
SUBSTITUTE SENATE BILL 5077

State of Washington

62nd Legislature

2011 Regular Session

By Senate Government Operations, Tribal Relations & Elections (originally sponsored by Senators Pflug, Shin, Carrell, Swecker, Sheldon, Becker, Honeyford, Benton, Schoesler, Stevens, Delvin, Keiser, Hewitt, Roach, and Holmquist Newbry; by request of Attorney General)

READ FIRST TIME 02/07/11.

1 AN ACT Relating to prohibiting the use of eminent domain for
2 economic development; and adding a new chapter to Title 8 RCW.

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

4 NEW SECTION. **Sec. 1.** The definitions in this section apply
5 throughout this chapter unless the context clearly requires otherwise.

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

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

11 (b) The transfer of property to a private entity that is a public
12 service company or common carrier;

13 (c) The use of eminent domain:

14 (i)(A) To remove a public nuisance;

15 (B) To remove a structure that is beyond repair or unfit for human
16 habitation or use; or

17 (C) To acquire abandoned property; and

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

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

3 "Economic development" does not include the transfer of property to
4 a public service company, a publicly owned utility, or a common carrier
5 for the purpose of constructing, operating, or maintaining generation,
6 transmission, or distribution facilities. "Economic development" also
7 does not include port districts' activities under Title 14 or 53 RCW.

8 (2)(a) "Public use" means:

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

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

13 (iii) Where the use of eminent domain:

14 (A)(I) Removes a public nuisance;

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

17 (III) Is used to acquire abandoned property; and

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

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

23 NEW SECTION. **Sec. 2.** Private property may be taken only for
24 public use and the taking of private property by any public entity for
25 economic development does not constitute a public use. No public
26 entity may take property for the purpose of economic development.

27 NEW SECTION. **Sec. 3.** In an action to establish or challenge the
28 asserted public use of a taking of private property, the taking of
29 private property shall be deemed for economic development, and not a
30 proper basis for eminent domain, if the court determines that the
31 taking of the private property does not result in any of the exceptions
32 to economic development set forth in section 1(1) of this act, and
33 economic development was a substantial factor in the governmental
34 body's decision to take the property.

1 NEW SECTION. **Sec. 4.** Sections 1 through 3 of this act constitute
2 a new chapter in Title 8 RCW.

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