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Eminent Domain Post-*Kelo*
2005-2006 State Legislation

Eminent domain legislation in response to the United States Supreme Court decision in *Kelo v. New London* has been considered in each of the 46 states that have been in session since the decision came down on June 23, 2005. Legislatures have passed bills in 31 states to date, as follows:

- Enacted in 26 states—Alabama, Alaska, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Minnesota, Missouri, Nebraska, New Hampshire, Ohio, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Vermont, West Virginia and Wisconsin.
- Passed a constitutional amendment that will go on the ballot for voter approval in 3 states—Louisiana, Michigan and South Carolina (in addition to Florida, Georgia and New Hampshire, which also enacted statutes).
- Vetoed by the governor in 2 states—Arizona and New Mexico (the Iowa legislature overrode the governor's veto).

The legislation generally falls into seven categories:

- Prohibiting eminent domain for economic development purposes, to generate tax revenue, or to transfer private property to another private entity.
- Defining what constitutes "public use," generally the possession, occupation or enjoyment of the property by the public at large, public agencies or public utilities.
- Restricting eminent domain to blighted properties and redefining what constitutes blight to emphasize detriment to public health or safety.
- Requiring greater public notice, more public hearings, negotiation in good faith with landowners and approval by elected governing bodies.
- Requiring compensation greater than fair market value where property condemned is the principal residence.
- Placing a moratorium on eminent domain for economic development.
- Establishing legislative study committees or stakeholder task forces to study and report back to legislature with findings.

Each of the bills is summarized in the following pages. A link to the legislation or to the legislature's bill tracking system can be found on NCSL's Eminent Domain Web page at www.ncsl.org/programs/natres/emindomain.htm. The bills listed are for the 2006 session, except where otherwise noted.

Enacted

Alabama
SB 68 (2005)
Prohibits the use of eminent domain for retail, commercial, residential or apartment development; for purposes of generating tax revenue; or for the transfer of private property to another private party. Contains a blight exception.

SB 654
Prohibits the use of eminent domain to acquire non-blighted property for a redevelopment project without the consent of the owner. Defines blighted property to emphasize characteristics that are detrimental to the public health and safety.

Alaska
HB 318
Prohibits the use of eminent domain to transfer private property to another private entity for economic development purposes.

Colorado
HB 1411
Stipulates that a public use for which eminent domain may be exercised does not include transferring private property to another private entity for economic development purposes or to generate additional tax revenue.

Delaware
SB 217 (2005)
Restricts the use of eminent domain by the state or a political subdivision to a recognized public use.

Florida
HB 1567
Prohibits the transfer of private property acquired through eminent domain to another private entity with certain exceptions, including for use by common carriers, public transportation, public utilities, or where the private use is incidental to a public project. Prohibits the use of eminent domain to eliminate blight conditions or to generate additional tax revenue. Authorizes the use of eminent domain under the Community Redevelopment Act if it is necessary to remove a threat to the public health or safety.

Georgia
HB 1313
Defines public use for which eminent domain may be exercised to be the possession, occupation and enjoyment of property by the public, public agencies or public utilities, or for the removal of blight. Prohibits the use of eminent domain for economic development purposes, including enhancement of the tax base or tax revenue, increased employment or improvement in the general economic health when the property is to be transferred to another private entity. Redefines blighted areas to emphasize

characteristics that are detrimental to the public health and safety. Requires approval of eminent domain actions by the governing body of a city or county, and greater public notice before proceeding with condemnation authority.

Idaho
HB 555
Prohibits the use of eminent domain for a public use that is merely a pretext for transferring the property to another private entity, or for promoting economic development.

Illinois
SB 3086
Prohibits the use of eminent domain to confer a benefit on a particular private entity or for a public use that is merely a pretext for conferring a benefit on a particular private entity. Limits the use of eminent domain for private development unless the area is blighted and the state or local government has entered into a development agreement with a private entity.

Indiana
HB 1010
Defines public use for which eminent domain may be exercised to be the possession, occupation and enjoyment of property by the public, public agencies or public utilities, and does not include an increase in the tax base, tax revenue, employment or general economic health. Redefines blighted areas to emphasize properties that are detrimental to the public health and safety. Requires payment of compensation where the property condemned is the person's primary residence at a rate equal to 150 percent of fair market value. Establishes a legislative study committee to study eminent domain and report its findings to the legislature no later than November 1, 2007.

Iowa
HF 2351
Defines public use for which eminent domain may be exercised to be the possession, occupation and enjoyment of the property by the general public or a public utility; where private use is only incidental to a public use; or to redevelop blighted areas where at least 75 percent of the properties in the area are blighted. States that public use does not include economic development activities that generate additional tax revenue or employment, or result in private residential, commercial or industrial development. Requires public notice before condemnation proceedings may begin. Includes a buy-back provision whereby the original owner of condemned property that is not put to a public use within five years may purchase it.

Kansas
SB 323
Prohibits the transfer of private property acquired through eminent domain to another private entity with certain exceptions, including property transferred to a common carrier; unsafe property acquired by a municipality; or property approved by the state legislature.

The restrictions do not apply to property in a redevelopment district created prior to enactment of the law. Increases the level of compensation to landowners whose property is condemned to 200 percent of the average appraised value of the property.

Kentucky
HB 508
Defines public use to be ownership, possession, occupation or enjoyment of the property by a governmental entity; removal of blighted properties; or for use by a public utility. Prohibits the transfer of private property to another private entity for economic development purposes, including enhancement of the tax base or tax revenue, increased employment or promoting the general economic health of the community.

Maine
LD 1870
Prohibits the use of eminent domain to condemn land used for agriculture, fishing or forestry or land improved with residential, commercial or industrial buildings, for private retail, office, commercial, industrial or residential purposes; primarily to generate additional tax revenue; or to transfer private property to another private entity. Provides a blight exception and use of land by a public utility.

Minnesota
SF 2750
Limits the use of eminent domain to a public use or public purpose, defined as the possession, occupation, ownership or enjoyment of the property by the general public or a public agency, or for the mitigation of blight. Stipulates that the public benefits of economic development do not, by themselves, constitute a public use or public purpose. Requires good faith negotiations with property owners and increases public notice and public hearing requirements.

Missouri
HB 1944
Prohibits the use of eminent domain solely for an economic development purpose, which is defined to mean an increase in the tax base, tax revenue or employment in the area. Stipulates that eminent domain may only be used to take property in blighted areas or for a public use. Requires public notification of affected property owners before condemnation may begin, and negotiation in good faith with property owners. Establishes an Office of Ombudsman for property rights in the Office of Public Counsel in the Department of Economic Development to assist property owners in obtaining information about eminent domain.

Nebraska
LB 924
Prohibits the use of eminent domain primarily for economic development purposes, which is defined to mean use by a commercial entity or to increase tax revenue, the tax base, employment or general economic conditions.

New Hampshire
SB 287
Defines public use for which eminent domain may be exercised to be the possession, occupation and enjoyment of property by the public, public agencies or public utilities; the removal of properties that pose a threat to the public health and safety; or private uses that occupy an incidental area within a public project. Stipulates that public use does not include enhanced tax revenue and increased employment opportunities.

Ohio
SB 167 (2005)
Places a moratorium on the use of eminent domain for economic development purposes that would ultimately result in the property being transferred to another private party in an area that is not blighted until December 31, 2006. Creates a task force to study eminent domain issues.

Pennsylvania
SB 881
Prohibits the use of eminent domain for private enterprise, except where the private enterprise occupies an incidental area within a public project. Does not affect the authority of the Pennsylvania Public Utility Commission, apply to the exercise of eminent domain where the property is blighted or taken pursuant to the urban redevelopment law or taken to provide low-income housing, among other considerations. Defines blight to emphasize characteristics that are detrimental to the public health and safety.

South Dakota
HB 1080
Prohibits the use of eminent domain to transfer private property to another private entity or to be used primarily to generate additional tax revenue.

Tennessee
SB 3296
Stipulates that public use for which eminent domain may be exercised does not include private use or benefit, or public benefit resulting indirectly from private economic development, including increased tax revenue and employment. Exceptions include use of eminent domain by public or private utilities, housing authorities or community development agencies to remove blight, private use that is merely incidental to public use, or the acquisition of property by a local government for an industrial park.

Texas
SB 7 (2005)
Prohibits the use of eminent domain to confer a private benefit on a private party or for economic development purposes, with certain exceptions.

Utah
SB 117

Requires approval by the governing body of a local government before eminent domain may be exercised for a public use. Requires a written notice to be sent to the affected landowner at least 10 days prior to the public hearing where the proposed taking will be considered. Expands the definition of public use to include bicycle paths and sidewalks adjacent to paved roads, while limiting the use of eminent domain for certain recreational purposes.

Vermont
SB 246
Prohibits the use of eminent domain primarily for economic development purposes, except in accordance with the state's urban renewal law. Other exceptions include uses for transportation, public utilities, public property and water projects.

West Virginia
HB 4048
Prohibits the use of eminent domain primarily for private economic development. Contains a blight exception and redefines blighted areas to emphasize properties that are detrimental to the public health and safety. Requires greater public notice and negotiation in good faith with the property owner.

Wisconsin
AB 657
Prohibits the use of eminent domain to condemn non-blighted properties to be transferred to another private entity. Redefines blight to emphasize properties that are detrimental to the public health and safety.

Passed Legislature—On the 2006 Ballot for Voter Approval

Florida
HB 1569
Requires a three-fifths vote of both houses of the state legislature to approve the use of eminent domain to transfer private property to another private entity.

Georgia
HR 1306
Requires approval by the elected governing body of a local government before eminent domain may be used for a redevelopment purpose.

Louisiana
SB 1
Prohibits the taking of private property predominantly for use by a private entity or to transfer ownership of the property to another private entity. Stipulates that neither economic development nor enhancement of tax revenue shall be considered in determining whether the taking of property is for a public purpose.

HB 707
Prohibits the sale or lease of property, with certain exceptions, that has been taken through eminent domain and held for less than 30 years unless the property is first offered to the original owner or his or her successor at fair market value. Stipulates that within one year after completion of a project for which eminent domain has been used, any surplus property must be offered to the original owner or his or her successor at fair market value.

Michigan
SJR E (2005)
Stipulates that if a person's principal residence is taken for public use, the amount of just compensation shall not be less than 125 percent of the property's fair market value; public use does not include transferring private property to another private entity for economic development or generating additional tax revenue.

New Hampshire
CACR 30
Prohibits the use of eminent domain if the property is to be transferred to another private entity for private development.

South Carolina
SB 1031
Prohibits the use of eminent domain for any use, including economic development, that is not a public use. Authorizes the legislature to enact laws allowing eminent domain to be used to remedy blight with the property put to public or private use provided just compensation is paid.

Passed Legislature—Vetoed by Governor

Arizona
HB 2675
Limits the use of eminent domain to the clearance and removal of slum conditions in a slum area as determined by a two-thirds vote of the city council based on clear and convincing evidence on a property-by-property basis. Defines public use to be the possession, occupation and enjoyment of the property by the general public or a public agency or public utility, and specifies that public use does not include an increase in tax revenue, tax base, employment or general economic health.

New Mexico
HB 746
Prohibits the use of eminent domain to promote private or commercial development and title to the property is transferred to another private entity.