

ESHB 2016 - H AMD TO H AMD (H-4496.4/08) **1070**
By Representative Rodne

NOT ADOPTED 2/13/2008

1 On page 29, after line 11 of the amendment, insert the
2 following:

3 "NEW SECTION. **Sec. 28.** It is the intent of this act, and the
4 provisions of this act shall be so construed, that the powers of
5 eminent domain shall be exercised solely for a stated public use,
6 except private ways of necessity, and for drains, flumes, or
7 ditches on or across the lands of others for agricultural,
8 domestic, or sanitary purposes consistent with Article I, section
9 16 of the state Constitution. All grants and exercise of the power
10 of eminent domain shall be strictly construed and no greater
11 interest shall be taken than is necessary to accomplish the stated
12 public use. "Public use" means the actual possession, occupation,
13 and use of the property by the general public or by the state; or
14 the use of land for the creation or functioning of public utilities
15 or common carriers such as railroads, utilities, or toll roads.
16 The taking of private property by the state for economic
17 development does not constitute public use. Public use shall not
18 be equated with public purpose, public interest, or public benefit,
19 such as promoting economic development, creating jobs, improving
20 the tax base, or enhancing tax revenues by building, expanding, or
21 upgrading private retail, commercial, industrial, or residential
22 establishments. The legislature intends that economic development
23 as contemplated by the United States supreme court decision in Kelo
24 v. City of New London, 545 U.S. 469 (2005) is not and shall not be
25 construed as public use."

26 Renummer the remaining section consecutively and correct the
27 title.

EFFECT: Expresses legislative intent to prohibit the exercise of eminent domain except to the extent necessary for a stated public use. Defines public use to mean actual possession, occupation, and use by the general public or the state, or the use of land by common carriers. Declares that public use may not be equated with economic development, job creation, or tax base improvement or tax revenue enhancement. Expresses the intent that the kind of economic development in the *Kelo* decision is not to be construed as a public use.