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FISCAL IMPACT REPORT

ORIGINAL DATE 02/17/07
 LAST UPDATED 02/20/07 **HB** HJR 11

SPONSOR Fox-Young

SHORT TITLE Limit Eminent Domain Uses, CA **SB** _____

ANALYST Hanika Ortiz

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

Relates to: HJR 1; SJR 3; SJR 8; HB 393; HB 159; HB 370; SB 759; SB 401; SB 469

SOURCES OF INFORMATION

LFC Files

Responses Received From
 Attorney General's Office (AGO)

SUMMARY

Synopsis of Bill

House Joint Resolution 11, if approved by the voters, amends Article 2, Section 20 of the Constitution of New Mexico to allow the "taking" of private property after payment of "just compensation" and then only when necessary for the possession, occupation or enjoyment of land by the public at large, public agencies or political subdivisions of the state. The resolution provides that except for privately owned common carriers, private property shall not be taken for use by private commercial enterprise, for economic development or for any other private use, except with the consent of the owner. The resolution further provides that property shall not be taken from one owner and transferred to another on the grounds that the public will benefit from a more profitable private use, and whenever an attempt is made to take private property for a use alleged to be public, the question of whether the contemplated use is really public shall be a judicial question and determined as such without regard to any legislative assertion that the use is public.

FISCAL IMPLICATIONS

Indeterminate fiscal impact, but unlikely to be large.

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

AGO reports this bill is one of many this session 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.*"

Several states are considering banning "takings" as authorized by *Kelo v. City of New London*. Current New Mexico state law allows a city to exercise its power of eminent domain in acquiring by condemnation interest in real property for an urban renewal project or land development project under the Urban Renewal Law (Section 3-46-32 NMSA); and, to sell property acquired to private entities for economic development purposes (Section 3-46-34 NMSA).

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to: HJR 1; SJR 3; SJR 8; HB 393; HB 159; HB 370; SB 759; SB 401; and SB 469 all relate to the use of the power of eminent domain by governmental entities.

OTHER SUBSTANTIVE ISSUES

Although "common carriers" generally transport people or goods, in the United States the term may also refer to telecommunications providers and public utilities.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Article 2, Section 20 of the Constitution of New Mexico will continue to read that private property shall not be taken or damaged for public use without just compensation.