

HCS HB 1876 -- EMINENT DOMAIN FOR UTILITY PURPOSE

SPONSOR: Haffner

COMMITTEE ACTION: Voted "Do Pass with HCS" by the Standing Committee on Judiciary by a vote of 5 to 4.

The following is a summary of the House Committee Substitute for HB 1876.

This bill specifies that, before the Public Service Commission (PSC) issues an approval for a merchant line, an entity, as defined in the bill, must provide the PSC with a resolution of support passed by the county commission in each county through which the merchant line will be built. Prior to the county providing the PSC with a resolution of support, the county must consider the impact of the utility on the county. The bill specifies that no entity has the power of eminent domain for the purposes of constructing merchant lines. This restriction will not apply to any rural electric cooperatives or any electrical corporation operating under a cooperative business plan.

The bill also specifies that in condemnation proceedings, just compensation for agricultural or horticultural land shall begin with 150% of fair market value. Additionally, if a judgment is higher than the initial offer required by statute, the utility will be required to pay the attorney fees of the other party. In a condemnation proceeding for agricultural or horticultural land in which a court appoints three disinterested commissioners, one of the commissioners must be a farmer who has been farming in the county for at least 10 years.

The following is a summary of the public testimony from the committee hearing. The testimony was based on the introduced version of the bill.

PROPONENTS: Supporters say that this is the eminent domain bill from last year. The government was designed with checks and balances for protections on individual rights. This deals with farmers' property rights. Invenergy has been granted the authority of eminent domain through the PSC. The project provides little benefit to the state of Missouri. Only 6% of the power from this project will be used in Missouri. This is a DC transmission line; the power is not compatible with residential power here. There needs to be some sort of converter in order to provide service to residents of Missouri. The PSC uses tartan factors to determine whether to grant eminent domain. One of the factors is that it has to meet the needs of the state but this will not meet the needs of

the state when only 6% of the power will stay in Missouri. Additionally, this will not meet the renewable energy standards here. Grain Belt was going to use the type of CCN that needs prior approval from the county commission. Whatever they have been doing now is not working. How do we determine the dollar amount for what "just" compensation is? Grain Belt said they would use eminent domain as a last resort; as it stands now, they have sent out tons of 30-day notifications to land owners saying they intend to condemn the property. Invenergy never had a certificate granted by the PSC. Clean Energy was allowed to sell its certificate to Invenergy, so that company has never had to be before the PSC. They said they received their certificate in Illinois, but that is a blatant lie. No one at the PSC is willing to step up for the land owners. There have been five condemnation lawsuits filed in the eight relevant counties. The first one was filed in September of last year in Buchanan County. The last four were filed in December. This line was turned down twice before Jay Nixon replaced several commissioners on the PSC and then Jay Nixon went to work for Grain Belt. They are engaging in unlawful business practice. This should not be compared to other utilities; there are no other projects out there like this. Everything Grain Belt is doing is legal because of the vagueness of our statutes but it is like snake oil. The PSC's own staff did not recommend this. Anybody could claim to be a public utility. We need to overhaul definitions no matter what happens with this bill.

Testifying for the bill were Representative Haffner; Arnie C. Ac Dienoff; Dawn Taylor; David E. Carpenter; Missouri Pork Association; Ron Staggs; Scott Hodges; Missouri Farm Bureau; John W. Lake; Missouri Corn Growers Association; Missouri Cattlemen's Association; Jonathan Abbott, Caldwell County; Marilyn O'Bannon; and Wiley Hibbard, Ralls County.

OPPONENTS: Those who oppose the bill say that this will be indefensible and damages sought against the state will begin at \$52 million. This is unconstitutional (state and federal) and violates Supreme Court precedent. This bill targets a single, lawful utility with an unconstitutional special law but it protects other utilities from this law. This bill will be used as a government taking of Grain Belt's private property. This violates the Dormant Interstate Commerce Clause and it discriminates against Grain Belt as an Indiana LLC. It violates Missouri's Supreme Court law that affirms the statutory scheme of the PSC's authority. All government entities that provide utility service have the power of eminent domain. Longtime residents of a county want to ask why the legislature wants to undo the rights and duties of the PSC to do what is best for the residents of the state. This project will bring many benefits to the state.

Clean, renewable energy. The substantial tax benefits. Randolph County will receive hundreds of thousands of dollars in money during the construction phase. And jobs for their residents. They are actively engaged in negotiations with land owners to obtain easements. This is similar to Ameren UE, which started as Union Electric. We do not have enough clean renewable energy. This is an economic necessity to Carroll County. County expenses increased dramatically in Carroll County from 2021 to 2022 so this is necessary. No one in the county has mentioned a single complaint in the negotiation process with Grain Belt. This is an opportunity for Missourians to benefit.

Largest scale economic improvement projects. This is happening without state subsidy. Thirty-nine hometown utilities that are not for profit will see \$12.9 million in tax savings. This sustains 1500 jobs regionally for three years. The impact to our local economies and to the state could not come at a better time. The average population of counties is 9,000 people. Out of the 1100 land owners, five condemnation proceedings have been filed and two have already settled. It sets up a dangerous regulatory precedent to stop projects that would provide benefits to the residents. This is unconstitutional. The company has already spent \$52 million on the project. Last year, Invenergy had 33% agreements between Kansas and Missouri and now it is at 65%. Other businesses will be looking at this project and what happens here to determine whether they should do business in Missouri and spend their dollars here. Most of the tax money will go into the school system and the counties will benefit significantly.

Testifying against the bill were John Richard Tregnago; Missouri AFL-CIO; Sierra Club Missouri Chapter; Renew Missouri Advocates; Larry Pollard; Clean Grid Alliance; Missouri Association of Municipal Utilities and Missouri Joint Municipal Electric Utility; Associated Industries of Missouri; Mike Beckett, Hubbell, Inc; Invenergy, LLC; Donna Inglis; and Peggy A. Whipple, Grain Belt Express, LLC.

This bill is similar to HB 2005 (2022).

Written testimony has been submitted for this bill. The full written testimony can be found under Testimony on the bill page on the House website.