

ONE HUNDRED SEVENTH LEGISLATURE

SECOND SESSION

LEGISLATIVE RESOLUTION 421

Introduced by Bostar, 29.

PURPOSE: The purpose of this resolution is to propose an interim study to examine property rights issues. In order to carry out the purpose of this resolution, the committee shall seek the assistance of attorneys with experience in eminent domain.

The right to own property is fundamental to American law. The Fifth Amendment to the United States Constitution provides that private property cannot be taken without due process and that such property can only be taken for a public use with just compensation. Article I, section 3, of the Nebraska Constitution requires due process to take private property and Article I, section 21, requires just compensation for property taken for public use.

Eminent domain is a process by which the government takes property from unwilling property owners and should be used only as a last resort. An easement taken by eminent domain may permanently alter the character of the land and its surroundings, including impacts on natural resources, and may create liabilities which fall on the property owner.

Section 76-710.04 restricts the use of eminent domain for economic development purposes but carves out certain exceptions including exceptions for a pipeline and a transmission line. An easement taken by eminent domain for major infrastructure projects like pipelines may create abandonment, restoration, and reclamation issues. A one-time payment for a permanent easement for a pipeline project that generates income for a private business may not provide just compensation to the property owner as required by the state and federal constitutions.

The use of zoning by local jurisdictions may provide one means of protection for property owners. Limiting easements for property taken for

private gain to a term of years or requiring reversion to the property owner upon abandonment may provide other means of protecting property owners.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE ONE HUNDRED SEVENTH LEGISLATURE OF NEBRASKA, SECOND SESSION:

1. That the Judiciary Committee of the Legislature shall be designated to conduct an interim study to carry out the purposes of this resolution.

2. That the committee shall upon the conclusion of its study make a report of its findings, together with its recommendations, to the Legislative Council or Legislature.