

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

SENATE BILL 1768

By: Laster

AS INTRODUCED

An Act relating to eminent domain; creating Eminent Domain Limitation Act of 2006; providing short title; stating purpose; stating entities covered by act; setting guidelines and criteria to be considered when assessing certain exercise of the power of eminent domain; providing for certain procedures, compensation and sale of certain property; prohibiting certain use of eminent domain; providing for codification; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9.1 of Title 27, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Eminent Domain Limitation Act of 2006".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9.2 of Title 27, unless there is created a duplication in numbering, reads as follows:

A. The Eminent Domain Limitation Act of 2006 shall serve to interpret and apply the provisions of Section 24 of Article II of the Oklahoma Constitution where a covered entity exercises the power of eminent domain in the following circumstances:

1. The exercise of the power of eminent domain is not governed by existing legislation;

2. The power of eminent domain is used to acquire an interest in real property for nontraditional public uses; or

3. The public will not have access to the real property once it is acquired.

B. The provisions and restrictions of this act shall not apply to the exercise of the powers of eminent domain when used:

1. Pursuant to the Urban Renewal Act;

2. Pursuant to the Neighborhood Redevelopment Act;

3. To acquire real property for traditional public uses, including, but not limited to, transportation needs including streets, bridges, airports, canals, railroads, mass transits, traffic control and the like, utility facilities, transmission systems, recreational facilities, public buildings and grounds, cemeteries, parks, and water systems and sewer systems and related needs; or

4. To acquire real property for any public use authorized by the government of the United States.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9.3 of Title 27, unless there is created a duplication in numbering, reads as follows:

This act shall apply to all entities vested with the power of eminent domain pursuant to Oklahoma law.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9.4 of Title 27, unless there is created a duplication in numbering, reads as follows:

Whenever a covered entity exercises the power of eminent domain in a situation not exempted by Section 2 of this act to acquire any right, title or interest in real property from a private owner and, thereafter, transfers title to the acquired interest in real property to a private third party, one or more of the following criteria shall be used to assess whether the exercise of eminent domain is for a public use within the meaning of the Oklahoma Constitution:

1. The degree to which the health, safety and quality of life of the citizens will be enhanced by the acquisition of the interest in the property;

2. The way in which the benefit to the public compares to the way in which the private party to whom title to the property is ultimately conveyed benefits from the transfer;

3. The benefits to the public in exchange for the cost incurred in acquiring the real property;

4. The degree of control over the property maintained by the covered entity after transfer to a private party and the degree of continued accountability to the covered entity by the private party to whom title is ultimately conveyed;

5. A comparison of the private dollars involved in the development of the property after acquisition to the number of public dollars involved in the project;

6. The degree of enhancement of economic growth and development for the benefit of the community as a whole; and

7. Any special exigent circumstances which call into question concerns regarding the health, safety and quality of life of the citizens of the community.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9.5 of Title 27, unless there is created a duplication in numbering, reads as follows:

A. In exercising the power of eminent domain in circumstances covered by Section 2 of this act, the covered entity will be governed by the procedures set forth in Sections 1 through 16 of Title 27 of the Oklahoma Statutes. In all cases, fair and just compensation must be paid to the land owner from whom title is obtained.

B. In connection with procedures for the exercise of eminent domain set forth in Title 27 of the Oklahoma Statutes, if a stipulated award of damages is tendered by the condemner and filed of record in the pending court proceeding, either prior to or within ninety (90) days subsequent to the filing of a commissioner's report, and such stipulated award is higher than the amount assessed

as just compensation in the commissioner's report, that award is deemed to be the commissioner's award for all statutory purposes.

C. It is further provided that in the event that real property taken by eminent domain under the procedures set forth in Title 27 of the Oklahoma Statutes is not used for the purposes for which it was condemned or for another public use by a covered entity within five (5) years of the date when title to the real property was acquired by the covered entity, the covered entity shall declare the property surplus and shall be required to first offer the property for resale to the person from whom the property was taken, or the person's heirs or assignees, at the then fair market value of the property or the original price at which the covered entity purchased the property, whichever is greater, as determined by either agreement of the parties or by the procedures for assessing fair market value for purposes of condemnation set forth in state law. In connection with this provision, the covered entity shall notify the former land owner of the right of first refusal by sending notice by certified mail, return receipt requested, to the last known address of the person as provided by the person or, if the mail is returned as not subject to delivery, by publication in a newspaper of general circulation in the community where the real property is located. If the offer to repurchase is not accepted within ninety (90) days from the date of notice or, if the offer to repurchase is tentatively accepted, from the date the fair market value placed on the property is determined, the property may then be sold at public sale.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9.6 of Title 27, unless there is created a duplication in numbering, reads as follows:

The use of eminent domain is prohibited where it is used to confer a solely private benefit to a private entity to whom the property is subsequently conveyed, whether by sale or lease.

SECTION 7. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this resolution shall take effect and be in full force from and after its passage and approval.

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