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## FISCAL IMPACT REPORT

ORIGINAL DATE 1/21/07

SPONSOR Anderson LAST UPDATED \_\_\_\_\_ HB 159

SHORT TITLE Private Property Rights Protection Act SB \_\_\_\_\_

ANALYST Wilson

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		Minimal				

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)

### SUMMARY

#### Synopsis of Bill

House Bill 159 enacts the Private Property Rights Protection Act. The bill provides the following:

- Definitions for the following terms: “comparable replacement dwelling”; “owner”; “slum”; and “taken” or “taking.” Additionally, the bill defines “public use” as *not* including “the public benefit of economic development, increased tax base or taxes, employment or general economic health.”
- The “power of eminent domain may be exercised only if its use is authorized by the state *and* for a public use.” The bill also provides for the supremacy of the Private Property Rights Protection Act above all but the New Mexico and United States constitutions and preemptory federal law.
- An entity exercising the power of eminent domain for the purpose of slum clearance and development, to provide to a person whose principal dwelling is taken either a comparable replacement dwelling or, if desired, a monetary amount at least sufficient to purchase a comparable replacement dwelling.

- The state or its political subdivision, in an eminent domain judicial action involving slum clearance and redevelopment, to establish by clear and convincing evidence that the real property being taken is necessary to eliminate a direct threat to the public health or safety caused by the property in its current condition; or the taking is necessary to acquire abandoned property. And the state or its political subdivisions must also prove there is no reasonable alternative to the taking.
- An owner of real property involved in an eminent domain action is not liable for attorney fees or costs, and shall be awarded reasonable attorney fees, costs and expenses if the taking is found not to be for a public use. The bill also provides for the award of attorney fees, costs and expenses in an action involving slum clearance and redevelopment, when the final amount of just compensation offered prior to a court trial is less than the amount of just compensation awarded by a jury or the court.

## FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to challenges to the exercise of eminent domain under the Act. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

## SIGNIFICANT ISSUES

The necessity and wisdom of using eminent domain to promote economic development are certainly matters of legitimate public debate.

The AOC states that House Bill 159 appears to be a response to the United States Supreme Court's June 2005 decision in *Kelo v. City of New London* allowing local governments to force property owners to sell out and make way for private economic development when officials decide it would benefit the public, even if the property is not blighted and the new project's success is not guaranteed.

## OTHER SUBSTANTIVE ISSUES

In the final paragraph of the majority's opinion in the Kelo case, Justice Stevens wrote:

In affirming the City's authority to take petitioners' properties, we do not minimize the hardship that condemnations may entail, notwithstanding the payment of just compensation. *We emphasize that nothing in our opinion precludes any State from placing further restrictions on its exercise of the takings power.* Indeed, many States already impose "public use" requirements that are stricter than the federal baseline. Some of these requirements have been established as a matter of state constitutional law, while others are expressed in state eminent domain statutes that carefully limit the grounds upon which takings may be exercised.