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FISCAL IMPACT REPORT

ORIGINAL DATE 02/07/07

SPONSOR Carraro LAST UPDATED _____ HB _____

SHORT TITLE Prohibit Use of Eminent Domain, CA SB SJR 8

ANALYST Hanika Ortiz

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

Attorney General's Office (AGO)

SUMMARY

Synopsis of Bill

Senate Joint Resolution 8, if approved by the voters, will amend Article 2, Section 20 of the New Mexico Constitution to prohibit taking or damaging private property by eminent domain for private ownership or use. The bill further clarifies that private property may be taken or damaged for public use only when necessary for the public at large; by public agencies, except if used for private commercial enterprise, economic development or any other private use unless consent of the owner is obtained; except for privately owned "common carriers". The bill requires the payment of "just compensation" whenever the power of eminent domain is exercised. The Resolution will also prohibit the transfer from one private owner to another on the grounds that the public will benefit from a more profitable use.

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."*

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".

House Bill 393 specifically prohibits a public body from exercising its power of eminent domain for the purpose of acquiring property for economic development.

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.