

SUBJECT: Condemnation of land by railroad companies in certain communities

COMMITTEE: Land and Resource Management — committee substitute recommended

VOTE: 9 ayes — Mowery, Harper-Brown, Blake, R. Cook, Escobar, Leibowitz, Miller, Orr, Pickett
0 nays

WITNESSES: For — Don Hastings, City of Midlothian; Dennis Kearns, BNSF Railway; Laura Matz, Texas Railroad Association.
Against — None

BACKGROUND: Chapter 6, Title 112, Revised Statutes governs the right-of-way for railroads, including the right of eminent domain. Under art. 6336, if a railroad company is unable to agree with the owner for the purchase of any real estate required for the transaction of its business, the company may acquire the property by condemnation. This applies only to land within two miles of the railroad's right of way.

DIGEST: CSHB 2921 would amend art. 6336 to specify that a terminal switching railroad handling between 3,000 and 4,000 carloads a year in a county with a population of 130,000 or less would not have the power to condemn property zoned for residential use unless the use of the condemned property was authorized under or in conformity with local zoning or development regulations.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2005.

SUPPORTERS SAY: CSHB 2921 would prohibit the abuse of eminent domain power by railroad companies when this power conflicted with local zoning laws in smaller cities. The bill is a response to the use of eminent domain by a terminal switching company in Midlothian, which condemned land in a residential area adjacent to a local park. While this particular matter is being addressed in court, it would be preferable to establish the protection

in statute rather than relying on the good faith of railroad companies to resolve such problems in the future.

The bill was crafted to address specific problems with one company, and is carefully bracketed so that it would not have a significant effect on the railroads' power of eminent domain. Midlothian is an industrial town accustomed to working with railroads on land acquisition issues, but a sharp line must be drawn when the expansion of railroad facilities threatens to harm the community.

**OPPONENTS
SAY:**

CSHB 2921 is unnecessary because the matter it is meant to resolve is being addressed in court and may be resolved before the bill takes effect. Although the bill appears to affect only one community, it would chip away at the railroad companies' right of eminent domain. This right, while rarely used, is necessary for the overall public good of constructing and maintaining railways. The bill would set a bad precedent by encouraging individual communities to seek protection in state law from railroads using eminent domain for legitimate public purposes.

NOTES:

The committee substitute stipulates that the bill would apply only to the condemnation of property for a terminal switching railroad handling between 3,000 and 4,000 carloads a year and operating in a county with a population of 130,000 or less. It also changed the effective date from September 1, 2005, to immediate effect with a two-thirds vote of each house.

The companion bill, SB 808 by Averitt, has been referred to the Senate Transportation and Homeland Security Committee.