

SB 5445 - H COMM AMD
By Committee on Judiciary

NOT CONSIDERED 01/05/2018

1 Strike everything after the enacting clause and insert the
2 following:

3 NEW SECTION. **Sec. 1.** (1) It is the intent of the legislature
4 to recognize, reaffirm, and support existing Washington case law
5 under Article I, section 16 of the state Constitution, that prohibits
6 the condemnation of private property other than for certain public
7 purposes pursuant to law.

8 (2) In light of the United States supreme court decision in *Kelo*
9 *v. New London*, 545 U.S. 469 (2005), the legislature intends to
10 reaffirm existing Washington state law relating to the use of eminent
11 domain by state and local governments, and to reaffirm the
12 prohibition in Article I, section 16 of the state Constitution on the
13 use of eminent domain to take private property for private use. To
14 this end, the legislature recognizes, reaffirms, and supports the
15 restrictions on the use of eminent domain to take private property
16 for private use, as set forth in chapters 8.04, 8.08, 8.12, 8.16, and
17 8.20 RCW and in the Washington state supreme court's decisions such
18 as *Hogue v. Seattle*, 54 Wn.2d 799, 341 P.2d 171 (1959); *Miller v.*
19 *Tacoma*, 61 Wn.2d 374, 378 P.2d 464 (1963); *In re Petition of Seattle*,
20 96 Wn.2d 616, 638 P.2d 549 (1981); and *State ex rel. Washington State*
21 *Convention & Trade Center v. Evans*, 136 Wn.2d 811, 966 P.2d 1252
22 (1998).

23 NEW SECTION. **Sec. 2.** The definitions in this section apply
24 throughout this chapter unless the context clearly requires
25 otherwise.

26 (1) "Consumer-owned utility" has the same meaning as in RCW
27 19.27A.140.

28 (2) "Economic development" means any activity to increase tax
29 revenue, tax base, employment, or general economic health, when that
30 activity does not result in:

1 (a) The transfer of property to public possession, occupation,
2 and enjoyment;

3 (b) The transfer of property to a private entity that is a public
4 service company, consumer-owned utility, or common carrier;

5 (c) The use of eminent domain:

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

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

9 (C) To acquire abandoned property; and

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

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

14 "Economic development" does not include the transfer of property
15 to a public service company, a consumer-owned utility, or a common
16 carrier for the purpose of constructing, operating, or maintaining
17 generation, transmission, or distribution facilities. "Economic
18 development" also does not include port districts' activities under
19 Title 14 or 53 RCW. "Economic development" also does not include
20 highway projects.

21 (3) "Public service company" has the same meaning as defined in
22 RCW 80.04.010.

23 (4)(a) "Public use" means:

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

26 (ii) The use of property for the creation or functioning of
27 public service companies, a consumer-owned utility, or common
28 carriers; or

29 (iii) Where the use of eminent domain:

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

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

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

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

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

1 NEW SECTION. **Sec. 3.** Private property may be taken only for
2 public use and the taking of private property by any public entity
3 for economic development does not constitute a public use. No public
4 entity may take property for the purpose of economic development.

5 NEW SECTION. **Sec. 4.** In an action to establish or challenge the
6 asserted public use of a taking of private property, the taking of
7 private property shall be deemed for economic development, and not a
8 proper basis for eminent domain, if the court determines that the
9 taking of the private property does not result in any of the
10 exceptions to economic development set forth in section 2(2) of this
11 act, and economic development was a substantial factor in the
12 governmental body's decision to take the property.

13 **Sec. 5.** RCW 35.81.080 and 2002 c 218 s 8 are each amended to
14 read as follows:

15 A municipality shall have the right to acquire by condemnation,
16 in accordance with the procedure provided for condemnation by such
17 municipality for other purposes, any interest in real property, which
18 it may deem necessary for a community renewal project under this
19 chapter after the adoption by the local governing body of a
20 resolution declaring that the acquisition of the real property
21 described therein is necessary for such purpose. Condemnation for
22 community renewal of blighted areas is declared to be a public use,
23 and property already devoted to any other public use or acquired by
24 the owner or a predecessor in interest by eminent domain may be
25 condemned for the purposes of this chapter. Condemnation of property
26 in blighted areas for economic development, as defined in section 2
27 of this act, is not a public use.

28 The award of compensation for real property taken for such a
29 project shall not be increased by reason of any increase in the value
30 of the real property caused by the assembly, clearance, or
31 reconstruction, or proposed assembly, clearance, or reconstruction in
32 the project area. No allowance shall be made for the improvements
33 begun on real property after notice to the owner of such property of
34 the institution of proceedings to condemn such property. Evidence
35 shall be admissible bearing upon the insanitary, unsafe, or
36 substandard condition of the premises, or the unlawful use thereof.

1 NEW SECTION. **Sec. 6.** Sections 2 through 4 of this act
2 constitute a new chapter in Title 8 RCW."

3 Correct the title.

EFFECT: Adds an intent section recognizing and reaffirming
existing Washington state law relating to the use of eminent domain
by state and local governments.

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