



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2011 Senate Bill 83

**Senate
Amendment 1**

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Senate Bill 83 makes various changes to current law relating to condemnation.

Among other provisions under the bill, in addition to restrictions under current law as to what entities may condemn and under what circumstances they may condemn, the bill provides that property may be acquired by condemnation only for the following public uses:

- The possession, occupation, and ownership of the property by a public agency for the enjoyment of the public agency or the general public.
- The establishment of a public utility.
- The elimination of blighted property.

The bill also modifies the current provision of the condemnation law regarding determining the necessity of a taking. Under current law, the condemnor determines the necessity of the taking in most condemnation proceedings. The necessity of a taking may also be determined by a certificate of public convenience and necessity issued by the Public Service Commission (PSC). In all other cases, a judge must determine the necessity. Current law also provides that a determination of the PSC of the necessity of taking any undeveloped water site is conclusive.

The bill repeals the provision under which the condemnor typically determines the necessity of the taking. Under the bill, if a judge determines the necessity of a taking, it must be established by a preponderance of the evidence. Finally, the bill provides that a determination by the PSC of the necessity of taking an undeveloped water site is conclusive unless the determination is arbitrary or unreasonable.

Senate Amendment 1 provides that property may be acquired by condemnation as a public use by entities, other than governmental entities, that are granted the authority to acquire property by condemnation for specified purposes under current law.

The amendment also deletes the provisions of the bill that modify current law relating to determining the necessity of a taking.

Legislative History

Senator Lazich offered Senate Amendment 1. On May 11, 2011, the Senate Committee on Judiciary, Utilities, Commerce and Government Operations unanimously recommended adoption of Senate Amendment 1 and recommended passage of Senate Bill 83, as amended, on a vote of Ayes, 3; Noes, 2.

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