
Judiciary Committee

SB 5363

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, Dandel, Pearson, Roach, Rivers, Angel, Schoesler, Braun, Dammeier, Honeyford and Hewitt.

Brief Summary of Bill
<ul style="list-style-type: none">• Declares that economic development is not considered a "public use" for the taking of private property.• Defines "economic development" and "public use."

Hearing Date: 3/25/15

Staff: Brent Campbell (786-7152).

Background:

Eminent Domain.

Eminent domain is the power of the government to take private property for public use. Although eminent domain may be used against virtually any kind of property or any interest in property, it is most commonly used to acquire real property.

The U.S. Constitution imposes limitations on the exercise of eminent domain and provides that "private property [shall not] be taken for public use, without just compensation."

The Washington Constitution limits the use of eminent domain even further and explicitly provides that "[p]rivate property shall not be taken for private use." It further provides that no private property shall be taken or damaged for public or private use without just compensation having been first made, and that whenever an attempt is made to take private property for a use

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alleged to be public, the question whether the contemplated use is actually public is a question for the courts, without regard to any legislative assertion that the use is public.

"Public Use" under the Federal Constitution - *Kelo v. New London, Connecticut*.

The U.S. Constitution requires that a taking be for a "public use." In 2005 the U.S. Supreme Court considered what "public use" means in *Kelo v. City of New London, Connecticut*. In *Kelo*, the city of New London, Connecticut, planned to redevelop a 90-acre area for a mix of retail, commercial, office, residential, and recreational uses. The redevelopment plan was intended to create jobs, generate tax revenue, revitalize the downtown area, and increase recreational opportunities. The city negotiated the sale of all but 15 privately-owned parcels in the redevelopment area and instituted eminent domain proceedings for the remaining parcels. Nine landowners sued, claiming that the taking of their property would violate the "public use" restriction in the Fifth Amendment Takings Clause. The U.S. Supreme Court ultimately found that the taking of the land as part of an economic development project qualified as a valid public use under the U.S. Constitution. The U.S. Supreme Court held that a government action serves a public use as long as it advances a public purpose and that economic development can, at least in certain instances, justify the condemnation of private property through eminent domain for private use.

"Public Use" under the Washington State Constitution.

The Washington Supreme Court has consistently held that the Washington Constitution prohibits the taking of property for purely economic development purposes. In the 1959 case *Hogue v. Port of Seattle*, the Washington Supreme Court was asked to determine whether the taking of "marginal lands" for the development of private port facilities constituted a "public use." The court found that such improvements were for a public purpose, but that they did not constitute a public use. The court assured property owners that "until our state constitution is amended, [they] may continue to own, possess, and use [their] property (for any lawful purpose) regardless of whether the state or any subdivision thereof may devise a plan for putting the property to a higher or better economic use than that to which the owner is currently devoting it."

The use of eminent domain in Washington is also limited by the fact that a taking for any proposed project must be completely for a public use. Where the purpose of a taking is partly for public use and the remainder for private use, the project is not for public use.

Though the Washington Supreme Court has explicitly said that economic development alone does not constitute a public use, it has allowed takings to cure "blighted areas." Blighted areas are areas "which constitute a serious and growing menace, injurious to the public health, safety, morals and welfare of the residents of the state." Property acquired with public funds to remove blight may be resold to private persons, subject to use restrictions that prevent recurrence of the blighted condition.

Summary of Bill:

Public entities may take private property only for a public use. Economic development is not considered a public use for the taking of property. Condemnation of property in blighted areas for economic development is not a public use.

"Economic development" is defined as any activity to increase tax revenue, tax base, employment, or general economic health, when that activity does not result in:

- 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 use of eminent domain to remove a public nuisance, remove a structure that is beyond repair or unfit for human habitation, or to acquire abandoned property;
- the use of eminent domain to eliminate a direct threat to public health and safety caused by the property in its current condition; or
- the transfer of property to private entities that occupy an incidental area within a publically owned and occupied project.

Economic development does not include port districts' activities or highway projects.

"Public use" is defined as:

- the possession, occupation, and enjoyment of the property by the general public, or by public agencies;
- the use of property for the creation or functioning of public service companies, a consumer-owned utility, or common carriers; or
- the use of eminent domain to remove a public nuisance, remove a structure that is beyond repair or unfit for human habitation, or to acquire abandoned property;
- the use of eminent domain to eliminate a direct threat to public health and safety caused by the property in its current condition.

In any action to establish or challenge the asserted public use of a taking of private property, the taking shall be deemed for economic development, and therefore not a proper basis for eminent domain, if the court determines that:

- the taking does not result in any of the listed exceptions to economic development; and
- economic development was a substantial factor in the decision to take the property.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.