

# SENATE BILL REPORT

## SB 6701

---

---

As Reported By Senate Committee On:  
Government Operations & Elections, January 30, 2006

**Title:** An act relating to restrictions on condemnation and sale of condemned property by state and local governments.

**Brief Description:** Reaffirming Washington state's eminent domain laws with a right of first refusal.

**Sponsors:** Senators Rasmussen, Kastama, Jacobsen, Franklin, Roach, Kohl-Welles and Benton; by request of Governor Gregoire and Commissioner of Public Lands.

**Brief History:**

**Committee Activity:** Government Operations & Elections: 1/24/06, 1/30/06 [DPS, DNP, w/oRec].

---

### SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

**Majority Report:** That Substitute Senate Bill No. 6701 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kastama, Chair; Berkey, Vice Chair; Haugen, Kline, McCaslin and Pridemore.

**Minority Report:** Do not pass.

Signed by Senators Roach, Ranking Minority Member and Mulliken.

**Minority Report:** That it be referred without recommendation.

Signed by Senator Benton.

**Staff:** Genevieve Pisarski (786-7488)

**Background:** The United States Supreme Court recently ruled that it was a legitimate public purpose under the Takings Clause of United States Constitution, when the City of New London, Connecticut, took private property by eminent domain for the purpose of transferring it to private developers for urban renewal and economic development projects. Whether eminent domain could be used in the same way in the State of Washington depends upon the State Constitution and the State Supreme Court cases that have interpreted it.

Article I, section 16 of the State Constitution places two concurrent restrictions on the power of the state and its governmental subdivisions to take private property. One is that just compensation must be paid. The other is that a court must determine whether the use for the property is really a public use, regardless of what the public entity may have determined. There are three specific exceptions in the Constitution to the requirement that a court must make this determination: private ways of necessity; drains, flumes, or ditches for agricultural, domestic, or sanitary purposes; and land reclamation and settlement purposes. State law

further specifies for what purposes and how the state, counties, cities, school districts, special districts, and corporations can use eminent domain.

The Court has interpreted the Constitution and state law to say that land could not be taken when the principal purpose was to sell it to private parties for industrial development (*Hogue*). An urban renewal law was not categorically unconstitutional, however, because it would allow property to be resold to private persons for redevelopment when there were specific use restrictions that accomplished the public purpose of eliminating blighted conditions (*Miller*). A court must find not only that the use for which property is taken is a public use but, further, that public interests require it and that the property is necessary to accomplish the public purpose. Using this test, property could not be taken for the purpose of promoting private retailing as part of a large-scale project that combined public and private uses (*In re Petition of Seattle*). When property is taken for a public use, part of it may be put to a private use, if the private use is merely incidental to the public use, meaning that the amount of land taken is no more than would be necessary solely for the public component of the project (*State ex rel. Washington State Convention & Trade Center*). In the absence of statutory direction to the contrary, if property is taken for a particular purpose and then is no longer needed for that purpose, it may be used for another purpose or sold (*Seattle Monorail Authority*).

**Summary of Substitute Bill:** The Legislature reaffirms existing state law on the use of eminent domain by state and local government, specifically the state's constitutional prohibition against taking private property for private use, the court cases interpreting it, and restrictions adopted in statute.

**Substitute Bill Compared to Original Bill:** Provisions for giving the owner of property that is taken by eminent domain a right of first refusal, when the property is no longer needed for public use, are removed.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

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

**Testimony For:** Private property should not be condemned for economic development. A property owner should have a right of first refusal to get property back, if it is no longer needed for a public purpose. The Washington Constitution creates an important tool for protecting private property, so that the New London case couldn't happen here; this proposal is intended to make that tool work better. This proposal will reassure property owners and provide guidance to local governments.

**Testimony Against:** The first section should be removed. The right of first refusal should be assignable, and the price should be the original price. SB 6388 is better and makes appropriate changes to statute, instead of creating confusion over what the state constitution does or doesn't mean by having the Legislature intervene in its interpretation. For example, the bill is silent on the recent Monorail case, and other cases, which addressed resale of condemned property, and resale price is left out, as well. Justifications for condemnation such

as blight can be subjective. Inappropriate resale of condemned property should not be allowed.

**Testimony Other:** There is no need for the first section, no need to restate the case law; it could cause unintended consequences, because it raises questions and doubts. Washington is a "non-Kelo" state, and the case law takes care of the concern about the effect of the New London case. The right of first refusal raises concerns about unconstitutional lending of credit. If the sale back is changed to be at the original price, it could be a windfall profit for the previous owner. Where condemnation is for roads that involve federal highway funding, these changes to state law could be contrary to federal law. Any right of first refusal should be very narrowly focused. Reaffirmation of case law does no harm. Small businesses are especially vulnerable and can't afford to fight condemnation in court. They need a way to know ahead of time, whether it's legitimate.

**Who Testified:** PRO: Sen. Rasmussen, Prime Sponsor; Keith Phillips for Governor Gregoire; Craig Partridge for Commissioner Sutherland.

CON: Jack Field, WA Cattlemen's Association; Clayton Hill, BIAW; John Stuhlmiller, WA Farm Bureau.

OTHER: Chris McCabe, AWB; Hugh Spitzer, Foster Pepper; Eric Johnson, WSAC; Carolyn Logue, NFIB.