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## Judiciary Committee

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### HB 1454

**Title:** An act relating to prohibiting the use of eminent domain for economic development.

**Brief Description:** Prohibiting the use of eminent domain for economic development.

**Sponsors:** Representatives Holy, Riccelli, Pollet, Manweller, Griffey, Dent, Van Werven, Shea, Appleton, McCabe, Blake, Schmick, Haler, Stokesbary, Tharinger, Hargrove, Ormsby and Stanford.

<p style="text-align: center;"><b>Brief Summary of Bill</b></p> <ul style="list-style-type: none"><li>• Prohibits public entities from taking private property for the purpose of economic development.</li></ul>
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**Hearing Date:** 1/31/17

**Staff:** Alex Arkfeld (786-7290) and Cece Clynch (786-7195).

**Background:**

Eminent Domain.

Eminent domain is the term used to describe the inherent power of a government to take privately owned property and convert it to public use. The power of eminent domain extends to all types of property, although it is most often associated with the taking of real property, such as acquiring property to build a highway. A "condemnation" is the exercise of eminent domain by a government.

The Fifth Amendment to the United States (U.S.) Constitution provides, in part, that "private property [shall not] be taken for public use, without just compensation."

Article I, section 16 of the Washington Constitution provides, in part, the following: "Private property shall not be taken for private use, except for private ways of necessity, and for drains, flumes, or ditches on or across the lands of others for agricultural, domestic, or sanitary

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purposes. No private property shall be taken or damaged for public or private use without just compensation having been first made .... [T]he question whether the contemplated use be really public shall be a judicial question, and determined as such, without regard to any legislative assertion that the use is public ...."

#### "Public Use" under the Federal Constitution.

The U.S. Constitution requires that a taking be for a "public use." In *Kelo v. City of New London*, a 2005 decision, the U.S. Supreme Court considered the meaning of "public use." In that case, the city planned to condemn property as part of its economic development plan to revitalize the area surrounding the future site of a large pharmaceutical company. The property was condemned solely for development and not because it was blighted or otherwise in poor condition. The city planned to transfer some of the condemned property to a private developer, who would put the property to commercial use, including office and retail space, a hotel, and restaurants. Under the plan, very little of the property in the development would be made available for use by the general public. The plan was intended to, among other things, enhance the city's tax base and create jobs. The U.S. Supreme Court upheld the plan as meeting the "public use" requirement of the Fifth Amendment.

#### "Public Use" under the Washington State Constitution.

In Washington, in order for a proposed condemnation to satisfy Article I, section 16, a court must find: (1) that the use is really public; (2) that the public interest requires it; and (3) that the property acquired is necessary for the purpose. What constitutes "public use" in this state has evolved over the years. In *Hogue v. Port of Seattle*, a 1959 decision, the Washington Supreme Court (the Court) declared unconstitutional a plan by a port district to condemn property and transfer it to private parties as part of the creation of an industrial development district. The Court required that the proponents of such a plan show that the condemned property is really for a public use. The Court noted that simply wanting to put property to a higher and better economic use is not sufficient grounds to condemn it. Subsequent case law suggests that transfers of condemned property for private use may be permissible in the following two situations:

- the private use is incidental to the planned public use; or
- the purpose of the condemnation is to cure blighted areas and the transfer is subject to use restrictions that prevent recurrence of the blighted condition.

#### **Summary of Bill:**

New provisions are added regarding the use of eminent domain by public entities.

A public entity may only take private property for public use. "Public use" is defined as follows:

- the possession, occupation, and enjoyment of the property by the general public or by public agencies;
- the use of property for the creation or functioning of a public service company, a consumer-owned utility, or common carriers; or
- the removal of a public nuisance, the removal of an uninhabitable structure that is beyond repair, or the acquisition of abandoned property that eliminates a direct threat to public health and safety caused by the property in its current condition and no other reasonable method of abating the threat exists.

The taking of private property by any public entity for economic development does not constitute a public use. "Economic development" is defined as any activity to increase tax revenue, tax base, employment, or general economic health, unless the activity results in public use or the transfer of the property is to private entities that occupy an incidental area within a publicly owned and occupied project. Economic development does not include the following:

- the transfer of property to a public service company, a consumer-owned utility, or a common carrier for the purpose of constructing, operating, or maintaining generation, transmission, or distribution facilities;
- port districts' activities; or
- highway projects.

In an action challenging public use, a taking is deemed to be for economic development rather than public use if a court determines that the taking does not result in any of the listed exceptions to economic development and economic development was a substantial factor in the decision to take the property.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.