



CORY TOMCZYK

STATE SENATOR • 29TH SENATE DISTRICT

Testimony – **SB 589** Senate Committee on Housing, Rural Issues, and Forestry

It is common practice for builders and developers to obtain written agreements with adjacent property owners to allow for construction cranes, also known as ‘boom cranes’, to swing over the adjoining real property. Most of the time, both parties agree to terms and construction can move forward. However, sometimes there are holdouts and construction has to stop or be postponed until a resolution is met.

In the case where a property owner does not agree to the use of air space, the project can be delayed for any length of time, often drastically increasing building costs in a world where building costs are now higher than ever.

By creating a temporary easement, SB 589 permits the owner of a property, to freely utilize construction cranes throughout the surrounding airspace above adjoining real property during construction. By eliminating red tape, this bill can assist developers and construction companies in alleviating Wisconsin’s housing shortage and shorten construction time for various other types of projects.

I am conscious of and sympathetic to concerns regarding property rights, specifically the property rights of the owners of the adjoining property. There will be some groups testifying today who will voice these concerns and my office is happy to work with them to clear up some of these issues. I believe we can reach an agreement that allows work to continue without interruption while protecting the rights of property owners.



JON PLUMER

STATE REPRESENTATIVE • 42nd ASSEMBLY DISTRICT

Senate Committee on Housing, Rural Issues and Forestry December 6, 2023

Thank you Chairman Quinn and members of the Senate Committee on Housing, Rural Issues and Forestry for your consideration of Senate Bill 589/Assembly Bill 621.

It is common practice for builders and developers to obtain written agreements with adjacent property owners to allow for construction cranes to swing over the adjoining real property. While in most cases, all parties are in agreement, there are occasional holdouts.

In the case where a property owner does not agree to the use of air space, the project can be delayed for any length of time, often drastically increasing building costs, which are then passed on to consumers, oftentimes renters.

This bill permits the owner of a property, who is building or renovating on that property, to freely utilize construction cranes throughout the surrounding airspace above adjoining real property.

By eliminating red tape, this bill can assist developers and construction companies in alleviating Wisconsin's housing shortage, and shorten construction time for various other types of projects.

We are currently in the process of negotiating an amendment with industry stakeholders that addresses some concerns regarding notification, insurance coverage, and just compensation. We look forward to continued discussions and support going forward.

Thank you again for your consideration of this legislation.



To: Members, Committee on Housing, Rural Issues and Forestry
From: Tom Larson, Executive Vice President
Date: December 6, 2023
RE: SB 589/AB 621 – Temporary Easements for Construction Booms

The Wisconsin REALTORS® Association (WRA) supports the objectives of SB 589/AB 621 but opposes the bill, as drafted, because of its negative impacts on property rights and the lack of any insurance requirement related to the construction booms.

Background -- The redevelopment of urban areas presents numerous challenges and often requires adjustments to normal rules and regulations. For example, the redevelopment of property often requires traffic to be redirected or lanes of traffic to be closed for extended periods of time while construction activities occur. The construction of tall buildings in urban areas often requires boom cranes to swing over adjacent property, encroaching upon the air rights of the property owners.

Generally, air rights grant property owners ownership and control over the airspace above their land. Air rights enable owners to develop, sell, or lease the space above their property. However, air rights are not absolute, and can be limited to reasonable heights. Balancing individual property rights with broader economic development interests is essential in managing air rights and their implications on urban development and property usage.

SB 589/AB 621—Unfortunately, SB 589/AB 621 fails to strike the necessary balance between private property rights and economic development interests. By failing to provide property owners with just compensation in exchange for the temporary easement through their air rights, SB 589/AB 621 violates the protections afforded to property owners under the Takings Clause in the Fifth Amendment of the U.S. Constitution, which provides that “private property [shall not] be taken for public use, without just compensation.”

The following U.S. Supreme Court cases highlight the takings concerns related to the legislation:

- **Air Rights Are Property** – In *U.S. v. Causby*, 328 U.S. 256 (1946), air rights were defined as property extending ownership rights vertically. The Supreme Court Ruled that landowners own the airspace above their property up to a reasonable altitude, and government action infringing on this right may require compensation under the Takings Clause of the Fifth Amendment.
- **Temporary Easements Across Private Property Can Be A Per Se Taking** – In *Cedar Point v. Hassid*, 549 U.S. XXX (2021), the Supreme Court clarified that temporary easements, granting access to private property, can constitute a per se taking under the Takings Clause if they substantially interfere with the property owner’s rights, even if the interference is temporary in nature. Compensation may be required.

- **Taking of Private Property For Economic Development Raises Policy Concerns** – In *Kelo v. City of New London*, 545 U.S. 469 (2005), the Supreme Court upheld the taking of private property for private economic development. However, the Court’s decision was controversial and critics have argued that the Court’s decision was wrongly decided because it expanded government power and benefited private developers at the expense of property rights.

In addition to the constitutional concerns about takings, SB 589/AB 621 does not require the owner of the easement or the boom operator to carry adequate insurance to protect against property damage or personal liability in the event an accident occurs.

Unless the issues related to private property rights and insurance are adequately addressed, the WRA opposes SB 589/AB 621.

The Fifth Amendment of the United States Constitution, made applicable to the states by the Fourteenth Amendment,