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SECOND SUBSTITUTE HOUSE BILL 3017

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State of Washington

59th Legislature

2006 Regular Session

**By** House Committee on Capital Budget (originally sponsored by Representatives Springer, P. Sullivan, Upthegrove, Chase, Morrell, Simpson, Sells, Schual-Berke, Green, Kilmer, B. Sullivan, Linville and Hasegawa; by request of Governor Gregoire and Commissioner of Public Lands)

READ FIRST TIME 02/08/06.

1 AN ACT Relating to restrictions on condemnation and sale of  
2 condemned property by state and local governments; amending RCW  
3 8.04.070, 8.08.020, and 8.12.030; adding a new section to chapter 8.04  
4 RCW; adding a new section to chapter 8.08 RCW; adding a new section to  
5 chapter 8.12 RCW; creating new sections; and providing an effective  
6 date.

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

8 NEW SECTION. **Sec. 1.** (1) Members of the public have expressed  
9 concern regarding a recent United States supreme court decision, *Kelo*  
10 *v. New London* (No. 04-108 (June 23, 2005)), which upheld, under the  
11 United States Constitution, a Connecticut city's exercise of eminent  
12 domain. It is the intent of the legislature to recognize, reaffirm,  
13 and support existing Washington case law under Article I, section 16 of  
14 the state Constitution, that prohibits the condemnation of private  
15 property other than for certain public purposes pursuant to law.

16 (2) In light of the United States supreme court decision in *Kelo v.*  
17 *New London*, the legislature intends to reaffirm existing Washington  
18 state law relating to the use of eminent domain by state and local  
19 governments, and to reaffirm the prohibition in Article I, section 16

1 of the state Constitution on the use of eminent domain to take private  
2 property for private use. To this end, the legislature recognizes,  
3 reaffirms, and supports the restrictions on the use of eminent domain  
4 to take private property for private use, as set forth in chapters  
5 8.04, 8.08, 8.12, 8.16, and 8.20 RCW. It is the intent of the  
6 legislature that state and local governments shall not appropriate or  
7 acquire any real property for the primary purpose of economic  
8 development without the consent of the property owner.

9 NEW SECTION. **Sec. 2.** A new section is added to chapter 8.04 RCW  
10 to read as follows:

11 (1) If the state determines, within seven years after the date the  
12 property is transferred to the state, that all or a portion of real  
13 property or an interest in real property that was acquired through  
14 condemnation or the threat of condemnation is no longer necessary for  
15 a public purpose and should be sold, the former owner shall have a  
16 repurchase right as provided in this section. "Former owner" means the  
17 person or entity from whom the state acquired title and that person's  
18 or entity's successors or assigns to the property or property interest  
19 subject to the repurchase right.

20 (2) At least ninety days prior to the date on which the state will  
21 announce a public competition bid for purchase or, if the sale is to be  
22 negotiated, at least ninety days prior to the date on which a purchase  
23 and sale agreement or similar document is to be signed, the state shall  
24 (a) publish notice of its determination to sell the property or portion  
25 of property in a legal newspaper of general circulation in the area  
26 where the property to be sold is located, (b) describe generally any  
27 easements, other restrictions, or reserved rights the state intends to  
28 retain upon sale, and (c) mail notice of the determination to the  
29 former owner of the property at the former owner's last known address  
30 or to a forwarding address if that owner has provided the state with a  
31 forwarding address.

32 (3) If the former owner notifies the state in writing within thirty  
33 days of the date of notice provided under subsection (2) of this  
34 section that the former owner intends to exercise the repurchase right  
35 granted by this section, the state shall, unless it already has a  
36 completed current independent appraisal for the property, immediately  
37 arrange for an independent appraisal to determine the fair market value

1 of the property or portion of property subject to repurchase, adjusted  
2 to reflect the value of any physical changes to the property, such as  
3 improvements or removal of structures. All costs of appraisal shall be  
4 paid by the state. If the former owner does not provide timely written  
5 notice to the state of the intent to exercise a repurchase right, that  
6 right shall be extinguished and the state shall be relieved of any  
7 further obligation under this section.

8 (4) Within thirty days of the date the state provides a written  
9 copy of the appraisal to the former owner, the former owner may  
10 exercise the repurchase right granted by this section by delivering to  
11 the state earnest money or a deposit in a form determined by the state  
12 in an amount equal to five percent of the appraised value, together  
13 with a written promise to pay, within thirty days, the following:

14 (a) The lesser of (i) the appraised value less the earnest money or  
15 deposit, or (ii) an amount equal to the compensation received from the  
16 state when the property or portion of property was condemned or sold  
17 under threat of condemnation, with interest accrued at the market rate,  
18 and with the amount adjusted to reflect the value of any physical  
19 changes to the property, such as improvements or removal of structures,  
20 as determined by the independent appraisal, less the earnest money or  
21 deposit; and

22 (b) All required fees and costs otherwise required for the transfer  
23 of real property.

24 (5) Upon receipt of the full payment required in subsection (4) of  
25 this section, the state shall transfer title to the former owner,  
26 subject to any easements, other restrictions, or reserved rights  
27 retained by the state. If the former owner fails to complete the sale,  
28 the earnest money or deposit shall be forfeited to the state, the  
29 former owner's repurchase right shall be extinguished, and the state  
30 shall be relieved of any further obligation under this section.

31 (6) The state may reject a notice of intent under subsection (3) of  
32 this section received from a person or entity claiming to be a  
33 successor or assignee that is not accompanied by evidence sufficient to  
34 demonstrate that the person or entity is the successor or assignee of  
35 the person or entity from whom the state acquired title.

36 (7) The obligations imposed on the state in this section are in  
37 addition to those provided by law for the surplusizing or sale of public  
38 property to private parties.

1        NEW SECTION.    **Sec. 3.**    A new section is added to chapter 8.08 RCW  
2 to read as follows:

3        (1) If a county determines, within seven years after the date the  
4 property is transferred to the county, that all or a portion of real  
5 property or an interest in real property that was acquired through  
6 condemnation or the threat of condemnation is no longer necessary for  
7 a public purpose and should be sold, the former owner shall have a  
8 repurchase right as provided in this section. "Former owner" means the  
9 person or entity from whom the county acquired title and that person's  
10 or entity's successors or assigns to the property or property interest  
11 subject to the repurchase right.

12        (2) At least ninety days prior to the date on which the county will  
13 announce a public competition bid for purchase or, if the sale is to be  
14 negotiated, at least ninety days prior to the date on which a purchase  
15 and sale agreement or similar document is to be signed, the county  
16 shall (a) publish notice of its determination to sell the property or  
17 portion of property in a legal newspaper of general circulation in the  
18 area where the property to be sold is located, (b) describe generally  
19 any easements, other restrictions, or reserved rights the county  
20 intends to retain upon sale, and (c) mail notice of the determination  
21 to the former owner of the property at the former owner's last known  
22 address or to a forwarding address if that owner has provided the  
23 county with a forwarding address.

24        (3) If the former owner notifies the county in writing within  
25 thirty days of the date of notice provided under subsection (2) of this  
26 section that the former owner intends to exercise the repurchase right  
27 granted by this section, the county shall, unless it already has a  
28 completed current independent appraisal for the property, immediately  
29 arrange for an independent appraisal to determine the fair market value  
30 of the property or portion of property subject to repurchase, adjusted  
31 to reflect the value of any physical changes to the property, such as  
32 improvements or removal of structures. All costs of appraisal shall be  
33 paid by the county. If the former owner does not provide timely  
34 written notice to the county of the intent to exercise a repurchase  
35 right, that right shall be extinguished and the county shall be  
36 relieved of any further obligation under this section.

37        (4) Within thirty days of the date the county provides a written  
38 copy of the appraisal to the former owner, the former owner may

1 exercise the repurchase right granted by this section by delivering to  
2 the county earnest money or a deposit in a form determined by the  
3 county in an amount equal to five percent of the appraised value,  
4 together with a written promise to pay, within thirty days, the  
5 following:

6 (a) The lesser of (i) the appraised value less the earnest money or  
7 deposit, or (ii) an amount equal to the compensation received from the  
8 county when the property or portion of property was condemned or sold  
9 under threat of condemnation, with interest accrued at the market rate,  
10 and with the amount adjusted to reflect the value of any physical  
11 changes to the property, such as improvements or removal of structures,  
12 as determined by the independent appraisal, less the earnest money or  
13 deposit; and

14 (b) All required fees and costs otherwise required for the transfer  
15 of real property.

16 (5) Upon receipt of the full payment required in subsection (4) of  
17 this section, the county shall transfer title to the former owner,  
18 subject to any easements, other restrictions, or reserved rights  
19 retained by the county. If the former owner fails to complete the  
20 sale, the earnest money or deposit shall be forfeited to the county,  
21 the former owner's repurchase right shall be extinguished, and the  
22 county shall be relieved of any further obligation under this section.

23 (6) The county may reject a notice of intent under subsection (3)  
24 of this section received from a person or entity claiming to be a  
25 successor or assignee that is not accompanied by evidence sufficient to  
26 demonstrate that the person or entity is the successor or assignee of  
27 the person or entity from whom the county acquired title.

28 (7) The obligations imposed on the county in this section are in  
29 addition to those provided by law for the surplusizing or sale of public  
30 property to private parties.

31 NEW SECTION. **Sec. 4.** A new section is added to chapter 8.12 RCW  
32 to read as follows:

33 (1) If a city or town determines, within seven years after the date  
34 the property is transferred to the city or town, that all or a portion  
35 of real property or an interest in real property that was acquired  
36 through condemnation or the threat of condemnation is no longer  
37 necessary for a public purpose and should be sold, the former owner

1 shall have a repurchase right as provided in this section. "Former  
2 owner" means the person or entity from whom the city or town acquired  
3 title and that person's or entity's successors or assigns to the  
4 property or property interest subject to the repurchase right.

5 (2) At least ninety days prior to the date on which the city or  
6 town will announce a public competition bid for purchase or, if the  
7 sale is to be negotiated, at least ninety days prior to the date on  
8 which a purchase and sale agreement or similar document is to be  
9 signed, the city or town shall (a) publish notice of its determination  
10 to sell the property or portion of property in a legal newspaper of  
11 general circulation in the area where the property to be sold is  
12 located, (b) describe generally any easements, other restrictions, or  
13 reserved rights the city or town intends to retain upon sale, and (c)  
14 mail notice of the determination to the former owner of the property at  
15 the former owner's last known address or to a forwarding address if  
16 that owner has provided the city or town with a forwarding address.

17 (3) If the former owner notifies the city or town in writing within  
18 thirty days of the date of notice provided under subsection (2) of this  
19 section that the former owner intends to exercise the repurchase right  
20 granted by this section, the city or town shall, unless it already has  
21 a completed current independent appraisal for the property, immediately  
22 arrange for an independent appraisal to determine the fair market value  
23 of the property or portion of property subject to repurchase, adjusted  
24 to reflect the value of any physical changes to the property, such as  
25 improvements or removal of structures. All costs of appraisal shall be  
26 paid by the city or town. If the former owner does not provide timely  
27 written notification to the city or town of the intent to exercise a  
28 repurchase right, that right shall be extinguished and the city or town  
29 shall be relieved of any further obligation under this section.

30 (4) Within thirty days of the date the city or town provides a  
31 written copy of the appraisal to the former owner, the former owner may  
32 exercise the repurchase right granted by this section by delivering to  
33 the city or town earnest money or a deposit in a form determined by the  
34 city or town in an amount equal to five percent of the appraised value,  
35 together with a written promise to pay, within thirty days, the  
36 following:

37 (a) The lesser of (i) the appraised value less the earnest money or  
38 deposit, or (ii) an amount equal to the compensation received from the

1 city or town when the property or portion of property was condemned or  
2 sold under threat of condemnation, with interest accrued at the market  
3 rate, and with the amount adjusted to reflect the value of any physical  
4 changes to the property, such as improvements or removal of structures,  
5 as determined by the independent appraisal, less the earnest money or  
6 deposit; and

7 (b) All required fees and costs otherwise required for the transfer  
8 of real property.

9 (5) Upon receipt of the full payment required in subsection (4) of  
10 this section, the city or town shall transfer title to the former  
11 owner, subject to any easements, other restrictions, or reserved rights  
12 retained by the city or town. If the former owner fails to complete  
13 the sale, the earnest money or deposit shall be forfeited to the city  
14 or town, the former owner's repurchase right shall be extinguished, and  
15 the city or town shall be relieved of any further obligation under this  
16 section.

17 (6) The city or town may reject a notice of intent under subsection  
18 (3) of this section received from a person or entity claiming to be a  
19 successor or assignee that is not accompanied by evidence sufficient to  
20 demonstrate that the person or entity is the successor or assignee of  
21 the person or entity from whom the city or town acquired title.

22 (7) The obligations imposed on the city or town in this section are  
23 in addition to those provided by law for the surplusing or sale of  
24 public property to private parties.

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

27 (1) At the time and place appointed for hearing the petition, or to  
28 which the hearing may have been adjourned, if the court has  
29 satisfactory proof that all parties interested in the lands, real  
30 estate, premises or other property described in the petition have been  
31 duly served with the notice, and is further satisfied by competent  
32 proof that the contemplated use for which the lands, real estate,  
33 premises, or other property are sought to be appropriated is really  
34 necessary for the public use of the state, it shall make and enter an  
35 order, to be recorded in the minutes of the court, and which order  
36 shall be final unless appellate review thereof is sought within five

1 days after entry thereof, adjudicating that the contemplated use for  
2 which the lands, real estate, premises or other property are sought to  
3 be appropriated is really a public use of the state.

4 (2) The state shall not take private property solely for the  
5 purpose of economic development. For the purposes of this section,  
6 "economic development" means the acquisition or use of real property to  
7 increase tax revenue, tax base, employment, or economic health. For  
8 the purposes of this section, "economic development" does not include  
9 the acquisition or use of real property for the primary purpose of:  
10 (a) The transfer of real property to public ownership; (b) the transfer  
11 of real property to a private entity that is a common carrier, such as  
12 a utility or railroad; (c) the transfer of real property to a private  
13 entity when acquisition or appropriation is necessary to remove a  
14 threat to public health or safety; (d) the transfer of real property to  
15 a private entity when acquisition or appropriation is necessary for the  
16 removal of unsanitary or unsafe conditions, conditions that endanger  
17 life or property by fire or other causes, conditions conducive to ill  
18 health, transmission of disease, infant mortality, juvenile delinquency  
19 and crime, hazardous soils, substances, or materials, or conditions  
20 detrimental to or constituting a menace to the public health, safety,  
21 welfare, and morals in its present condition and use; (e) the transfer  
22 of real property to a private entity when acquisition or appropriation  
23 is necessary for the acquisition of abandoned property; or (f) the  
24 lease of real property to a private entity that occupies an area within  
25 a public project or facility.

26 **Sec. 6.** RCW 8.08.020 and 1949 c 79 s 2 are each amended to read as  
27 follows:

28 (1) Any condemnation, appropriation or disposition intended in RCW  
29 8.08.010 through 8.08.080 shall be deemed and held to be for a county  
30 purpose and public use within the meaning of RCW 8.08.010 through  
31 8.08.080 when it is directly or indirectly, approximately or remotely  
32 for the general benefit or welfare of the county or of the inhabitants  
33 thereof.

34 (2) A county shall not take private property solely for the  
35 purpose of economic development. For the purposes of this section,  
36 "economic development" means the acquisition or use of real property to  
37 increase tax revenue, tax base, employment, or economic health. For



1 the purposes of this section, "economic development" does not include  
2 the acquisition or use of real property for the primary purpose of:  
3 (a) The transfer of real property to public ownership; (b) the transfer  
4 of real property to a private entity that is a common carrier, such as  
5 a utility or railroad; (c) the transfer of real property to a private  
6 entity when acquisition or appropriation is necessary to remove a  
7 threat to public health or safety; (d) the transfer of real property to  
8 a private entity when acquisition or appropriation is necessary for the  
9 removal of unsanitary or unsafe conditions, conditions that endanger  
10 life or property by fire or other causes, conditions conducive to ill  
11 health, transmission of disease, infant mortality, juvenile delinquency  
12 and crime, hazardous soils, substances, or materials, or conditions  
13 detrimental to or constituting a menace to the public health, safety,  
14 welfare, and morals in its present condition and use; (e) the transfer  
15 of real property to a private entity when acquisition or appropriation  
16 is necessary for the acquisition of abandoned property; or (f) the  
17 lease of real property to a private entity that occupies an area within  
18 a public project or facility.

19 **Sec. 7.** RCW 8.12.030 and 1915 c 154 s 1 are each amended to read  
20 as follows:

21 (1) Every city and town and each unclassified city and town within  
22 the state of Washington, is hereby authorized and empowered to condemn  
23 land and property, including state, county and school lands and  
24 property for streets, avenues, alleys, highways, bridges, approaches,  
25 culverts, drains, ditches, public squares, public markets, city and  
26 town halls, jails and other public buildings, and for the opening and  
27 widening, widening and extending, altering and straightening of any  
28 street, avenue, alley or highway, and to damage any land or other  
29 property for any such purpose or for the purpose of making changes in  
30 the grade of any street, avenue, alley or highway, or for the  
31 construction of slopes or retaining walls for cuts and fills upon real  
32 property abutting on any street, avenue, alley or highway now ordered  
33 to be, or such as shall hereafter be ordered to be opened, extended,  
34 altered, straightened or graded, or for the purpose of draining swamps,  
35 marshes, tidelands, tide flats or ponds, or filling the same, within  
36 the limits of such city, and to condemn land or property, or to damage  
37 the same, either within or without the limits of such city for public

1 parks, drives and boulevards, hospitals, pesthouses, drains and sewers,  
2 garbage crematories and destructors and dumping grounds for the  
3 destruction, deposit or burial of dead animals, manure, dung, rubbish,  
4 and other offal, and for aqueducts, reservoirs, pumping stations and  
5 other structures for conveying into and through such city a supply of  
6 fresh water, and for the purpose of protecting such supply of fresh  
7 water from pollution, and to condemn land and other property and damage  
8 the same for such and for any other public use after just compensation  
9 having been first made or paid into court for the owner in the manner  
10 prescribed by this chapter.

11 (2) A city or town shall not take private property solely for the  
12 purpose of economic development. For the purposes of this section,  
13 "economic development" means the acquisition or use of real property to  
14 increase tax revenue, tax base, employment, or economic health. For  
15 the purposes of this section, "economic development" does not include  
16 the acquisition or use of real property for the primary purpose of:  
17 (a) The transfer of real property to public ownership; (b) the transfer  
18 of real property to a private entity that is a common carrier, such as  
19 a utility or railroad; (c) the transfer of real property to a private  
20 entity when acquisition or appropriation is necessary to remove a  
21 threat to public health or safety; (d) the transfer of real property to  
22 a private entity when acquisition or appropriation is necessary for the  
23 removal of unsanitary or unsafe conditions, conditions that endanger  
24 life or property by fire or other causes, conditions conducive to ill  
25 health, transmission of disease, infant mortality, juvenile delinquency  
26 and crime, hazardous soils, substances, or materials, or conditions  
27 detrimental to or constituting a menace to the public health, safety,  
28 welfare, and morals in its present condition and use; (e) the transfer  
29 of real property to a private entity when acquisition or appropriation  
30 is necessary for the acquisition of abandoned property; or (f) the  
31 lease of real property to a private entity that occupies an area within  
32 a public project or facility.

33 NEW SECTION. Sec. 8. Sections 2 through 7 of this act take effect  
34 July 1, 2007.

35 NEW SECTION. Sec. 9. The office of financial management, working  
36 in consultation with state and local governments and private utilities

1 and corporations that acquire property through eminent domain, shall  
2 develop and provide recommendations to the legislature by December 1,  
3 2006, regarding the definition of "economic development" as set forth  
4 in RCW 8.04.070, 8.08.020, and 8.12.030 and regarding the appropriate  
5 statutory provisions for providing a repurchase right to the former  
6 owner of land that has been condemned by a state or local government or  
7 a private utility or corporation, where the condemning entity has  
8 decided to sell the condemned land.

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