

ONE HUNDRED FIFTH LEGISLATURE

FIRST SESSION

**LEGISLATIVE RESOLUTION 243**

Introduced by Wayne, 13.

PURPOSE: The purpose of this resolution is to study issues related to eminent domain and property rights. The right to own property is fundamental to the fabric of American law and justice. The Fifth Amendment of the Constitution of the United States 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 Constitution of Nebraska requires due process to take property from its owner. Article I, section 21, of the Constitution of Nebraska requires just compensation for property taken for a public use. Section 76-710.04 of the Nebraska Revised Statutes restricts the use of eminent domain for economic development purposes, but carves out specific exceptions, including pipelines and transmission lines.

A one-time payment for a permanent easement for an infrastructure project that generates revenue may not provide just compensation to the property owner, and an easement taken by eminent domain may permanently alter the character of the land and its surroundings. An easement taken by eminent domain may also create liabilities which fall on the property owner in addition to abandonment, restoration, and reclamation issues. The use of zoning by local jurisdictions may provide a means of protecting property owners.

The study committee shall examine the following issues:

- (1) Whether granting eminent domain authority to for-profit entities meets the constitutional requirement of a public use;
- (2) Whether the constitutional requirement of a public use should require proof of a benefit to the general public;
- (3) Whether administrative processes that trigger eminent domain authority meet standards necessary to provide adequate due process for property owners;

(4) Whether a one-time payment for property taken through eminent domain provides just compensation for projects that generate revenue;

(5) Whether a system of renewals or lease payments should be required instead of permanent easements for major infrastructure projects that generate revenue, such as transmission lines and pipelines;

(6) Whether entities granted easements for infrastructure projects that generate revenue, such as pipeline and transmission lines, should be required to provide bonds, liability insurance, and decommissioning plans to protect property owners;

(7) Whether impacts to natural resources should be considered as part of the process of granting eminent domain authority for infrastructure projects such as pipelines and transmission lines;

(8) Whether social and economic impacts should be considered as part of the process of granting eminent domain authority for infrastructure projects such as pipelines and transmission lines; and

(9) Whether there are other effective means of protecting the rights of private property owners including zoning provisions.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE ONE HUNDRED FIFTH LEGISLATURE OF NEBRASKA, FIRST 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 conduct at least three public hearings, including at least one in each Congressional district.

3. 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.