**5445 AMH JUDI H2499.1 - NOT FOR FLOOR USE**

**SB 5445** - H COMM AMD

By Committee on Judiciary

**NOT CONSIDERED 01/05/2018**

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec.**  (1) It is the intent of the legislature to recognize, reaffirm, and support existing Washington case law under Article I, section 16 of the state Constitution, that prohibits the condemnation of private property other than for certain public purposes pursuant to law.

(2) In light of the United States supreme court decision in *Kelo v. New London*, 545 U.S. 469 (2005), the legislature intends to reaffirm existing Washington state law relating to the use of eminent domain by state and local governments, and to reaffirm the prohibition in Article I, section 16 of the state Constitution on the use of eminent domain to take private property for private use. To this end, the legislature recognizes, reaffirms, and supports the restrictions on the use of eminent domain to take private property for private use, as set forth in chapters 8.04, 8.08, 8.12, 8.16, and 8.20 RCW and in the Washington state supreme court's decisions such as *Hogue v. Seattle*, 54 Wn.2d 799, 341 P.2d 171 (1959); *Miller v. Tacoma*, 61 Wn.2d 374, 378 P.2d 464 (1963); In re Petition of Seattle, 96 Wn.2d 616, 638 P.2d 549 (1981); and State ex rel. *Washington State Convention & Trade Center v. Evans*, 136 Wn.2d 811, 966 P.2d 1252 (1998).

NEW SECTION. **Sec.**  The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Consumer-owned utility" has the same meaning as in RCW 19.27A.140.

(2) "Economic development" means any activity to increase tax revenue, tax base, employment, or general economic health, when that activity does not result in:

(a) The transfer of property to public possession, occupation, and enjoyment;

(b) The transfer of property to a private entity that is a public service company, consumer-owned utility, or common carrier;

(c) The use of eminent domain:

(i)(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

(ii) To eliminate a direct threat to public health and safety caused by the property in its current condition; or

(d) The transfer of property to private entities that occupy an incidental area within a publicly owned and occupied project.

"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 under Title 14 or 53 RCW. "Economic development" also does not include highway projects.

(3) "Public service company" has the same meaning as defined in RCW 80.04.010.

(4)(a) "Public use" means:

(i) The possession, occupation, and enjoyment of the property by the general public, or by public agencies;

(ii) The use of property for the creation or functioning of public service companies, a consumer-owned utility, or common carriers; or

(iii) Where the use of eminent domain:

(A)(I) Removes a public nuisance;

(II) Removes a structure that is beyond repair or unfit for human habitation or use; or

(III) Is used to acquire abandoned property; and

(B) Eliminates a direct threat to public health and safety caused by the property in its current condition.

(b) The public benefits of economic development, including an increase in tax base, tax revenues, employment, and general economic health, may not constitute a public use.

NEW SECTION. **Sec.**  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. No public entity may take property for the purpose of economic development.

NEW SECTION. **Sec.**  In an action to establish or challenge the asserted public use of a taking of private property, the taking of private property shall be deemed for economic development, and not a proper basis for eminent domain, if the court determines that the taking of the private property does not result in any of the exceptions to economic development set forth in section 2(2) of this act, and economic development was a substantial factor in the governmental body's decision to take the property.

**Sec.**  RCW 35.81.080 and 2002 c 218 s 8 are each amended to read as follows:

A municipality shall have the right to acquire by condemnation, in accordance with the procedure provided for condemnation by such municipality for other purposes, any interest in real property, which it may deem necessary for a community renewal project under this chapter after the adoption by the local governing body of a resolution declaring that the acquisition of the real property described therein is necessary for such purpose. Condemnation for community renewal of blighted areas is declared to be a public use, and property already devoted to any other public use or acquired by the owner or a predecessor in interest by eminent domain may be condemned for the purposes of this chapter. Condemnation of property in blighted areas for economic development, as defined in section 2 of this act, is not a public use.

The award of compensation for real property taken for such a project shall not be increased by reason of any increase in the value of the real property caused by the assembly, clearance, or reconstruction, or proposed assembly, clearance, or reconstruction in the project area. No allowance shall be made for the improvements begun on real property after notice to the owner of such property of the institution of proceedings to condemn such property. Evidence shall be admissible bearing upon the insanitary, unsafe, or substandard condition of the premises, or the unlawful use thereof.

NEW SECTION. **Sec.**  Sections 2 through 4 of this act constitute a new chapter in Title 8 RCW."

Correct the title.

EFFECT: Adds an intent section recognizing and reaffirming existing Washington state law relating to the use of eminent domain by state and local governments.