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FISCAL IMPACT REPORT

ORIGINAL DATE 02/03/11

SPONSOR Madalena LAST UPDATED _____ HB 110

SHORT TITLE Limited Use of Eminent Domain SB _____

ANALYST Hanika-Ortiz

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$5.0 - \$50.0			Recurring	Various

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)

Department of Finance and Administration (DFA)

SUMMARY

Synopsis of Bill

House Bill 110 authorizes municipalities with populations greater than 75,000 to acquire by exercise of eminent domain real property without existing homes, businesses or other habitable structures that are located in a metropolitan redevelopment plan area if certain conditions are met. The bill also provides that a property owner who rejects monetary compensation may be offered a proportional participatory interest in the redevelopment project if the plan provides for private interests in the project.

FISCAL IMPLICATIONS

Direct fiscal impact may include the costs for appraisers by the municipality and property owner and any settlement expenses. The table above reflects a range to indicate the expenses to the municipality that may occur to acquire one property by exercise of eminent domain.

SIGNIFICANT ISSUES

Passage of the bill is anticipated to correct obsolete or impractical planning of a subdivision platted prior to 1973.

The AGO asserts that this amendment will allow a municipality to acquire property through eminent domain with limitations that are consistent with existing provisions of the Metropolitan redevelopment code.

Under the amendment a property owner is provided sixty days to request an appraisal to determine just compensation. Any final judgment awarding an amount higher than the appraised value reflects payment for a property owner's litigation expenses. If the property owner rejects the offer, the municipality may offer the owner a participatory interest in the project equal to the percentage of the appraised value of the owner's property in the project.

PERFORMANCE IMPLICATIONS

AGO offered as a historical note, that in 2007, New Mexico, like many other states, repealed the authority of municipalities to acquire property by eminent domain in the wake of the U.S. Supreme Court's decision in *Kelo v. New London*, 545 U.S. 469 (2005).

ADMINISTRATIVE IMPLICATIONS

HB 110 reinstates a municipality's eminent domain authority in limited circumstances as stated in the bill.

TECHNICAL ISSUES

AGO finds the following issues:

1. Section 2(A)(9) of HB 110 refers to NMSA § 42A-1-5, but it is unclear whether § 42A-1-5 applies in its entirety.
2. Section 2(A)(10) seems unclear and awkwardly drafted. Additionally, § 2(A)(10) speaks of a private enterprise tendering an amount on behalf of a municipality. However, HB 110 does not authorize private enterprises to act on behalf of municipalities, and there is no reference to any other statutory provision that does so.
3. Section 2(C) allows a municipality in stated circumstances to offer the owner "a participatory interest in the project equal to the percentage of the appraised value of the owner's property in the project" but there is no definition of total project value. Stated differently, the appraised value of the owner's property is the numerator of the relevant fraction, but HB 110 does not specify how the denominator is to be determined.

OTHER SUBSTANTIVE ISSUES

The purpose of the Metropolitan Redevelopment code is to acquire, own, lease, improve and dispose of properties in a metropolitan redevelopment area for the benefit of the inhabitants of this state and municipalities of the state for the promotion of their health, safety, welfare, convenience and prosperity.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Loss of opportunity for economic development because of obsolete or impractical planning and platting of a subdivision.