

EMINENT DOMAIN

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Senate Joint Resolution E

Sponsor: Sen. Tony Stamas

House Committee: Government Operations

Senate Committee: Transportation

Complete to 11-28-05

A SUMMARY OF SENATE JOINT RESOLUTION E AS ADOPTED BY THE SENATE 11-9-05

Article 10, Section 2 of the 1963 State Constitution provides, "[p]rivate property shall not be taken for public use without just compensation therefore being first made or secured in a manner prescribed by law. Compensation shall be determined in proceedings in a court of record."

Senate Joint Resolution E would add that "public use" would not include the taking of private property for the transfer of ownership to a private entity for the purpose of economic development or enhancement of tax revenue. The joint resolution also provides that if an individual's principal residence is taken for a public use, the amount of compensation would have to be at least 125 percent of the property's fair market value, in addition to any other reimbursement allowed by law.

The joint resolution would further add that in a condemnation action, the burden of proof is on the condemning authority to demonstrate, by a preponderance of the evidence, that the taking of private property is for a public use. If, however, the action involves the taking of property for the purposes of eradicating blight, the condemning authority would have to demonstrate by clear and convincing evidence that the taking is for a public use.

The joint resolution further provides that any existing right, grant, or benefit afforded to property owners as of November 1, 2005, whether provided by Section 2, by statute, or otherwise, would not be abrogated or impaired by the amendment.

The joint resolution would be submitted to voters at the next general election.

FISCAL IMPACT:

The joint resolution would have an indeterminate fiscal impact on the state and local governmental units.

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