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FISCAL IMPACT REPORT

SPONSOR	<u>Cheney</u>	ORIGINAL DATE	<u>2-4-06</u>	HB	<u>746/aHJC</u>
		LAST UPDATED	<u>2-9-06</u>		
SHORT TITLE	<u>USE OF EMINENT DOMAIN IN ECONOMIC DEVELOPMENT</u>			SB	<u></u>
				ANALYST	<u>Hadwiger</u>

Original bill duplicated SB702 and duplicated SB231 and HB27 except for appropriation.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Finance and Administration (DFA)
New Mexico Department of Environment (NMED)
Economic Development Department (EDD)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendment to House Bill 746 narrows the prohibition in the bill to instances when condemnation is solely to promote private or commercial development. The amendment also deletes the appropriation.

Synopsis of Original Bill

House Bill 746 would prohibit state or local governments from condemning private property if the taking is to promote private or commercial development and title to the property is transferred to another private entity.

The bill also appropriates \$20 thousand from the general fund to the Local Government Division (LGD) of the Department of Finance and Administration (DFA) in FY07 to hold a series of meetings across the state to educate local public bodies on the proper use of eminent domain powers.

FISCAL IMPLICATIONS

Additionally, according to DFA, the fiscal implications to municipalities who seek to redevelop blighted properties in a designated metropolitan redevelopment area are potentially significant. Not having the ability to exercise eminent domain as a last resort, in order to acquire all property deemed necessary to redevelop a redevelopment area, may cause a municipality to forego tax revenues that it would otherwise accrue. The bill also may cause a municipality to not seek

funding from sources now opening up for redevelopment purposes, such as tax increment financing.

SIGNIFICANT ISSUES

The Economic Development Department (EDD) expressed the following concerns about this bill:

1. A blanket prohibition of the use of eminent domain would affect the use of the MRA tool in blighted areas including rail yards, abandoned industrial and manufacturing sites, Brownfield areas as well as deteriorating and cleared lots operating as commercial areas in town centers.
2. The bill presupposes the abuse of eminent domain by municipalities in the state of New Mexico and dedicates funding to the Local Government Division for an activity and purpose that remains un-clarified as to its necessity.
3. The bill may also have adverse impact on EDD initiatives such as the Certified Communities Initiative and the Local Economic Development Act which seeks to prepare communities to partner in infrastructure and capital investments to assist redevelopment of under-utilized and non performing properties which could be local economic generators if put back into commercial and other uses.
4. The bill disrupts the balance between minimizing the burdens on individuals and maximizing the benefits to the community.

DFA expressed several concerns with regard to this bill. According to DFA, the promotion of economic development, even if it means allowing public purpose to be advanced through transferring title of private property to another private entity, which HB746 prohibits, is a long standing though unused power of New Mexico municipalities. Eminent domain has been a long standing tool in the economic development toolbox. While it may be a last resort, its presence enables marketplace-set levels of just compensation to rule, not exorbitant or unreasonable rates that can prevent community-desired development or redevelopment from occurring.

DFA added that the three laws that allow economic development tools to combat blight – Community Development Act, Metropolitan Redevelopment Act, and the Urban Development Act – only allow private gain for a public purpose after a rigorous, open and fair public planning process. As noted by certified planners Mark Pellegrini and Donald Poland, “the process should articulate the goals for development and the purposes to be served, and consider alternatives both for the development itself and the mechanisms by which to accomplish it.” Done well, such an open and participatory process can ensure that a community’s direction is decided by local citizens through their local elected officials, not by state or federal mandates.

According to DFA, HB746, one of 13 bills introduced in the 2006 Legislature in reaction to the U.S. Supreme Court decision in *Kelo vs. New London CT* in June 2005 (see below), seeks answers for a problem that does not exist in New Mexico. Nationally, the public’s concerns about the use of eminent domain have involved both issues of condemnation process and just compensation; HB746 addresses neither of these concerns. There have been no reported abuses or problems in New Mexico with eminent domain. Local governments usually bend over backwards to accommodate private property owners; for instance, Rio Rancho, when exercising its power on a 1000-acre parcel, only condemned raw land, and it gave vouchers to land owners to obtain lands plumbed with infrastructure in other parts of the city.

DFA noted that New Mexico’s history of the use of eminent domain for economic development purposes goes back to the 19th century. Each railroad town in New Mexico – including Raton, Las Vegas, Albuquerque, Belen, Grants, Gallup, Encino, Vaughn, Socorro, Deming, Lordsburg, Mountainair, Alamogordo, Santa Rosa, Tucumcari, Fort Sumner, Artesia, Bernalillo, Clovis, and Portales – owes its existence to the outright gift of public lands to private railroads to spur economic development. Ironically, rail yard redevelopment efforts at the heart of many of these communities, if they invoke existing authority such as under the Metropolitan Redevelopment Act and future funding to be available through tax increment financing, may be made much harder should legislation pass to prohibit promoting economic development through transferring title of private property to another private entity as a public purpose. Passage of the bill may result in putting public entities in the business of redevelopment, a task best left up to the private sector and inappropriate for the public sector.

DFA indicated the Kelo Supreme Court decision, which acknowledges that there is no “principled way of distinguishing economic development from the other public purposes that we have recognized,” reached the following conclusions:

- Reaffirmed fifty years of takings jurisprudence, rather than broadening the power of eminent domain;
- Stated that the 5th amendment does not require more than just compensation;
- Stated that economic development is a public purpose, even when it is not a public use;
- Equated public use with public purpose as long as just compensation is made;
- Declared that creation of new jobs and elimination of blight and economic development are public purposes;
- Gave deference to local decision makers;
- Reaffirmed no rigid formulas for determining what public needs such as economic development justify the use of eminent domain;
- Reaffirmed economic development as a traditional local government function;
- Allowed states to further define eminent domain; and
- Emphasized a local government plan’s comprehensiveness and the value of coordinating uses as a whole.

DFA explained that many states now exercising the last of these findings have yet to ground their redevelopment laws in a clear definition of “blight,” as is done in New Mexico's Community Development, Metropolitan Redevelopment, and Urban Development Acts. In sum, the bill disrupts the delicate balance between minimizing the burdens on individuals and maximizing the benefits to the community.

DFA also noted that this is one of many bills, including SJR1, SJR4, SM3, SB370, SB231, HJR7, HM6, HB746 and HB27, that attempt to restrict the use of economic development as a clear rationale for use of eminent domain. Each proposal seeks to limit the power of eminent domain in response to the Kelo v. City of New London decision by the U.S. Supreme Court (125 S.Ct. 2655) so that private property is not taken for a private commercial enterprise or economic development or any other private use. Six want to bring the issue to the voters for a constitutional amendment. SB 231, HB746, HB 27 and this bill seek to prohibit state and local governments from condemning private property to promote private or commercial development by transferring the title of the property to another private entity. SB 370 repeals the Community Development Act, and amends the Metropolitan Redevelopment Act and Urban Development Act to exclude improper planning or multiple ownership from the legal definition of blight. It removes

economic development as a reason to address slum and blighted conditions, along with many other substantive changes. DFA indicated each of these bills conveys a misconception that, under present rules, a municipality has unlimited powers of condemnation. In the absence of any discussion about eminent domain abuse in New Mexico, these legislative over-reactions to Kelo may preclude the implementation of a number of beneficial projects that could create jobs, housing opportunities and economic growth on lands currently labeled brownfield, blighted, or worse.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This bill duplicates SB702; duplicates SB231 and HB27 except for appropriation. It also relates to HJR7, HM6 SB370, SJR1, SJR4.

TECHNICAL ISSUES

DFA and EDD noted that the bill intends to amend the Eminent Domain Code, but there are dozens of laws that authorize the use of condemnation. Three laws (Community Development Act, Metropolitan Redevelopment Act, and the Urban Development Act) that explicitly include eminent domain as one of the economic development tools used to combat blight, only allow private gain for a public purpose after a rigorous review, and only after an open and fair public planning process.

OTHER SUBSTANTIVE ISSUES

EDD noted that this legislation may be in conflict with State Law related to the State Economic Development Act and the Metropolitan Redevelopment Code. Passage of the bill could lead to competitive disadvantages with neighboring states doing redevelopment and competing for new business, creating new jobs. The City of Albuquerque's Attorney, upon recent review of similar legislation before the Albuquerque City Council, was that the existing legislation provided adequate protection and legal redress for home owners being removed from their property for economic development purposes.

ALTERNATIVES

EDD and DFA noted that HB746 prohibits any use of eminent domain for any case where land will be conveyed to a private party. However, the issue is too complex, and the potential impacts too great, to simply enact categorical exclusions. A Legislative task force or interim committee should study the use of eminent domain and its impact on the state; how the Kelo decision affects state law governing the use of eminent domain in the state; and the overall impact of state laws governing the use of eminent domain on economic development, residents and local governments in New Mexico.

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