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FISCAL IMPACT REPORT

ORIGINAL DATE 2/12/07

SPONSOR K. Martinez LAST UPDATED HB 856

SHORT TITLE Repeal Certain Imminent Domain Statutes SB

ANALYST C. Sanchez

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Finance Administration (DFA)

Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of Bill

House Bill 856 addresses issues related to municipality's use of eminent domain for economic development purposes, by limiting its use to last resort, clarifying the definition of "slum and blighted", and augmenting public notice requirements. The bill also repeals two related laws that are no longer in use and are redundant to the Redevelopment Act.

FISCAL IMPLICATIONS

No fiscal impact on the general fund.

SIGNIFICANT ISSUES

HB 856 provides a response to the US Supreme Court's Kelo v. London decision regarding the public use of eminent domain for economic development purposes, from the perspective of municipalities. It brings into legislation agreements made by the Governor's Task Force on Eminent

Domain regarding notification, along with the wishes of the task force's municipal members to retain the use of eminent domain as a last resort.

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; that is 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. This bill retains that power. In the task force report's minority recommendation, the seven members expressed concern that without this power it "would unduly restrict the ability of local governments to remedy conditions that limit economic development and growth. This is particularly true in places like Rio Rancho where thousands of acres of land suffer from poor and inadequate platting and layout."

The bill adds new public notice requirements and relocation assistance which, as stated in the minority recommendations of the Task Force report, offers "a balanced and reasonable framework for local governments to follow in the aftermath of Kelo v. London. The Metropolitan Redevelopment Act has always required local governments to prove that condemnation is necessary to remedy slum or blight conditions. In fact, some States have responded to Kelo v. London by passing legislation that simply mirrors existing law in New Mexico. These procedural protections would improve New Mexico's existing law by combining and tightening the definitions of slum area and blight area, enhancing notice and hearing requirements and providing relocation assistance to displaced property owners." These recommendations were agreed to by the full Task Force and HB 856 is the only bill of all the bills introduced this session to address these issues.

House Bill 856 amends the law to say that "No public agency authorized to condemn property under this Act shall condemn private property for economic development purposes, except for the eradication of slum and blight as defined in this Act." This reflects the feeling among the municipal members of the task force that "eminent domain has historically been – and should continue to be used – as a tool of last resort." In other words, with no evidence of abuse by New Mexico local governments of eminent domain, there is no need to revoke this power.

ADMINISTRATIVE IMPLICATIONS

Local government will play key roles in determining when and where eminent domain powers can be exercised.

OTHER SUBSTANTIVE ISSUES

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 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. If an area is not declared a slum or blighted area, it may not be designated as a redevelopment area and the powers of the Metropolitan Redevelopment Act may not be invoked. (And) 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."

According to a Wall Street Journal/NBC News poll: "In the wake of the court's eminent domain decision, Americans overall cite 'private property rights' as the current legal issue they care most about." And according to an American Survey poll conducted in July among 800 registered voters nationwide, "Public support for limiting the power of eminent domain is robust and cuts across demographic and partisan groups. Sixty-percent of self-identified Democrats, 74 percent of independents and 70 percent of Republicans support limits." Indeed, in response to this decision, legislators in at least 35 states, including Illinois, are considering changes to eminent domain laws to prevent the taking of private land for private development because they argue the Kelo decision went too far in taking private property.

This reduces the supply of affordable housing in the area and drives up prices, making it more and more difficult for the underprivileged, racial and ethnic minorities and the elderly to live in the neighborhoods they call home. Additionally, we need to discuss whether compensation in eminent domain cases is fair, especially if those who are displaced are unable to find comparable housing they can afford.

ALTERNATIVES

The bill does not clearly address the issue of whether compensation in eminent domain cases is fair, especially if those who are displaced are unable to find comparable housing they can afford?

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

POSSIBLE QUESTIONS

Does this bill help draw a clearer distinction between private use and public use? Moreso than Kelo v. New London did?

CS/sb