SENATE BILL REPORT
SB 5445

As of January 27, 2017

Title: An act relating to prohibiting the use of eminent domain for economic development.

Brief Description: Prohibiting the use of eminent domain for economic development.

Sponsors: Senators Padden, O'Ban, Sheldon, Chase and Fortunato.

Brief History:
Committee Activity: Law & Justice:

Brief Summary of Bill

- Declares that economic development is not considered a public use for the taking of private property in eminent domain actions.
- Defines "economic development" and "public use."

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Aldo Melchiori (786-7439)

Background: Eminent domain is the term used to describe the power of a government to take private property for public use. The power of eminent domain extends to all types of property, although it is most often associated with the taking of real property. A condemnation is the judicial proceeding used for the exercise of eminent domain.

The Fifth Amendment to the U.S. Constitution provides that "...private property [shall not] be taken for public use, without just compensation." Article I, section 16 of the state Constitution provides that, in part, "Private property shall not be taken for private use, except for private ways of necessity, and for drains, flumes, or ditches on or across the lands of others for agricultural, domestic, or sanitary purposes. No private property shall be taken or damaged for public or private use without just compensation having been first made...which compensation shall be ascertained by a jury...Whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and determined as such, without regard to any legislative assertion that the use is public..."

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The U.S. Supreme Court construes the term public use under the Fifth Amendment more broadly than the Washington State Supreme Court construes this term under article 1, section 16. As a result, Washington State and its local governments may not acquire property by eminent domain for some public purposes that would be allowed in the federal Constitution.

The Washington State Supreme Court has held that the proposed use for which private property may be condemned must be a public use, as distinguished from a use that is merely in the public interest or that will merely benefit the public. Other constitutional provisions grant eminent domain powers to telephone companies; make the property of corporations subject to eminent domain to the same extent as the property of individuals; and declare the use of water for irrigation, mining, and manufacturing to be a public use. Additionally there are more than 300 statutory sections in the Revised Code of Washington dealing with eminent domain powers. Some of the statutes confer eminent domain powers on governmental entities ranging from counties to mosquito control districts, and give the power of eminent domain to railroads, electrical utilities, and pipeline companies.

Summary of Bill: Private property may be taken only for public use and the taking of private property by any public entity for economic development does not constitute a public use. Condemnation in blighted areas for economic development is not a public use. No public entity may take property for the purpose of economic development.

Economic development means any activity to increase tax revenue, tax base, employment, or general economic health, when that activity does not result in the following:

- the transfer of property to public possession, occupation, and enjoyment;
- the transfer of property to a private entity that is a public service company, consumer-owned utility, or common carrier;
- the transfer of property to private entities that occupy an incidental area within a publicly owned and occupied project; or
- the use of eminent domain: (a) to remove a public nuisance, (b) to remove a structure that is beyond repair or unfit for human habitation or use, or (c) to acquire abandoned property and to eliminate a direct threat to public health and safety caused by the property in its current condition.

Economic development does not include the transfer of property to a public service company, a consumer-owned utility, or a common carrier for the purpose of constructing, operating, or maintaining generation, transmission, or distribution facilities. Economic development also does not include port districts' activities or highway projects. In a condemnation action, the taking is deemed to be for economic development if the court determines that the condemnation does not result in any of the exceptions to economic development and that economic development was a substantial factor in the governmental body's decision to take the property.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Draft Bill: PRO: Eminent domain substitutes coercion for consent. The purpose of government is to protect citizen's rights and eminent domain does the opposite. It is used to benefit the economically powerful. The bill carefully distinguishes between economic development and the traditional eminent domain uses. There is overwhelming public opposition to the use of eminent domain for economic development. The current use of eminent domain is not fair, equitable, or ethical. It tortures the meaning of the constitutional provisions. Public land use planners think of property as part of a development plan instead of the rights of private property owners. The bill will help restore private ownership rights.

CON: This is already prohibited by the Washington State Constitution. It will cause re-litigation of issues that have already been decided. It will cause delays and additional taxpayer expense. It will also effect community renewal projects.

Persons Testifying: PRO: David DeWolf, citizen; Cherie Cooper, citizen; Glen Morgan, Citizen Alliance for Property Rights; Cindy Alia, Citizen Alliance for Property Rights.

CON: Carl Scheroeder, Association of Washington Cities.

Persons Signed In To Testify But Not Testifying: No one.