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House Republican Staff Analysis

Bill: HF 603
Committee: Judiciary
Date: 3/21/2011
Member: Rep. Kaufmann
Staff: Amanda Freel (1-5230)

Summary

This bill provides protection for land owners facing loss of land due to eminent domain. Prevents land being taken for recreational purposes (ie: lakes). It gives landowners the opportunity to ask for a review of water needs for the community. Requires acquiring agency to prove land is not for recreational purposes. Attorney fees may be paid to land owner if agency wrongly condemns land. Exemptions exist for DOT in some situations.

Summary of Action

- Subcommittee February
 - Committee 3/2/2011 (15-6)
 - Passed House 3/22/11 (91-6)
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Section-by-Section Analysis

Section 1- Property on State Historic Registry

- Property on the State Historic Registry shall not be removed for the purpose of condemnation
- Property on the State Historic Registry shall not be condemned by the State or a political subdivision unless a resolution is passed by 2/3 of both chambers and signed by the governor
- DOT exemption

Section 2 Additional limitations on exercise of power — definitions.

- This chapter shall not be construed to limit the utilities division of the department of commerce
- If private property is to be condemned for a lake, only the land that is reasonable and necessary for surface drinking water may be condemned.
- Acquiring agency shall conduct a review of prudent and feasible alternatives of a drinking water source.
- For the second review, the data used to determine drinking water needs should include data and information related to the population growth and economic growth from the past two federal censuses, unless a district judge in the county determines, by a preponderance of the evidence, that the data would not accurately predict the economic and residential growth.
- A second review of the drinking water needs shall be performed if at least 25% of the affected property owners sign a petition requesting it. The engineer performing the second

- review shall be selected by a committee which shall be comprised of at least 50% property owners affected by the condemnation action.
- If property is condemned for a lake the acquiring agency shall not include plans to use the lake for recreational purposes.

Section 3- Judicial review of eminent domain authority

- The acquiring agency shall prove by clear and convincing evidence that the public use, purpose or improvement meets the definition of those terms.
- If the DOT is the acquiring agency, the burden of proof shall be on the department to prove by a preponderance of the evidence that the taking is for public use, purpose or improvement.
- If the property owner prevails in their action, the acquiring agency shall pay reasonable attorney fees.

Section 4- Approval of the Public Improvement

- DOT must prove there is a reasonable expectation the department will be able to achieve its public purpose and comply with all applicable standards and obtain necessary permits
- All others, if the authority to condemn is not conferred, the condemnation proceeding shall not progress unless the governing body for the acquiring agency declares, by resolution, that adequate funding has been or is reasonably certain to be secured.
- This prevents agencies from taking land and then not having the funding to complete the project and endlessly holding the land.

Section 5 Commission to assess damages

- Expands members of a compensation commission to contiguous counties

Section 6 Appraisalment — report

Section 7- Acquisition policies for acquiring agencies

Reasonable attorney fees and costs not to exceed \$100,000 may be awarded if it is determined that the creation of a lake through condemnation is not for public use (ie: if it's for recreational purposes)

Section 8 Disposition of condemned Property- Two Year Time Period

Substantial progress must be made within 2 years of the condemnation of the land for a proposed lake. If not, the acquiring agency must adopt a resolution within 60 days, offering the property for sale to the prior owner.

If the agency does not do this, the prior owner may petition the agency in writing for the land.

Section 9 Moving and Related Expenses

Section 10 Property and services outside of city — lease-purchase — insurance

Requires the city to consider viable alternatives within the city.

Section 11 Condemnation of property.

Adds chapters 6A and 6B

Requires the city to seek viable alternatives instead of condemning agricultural land, if the alternatives exist.

Section 12- Use of Revenues

If the local sales tax has not been approved in an election in the area where the property is to be condemned, the money cannot be used to for the condemnation for the creation of a lake.

Section 13 Natural resource commission

Land taken by eminent domain shall not be used for recreational purposes.

Section 14 Natural Resources Department Specific Power

Removes the power of condemnation. (During the subcommittee the DNR said they did not condemn land)

Section 15 Natural Resources Department Specific Power

Ability to acquire land shall not include the ability to acquire it for recreational purposes.

Section 16 Purchase of Lands-Public Parks

The commission may purchase lands from willing sellers for public parks.

Section 17 Public Lands and Water-Title to land

Removes ability to condemn for parks. Allows the commission to sell land donated or purchased for parks to others.

Section 18- Honey Creek Park Development- General Authority

Power to acquire property but not through eminent domain.

Section 19- Repeal

Repeal Code Sections 461A.9 and 461A.75

Section 20- Effective upon Enactment and Applicability