
SUBSTITUTE HOUSE BILL 3017

State of Washington 59th Legislature 2006 Regular Session

By House Committee on Judiciary (originally sponsored by Representatives Springer, P. Sullivan, Upthegrove, Chase, Morrell, Simpson, Sells, Schual-Berke, Green, Kilmer, B. Sullivan, Linville and Hasegawa; by request of Governor Gregoire and Commissioner of Public Lands)

READ FIRST TIME 02/03/06.

1 AN ACT Relating to restrictions on condemnation and sale of
2 condemned property by state and local governments; amending RCW
3 8.04.070, 8.08.020, and 8.12.030; adding a new section to chapter 8.04
4 RCW; adding a new section to chapter 8.08 RCW; adding a new section to
5 chapter 8.12 RCW; creating new sections; and providing an effective
6 date.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8 NEW SECTION. **Sec. 1.** (1) Members of the public have expressed
9 concern regarding a recent United States supreme court decision, *Kelo*
10 *v. New London* (No. 04-108 (June 23, 2005)), which upheld, under the
11 United States Constitution, a Connecticut city's exercise of eminent
12 domain. It is the intent of the legislature to recognize, reaffirm,
13 and support existing Washington case law under Article I, section 16 of
14 the state Constitution, that prohibits the condemnation of private
15 property other than for certain public purposes pursuant to law.

16 (2) In light of the United States supreme court decision in *Kelo v.*
17 *New London*, the legislature intends to reaffirm existing Washington
18 state law relating to the use of eminent domain by state and local
19 governments, and to reaffirm the prohibition in Article I, section 16

1 of the state Constitution on the use of eminent domain to take private
2 property for private use. To this end, the legislature recognizes,
3 reaffirms, and supports the restrictions on the use of eminent domain
4 to take private property for private use, as set forth in chapters
5 8.04, 8.08, 8.12, 8.16, and 8.20 RCW and in the Washington state
6 supreme court's decisions such as *Hogue v. Seattle*, 54 Wn.2d 799, 341
7 P.2d 171 (1959); *Miller v. Tacoma*, 61 Wn.2d 374, 378 P.2d 464 (1963);
8 *In re Petition of Seattle*, 96 Wn.2d 616, 638 P.2d 549 (1981); and *State*
9 *ex rel. Washington State Convention & Trade Center v. Evans*, 136 Wn.2d
10 811, 966 P.2d 1252 (1998). Consistent with these decisions, it is the
11 intent of the legislature that state and local governments shall not
12 appropriate or acquire any real property for the primary purpose of
13 economic development without the consent of the property owner.

14 NEW SECTION. **Sec. 2.** A new section is added to chapter 8.04 RCW
15 to read as follows:

16 (1) If the state determines, within seven years after the date the
17 property is transferred to the state, that all or a portion of real
18 property or an interest in real property that was acquired through
19 condemnation or the threat of condemnation is no longer necessary for
20 a public purpose and should be sold, the former owner shall have a
21 repurchase right as provided in this section. "Former owner" means the
22 person or entity from whom the state acquired title and that person's
23 or entity's successors or assigns to the property or property interest
24 subject to the repurchase right.

25 (2) At least ninety days prior to the date on which the state will
26 announce a public competition bid for purchase or, if the sale is to be
27 negotiated, at least ninety days prior to the date on which a purchase
28 and sale agreement or similar document is to be signed, the state shall
29 (a) publish notice of its determination to sell the property or portion
30 of property in a legal newspaper of general circulation in the area
31 where the property to be sold is located, (b) describe generally any
32 easements, other restrictions, or reserved rights the state intends to
33 retain upon sale, and (c) mail notice of the determination to the
34 former owner of the property at the former owner's last known address
35 or to a forwarding address if that owner has provided the state with a
36 forwarding address.

1 (3) If the former owner notifies the state in writing within thirty
2 days of the date of notice provided under subsection (2) of this
3 section that the former owner intends to exercise the repurchase right
4 granted by this section, the state shall, unless it already has a
5 completed current independent appraisal for the property, immediately
6 arrange for an independent appraisal to determine the fair market value
7 of the property or portion of property subject to repurchase, adjusted
8 to reflect the value of any physical changes to the property, such as
9 improvements or removal of structures. All costs of appraisal shall be
10 paid by the state. If the former owner does not provide timely written
11 notice to the state of the intent to exercise a repurchase right, that
12 right shall be extinguished and the state shall be relieved of any
13 further obligation under this section.

14 (4) Within thirty days of the date the state provides a written
15 copy of the appraisal to the former owner, the former owner may
16 exercise the repurchase right granted by this section by delivering to
17 the state earnest money or a deposit in a form determined by the state
18 in an amount equal to five percent of the appraised value, together
19 with a written promise to pay, within thirty days, the following:

20 (a) The lesser of (i) the appraised value less the earnest money or
21 deposit, or (ii) an amount equal to the compensation received from the
22 state when the property or portion of property was condemned or sold
23 under threat of condemnation, with interest accrued at the market rate,
24 and with the amount adjusted to reflect the value of any physical
25 changes to the property, such as improvements or removal of structures,
26 as determined by the independent appraisal, less the earnest money or
27 deposit; and

28 (b) All required fees and costs otherwise required for the transfer
29 of real property.

30 (5) Upon receipt of the full payment required in subsection (4) of
31 this section, the state shall transfer title to the former owner,
32 subject to any easements, other restrictions, or reserved rights
33 retained by the state. If the former owner fails to complete the sale,
34 the earnest money or deposit shall be forfeited to the state, the
35 former owner's repurchase right shall be extinguished, and the state
36 shall be relieved of any further obligation under this section.

37 (6) The state may reject a notice of intent under subsection (3) of
38 this section received from a person or entity claiming to be a

1 successor or assignee that is not accompanied by evidence sufficient to
2 demonstrate that the person or entity is the successor or assignee of
3 the person or entity from whom the state acquired title.

4 (7) The obligations imposed on the state in this section are in
5 addition to those provided by law for the surplusing or sale of public
6 property to private parties.

7 NEW SECTION. **Sec. 3.** A new section is added to chapter 8.08 RCW
8 to read as follows:

9 (1) If a county determines, within seven years after the date the
10 property is transferred to the county, that all or a portion of real
11 property or an interest in real property that was acquired through
12 condemnation or the threat of condemnation is no longer necessary for
13 a public purpose and should be sold, the former owner shall have a
14 repurchase right as provided in this section. "Former owner" means the
15 person or entity from whom the county acquired title and that person's
16 or entity's successors or assigns to the property or property interest
17 subject to the repurchase right.

18 (2) At least ninety days prior to the date on which the county will
19 announce a public competition bid for purchase or, if the sale is to be
20 negotiated, at least ninety days prior to the date on which a purchase
21 and sale agreement or similar document is to be signed, the county
22 shall (a) publish notice of its determination to sell the property or
23 portion of property in a legal newspaper of general circulation in the
24 area where the property to be sold is located, (b) describe generally
25 any easements, other restrictions, or reserved rights the county
26 intends to retain upon sale, and (c) mail notice of the determination
27 to the former owner of the property at the former owner's last known
28 address or to a forwarding address if that owner has provided the
29 county with a forwarding address.

30 (3) If the former owner notifies the county in writing within
31 thirty days of the date of notice provided under subsection (2) of this
32 section that the former owner intends to exercise the repurchase right
33 granted by this section, the county shall, unless it already has a
34 completed current independent appraisal for the property, immediately
35 arrange for an independent appraisal to determine the fair market value
36 of the property or portion of property subject to repurchase, adjusted
37 to reflect the value of any physical changes to the property, such as

1 improvements or removal of structures. All costs of appraisal shall be
2 paid by the county. If the former owner does not provide timely
3 written notice to the county of the intent to exercise a repurchase
4 right, that right shall be extinguished and the county shall be
5 relieved of any further obligation under this section.

6 (4) Within thirty days of the date the county provides a written
7 copy of the appraisal to the former owner, the former owner may
8 exercise the repurchase right granted by this section by delivering to
9 the county earnest money or a deposit in a form determined by the
10 county in an amount equal to five percent of the appraised value,
11 together with a written promise to pay, within thirty days, the
12 following:

13 (a) The lesser of (i) the appraised value less the earnest money or
14 deposit, or (ii) an amount equal to the compensation received from the
15 county when the property or portion of property was condemned or sold
16 under threat of condemnation, with interest accrued at the market rate,
17 and with the amount adjusted to reflect the value of any physical
18 changes to the property, such as improvements or removal of structures,
19 as determined by the independent appraisal, less the earnest money or
20 deposit; and

21 (b) All required fees and costs otherwise required for the transfer
22 of real property.

23 (5) Upon receipt of the full payment required in subsection (4) of
24 this section, the county shall transfer title to the former owner,
25 subject to any easements, other restrictions, or reserved rights
26 retained by the county. If the former owner fails to complete the
27 sale, the earnest money or deposit shall be forfeited to the county,
28 the former owner's repurchase right shall be extinguished, and the
29 county shall be relieved of any further obligation under this section.

30 (6) The county may reject a notice of intent under subsection (3)
31 of this section received from a person or entity claiming to be a
32 successor or assignee that is not accompanied by evidence sufficient to
33 demonstrate that the person or entity is the successor or assignee of
34 the person or entity from whom the county acquired title.

35 (7) The obligations imposed on the county in this section are in
36 addition to those provided by law for the surplusizing or sale of public
37 property to private parties.

1 NEW SECTION. **Sec. 4.** A new section is added to chapter 8.12 RCW
2 to read as follows:

3 (1) If a city or town determines, within seven years after the date
4 the property is transferred to the city or town, that all or a portion
5 of real property or an interest in real property that was acquired
6 through condemnation or the threat of condemnation is no longer
7 necessary for a public purpose and should be sold, the former owner
8 shall have a repurchase right as provided in this section. "Former
9 owner" means the person or entity from whom the city or town acquired
10 title and that person's or entity's successors or assigns to the
11 property or property interest subject to the repurchase right.

12 (2) At least ninety days prior to the date on which the city or
13 town will announce a public competition bid for purchase or, if the
14 sale is to be negotiated, at least ninety days prior to the date on
15 which a purchase and sale agreement or similar document is to be
16 signed, the city or town shall (a) publish notice of its determination
17 to sell the property or portion of property in a legal newspaper of
18 general circulation in the area where the property to be sold is
19 located, (b) describe generally any easements, other restrictions, or
20 reserved rights the city or town intends to retain upon sale, and (c)
21 mail notice of the determination to the former owner of the property at
22 the former owner's last known address or to a forwarding address if
23 that owner has provided the city or town with a forwarding address.

24 (3) If the former owner notifies the city or town in writing within
25 thirty days of the date of notice provided under subsection (2) of this
26 section that the former owner intends to exercise the repurchase right
27 granted by this section, the city or town shall, unless it already has
28 a completed current independent appraisal for the property, immediately
29 arrange for an independent appraisal to determine the fair market value
30 of the property or portion of property subject to repurchase, adjusted
31 to reflect the value of any physical changes to the property, such as
32 improvements or removal of structures. All costs of appraisal shall be
33 paid by the city or town. If the former owner does not provide timely
34 written notification to the city or town of the intent to exercise a
35 repurchase right, that right shall be extinguished and the city or town
36 shall be relieved of any further obligation under this section.

37 (4) Within thirty days of the date the city or town provides a
38 written copy of the appraisal to the former owner, the former owner may

1 exercise the repurchase right granted by this section by delivering to
2 the city or town earnest money or a deposit in a form determined by the
3 city or town in an amount equal to five percent of the appraised value,
4 together with a written promise to pay, within thirty days, the
5 following:

6 (a) The lesser of (i) the appraised value less the earnest money or
7 deposit, or (ii) an amount equal to the compensation received from the
8 city or town when the property or portion of property was condemned or
9 sold under threat of condemnation, with interest accrued at the market
10 rate, and with the amount adjusted to reflect the value of any physical
11 changes to the property, such as improvements or removal of structures,
12 as determined by the independent appraisal, less the earnest money or
13 deposit; and

14 (b) All required fees and costs otherwise required for the transfer
15 of real property.

16 (5) Upon receipt of the full payment required in subsection (4) of
17 this section, the city or town shall transfer title to the former
18 owner, subject to any easements, other restrictions, or reserved rights
19 retained by the city or town. If the former owner fails to complete
20 the sale, the earnest money or deposit shall be forfeited to the city
21 or town, the former owner's repurchase right shall be extinguished, and
22 the city or town shall be relieved of any further obligation under this
23 section.

24 (6) The city or town may reject a notice of intent under subsection
25 (3) of this section received from a person or entity claiming to be a
26 successor or assignee that is not accompanied by evidence sufficient to
27 demonstrate that the person or entity is the successor or assignee of
28 the person or entity from whom the city or town acquired title.

29 (7) The obligations imposed on the city or town in this section are
30 in addition to those provided by law for the surplusizing or sale of
31 public property to private parties.

32 **Sec. 5.** RCW 8.04.070 and 1988 c 202 s 6 are each amended to read
33 as follows:

34 (1) At the time and place appointed for hearing the petition, or to
35 which the hearing may have been adjourned, if the court has
36 satisfactory proof that all parties interested in the lands, real
37 estate, premises or other property described in the petition have been

1 duly served with the notice, and is further satisfied by competent
2 proof that the contemplated use for which the lands, real estate,
3 premises, or other property are sought to be appropriated is really
4 necessary for the public use of the state, it shall make and enter an
5 order, to be recorded in the minutes of the court, and which order
6 shall be final unless appellate review thereof is sought within five
7 days after entry thereof, adjudicating that the contemplated use for
8 which the lands, real estate, premises or other property are sought to
9 be appropriated is really a public use of the state.

10 (2) The state shall not take private property solely for the
11 purpose of economic development. For the purposes of this section,
12 "economic development" means the acquisition or use of real property to
13 increase tax revenue, tax base, employment, or economic health. For
14 the purposes of this section, "economic development" does not include
15 the acquisition or use of real property for the primary purpose of:
16 (a) The transfer of real property to public ownership; (b) the transfer
17 of real property to a private entity that is a common carrier, such as
18 a utility or railroad; (c) the transfer of real property to a private
19 entity when acquisition or appropriation is necessary to remove a
20 threat to public health or safety; (d) the transfer of real property to
21 a private entity when acquisition or appropriation is necessary for the
22 removal of unsanitary or unsafe conditions, conditions that endanger
23 life or property by fire or other causes, conditions conducive to ill
24 health, transmission of disease, infant mortality, juvenile delinquency
25 and crime, hazardous soils, substances, or materials, or conditions
26 detrimental to or constituting a menace to the public health, safety,
27 welfare, and morals in its present condition and use; (e) the transfer
28 of real property to a private entity when acquisition or appropriation
29 is necessary for the acquisition of abandoned property; or (f) the
30 lease of real property to a private entity that occupies an area within
31 a public project or facility.

32 **Sec. 6.** RCW 8.08.020 and 1949 c 79 s 2 are each amended to read as
33 follows:

34 (1) Any condemnation, appropriation or disposition intended in RCW
35 8.08.010 through 8.08.080 shall be deemed and held to be for a county
36 purpose and public use within the meaning of RCW 8.08.010 through

1 8.08.080 when it is directly or indirectly, approximately or remotely
2 for the general benefit or welfare of the county or of the inhabitants
3 thereof.

4 (2) A county shall not take private property solely for the
5 purpose of economic development. For the purposes of this section,
6 "economic development" means the acquisition or use of real property to
7 increase tax revenue, tax base, employment, or economic health. For
8 the purposes of this section, "economic development" does not include
9 the acquisition or use of real property for the primary purpose of:
10 (a) The transfer of real property to public ownership; (b) the transfer
11 of real property to a private entity that is a common carrier, such as
12 a utility or railroad; (c) the transfer of real property to a private
13 entity when acquisition or appropriation is necessary to remove a
14 threat to public health or safety; (d) the transfer of real property to
15 a private entity when acquisition or appropriation is necessary for the
16 removal of unsanitary or unsafe conditions, conditions that endanger
17 life or property by fire or other causes, conditions conducive to ill
18 health, transmission of disease, infant mortality, juvenile delinquency
19 and crime, hazardous soils, substances, or materials, or conditions
20 detrimental to or constituting a menace to the public health, safety,
21 welfare, and morals in its present condition and use; (e) the transfer
22 of real property to a private entity when acquisition or appropriation
23 is necessary for the acquisition of abandoned property; or (f) the
24 lease of real property to a private entity that occupies an area within
25 a public project or facility.

26 **Sec. 7.** RCW 8.12.030 and 1915 c 154 s 1 are each amended to read
27 as follows:

28 (1) Every city and town and each unclassified city and town within
29 the state of Washington, is hereby authorized and empowered to condemn
30 land and property, including state, county and school lands and
31 property for streets, avenues, alleys, highways, bridges, approaches,
32 culverts, drains, ditches, public squares, public markets, city and
33 town halls, jails and other public buildings, and for the opening and
34 widening, widening and extending, altering and straightening of any
35 street, avenue, alley or highway, and to damage any land or other
36 property for any such purpose or for the purpose of making changes in
37 the grade of any street, avenue, alley or highway, or for the

1 construction of slopes or retaining walls for cuts and fills upon real
2 property abutting on any street, avenue, alley or highway now ordered
3 to be, or such as shall hereafter be ordered to be opened, extended,
4 altered, straightened or graded, or for the purpose of draining swamps,
5 marshes, tidelands, tide flats or ponds, or filling the same, within
6 the limits of such city, and to condemn land or property, or to damage
7 the same, either within or without the limits of such city for public
8 parks, drives and boulevards, hospitals, pesthouses, drains and sewers,
9 garbage crematories and destructors and dumping grounds for the
10 destruction, deposit or burial of dead animals, manure, dung, rubbish,
11 and other offal, and for aqueducts, reservoirs, pumping stations and
12 other structures for conveying into and through such city a supply of
13 fresh water, and for the purpose of protecting such supply of fresh
14 water from pollution, and to condemn land and other property and damage
15 the same for such and for any other public use after just compensation
16 having been first made or paid into court for the owner in the manner
17 prescribed by this chapter.

18 (2) A city or town shall not take private property solely for the
19 purpose of economic development. For the purposes of this section,
20 "economic development" means the acquisition or use of real property to
21 increase tax revenue, tax base, employment, or economic health. For
22 the purposes of this section, "economic development" does not include
23 the acquisition or use of real property for the primary purpose of:
24 (a) The transfer of real property to public ownership; (b) the transfer
25 of real property to a private entity that is a common carrier, such as
26 a utility or railroad; (c) the transfer of real property to a private
27 entity when acquisition or appropriation is necessary to remove a
28 threat to public health or safety; (d) the transfer of real property to
29 a private entity when acquisition or appropriation is necessary for the
30 removal of unsanitary or unsafe conditions, conditions that endanger
31 life or property by fire or other causes, conditions conducive to ill
32 health, transmission of disease, infant mortality, juvenile delinquency
33 and crime, hazardous soils, substances, or materials, or conditions
34 detrimental to or constituting a menace to the public health, safety,
35 welfare, and morals in its present condition and use; (e) the transfer
36 of real property to a private entity when acquisition or appropriation
37 is necessary for the acquisition of abandoned property; or (f) the

1 lease of real property to a private entity that occupies an area within
2 a public project or facility.

3 NEW SECTION. **Sec. 8.** Sections 2 through 7 of this act take effect
4 July 1, 2007.

5 NEW SECTION. **Sec. 9.** The office of financial management, working
6 in consultation with state and local governments and private utilities
7 and corporations that acquire property through eminent domain, shall
8 develop and provide recommendations to the legislature by December 1,
9 2006, regarding the definition of "economic development" as set forth
10 in RCW 8.04.070, 8.08.020, and 8.12.030 and regarding the appropriate
11 statutory provisions for providing a repurchase right to the former
12 owner of land that has been condemned by a state or local government or
13 a private utility or corporation, where the condemning entity has
14 decided to sell the condemned land.

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