

---

HOUSE BILL 2854

---

State of Washington

59th Legislature

2006 Regular Session

By Representatives Nixon, Bailey, Rodne, Serben, Sump, Newhouse, Crouse, Haler, Woods, Priest, Condotta, Shabro, Kristiansen, Strow, Ericksen, Walsh, Skinner, Roach, Buck, Holmquist, Ahern, McCune, Tom, Kretz, Talcott, Orcutt, Dunn, Anderson, McDonald, Armstrong, Chandler, Campbell, Wallace, Pearson and Hinkle

Read first time 01/16/2006. Referred to Committee on Judiciary.

1 AN ACT Relating to limiting the power of eminent domain; amending  
2 RCW 8.04.070, 8.08.020, 8.12.030, and 8.20.070; and adding a new  
3 chapter to Title 8 RCW.

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

5 **Sec. 1.** RCW 8.04.070 and 1988 c 202 s 6 are each amended to read  
6 as follows:

7 (1) At the time and place appointed for hearing the petition, or to  
8 which the hearing may have been adjourned, if the court has  
9 satisfactory proof that all parties interested in the lands, real  
10 estate, premises or other property described in the petition have been  
11 duly served with the notice, and is further satisfied by competent  
12 proof that the contemplated use for which the lands, real estate,  
13 premises, or other property are sought to be appropriated is really  
14 necessary for the public use of the state, it shall make and enter an  
15 order, to be recorded in the minutes of the court, and which order  
16 shall be final unless appellate review thereof is sought within five  
17 days after entry thereof, adjudicating that the contemplated use for  
18 which the lands, real estate, premises or other property are sought to  
19 be appropriated is really a public use of the state.

1       (2) Private property shall be taken by the state only for public  
2 use and no greater interest shall be taken than is necessary to  
3 accomplish the public use. "Public use" means only the actual  
4 possession, occupation, or enjoyment of the property by the general  
5 public or by the state; or the use of land for the creation or  
6 functioning of public utilities or common carriers such as railroads,  
7 utilities, or toll roads. The taking of private property by the state  
8 for economic development does not constitute public use.

9       **Sec. 2.** RCW 8.08.020 and 1949 c 79 s 2 are each amended to read as  
10 follows:

11       ~~((Any condemnation, appropriation or disposition intended in RCW~~  
12 ~~8.08.010 through 8.08.080 shall be deemed and held to be for a county~~  
13 ~~purpose and public use within the meaning of RCW 8.08.010 through~~  
14 ~~8.08.080 when it is directly or indirectly, approximately or remotely~~  
15 ~~for the general benefit or welfare of the county or of the inhabitants~~  
16 ~~thereof.))~~

17       Private property shall be taken by the county only for public use  
18 and no greater interest shall be taken than is necessary to accomplish  
19 the public use. "Public use" means only the actual possession,  
20 occupation, or enjoyment of the property by the general public or by  
21 the county; or the use of land for the creation or functioning of  
22 public utilities or common carriers such as railroads, utilities, or  
23 toll roads. The taking of private property by the county for economic  
24 development does not constitute public use.

25       **Sec. 3.** RCW 8.12.030 and 1915 c 154 s 1 are each amended to read  
26 as follows:

27       (1) Every city and town and each unclassified city and town within  
28 the state of Washington, is hereby authorized and empowered to condemn  
29 land and property, including state, county and school lands and  
30 property for streets, avenues, alleys, highways, bridges, approaches,  
31 culverts, drains, ditches, public squares, public markets, city and  
32 town halls, jails and other public buildings, and for the opening and  
33 widening, widening and extending, altering and straightening of any  
34 street, avenue, alley or highway, and to damage any land or other  
35 property for any such purpose or for the purpose of making changes in  
36 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) Private property shall be taken by the city, town, or other  
19 municipality, only for public use and no greater interest shall be  
20 taken than is necessary to accomplish the public use. "Public use"  
21 means only the actual possession, occupation, or enjoyment of the  
22 property by the city, town, or other municipality; or the use of land  
23 for the creation or functioning of public utilities or common carriers  
24 such as railroads, utilities, or toll roads. The taking of private  
25 property by the city, town, or other municipality for economic  
26 development does not constitute public use.

27 **Sec. 4.** RCW 8.20.070 and 1927 c 88 s 1 are each amended to read as  
28 follows:

29 (1) At the time and place appointed for hearing said petition, or  
30 to which the same may have been adjourned, if the court or judge  
31 thereof shall have satisfactory proof that all parties interested in  
32 the land, real estate, premises, or other property described in said  
33 petition, have been duly served with said notice as above prescribed,  
34 and shall be further satisfied by competent proof that the contemplated  
35 use for which the land, real estate, premises or other property sought  
36 to be appropriated is really a public use, or is for a private use for  
37 a private way of necessity, and that the public interest requires the

1 prosecution of such enterprise, or the private use is for a private way  
2 of necessity, and that the land, real estate, premises or other  
3 property sought to be appropriated are required and necessary for the  
4 purposes of such enterprise, the court or judge thereof may make an  
5 order, to be recorded in the minutes of said court, directing that a  
6 jury be summoned, or called, in the manner provided by law, to  
7 ascertain the compensation which shall be made for the land, real  
8 estate, premises or other property sought to be appropriated, unless a  
9 jury be waived as in other civil cases in courts of record, in the  
10 manner prescribed by law.

11 (2) Private property shall be taken by the corporate or  
12 governmental entity only for public use and no greater interest shall  
13 be taken than is necessary to accomplish the public use. "Public use"  
14 means only the actual possession, occupation, or enjoyment of the  
15 property by the corporate or governmental entity; or the use of land  
16 for the creation or functioning of public utilities or common carriers  
17 such as railroads, utilities, or toll roads. The taking of private  
18 property by the corporate or governmental entity for economic  
19 development does not constitute public use.

20 NEW SECTION. Sec. 5. It is the intent of this title, and the  
21 provisions of this title shall be so construed, that the powers of  
22 eminent domain shall be exercised solely for public use, except private  
23 ways of necessity, and for drains, flumes, or ditches on or across the  
24 lands of others for agricultural, domestic, or sanitary purposes  
25 consistent with Article I, section 16 of the state Constitution. The  
26 power of eminent domain may be exercised only for a stated public use  
27 and all grants and exercise of the power of eminent domain shall be  
28 strictly construed. Public use shall not be equated with public  
29 purpose, public interest, or public benefit, such as promoting economic  
30 development, creating jobs, improving the tax base, or enhancing tax  
31 revenues by building, expanding, or upgrading private retail,  
32 commercial, industrial, or residential establishments. The legislature  
33 intends that economic development as contemplated by the United States  
34 supreme court decision in *Kelo v. City of New London*, 545 U.S. . . .  
35 (2005) is not and shall not be construed as public use.

1        NEW SECTION.    **Sec. 6.**    (1) Upon a final order adjudicating eminent  
2 domain proceedings, the land, real estate, premises, or other property  
3 described in the appropriating petition shall not be used for any use,  
4 whether public or private, in whole or in part, other than the  
5 contemplated and actual public use described in the final order of  
6 condemnation. The contemplated and actual public use described in the  
7 final order of condemnation shall be the sole use permitted.  
8 Incidental private uses are prohibited.

9        (2) A final order of condemnation shall be voidable if a person  
10 with interest in land that has been condemned files a petition to void  
11 the order of condemnation and shows: (a) That the land, real estate,  
12 premises, or other property described in the appropriating petition was  
13 never physically and substantially put to the contemplated and actual  
14 public use described in the final order of condemnation and that more  
15 than ten years has passed since the date of the final order of  
16 condemnation, or (b) that the land, real estate, premises, or other  
17 property described in the appropriating petition was put to any use  
18 inconsistent with the contemplated and actual public use described in  
19 the final order of condemnation after the date of the final order of  
20 condemnation.

21        (3) Any person who prevails in an action to void, in whole, a final  
22 order of condemnation under this section appropriating lands, real  
23 estate, premises, or other property described in the appropriating  
24 petition shall pay back the amount of compensation received in the  
25 eminent domain proceedings with interest at the market rate. Any  
26 person who prevails in an action to void, in part, a final order of  
27 condemnation under this section appropriating land, real estate,  
28 premises, or other property described in the appropriating petition  
29 shall pay back an amount of the compensation received in the eminent  
30 domain proceedings with interest at the market rate with said amount to  
31 be ascertained and determined by the court. Upon payment of said  
32 compensation with interest to the court, that interest in the  
33 appropriated land, real estate, premises, or other property which is  
34 voided in the final order of condemnation shall be transferred back to  
35 the person whose interest was appropriated.

36        (4) Any person who prevails in an action to void, in whole or in  
37 part, a final order of condemnation under this section shall be  
38 entitled to reasonable attorney fees and costs.

1           (5) Except as otherwise provided in subsections (1) through (4) of  
2 this section, if any land, real estate, premises, or other property  
3 ceases to be used for the contemplated and actual public use described  
4 in a final order of condemnation, the previous owner of the land, real  
5 estate, premises, or other property, or a beneficiary of the previous  
6 owner, has the first right to reacquire the land, real estate,  
7 premises, or other property for the amount of the compensation received  
8 in the eminent domain proceedings with interest at the market rate, or  
9 the fair market value, whichever is less, before the land, real estate,  
10 premises, or other property may otherwise be sold or transferred. Upon  
11 petition to the court and payment of said compensation with interest,  
12 or fair market value, to the court, that interest in the appropriated  
13 land, real estate, premises, or other property which has ceased to be  
14 used shall be transferred upon order of the court back to the previous  
15 owner, or beneficiary of the previous owner, who has exercised the  
16 right to reacquire the land, real estate, premises, or other property.

17           NEW SECTION.   **Sec. 7.** Sections 5 and 6 of this act constitute a  
18 new chapter in Title 8 RCW.

--- END ---