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FISCAL IMPACT REPORT

ORIGINAL DATE 02/05/07
 LAST UPDATED 03/16/07 HB 393/a HJC/a SPAC /aCC

SPONSOR Wirth

SHORT TITLE Repeal Certain Eminent Domain Statutes SB _____

ANALYST Hanika Ortiz

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$.1 see narrative			recurring	various

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Economic Development Department (EDD)
 Office of the Attorney General (AGO)
 Department of Finance and Administration (DFA)

SUMMARY

Synopsis of CC Amendment

The Conference Committee Amendment strikes HJC Amendment #2 pertaining to condemnation of private property for certain public uses; and, strikes SPAC Amendment #1 which had removed all HJC amendments. The CC further restores HJC Amendments 1 and 3 which inserts “addressing the eminent domain power of municipalities” into the title of the bill; and, renumbers the sections accordingly. The CC further amends Section 3-18-10 NMSA 1978 and inserts a new section to allow a property to be acquired by eminent domain for park purposes; to establish or acquire cemeteries or mausoleums; for correcting “obsolete or impractical planning and platting” and defines such as property platted prior to 1971 that has remained vacant and unimproved; and, either threatens the health, safety and welfare of persons or property due to erosion, flooding and inadequate drainage.

Synopsis of SPAC Amendment

The Senate Public Affairs Committee Amendment strikes all HJC amendments.

Synopsis of HJC Amendment

The House Judiciary Committee Amendment inserts language into the title referring to Article 18 relating to powers of municipalities. The committee amendment inserts Section 3-18-10 NMSA 1978 and adds language to further clarify that a property may be acquired by eminent domain for park purposes; to establish or acquire cemeteries or mausoleums; for correcting “obsolete or impractical planning and platting” and defines such as property platted prior to 1975 that has remained vacant and unimproved; and, either threatens the health, safety and welfare of persons or property as defined in the bill or is unsuitable for building.

Synopsis of Original Bill

House Bill 393 will repeal statutes allowing local public bodies and other governmental entities to address blighted areas and encourage economic development through the use of the power of eminent domain. The bill will repeal most of the Urban Development Law (NMSA Section 3-46-1 to 3-46-45) except for NMSA Section 3-46-43 relating to dwellings unfit for human habitation. It will also repeal the Community Development Law, NMSA Sections 3-60-1 to 3-60-7.

The bill repeals provisions in the Metropolitan Redevelopment Code (NMSA Section 3-60A-1) relating to a public body’s exercise of its power of eminent domain to acquire property for economic development. Under this bill, a public body will also be specifically prohibited from exercising its power of eminent domain for that purpose.

FISCAL IMPLICATIONS

Indeterminate fiscal impact, but unlikely to be large.

SIGNIFICANT ISSUES

The bill derives from the recommendations of the 2006 Governor's Task Force on the Responsible Use of Eminent Domain by State and Local Governments. Governor Richardson charged the Eminent Domain Task Force with examining “the Kelo case to determine what impact the decision will have or has had on condemnation proceedings around the state in order to develop recommendations, including any legislative proposals...”

The Task Force determined that the Urban Development Code, the Community Development Code and the Metropolitan Redevelopment Code are redundant and unanimously agreed to recommend elimination of the Urban and Community Development Codes. This bill does so. The Task Force also recommended in a 10-7 vote that Section 11 be removed from the Metropolitan Redevelopment Code; the part of the law that currently allows the use of eminent domain for economic development purposes in a municipality's attempts to reduce or eliminate slum or blighted conditions.

Rio Rancho is the only governmental entity to use the power of eminent domain as permitted in the Metropolitan Redevelopment Act. The Task Force found that Rio Rancho turned to eminent domain primarily to resolve inadequate and antiquated platting, which resulted from the unique nature of Rio Rancho’s development.

PERFORMANCE IMPLICATIONS

AGO reports this bill is in response to the United States Supreme Court decision in *Kelo v. City of New London*. On July 23, 2005 the Supreme Court, by a 5-4 decision, allowed the City of New London, Connecticut to exercise its power of eminent domain to condemn privately owned real estate so it could be used as part of a comprehensive redevelopment plan. The decision was based upon the city's desire to address its economic downturn by allowing the New London Development Corporation, a private entity under the control of the city government, to revitalize the "Fort Trumbull" neighborhood after Pfizer Pharmaceuticals began to build a large research facility on the outskirts of that neighborhood. The corporation offered to purchase the properties involved, but the owners of 15 out of 115 lots refused to sell. The City exercised its power of eminent domain and condemned the holdout lots. The Supreme Court upheld the City's action.

Justice O'Conner, who dissented, stated: "*Any property may now be taken for the benefit of another private party, but the fallout from this decision will not be random. The beneficiaries are likely to be those citizens with disproportionate influence and power in the political process, including large corporations and development firms.*"

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HJR 1 and SJR 3 propose to amend the New Mexico Constitution to prohibit the use of the power of eminent domain for private purposes or for economic development.

House Bill 159 prohibits the exercise of the power of eminent domain for private purposes by enacting the "Private Property Rights Protection Act".

OTHER SUBSTANTIVE ISSUES

DFA reports that according to the report of the Eminent Domain Task Force, the Metropolitan Redevelopment Act (MRA) "allows local governments to rehabilitate areas within communities that have fallen into disrepair or become overridden by crime and violence. Local governments are able to invest public resources in projects like roads, buildings, parks, and other structures and facilities that promote economic stability and opportunity. The Legislature has expressly given local governments the ability to exercise the power of eminent domain. No other laws in New Mexico allow eminent domain to be used solely for the promotion of economic development."

The Task Force report further notes that in order for a municipality to declare a Metropolitan Redevelopment Area, "the first phase requires the passage of a resolution by a local governmental body declaring that a proposed area is a slum or blighted and that remedying the slum or blight is in the interest of the public health, safety, morals or welfare of the residents of the municipality." If slum/blight conditions exist, then the local governmental body may designate that area as a redevelopment area. The designation occurs through a formal vote of the local governmental body. The local governmental body must provide notice to the community of its intent to (1) hold a slum/blight hearing and (2) declare the slum/blighted area a redevelopment area. If a local governmental body declares an area a redevelopment area by formal resolution, it may then adopt a redevelopment plan. Thus the process under existing law for exercising the MRA powers, including the use of eminent domain, is fairly explicit. Exercising eminent domain under the MRA, that is, acquiring "property through purchase or condemnation (that) may be

sold or leased to private parties for a use, (must be) consistent with the redevelopment plan."

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The recommendations of the Eminent Domain Taskforce will not be enacted and the use of eminent domain under the Metropolitan Development Code will continue.

AHO/mt