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FISCAL IMPACT REPORT

ORIGINAL DATE 1/26/2006

SPONSOR Park LAST UPDATED 1/30/06 HB HJR 2

SHORT TITLE Limit Public Taking of Private Lands, CA SB _____

ANALYST McOlash

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY06	FY07		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

Relates to, but not a duplicate of SJR 1 and relates to the duplicate bills SB 231 and HB 27
 Relates to: SM3, HM6, SJR1, and duplicate bills SJR4 HB27, SB231

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
 Secretary of State (SOS)
 Administrative Office of the Courts (AOC)
 New Mexico Department of Transportation (NMDOT)

SUMMARY

Synopsis of Bill

House Joint Resolution 2 would amend Article 2, section 20 of the New Mexico Constitution to prevent taking of private property--even when just compensation is paid--for use by private commercial enterprise, for economic development or for any other private use. The only exception is when the owner consents (who would still be entitled to just compensation), or when the taking by privately owned common carriers, who are authorized to exercise eminent domain under the conditions set out in sections 42A-2-1 through 4, NMSA 1978 (1981) (which applies to railroads, telephone and telegraph companies). The language of this amendment also makes clear that the determination of whether a taking is for public use is a judicial rather than legislative question.

FISCAL IMPLICATIONS

There is no fiscal impact if the amendment is included in the general election. However, there would be an estimated cost of \$ 1.8 million if the constitutional amendment were proposed for a special election, according to the Secretary of State's staff.

SIGNIFICANT ISSUES

AGO

Last year, the United States Supreme Court, in Kelo v. City of New London, Conn., 125 S.Ct. 2655 (2005), recognized and applied its longstanding policy of deference to legislative judgment as to what public needs justify use of the takings power. In Kelo, the Court upheld the city's taking under a Connecticut state statute specifically authorizing the use of eminent domain to promote economic development. This constitutional amendment, if passed by the legislature and approved by the voters, appears to prevent the type of takings allowed (as authorized by a Connecticut state statute) in that case.

New Mexico courts have consistently read this section of the Constitution to require a public use to justify condemnation of private property. See Kaiser Steel Corp. v. W.S. Ranch Co., 81 NM 414 (1970) at 416; Kennedy v. Yates Petroleum, 104 NM 596 (1986) at 589-590. Further, the provision in the proposed amendment that the question of whether a particular taking constitutes public use appears consistent with New Mexico law, in that our courts have determined that question to be in the last analysis a judicial one, while recognizing a presumption, in deference to the legislature being a coordinate branch of government, that a use is public if the legislature declares it so. Kaiser at 420.

The legislature has previously granted the power of eminent domain to certain private entities other than common carriers for certain public uses, including water and natural gas lines. Those powers may be called into question if this amendment becomes law. Questions may also arise concerning the ultimate use to which a public entity puts real property it has acquired through condemnation—for example leasing all or part to private entity such as a coffee shop, or sale of the property once it is no longer needed for public use.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB 231/HB 27 would amend the Eminent Domain Code to expressly prevent a taking “to promote private or commercial development” when title is transferred to another private entity. It does not address who would determine whether a particular taking would violate this bar.

SM 3/HM 6 requests the New Mexico Congressional delegation to work to protect intellectual and physical property rights.

SJR 1 is effectively, but not literally, a duplicate.

BMC/mt:yr