

HCS HB 1944 -- EMINENT DOMAIN (Hobbs)

COMMITTEE OF ORIGIN: Judiciary

This substitute changes the laws regarding the use of eminent domain. The power of eminent domain will be vested in governmental entities or agencies whose governing body is elected or appointed by elected officials, private utility companies, public utilities, rural electric cooperatives, municipally owned utilities, pipelines, railroads, and common carriers. In its main provisions, the substitute specifies that:

(1) Private property may only be taken through the use of eminent domain after determining blight of the property or that the taking is for a public use and not without just compensation. Compensation will be determined by considering the comparable sales in the area, current use of the property, fair market value of the property based on its highest and best use, availability of comparable property in the area, and heritage value of the property;

(2) The definition of "heritage value" means a value assigned to any real property that has been owned by the same family for one or more years. If the line of ownership in the property meets the standard of same family, a premium will be paid so that the years of ownership correlates with a percentage that may be awarded by the appointed disinterested commissioners to the property owner up to 100% for 100 years;

(3) Farmland will not be determined to be blighted;

(4) At least 30 days prior to initiating negotiations to acquire a property interest, the condemning authority must give actual notification to the owner of record identifying the interest in real property to be acquired; the purpose for which the property is being condemned; an appraisal paid for by the condemning authority if the damages due to the taking are greater than \$10,000; a statement of the property owners rights including the right of the property owner to seek legal counsel; and the right to make a counteroffer and engage in negotiations, to obtain the landowner's own appraisal, to contest the condemnation proceeding, and to have just compensation determined preliminarily by court-appointed condemnation commissioners and, ultimately, a jury. The jury will consider the same factors as those used for determining just compensation when blighted property or property for a public use is taken. If the property owner employs an appraiser to appraise the property to be acquired, the appraisal must be delivered to the condemning authority within 60 days;

(5) A written offer must be presented to the property owners of record at least 30 days before filing a condemnation petition;

(6) Before a condemning authority may proceed with condemnation, there must be a court determination that proper and timely notice was given to all property owners, an initial offer no lower than the appraisal amount was given, and that the landowner was given an opportunity to obtain his or her own appraisal from a state-licensed or state-certified appraiser of his or her choice. If the court finds good faith negotiations have not taken place, the court must dismiss the condemnation petition and order the condemning authority to reimburse the owner for his or her actual reasonable attorney fees and costs;

(7) The court must order payment of the landowner's legal fees and expenses and award damages accruing as a direct and proximate result of the pendency of the condemnation if the condemning authority abandons condemnation prior to the final judgment of the court;

(8) Unless it is a total taking, a landowner may propose an alternative location on his or her property which must be considered by the condemning authority;

(9) No condemning authority can acquire private property through the use of the power of eminent domain for solely economic development purposes and defines "economic development" to mean a use of a specific piece of property which would provide an increase in the tax base, tax revenues, or employment for any political subdivision;

(10) The condemning authority must individually consider each parcel of property in the area with regard to whether the property is blighted. If the condemning authority finds that the area is predominately blighted, it may proceed with the condemnation of any parcel in the area;

(11) Property interests acquired through eminent domain by private utility companies, public utilities, rural electric cooperatives, municipally owned utilities, or common carriers are fixed and determined by the particular use for which the property was acquired. Any expanded use of the property will require additional eminent domain proceedings to acquire the additional rights;

(12) An Office of Ombudsman will be established in the Office of Public Counsel within the Department of Economic Development to assist citizens seeking information regarding the condemnation process and procedures;

(13) Any financial gain to the property owner arising from a condemnation action will be deducted from the taxpayer's federal adjusted gross income;

(14) Any easements that are acquired after the effective date of the substitute that are not used in whole or in part for the purpose for which they were acquired for a period of 15 consecutive years must be vacated by the holder of the easement upon written request from the then-owner of record of the burdened property. If the holder of the easement does not vacate the easement within 90 days after receiving the request, the landowner has the right to petition the circuit court to obtain vacation of the easement and the holder has the right to petition the circuit court to grant an extension of 15 years;

(15) Any legislative determination that an area is blighted, substandard, or insanitary must not be arbitrary or capricious and must be supported by substantial evidence. Upon the filing of any appeal of a legislative determination of blight, the circuit court must give preference in the order of hearing to all other cases, except elections cases, to the extent necessary to conclude the case within 30 days of having been filed. Any subsequent appeal must be given preference and concluded in an expedited manner similar to the manner specified for a hearing in circuit court;

(16) For any existing contract for land use or real property and once funds or land titles have been exchanged, the contract for sale is exempt from any exceptions after a period of 30 calendar days;

(17) Transportation development districts can condemn lands only upon prior approval by the county commission or by the local transportation authority in conjunction with ordinances of the local governing body;

(18) No condemning authority can use the power of eminent domain to take any property where a place of religious worship has been situated for a period of at least 10 consecutive years; and

(19) Tax increment financing cannot be used for the development of property taken by eminent domain in Shannon County.

FISCAL NOTE: No impact on General Revenue Fund in FY 2007, FY 2008, and FY 2009. Estimated Cost on Other State Funds of Unknown in FY 2007, FY 2008, and FY 2009.