

EMINENT DOMAIN

LEGISLATIVE STRATEGY TOOLKIT



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A Guide for Eminent Domain Legislation

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INTRODUCTION TO THE ISSUE IN THE COURTS

In *Kelo v. City of New London*, 125 S. Ct. 2655 (2005), the United States Supreme Court held that, under the Fifth Amendment to the federal Constitution, commercial economic development can constitute a “public use” for which eminent domain may be exercised. As a result, private property may be taken by government and transferred to another private party under certain circumstances to create jobs and generate tax revenue.

The 5-4 decision was not without controversy within the Court. Justice O’Connor, a supporter of a broad conception of “public use,” nevertheless authored a dissent arguing that the Court’s opinion rendered the words “public use” in the Fifth Amendment ineffectual.

The decision produced a great deal of controversy in the public arena, as well. Movements were commenced to condemn properties of Supreme Court Justices Breyer and Souter. Some have sought to turn Justice Souter’s personal residence into a “Lost Liberty” museum and hotel.

While many feel that the decision is simply a reaffirmation of longstanding Supreme Court jurisprudence, legislation has been introduced in Congress and many state legislatures seeking to strengthen the requirements contained in state constitutions and legislative schemes with respect to the public use requirement.

The purpose of this paper is not to analyze the correctness of the Supreme Court’s decision in *Kelo* as a matter of constitutional or decisional law. There is a diversity of opinion as to the merits of that decision within the public at large as well as within NAHB itself. Rather, this paper will provide a brief overview of the *Kelo* decision and the precedent on which it relied in reaching its holding, and then will offer twelve different legislative alternatives for consideration by affiliates of NAHB seeking to influence state or local legislation. These alternatives run the gamut from affirming the holding in the *Kelo* decision to a complete rejection of that holding, and cover many intermediate alternatives between those two poles.

Overview of *Kelo*

In *Kelo*, the City of New London, Connecticut, had been experiencing decades of economic decline. In 1990, a state agency had declared the city to be a “distressed municipality.” Then, in 1996, New London suffered a significant blow when the Federal Government closed the Naval Undersea Warfare Center, located in the Fort Trumbull area, which had employed 1,500 people.

These events led both the city and the state to target New London for economic revitalization, particularly the Fort Trumbull area. The city’s plans were aided by the announcement in February 1998 that Pfizer, Inc., the pharmaceutical company, planned to build a \$300 million research facility immediately adjacent to Fort Trumbull. Hoping to use the Pfizer announcement as a catalyst for further development, and in accordance with a Connecticut state statute, the city designated the New London Development Corporation (“NLDC”), a private nonprofit entity, to design an integrated development plan for the area and, ultimately, assigned NLDC the power of eminent domain to carry out that plan.

The redevelopment plan consisted of a ninety-acre area along the city’s waterfront and included

new commercial, retail, and residential space, as well as a new state park. New London's stated goal for the redevelopment was "creating new jobs, generating tax revenue, and helping to build momentum for the revitalization of downtown New London."

Of the 115 privately owned properties in the redevelopment zone, the NLDC was able to acquire all but 15 through negotiation. Four of the remaining properties were located in that area of the redevelopment zone slated for construction of a 90,000 square foot building to house research and development offices. The remaining eleven properties were located in the area slated to become a parking lot and retail services in support of either the park or the marina.

After negotiation over the acquisition of the fifteen properties belonging to the petitioners failed, condemnation proceedings were initiated. Despite the designation of the city as a "distressed municipality," there was no evidence of blight or slum conditions on the condemned properties.

The question presented to the United States Supreme Court was whether the city's subsequent plans for the petitioners' property satisfied the requirements of the public use clause of the Fifth Amendment.

Openly recognizing that the interpretation of the public use clause has been expanding over the last 150 years, the Supreme Court embraced the broader, and what it termed "more natural," interpretation of "public use" to equate that phrase with "public purpose." Given that the New London takings were to be executed pursuant to a carefully considered development plan and that there was no evidence of an illegitimate purpose, the Court focused the question on whether the city's redevelopment plan served a "public purpose." The Court concluded that economic development is a long-accepted purpose of government and within the bounds of what is traditionally understood to be a "public purpose."

The Supreme Court then reiterated the deference historically granted to legislative judgments in determining which purposes serve the public, going so far as to equate "public purpose" with "public welfare." Once the Court concluded that economic development and/or redevelopment of the depressed city was a legitimate end, the Court maintained the long-standing belief that the federal courts should refrain from questioning the means chosen by the legislature in achieving such rational ends. Based on this holding, the Court deferred to the city's determination that the area was sufficiently distressed to justify a program of economic rejuvenation.

In a concurring opinion, Justice Kennedy rejected the petitioners' arguments regarding the potential for a blurred boundary between public and private takings. Clarifying the position of the Court, Justice Kennedy noted that rational basis review was applicable to cases involving the public use clause. Despite this, courts should review charges of favoritism intending to benefit a particular party or benefits to the public that were only incidental or pretextual. In other words, courts must decide whether the government's stated public purpose of economic advantage is only incidental to the benefits bestowed on private parties. If the petitioners could show that the economic advantages to a city were merely incidental to the benefits bestowed upon private developers, the taking could never be sustained under the public use clause. Justice Kennedy noted that because the identity of specific private entities to which the

condemned property would go was unknown, the actions of New London were not an attempt to take A's property to bestow a benefit upon B. Based on the facts, Justice Kennedy concluded the benefits bestowed upon the private entity in *Kelo* were incidental to the greater objective of economic development; therefore, the taking was constitutional.

Berman v. Parker

In reaching its holding, the Supreme Court relied on two prior precedents. In *Berman v. Parker*, 348 U.S. 26 (1954), the Supreme Court upheld a comprehensive urban renewal plan that allowed the condemnation and transfer of property to private developers. *Berman v. Parker* was the first case to analyze in-depth the meaning of public use with regard to the government's exercise of eminent domain to take private property for a subsequent private use, upholding a redevelopment plan targeting a blighted area of Washington, D. C., in which most of the housing for the area's 5,000 inhabitants was beyond repair.

In *Berman*, the Congress, acting as the local legislature for the District of Columbia, passed legislation enabling the local planning commission to develop a comprehensive redevelopment plan. The redevelopment plan's primary purpose was to rid the District of Columbia of blighted property and slums. To achieve its goals, the act permitted property to be acquired and assembled through eminent domain. Once the property was acquired, the land to be devoted to public purposes such as streets, utilities, recreational facilities, and schools was to be transferred to public agencies. The remainder was to be leased or sold to private redevelopment companies, individuals, or partnerships. Preference was to be given to private enterprise over public agencies in executing the redevelopment plan.

The challenge in *Berman* came from the owner of a department store located in the redevelopment area, whose land had been condemned and slated for private redevelopment. The owner maintained that his store was not itself blighted and argued that the creation of a "better balanced, more attractive community" was not a valid public use.

Rather than force redevelopment on a piecemeal, lot-by-lot basis, Justice Douglas, writing for a unanimous Court, refused to evaluate this claim in isolation, deferring instead to the legislative and agency judgment that the area "must be planned as a whole" for the plan to be successful. The Court noted that the determination whether power is being exercised for a public purpose is an extremely narrow question and once the question had been answered, it was essential that the judiciary refrain from second-guessing the means by which the legislature achieved its public purpose ends.

The Court essentially defined "public use" as "public welfare," and exhibited great deference to the legislature in its determination whether the use to which the condemned property would be put benefited the public. Using this broad definition, the Court found that slum conditions are injurious to public health, safety, welfare, and morals, and that redevelopment plans targeting slums and severely blighted areas fall squarely within the police power of the legislature. Thus, the *Berman* Court determined that the legislature has the power to ensure beauty, health, spacious and clean living, and a well-balanced and well-patrolled neighborhood through a comprehensive redevelopment plan, and could therefore condemn non-blighted properties

located within the redevelopment zone.

The *Berman* decision resulted in a broad determination of the legislature's police power and a clear indication the Supreme Court would not tolerate federal courts replacing the wisdom of the legislature with that of its own regarding the manner in which the public interest would be accomplished.

Hawaii Housing Authority v. Midkiff

In *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229 (1984), a unanimous Supreme Court validated a Hawaii statute under which fee title was taken from lessors and transferred to lessees in order to reduce the concentration of land ownership, which had its roots in Hawaii's original feudal land system. The Hawaii state legislature discovered that only twenty-two individuals owned over seventy percent of the private land in Hawaii. Believing skewed land prices resulting from concentrated land ownership to be injurious to the public, the Hawaii legislature instituted a plan to compel large landowners to break up their estates.

Reaffirming *Berman*'s deferential approach to legislative judgments, the Court concluded that Hawaii's purpose of eliminating the "social and economic evils of a land oligopoly" was well within its police powers and thus qualified as a valid public use. The Court refused to find that the taking was "a naked attempt on the part of the state of Hawaii to take the property of A and transfer it to B solely for B's private use and benefit," despite the fact that Hawaii immediately transferred the properties to private individuals upon condemnation. The Court concluded that it was concerned only with the purpose of the taking, "not its mechanics" in determining public use. However, the Court seemed to expand the holding of *Berman* by declaring that, "the 'public use' requirement is coterminous with the scope of a sovereign's police power."

The Kelo Dissents

However, unlike the *Berman* and *Midkiff* decisions, the *Kelo* decision was far from unanimous. Although Justice Sandra Day O'Connor authored *Midkiff*, she wrote the principal dissenting opinion in *Kelo*.

Justice O'Connor feared that the majority's decision turned the public use clause into a mechanism by which the taking of private property could be justified as long as subsequent use of the property could be said to "upgrade" the property. She also expressed concern that the beneficiaries of the majority decision would be those holding political power and influence, rather than the ordinary populace.

But Justice O'Connor's dissent did not question the means by which the legislature was attempting to achieve its ends. Rather, Justice O'Connor questioned the ultimate purpose or ends the legislature was attempting to achieve, and attempted to limit the power of the legislature to use eminent domain to acquire property for subsequent private use. She distinguished *Berman* and *Midkiff* by arguing that those decisions involved a taking that "directly achieved a public benefit," *i.e.*, the elimination of accepted and existing social ills, and argued that an affirmative finding of a "justifying public purpose" must be present. Justice O'Connor ultimately concluded

that the power of eminent domain should be reserved for transfers of private property to: (1) public ownership (for roads, hospitals, and the like); (2) private ownership for public use (such as railroads or public utilities); or (3) private ownership to remedy a prior harmful use (such as blight resulting from extreme poverty or an oligopoly resulting from extreme wealth).

Justice Thomas not only joined in Justice O'Connor's dissent, but also dissented separately, focusing on the Constitution and the original meaning of phrase "public use." Justice Thomas ascribed a narrow interpretation to the historic meaning of the term "public use." He then pinpointed the divergence from that original narrow meaning in our caselaw, arguing that the 1896 case of *Fallbrook Irrigation Dist. V. Bradley*, 164 U.S. 112 (1896), had ignored prior caselaw that had utilized the "actual use" test. Justice Thomas also argued that a second line of cases had deviated from the public use clause's original meaning by allowing legislatures to define the scope of valid uses. These two "misguided" lines of cases converged, according to Justice Thomas, in *Berman v. Parker* and *Hawaii Housing Authority v. Midkiff*. Justice Thomas also found that *Berman*, *Midkiff*, and the majority opinion erred by commingling the use of the power of eminent domain for takings with the police power for regulatory purposes.

Key State Decision – Michigan

The *Kelo* majority recognized that its decision was limited to determining whether the condemnations were for a public purpose within the meaning of the Fifth Amendment to the federal Constitution. The Supreme Court explicitly stated that "nothing in our opinion precludes any State from placing further restrictions on its exercise of the takings power."

In July 2004, in a decision that perhaps foresaw this statement, the Michigan Supreme Court reversed its long standing precedent, *Poletown Neighborhood Council v. City of Detroit*, 304 N.W.2d 455 (Mich. 1981). In *Poletown*, the Michigan Supreme Court approved Detroit's condemnation of a residential neighborhood so that the land could be transferred to General Motors Corporation for construction of an assembly plant. In *County of Wayne v. Hathcock*, 684 N.W.2d 765 (Mich. 2004), the Michigan Supreme Court concluded that the Michigan Constitution did not permit the condemnation of private property for the construction of a business and technology park owned by private entities. In *Hathcock*, Wayne County attempted to use the power of eminent domain to condemn real property for the construction of a 1,300-acre business and technology park. The proposed commercial center was intended to reinvigorate the struggling economy of southeastern Michigan by attracting businesses to the area, particularly those involved in developing new technologies.

Although the Michigan Supreme Court found the condemnations justified by the state enabling statute, it concluded that they violated the Michigan Constitution's "public use" requirement. The Court found that Wayne County intended to transfer the condemned properties to private parties in a manner wholly inconsistent with the common understanding of "public use" at the time the 1963 Constitution was ratified.

After determining that terms in the state Constitution should be interpreted in accordance with the understanding as of ratification in 1963, the Michigan Court concluded that the pre-1963 jurisprudence indicated that the state was prohibited from transferring condemned property to

private entities for private use. In fact, there were only three situations in which the transfer of condemned property to a private entity could take place: (1) condemnations involving “public necessity of the extreme sort otherwise impracticable,” *i.e.*, “highways, railroads, canals, and other instrumentalities of commerce;” (2) when the private entity remains accountable to the public in its use of that property; and (3) when the selection of the land to be condemned is itself based on public concern, *i.e.*, a slum or blighted area.

After having established the parameters of the meaning of public use in the state Constitution, the Michigan Court then found that the *Poletown* Court engaged in a “radical and unabashed departure from the entirety of this Court’s pre-1963 eminent domain jurisprudence.” As a result, *Poletown* could not justify the condemnations at issue in *Hathcock*, and was overruled.

INTRODUCTION TO LEGISLATIVE LANGUAGE OPTIONS

The genesis of this paper is the *Kelo* Court's holding that the individual states can determine the proper scope of the eminent domain power, which may be stricter than mandated by the United States Constitution. Of course, relying on each state's supreme court to define the "public use" requirement is unpredictable. To that end, this paper contains a number of different legislative language options that local and state affiliates may decide to pursue, use or modify for their respective state legislatures, in order to produce a desired interpretation of public use.

NAHB members are divided over the issues related to limiting the use of eminent domain. Therefore, it should be noted that while this paper sets forth and discusses a broad spectrum of differing legislative options, NAHB does not intend the presentation of those options to suggest that any action is warranted. Nor is anything in this paper intended to suggest that a state or local affiliate should favor any particular option over others. (For more information on NAHB's eminent domain policy, see the "Preserving Private Property Rights" resolution approved by the NAHB Board of Directors on September 9, 2005.)

Instead, members are encouraged to evaluate their local or state needs and goals, fully discuss all intended and unintended consequences of any options considered, and carefully develop a legislative strategy in consultation with local attorneys and legislative aides. The analysis should encompass consequences for all relevant stakeholders, including the property owner and the affected community. In addition, consideration should be given to flexibility to meet foreseeable and unforeseeable conditions in the future. As with any legislative effort, it is important to craft eminent domain laws that allow for varied responses when changing conditions so require.

The legislative language options fall into four basic categories and include considerations gathered from a variety of legislative proposals. The first category approaches the problem by defining public use and distinguishing it from private use. The second category seeks to regulate the use of eminent domain by reference to whether the property sought to be acquired is blighted. The third category deals directly with whether acquisition of the property is for purposes of economic development or a similar justification. The fourth category seeks to limit the condemnation authority by imposition of resale limitations.

However, in reality, the legislative options form part of a continuum allowing or prohibiting certain uses. While the following continuum graphic (see page 10) does not address every single use or issue that will be raised as to eminent domain, it can serve as a general guide on where the legislative options in this paper fall in relation to the public uses being addressed by the state or local association. It also should be noted that some legislative options in this paper may overlap or be used in conjunction with one another to reach a certain policy objective.

A few other matters for legislative strategy that are beyond the scope of this paper should be considered by affiliates. The first is the standard of review that will, and should be, applied by the courts in determining whether a development project meets the standard of public use. Regardless of the legislative option(s) chosen, government agencies will often seek ways to avoid the legislative strictures placed on them. As suggested in Justice Kennedy's concurrence and Justice Thomas' dissent in *Kelo*, one way to control municipal abuse of any legislative scheme is to require a heightened standard of judicial review of condemnations, or a specific

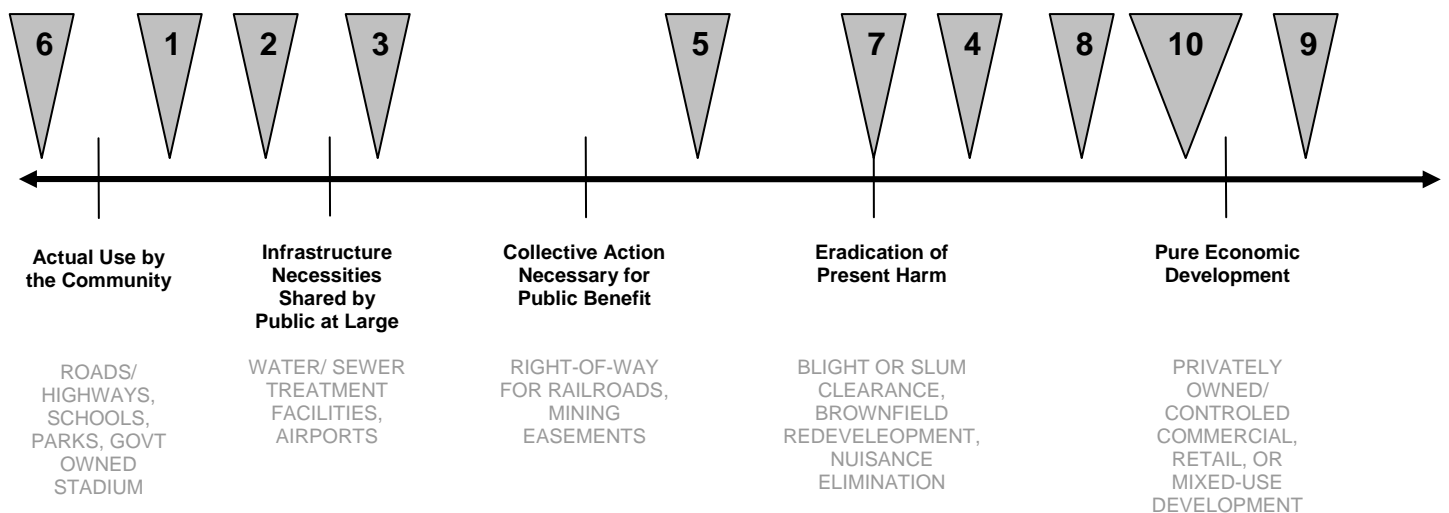
class of condemnations, such as those resulting in private control of the property. As NAHB has argued previously, it is not clear that local government decisions should be afforded the same deferential treatment as those of state governments. The means for achieving heightened judicial review will vary from state to state, but may require constitutional amendment, legislation, or amendment of court rules. (For more information on the issue of heightened judicial scrutiny, see NAHB’s *Amicus Curiae* Brief to the U.S. Supreme Court in *Kelo*.)

In this regard, however, before a government entity exercises any of its powers, condemnation among them, there must be some assurance that the exercise serves the public welfare. A primary way to ensure that a government agency is acting in the public interest is through comprehensive planning. Throughout the majority opinion in *Kelo*, Justice Stevens emphasized that proper planning must precede the exercise of eminent domain to satisfy constitutional requirements.

In order to assure that all governmental decisions have a rational basis and support the public interest, government agencies at all levels should engage in a comprehensive planning process, including assessing the public necessity for the condemned property or its proposed use, sorting through the various alternatives, and arriving at a directed course of action. The planning process should result in the adoption of a comprehensive plan, prior to enactment or revision of land use ordinances to develop or redevelop property. The local comprehensive plan insures that a municipal land use scheme, including exercise of the condemnation authority, protects the public health and safety and promotes the general welfare.

Finally, it should be noted that although certain legislative options touch on the issue of compensation in condemnation proceedings, a full treatment of the issue of just compensation is beyond the scope of this paper and nothing herein is intended to comprehensively address that issue.

Continuum of Legislative Options



SECTION I

Section I includes three Legislative Options. As explained in the Introduction, state constitutions originally required that government exercise of eminent domain be for a public use. The traditional public use test was liberalized into a less rigorous public purpose test, particularly by judicial opinions such as *Berman v. Parker*. The Legislative Options in Section I attempt to restore the public use limitation in various ways:

- Option No. 1 restricts the use of condemnation to development that is owned or controlled by a government entity or actually used by the public.
- Option No. 2 provides that any acquired property be transferred to another governmental entity only, and not a private entity.
- Option No. 3 limits the use of eminent domain to essential governmental purposes and infrastructure necessary to protect public health and safety.

These three Legislative Options focus on limiting the reuse of the property. They do not deal with the nature or condition of the property being acquired. If the association is concerned with the current condition of property, it should consider combining these Options with those found in Section II.

Legislative Option No. 1

LIMITS CONDEMNATION TO PUBLIC CONTROL OR ACTUAL USE

Legislative Option No. 1 would permit the use of eminent domain only if the resulting use is owned or controlled by a government entity, or if the resulting use is actually used by members of the general public. Adoption of this provision would prevent the use of condemnation and the transfer of property to a private entity for private economic development. Rather than simply prohibiting the use of eminent domain for private economic development, as in Option No. 7, this language provides a positive limitation on the use of the eminent domain power to traditional uses.

SPECIFIC LANGUAGE

The state and any political subdivision of the state may condemn private property provided that the resultant development or redevelopment of the property shall be owned or controlled by a governmental entity and the resulting use shall actually be used by the members of the general public.

NOTES

- The last phrase of this proposed statutory language may be amplified by adding the following:

Use by members of the general public shall include uses such as streets and roads, parks and recreation facilities, fire and emergency services stations, public infrastructure, government buildings, schools, and libraries.

- Some public facilities, such as national parks and municipal golf courses, charge an admission or user fee. The association can consider adding language to Legislative Option No. 1 stating that the use will still be considered to be used by members of the general public even if the government entity charges a reasonable/nominal user fee.
- A government agency might attempt to evade this public use requirement by granting a private entity a 99-year lease on the property. The association may want to add language prohibiting the leasing of condemned property to private parties or limiting such leases to short time periods.

Legislative Option No. 2

LIMITS CONVEYANCE TO PUBLIC ENTITY

This proposed language would prohibit a government entity from reconveying condemned property to any type of private entity.

SPECIFIC LANGUAGE

Any property acquired by the State or any political subdivision thereof may be reconveyed by the acquiring governmental entity only to a governmental entity; no property acquired through eminent domain may be conveyed to a private entity.

NOTES

- This Legislative Option focuses upon the legal status of the entity to which title of condemned property is transferred. It contains a blanket prohibition against transferring condemned property to a private entity; condemned property may only be transferred to a public entity.
- Legislative Option No. 2 differs from Legislative Option No.1 in that Legislative Option No. 1 would permit transfer to a private entity that is “controlled” by a government entity.
- An issue may arise to the extent that the government entity may lease some or all of the publicly owned building to private tenants. (This issue seems to arise in the stadium context most often.) In order to prevent avoidance of the private entity ownership prohibition contained in Legislative Option No. 2, language can be added stating that while private tenants are permitted to occupy a public building, the use and occupancy of the building must be predominately public, and only incidentally private. For example, a public utility should be permitted to lease a newsstand on the ground floor of a public building for a reasonable lease term (no more than two years).
- Another issue to consider is whether the government entity must hold title forever or whether a reasonable time period should be specified. If the time period is too short, it will allow evasion of the statute.

Legislative Option No. 3

RESTRICTS USE TO INFRASTRUCTURE NECESSARY FOR HEALTH AND SAFETY

Legislative Option No. 3 permits the exercise of eminent domain solely for the provision of necessary public infrastructure. In order to make the statutory intent clear, the provision contains an enumeration of the public facilities and infrastructure for which condemnation may be used. The section also contains an overall limitation that eminent domain may be used for the enumerated public facilities and infrastructure only to the extent necessary for preservation of public health and safety.

SPECIFIC LANGUAGE

The right of eminent domain may be exercised in behalf of the following essential public purposes, only insofar as necessary to protect the public health and safety:

1. **Federal activities.** *All public purposes authorized by the Government of the United States.*
2. **State activities.** *Public buildings and grounds for the use of the State.*
3. **County, city, town and school district activities.** *Public buildings and grounds for the use of any county, incorporated city or town, or school district, reservoirs, water rights, canals, aqueducts, flumes, ditches or pipes for conducting water for the use of the inhabitants of any county, incorporated city or town, for draining any county, incorporated city or town, for raising the banks of the streams, removing obstructions therefrom and widening, deepening or straightening their channels, for roads, streets and alleys, and all other public purposes for the benefit of any county, incorporated city or town, or the inhabitants thereof.*
4. **Bridges, toll roads, railroads, street railways and similar uses.** *Wharves, docks, piers, chutes, booms, ferries, bridges, toll roads, byroads, plank and turnpike roads, roads for transportation by traction engines or locomotives, roads for logging or lumbering purposes, and railroads and street railways for public transportation.*
5. **Ditches, canals, aqueducts.** *Reservoirs, dams, water gates, canals, ditches, flumes, tunnels, aqueducts, and pipes for supplying persons, mines, mills, smelters or other works for the reduction of ores, with water for domestic and other uses, for irrigating purposes, for draining and reclaiming lands, for floating logs and lumber on non-navigable streams, for flood control, or for stormwater management facilities.*
6. **Roads.** *Public roads, streets and highways.*

7. **Public utilities.** *Lines for telegraph, telephone, fiber optic, electric light and electric power; cable television; lines for internet access and communications; pipes for natural gas, solid waste handling facilities.*
8. **Sewerage Facilities.** *Pipes, lines, force mains, and pumping stations for public sewage systems.*
9. **Water Facilities.** *Canals, reservoirs, dams, ditches, flumes, aqueducts and pipes for supplying and storing water for public water systems.*
10. **Public parks.** *Public parks and recreation.*
11. **Aviation.** *Airports, facilities for air navigation and aerial rights-of-way.*

NOTES

- The limitation that condemnation used for public facilities and infrastructure must be necessary for public health and safety is designed to avoid governmental use of eminent domain to prevent residential development. For example, in some jurisdictions, local government has used eminent domain to acquire land which is zoned or approved for residential development, for purposes of farmland preservation, parks, or recreation. Although parks and recreation are normally considered a public purpose and part of municipal infrastructure, thereby justifying the use of eminent domain, the addition of the public health and safety limitation is designed to limit the use of eminent domain solely to thwart residential development. The rationale for this limitation is that public parks and recreation are usually justified on the basis of general welfare, and cannot meet a health or safety limitation.
- The structure of this option also suggests a sub-option which recognizes that in many locales, infrastructure that would otherwise be publicly or quasi-publicly owned is made possible by private entities although dedicated to public use or benefit. Thus, for example, as to the uses delineated in paragraphs 6, 7, 8, 9, and 10, language could be added that recognizes that condemnation may be used for projects that are privately owned or incidental to a privately owned development if, in their ultimate use, they will be made available for use by the public generally.

SECTION II

Section II includes three Legislative Options. If an area is truly blighted, consisting of dilapidated or substandard properties, government should have the right to condemn property for the purpose of blight elimination. Therefore, these three options authorize eminent domain to acquire blighted property and prohibit acquisition of non-blighted property.

- Option No. 4 allows for condemnation of blighted property and provides a detailed definition of blight in order to curtail government abuse.
- Option No. 5 approaches the same position by the other tack, prohibiting the condemnation of non-blighted property.
- Option No. 6 focuses on the provision of housing. A government agency cannot condemn legally occupied residential property maintained in accordance with applicable codes.

These three options focus on the current condition of the property. Property can be condemned if it is blighted. These three options do not deal with the reuse of the property. That is, once having condemned a property as blighted, the government agency would be free to develop or dispose of the property without limitation. Therefore, the association may want to combine these options with Options 1, 2, 3, or 7.

Legislative Option No. 4

ALLOWS FOR CONDEMNATION OF BLIGHTED PROPERTY

All states have an existing definition of blight and most of them allow condemnation on those grounds. After *Kelo*, there may be some movement to eliminate this option often needed by developers. Legislative Option No. 4 defines blight broadly and would clarify that a governmental entity may exercise the power of eminent domain for private transfer when the goal is to eliminate slums or blighted property, contaminated sites, or property constituting a public nuisance.

SPECIFIC LANGUAGE

Section 1:

Neither the State nor any political subdivision of the State may condemn property unless it meets the definition of blight contained in this Act.

Section 2:

“Blighted property” means any improved or vacant property where:

- A. *If improved, industrial, commercial, and residential buildings or improvements on the property are detrimental to the public safety, health, or welfare because of a combination of five or more of the following factors, each of which is present, with that presence documented, to a meaningful extent so that the condemning authority may reasonably find that the factor is clearly present:*

(1) ***Dilapidation.*** *An advanced state of disrepair or neglect of necessary repairs to the primary structural components of buildings or improvements on the property in such a combination that a documented building condition analysis determines that major repair is required or the defects are so serious and so extensive that the buildings must be removed.*

(2) ***Obsolescence.*** *The condition or process of falling into disuse. Structures have become ill-suited for the original use or any reasonable adaptive re-use.*

(3) ***Deterioration.*** *With respect to buildings, defects including but not limited to major defects in the secondary building components such as doors, windows, porches, gutters and downspouts, and fascia. With respect to surface improvements, that the condition of roadways, alleys, curbs, gutters, sidewalks, off-street parking, and surface storage areas evidence deterioration, including, but not limited to, surface cracking, crumbling, potholes, depressions and loose paving material.*

(4) ***Presence of structures below minimum code standards.*** *All structures possessing structural inadequacies preventing ingress and egress to and from all rooms and units within a*

building, or that do not meet the standards of zoning, subdivision, building, fire, or other governmental codes applicable to the property, but not including housing and property maintenance codes applicable to habitability of the property.

(5) ***Illegal use of individual structures.*** *The use of structures in violation of applicable federal, state, or local laws, exclusive of those applicable to the presence of structures below minimum code standards.*

(6) ***Excessive vacancies.*** *The presence of buildings that are unoccupied or under-utilized and that represent an adverse influence on the immediately surrounding area because of the frequency, extent, or duration of the vacancies.*

(7) ***Lack of ventilation or sanitary facilities.*** *The absence of adequate ventilation means the absence of air circulation in spaces or rooms for the removal of dust, odor, gas, smoke, or other noxious airborne materials. Inadequate sanitary facilities refers to the absence or inadequacy of garbage storage and enclosure, bathroom facilities, hot water or kitchens.*

(8) ***Inadequate utilities.*** *Underground and overhead utilities such as storm sewers and storm drainage, sanitary sewers, water lines, and gas, telephone, and electrical services that are shown to be inadequate. Inadequate utilities are those that are deteriorated, antiquated, obsolete, or in disrepair and present a health or safety hazard to the residents or occupants of the structure.*

(9) ***Excessive land coverage and overcrowding of structures and community facilities.*** *The over-intensive use of the property and the crowding of buildings and accessory facilities onto the property. Examples of problem conditions warranting the designation of a property as one exhibiting excessive land coverage are: (i) the presence of buildings either improperly situated the parcels or located on parcels of inadequate size and shape in relation to present-day standards of development for health and safety, and (ii) the presence of multiple buildings on a single parcel. For there to be a finding of excessive land coverage, these parcels must exhibit one or more of the following conditions: increased threat of spread of fire due to the close proximity of buildings, lack of adequate or proper access to a public right-of-way, lack of reasonably required off-street parking, or inadequate provision for loading and service.*

(10) ***Environmental clean-up.*** *The property has incurred State Environmental Protection Agency or United States Environmental Protection Agency remediation costs for, or a study conducted by an independent consultant recognized as having expertise in environmental remediation has determined a need for, the clean-up of hazardous waste, hazardous substances, or underground storage tanks required by State or federal law, provided that the remediation costs constitute a material impediment to the*

development or redevelopment of the property.

(11) *The total equalized assessed value of the property has declined for 7 of the last 10 calendar years prior to the year in which the condemnation action is commenced; or tax or special assessment delinquency exist which exceed the fair market value of the property.*

(12) ***Defective or unusual conditions of title.***

(13) *Any premises which because of physical condition or use in regarded as a public nuisance at common law or has been declared a public nuisance in accordance with the housing, building, plumbing, electrical, fire or related codes.*

(14) *Any dwelling which because it is dilapidated, unsanitary, unsafe, vermin-infested or lacking in the facilities and equipment required by the housing code of the municipality, has been designated by the department responsible for enforcement of the code as unfit for human habitation.*

(15) ***Any abandoned property.*** *A property shall be considered abandoned if: (i) it is a vacant or unimproved lot or parcel of ground on which a municipal lien for the cost of demolition of any structure located on the property remains unpaid for a period of six months; (ii) the property has been declared abandoned by the owner, including an estate that is in possession of the property; or (iii) the property has been declared abandoned by a court under any state or municipal ordinance.*

(16) ***Tax Lien.*** *Any property upon which a municipal or county lien has been in place for a period of at least six (6) months as a result of the failure of the owner to pay property.*

B. Non-blighted properties may be condemned only if they are significant to and necessary for the removal of blight.

NOTES

- Restricting the government entity to acquiring property that is blighted, contaminated, or constitutes a nuisance, limits the type of property that a government can condemn, based on its physical condition. This language would not limit a government entity, once having condemned blighted property, from permitting the redevelopment of that property for economic improvement. Therefore, adoption of this limitation would allow transfer by the government of the property to a private party to own/control/develop, so long as the reason for the exercise of eminent domain was for blight elimination. If the association is also concerned about reuse of the property, it may want to consider this Option with Options 1, 2, 3, or 7.
- The definitions of slum and blight, contamination, and public nuisance must be clearly and narrowly drawn in order to prevent a municipality from condemning non-blighted property to achieve economic development goals.

- It may be desirable to add this blight definition to several of the other Legislative Options (for example, Legislative Option No. 5 and Legislative Option No. 7), to further define the permissible scope of the exercise of eminent domain.
- The “significant and necessary” language contained in Section 2(B) is intended to assure that the blighted area contains a significant amount of blighted property. As an alternative, the association may prefer to impose the same limitation through use of a numerical test:

In order to meet the definition of blighted property contained in Section 2(A) of this Act, at least ____% of the structures designated for condemnation in a given geographic area must meet the test established in Section 2(A).

Legislative drafters have been suggesting anywhere from 67% to 90% for this provision. The association may decide to use a higher or lower percentage, as long as this principle is maintained.

- It may also be helpful to add a requirement that the boundaries of a blighted area must be drawn to include a reasonably contiguous area of land so as not to include non-blighted properties. This limitation is designed to prevent condemners from gerrymandering the project area boundaries to avoid the “significant and necessary” language contained in Section 2(B) or the percentage limitation provided in note bullet 4.

Legislative Option No. 5

PROHIBITS CONDEMNATION OF NON-BLIGHTED PROPERTY

When a government entity makes a declaration of blight for condemnation purposes, it often declares an entire area blighted so that the area can be completely cleared of structures and replanned on a comprehensive basis. The problem with this approach is that such condemnation includes properties that are not themselves blighted, along with blighted properties so that comprehensive redevelopment can occur. Legislative Option No. 5 prohibits the acquisition of non-blighted property when a governmental entity condemns for blight removal.

SPECIFIC LANGUAGE

The clearance, replanning, development, or redevelopment of blighted areas shall be a public purpose and public use, for which private property may be taken or acquired; provided however, that private property within a blighted area that is not itself blighted shall not be condemned.

NOTES

- As with Legislative Option No. 4, Legislative Option No. 5 regulates the availability of condemnation based upon the nature and condition of the property acquired, rather than the proposed reuse.
- In order to prevent abuse, Legislative Option No. 5 should be combined with a narrow definition of blight, as presented in Legislative Option No. 4.
- There is a major drawback with Legislative Option No. 5. This Option considers individual parcels, rather than the blighted area as a whole (as does Legislative Option No. 4). In order for a government agency to conduct legitimate redevelopment activities, it is often necessary for the agency to include non-blighted properties in the condemnation. Option No. 4 recognizes this reality, permits condemnation of non-blighted property, but imposes a reasonable limitation. Option No. 5 does not permit condemnation of non-blighted property. The result may be to curtail redevelopment opportunities, to the detriment of association members.

Legislative Option No. 6

PROHIBITS CONDEMNATION OF RESIDENTIAL PROPERTY

Legislative Option No. 6 concentrates on the type of property condemned, and would prohibit the use of eminent domain to condemn any residential property that meets applicable housing codes.

SPECIFIC LANGUAGE

No property that is legally occupied as residential property and maintained in accordance with applicable housing codes and standards shall be subject to condemnation.

NOTES

- Legislative Option No. 6 prohibits the acquisition of any code-compliant residential property. It does not distinguish between owner-occupied or tenant-occupied property, provided that it is residentially occupied.
- As with Legislative Option Nos. 4 and 5, Legislative Option No. 6 does not regulate the reuse of the property; it concentrates only upon the type of property which can be condemned. Therefore, Legislative Option No. 6 does not prevent a government entity from condemning property for economic development. The wording can be changed to add the following at the end:

, if ownership of the property will be transferred to a private party or private entity or the reuse of the property is for private economic development. The addition of this language would permit government condemnation of residential property for blight removal and public uses, and prohibit condemnation of residential property only in the case of economic development.

- As an additional deterrent, the legislation can require that the condemnor pay a penalty if it acquires residual property (the amount of the penalty is left to the affiliate to determine, however, a penalty of one hundred fifty percent (150%) has been suggested by various legislative drafters):

In cases where residential property is acquired, the condemnor shall, in addition to any other compensation requirements, compensate the condemnee a minimum of ____% of the fair market value of the real property or, in the case of a rental tenant, a minimum of ___% of the annual rent.

The association may consider adding this language to Option Nos. 4, 5, and 7.

SECTION III

Section III includes three Legislative Options which tackle the economic development issue directly.

- Option No. 7 simply and directly prohibits the use of eminent domain for economic development.
- Option No. 8 follows legislation recently passed by the United States House of Representatives, and penalizes any condemnor with the loss of state economic development assistance.
- For associations seeking to affirm *Kelo* legislatively, Option No. 9 provides authorization to condemn for economic development.
- Option No. 10 is for those associations that may want to encourage redevelopment of industrial or commercial zones into residential housing, providing authorization to condemn unutilized industrial zones for residential development.

These four options do not regulate the type of property that might be condemned, with the exception of Option No. 10. Rather, they regulate the exercise of eminent domain by the reuse of the property. Therefore, an association that remains concerned about the nature of the property condemned may want to combine these options with the options contained in Section II.

Legislative Option No. 7

PROHIBITS ANY PRIVATE USE

Legislative Option No. 7 is a blanket and flat prohibition against using condemned property for any type of private reuse or economic development.

SPECIFIC LANGUAGE

Notwithstanding any other provision of law, neither the State nor any political subdivision of the State may condemn property for the purposes of private retail, office, commercial, industrial, or residential development; for any type of private economic activity; or primarily for enhancement of tax revenue or other economic benefits, such as job creation; or for transfer, sale, or lease to a private individual, non-governmental entity, public-private partnership, corporation, or other business entity, or which in any manner eventuates in control of the property by a private entity.

NOTES

- This language would prohibit the use of eminent domain to advantage one private party over another.
- In order to strengthen the private entity benefit limitation of Legislative Option No. 7, a definition of “private ownership or control” can be added as follows:

“private ownership or control” shall be liberally construed to prevent the use of long-term leases, options to purchase, and other mechanisms intended to defeat the purposes of this Act.
- As an exception to the blanket prohibition contained in Legislative Option No. 7, language may be added permitting reuse of acquired property for economic development if such reuse is a secondary purpose to blight elimination, as follows:

Incidental economic development may be permitted if it is a secondary purpose resulting from municipal community development or municipal urban renewal activities to eliminate an existing affirmative harm on society from slum or blighted conditions.
- Care should be taken in adding this or any other exception to the blanket prohibition contained in Legislative Option No. 7, since such exceptions might provide too large a loophole for government economic redevelopment projects.
- As with Legislative Option Nos. 1 and 2, it may be appropriate to add language permitting the leasing of property acquired by eminent domain to a private person or entity on an incidental basis and for a reasonable period of time. An example of leasing property on an incidental basis is the lease of a newsstand on the ground floor of a

municipal building. The language of Legislative Option No. 7 is intended, however, to prohibit the government's evasion of the private use prohibition by granting a private entity a 99-year lease on the property.

Legislative Option No. 8

PROHIBITS ECONOMIC DEVELOPMENT WITH PENALTY

Legislative Option No. 8 prohibits the use of eminent domain for economic development. It imposes on the condemnor, as a penalty for violating the prohibition, the loss of state economic development assistance for a two-year period.

SPECIFIC LANGUAGE

Section 1:

No political subdivision of the State shall exercise its power of eminent domain, or allow the exercise of such power by any person or entity to which such power has been delegated, over property to be used for economic development or over property that is subsequently used for economic development, if that political subdivision receives any type of State economic development funds or assistance during any fiscal year in which it does so. A violation of this section by any political subdivision shall render such political subdivision ineligible for any State economic development funds or assistance for a period of two fiscal years following a final judgment on the merits by a court of competent jurisdiction that such subsection has been violated, and any State agency charged with distributing those funds or providing that assistance shall withhold them for such two-year period, and any such funds or assistance distributed to such political subdivision shall be returned or reimbursed by such political subdivisions to the appropriate State agency.

Section 2:

For purposes of this Act, the term “economic development:” means taking private property, without the consent of the owner, and conveying or leasing such property from one private person or entity to another private person or entity for commercial enterprise carried on for profit, or to increase tax revenue, tax base, employment, or general economic health.

NOTES

- Legislative Option No. 8 adopts the penalty principle and tracks the language of H.R. 4128, the Private Property Rights Protection Act of 2005, which was passed by the United States House of Representatives on 3 November 2005. As with the federal bill, Legislative Option No. 8 prohibits the use of eminent domain for economic development. A governmental jurisdiction violating the prohibition becomes ineligible for state economic development funds or other forms of assistance for two years after a court determines a violation of the statute.

Legislative Option No. 9

PERMITS ECONOMIC DEVELOPMENT

If a state or local association prefers language authorizing government entities to use the power of eminent domain for economic development projects, this language would authorize such use, with limitations.

SPECIFIC LANGUAGE

It is hereby found and declared that there exists in the State a condition of substantial and persistent unemployment and underemployment which causes hardship to many individuals and families, wastes vital human resources, increases public assistance burdens, impairs the security of family life, impedes the economic and physical development of municipalities, and adversely affects the welfare and prosperity of the people; that unemployment and underemployment have been caused in part by industrial and manufacturing companies moving from municipalities; that many existing industrial and manufacturing facilities within municipalities are obsolete and inefficient; that such facilities are underutilized or vacant, thereby creating additional unemployment; that such obsolescence and abandonment of existing facilities are causing injury to the economy of municipalities and the State; that the manufacturing and industrial sector of the economy provides one of the best immediate opportunities for better jobs at higher wages for inhabitants of municipalities; that new industrial and manufacturing sites are required to attract and house new industries and to retain existing industries in need of expansion space; that the unaided efforts of private enterprise have not provided and cannot provide the necessary industrial sites within the urban environment due to problems encountered in the assembly of suitable building sites, the provision of adequate public services, the unavailability of sufficient private capital for development, and the inability of private enterprise alone to plan, finance and coordinate industrial development projects; that in many metropolitan areas of the State, municipalities want and need to revitalize their industrial job base, but are frequently at a competitive disadvantage with suburban areas in the process of assembling and developing industrial land resources.

Municipalities are therefore authorized to take the following actions:

- (1) To designate areas of the municipality as economic development areas.*
- (2) To acquire and hold by bequest, devise, grant, gift, purchase, exchange, lease, judicial order or decree, or otherwise, for any of its objects and purposes, any property, either real or personal, or any interest therein; and without limiting the generality of the foregoing, to acquire by purchase or otherwise, on such terms and conditions and in such manner as it may deem proper, or by the exercise of the power of eminent domain following a public hearing and an affirmative two-thirds vote of the municipal governing body, such private lands, or any interests therein, as*

it may deem necessary for carrying out the provisions of this act or for providing for the relocation of persons and businesses displaced as a result of carrying out an economic development plan.

The municipal governing body may only approve the exercise of eminent domain under this Act if it finds that

(1) the development agency conducted a comprehensive planning process that included a sufficient assessment of alternatives to achieve the objectives of the development project, and that the proposed condemnation is consistent with the plan; (2) there exists clear and convincing evidence of public need for the development project; (3) the public benefits of the development project outweigh any individual private benefits; and (4) there is a reasonable expectation that the development project will achieve its objectives.

NOTES

- This language would permit a governmental entity to condemn property for the purpose of economic development. In order to control the use of eminent domain for this purpose, the language requires a level of advance planning and specific findings that the proposed condemnation will contribute to the economic improvement of the jurisdiction.
- The association may be uncomfortable delegating this type of authority to a local government. If so, the language of Legislative Option No. 9 may be changed to place the responsibility in the hands of a state agency. The same reallocation of authority may also be considered for Legislative Options Nos. 1, 2, 3, and 4.

Legislative Option No. 10

PERMITS CONDEMNATION OF INDUSTRIAL PROPERTY FOR RESIDENTIAL USE

This option recognizes that in many areas, there is movement away from industrial development which often requires redevelopment of an area. Although such an area was formerly industrial, it may not yet be “blighted” within the statutory meaning of that word. Redevelopment in the form of housing is beneficial in its own right and also provides jobs and the platform for economic redevelopment. If a state or local association prefers language authorizing government entities to use the power of eminent domain to redevelop formerly industrial or commercial areas for residential housing, this language would authorize such use, with limitations.

SPECIFIC LANGUAGE

It is hereby found and declared that industrial and manufacturing companies have been and are continuing to move from municipalities in the State; that many existing industrial and manufacturing facilities within municipalities are obsolete and inefficient; that such facilities are underutilized or vacant, thereby creating unemployment and other undesirable conditions; that such obsolescence and abandonment of existing facilities are causing injury to the economy and development of municipalities and the State; that the manufacturing and industrial sector of the economy has receded in certain locations and that residential redevelopment of the formally industrial areas is needed to provide the platform to attract jobs for inhabitants of municipalities; that the unaided efforts of private enterprise have not provided and cannot provide the necessary redevelopment within the urban environment due to problems encountered in the assembly of suitable building sites, the provision of adequate public services, the unavailability of sufficient private capital for development, and the inability of private enterprise alone to plan, finance and coordinate redevelopment projects; that in many metropolitan areas of the State, municipalities want and need to redevelop formerly industrial areas into residential housing, but are frequently at a competitive disadvantage with suburban areas in the process of assembling and developing land resources.

Municipalities are therefore authorized to take the following actions:

- (1) To designate areas of the municipality as residential redevelopment areas.*
- (2) To acquire and hold by bequest, devise, grant, gift, purchase, exchange, lease, judicial order or decree, or otherwise, for any of its objects and purposes, any property, either real or personal, or any interest therein; and without limiting the generality of the foregoing, to acquire by purchase or otherwise, on such terms and conditions and in such manner as it may deem proper, or by the exercise of the power of eminent domain following a public hearing and an affirmative two-thirds vote of the municipal governing body, such private lands, or any interests therein, as it may deem necessary for carrying out the provisions of this act or for providing for the relocation of persons and businesses displaced as a*

result of carrying out a redevelopment plan.

The municipal governing body may only approve the exercise of eminent domain under this Act if it finds that

(1) the development agency conducted a comprehensive planning process that included a sufficient assessment of alternatives to achieve the objectives of the development project, and that the proposed condemnation is consistent with the plan; (2) there exists clear and convincing evidence of public need for the development project; (3) the public benefits of the development project outweigh any individual private benefits; and (4) there is a reasonable expectation that the development project will achieve its objectives.

NOTES

- This language would permit a governmental entity to condemn property for the purpose of converting formerly industrial or commercial zones to residential housing. In order to control the use of eminent domain for this purpose, the language requires a level of advance planning and specific findings that the proposed condemnation will attain its objectives.
- As with Option Nos. 1, 2, 3, 4, and 9, the association may be uncomfortable delegating this type of authority to a local government. If so, the language of Legislative Option No. 10 may be changed to place the responsibility in the hands of a state agency.

SECTION IV

Section IV limits the government's condemnation authority in an indirect manner. Rather than prescribing what type of property the government can condemn (as in Section II), or the reuse of the property (as in Section I and Section III), these options provide remedies in the event the government changes its plans.

- Option No. 11 provides that in the event the government abandons its plans or no longer needs the property, it must first offer to resell the property to the condemnee.

- Similarly, Option No. 12 provides for the automatic return of condemned property to the original condemnee.

These options are intended to act as a deterrent against the government condemning for purposes of economic development. In order to strengthen this approach, the association should consider combining these options with Option No. 7.

Legislative Option No. 11

ALLOWS FOR RESEALE OF CONDEMNED PROPERTY

In the event that that property is condemned for purposes permitted under a state statute, in the event that the condemning authority abandons the development project or finds it no longer needs the condemned property, Legislative Option No. 11 requires the condemning authority to offer to resell the property to the original property owner.

SPECIFIC LANGUAGE

Property condemned pursuant to this statute, if not ever used for the purpose or purposes for which it was condemned or for some other public use, that is subsequently determined to be sold, shall be first offered for sale to the person or persons from whom the property was condemned, or his or her known or ascertainable beneficiaries, heirs, or assigns, at the lower of (a) the price which was paid for the property, or (b) the current fair market value of the property, less (c) such amount, if any, as the person or persons from whom the property was condemned shall show by good and sufficient documentation to be the amount of income and transaction taxes, if any, actually paid in connection therewith. If the offer shall not be accepted within 90 days from the date it is made, the property may be sold to any other person, but only at public sale after legal notice is given.

NOTES

- Legislative Option No. 11 gives to the condemnee, his heirs if the condemnee is no longer alive, or any beneficiaries or assigns of the condemnee, a 90-day right of first refusal to reacquire the property.
- The reacquisition price is the lower of the amount the condemning authority paid for the property or the current fair market value of the property, less any income and transaction taxes paid by the property owner at the time of the original condemnation. The association may consider increasing the reacquisition price to be paid by the condemnor by also deducting the other transaction costs paid by the property owner at the time of the original condemnation. In order to make the condemnee whole, other costs and expenses imposed on the property owner by the original condemnation, such as relocation costs, may be added to the formula.
- Undoubtedly, the government entity would argue that the condemnee's reacquisition price should be the higher of the condemnation price of the property or the current fair market value of the property. However, Legislative Option No. 11 specifies the lower of the condemnation amount or fair market value, since the government should not profit by its action.

Legislative Option No. 12

ALLOWS FOR REVERSION OF CONDEMNED PROPERTY

Another way to deter a taking of property for economic development is to provide an automatic reverter of the property to the original condemnee in the event the property is no longer needed or used for a public purpose.

SPECIFIC LANGUAGE

Whenever the State or a political subdivision thereof condemns property, the declaration of taking shall contain a reverter clause, which clause shall provide that the condemned property will automatically revert to the condemnee, or his or her known or ascertainable beneficiaries, heirs, or assigns, should the condemned property ever be used for a non-public purpose.

NOTES

- This language should be part of a statute prohibiting or limiting condemnation for economic development, as in Legislative Option No. 7.
- The reverter would operate when property is condemned for a public use, but at some point in the future, is no longer used for that public purpose and, instead, is used for a non-public purpose.
- Since this provision is designed to be a penalty to the condemnor, it does not require that the property owner pay for the property at the time of the reversion.
- To the extent that compensation paid by the condemnor may be an additional deterrent, the association may consider adding the compensation language from Legislative Option No. 11 so that upon reversion, the condemnor would have to pay consequential expenses (e.g., transaction taxes, relocation costs) to the property owner.

ADDITIONAL RESOURCES

For more information on the eminent domain issue or to access other eminent domain resources, including NAHB's state legislative tracking chart and *Kelo* amicus brief, please visit www.nahb.org/eminentdomain.

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State Eminent Domain Guide

May 5, 2006

The materials provided in this guide are intended solely to familiarize NAHB members with eminent domain law, and should not be regarded as an exhaustive presentation of legal information for any state. Because of the ever-changing nature of the law, this information only represents legal research and should not be relied upon as an interpretation or opinion of law. A builders association should consult with local counsel to determine how this information applies to a particular legal situation or legislative proposal.

Alabama

Alabama

Constitutional Takings Language

Ala. CONST. art. I, § 23: That the exercise of the right of eminent domain shall never be abridged nor so construed as to prevent the legislature from taking the property and franchises of incorporated companies, and subjecting them to public use in the same manner in which the property and franchises of individuals are taken and subjected; but private property shall not be taken for, or applied to public use, unless just compensation be first made therefore; nor shall private property be taken for private use, or for the use of corporations, other than municipal, without the consent of the owner; provided, however, the legislature may by law secure to persons or corporations the right of way over the lands of other persons or corporations, and by general laws provide for and regulate the exercise by persons and corporations of the rights herein reserved; but just compensation shall, in all cases, be first made to the owner; and, provided, that the right of eminent domain shall not be so construed as to allow taxation or forced subscription for the benefit of railroads or any other kind of corporations, other than municipal, or for the benefit of any individual or association.

Ala. CONST. art. XII, §235: Municipal and other corporations and individuals invested with the privilege of taking property for public use, shall make just compensation, to be ascertained as may be provided by law, for the property taken, injured, or destroyed by the construction or enlargement of its works, highways, or improvements, which compensation shall be paid before such taking, injury, or destruction. The legislature is hereby prohibited from denying the right of appeal from any preliminary assessment of damages against any such corporations or individuals made by viewers or otherwise, but such appeal shall not deprive those who have obtained the judgment of condemnation from a right of entry, provided the amount of damages assessed shall have been paid into court in money, and a bond shall have been given in not less than double the amount of the damages assessed, with good and sufficient sureties, to pay such damages as the property owner may sustain; and the amount of damages in all cases of appeals shall on demand of either party, be determined by a jury according to law.

Statutory Definition of Public Use

No provision found.

Statutory Definition of Blight

Ala. Code §11-99-2 (2004). (1) Blighted or economically distressed area: a. An area in which the structures, buildings, or improvements, by reason of dilapidation, deterioration, age, or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, are conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime, and are detrimental to the public health, safety, morals, or welfare, or b. Any area which by reason of the presence of a substantial number of substandard, slum, deteriorated, or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility, or usefulness, unsanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquencies exceeding the fair value of the land, defective or unusual conditions of title, or the existence of conditions which endanger life or property by fire and other causes, or any combination of the foregoing, substantially impairs or arrests the sound economic growth of an area, retards the provision of housing accommodations, or constitutes an economic or social liability and is a detriment to the public health, safety, morals, or welfare in its present condition and use, or c. Any area which is predominantly open and which because of obsolete platting, diversity of ownership, deterioration of structures or of site improvements, or otherwise, substantially impairs or arrests the sound economic growth of an area, or d. Any area which the local governing body certifies is in need of redevelopment or rehabilitation as a result of flood, fire, hurricane, tornado, earthquake, storm, or other catastrophe respecting which the Governor of the state has certified the need for disaster assistance under federal law, or e. Any area containing excessive vacant land on which structures were previously located, or on which are located abandoned or vacant buildings or old buildings, or where excessive vacancies exist in existing buildings, or which contains substandard structures, or with respect to which there exist delinquencies in payment of real property taxes.

New Eminent Domain Legislation **SB 68, Signed 8/3/05**

An Act, relating to the powers of the state, a municipality, county, or other governmental entity to acquire private property by condemnation

so as to specify that such entities may not, except as otherwise provided, condemn property for nongovernmental retail, office, commercial, residential, or industrial development or use, and to amend Sections 11-47-170 and 11-80-1, Code of Alabama 1975, in relation thereto.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1.

Statement of Legislative Intent.

In light of the decision and certain opinions recently announced by the United States Supreme Court interpreting the extent of the power of government to take property for public use as described in the Fifth Amendment to the United States Constitution and providing that individual states may restrict the exercise of that power, the Legislature intends in enacting this act to ensure that governmental bodies in Alabama vested with all or any part of the power of eminent domain may not, the aforesaid recent interpretation of the Fifth Amendment to the contrary notwithstanding, use the power to take the private property of any person for the private use of another, as opposed to the use thereof by the public generally, except as and in the limited circumstances set out in this act.

Section 2.

Sections 11-47-170 and 11-80-1, Code of Alabama 1975, are amended to read as follows:

§11-47-170.

"(a) Except as otherwise provided in subsection (b), whenever in the judgment of the council, commission, or other governing body of a city or town it may be necessary or expedient for the carrying out and full exercise of any power granted by the applicable provisions of this title or any other applicable provision of law, the town or city shall have full power and authority to acquire by purchase the necessary lands or rights, easements, or interests therein, thereunder, or thereover or, for the purposes for which private property may be acquired by condemnation, may proceed to condemn the same in the manner provided by this article, or by the general laws of this state governing the taking of lands or the acquiring of interests therein for the uses for which private property may be taken, and such proceedings shall be governed in every respect by the general laws of this state pertaining thereto or by the provisions on the subject contained in this article when the same are followed.

"(b) Notwithstanding any other provision of law, a municipality or county may not condemn property for the purposes of private retail, office, commercial, industrial, or residential development; or primarily for enhancement of tax revenue; or for transfer to a person, nongovernmental entity, public-private partnership, corporation, or other business entity. Provided, however, the provisions of this subsection shall not apply to the use of eminent domain by any municipality, housing authority, or other public entity based upon a finding of blight in an area covered by any redevelopment plan or urban renewal plan pursuant to Chapters 2 and 3 of Title 24, but just compensation, in all cases, shall continue to be first made to the owner. Nothing in this article shall limit the exercise of eminent domain by or for the benefit of public utilities or other entities engaged in the generation, transmission, or distribution of telephone, gas, electricity, water, sewer, or other utility products or services. Nothing in this article shall be interpreted to prohibit a municipal or county governing body from exercising the power of eminent domain for the purpose of constructing, maintaining, or operating streets and roadways, government buildings, or park and recreation facilities.

"(c) Property condemned pursuant to the authorizations as described in subsections (a) and (b), if not ever used for the purpose or purposes for which it was condemned or for some other public use, that is subsequently determined to be sold shall be first offered for sale to the person or persons from whom the property was condemned, or his or her known or ascertainable heirs or assigns, at the price which was paid for the property, less such amount, if any, as the person or persons from whom the property was condemned shall show by good and sufficient documentation to be the amount of income and transaction taxes, if any, actually paid in connection therewith, and if the offer shall not be accepted within 90 days from the date it is made, the property may be sold to any other person, but only at public sale after legal notice is given.

§11-80-1.

"(a) Counties and municipal corporations may condemn lands for public building sites or additions thereto, or for enlargements of sites already owned, or for public roads or streets or alleys, or for material for the construction of public roads or streets or for any other public use.

"(b) Notwithstanding any other provision of law, a municipality or county may not condemn property for the purposes of private retail, office, commercial, industrial, or residential development; or primarily for enhancement of tax revenue; or for transfer to a person, nongovernmental entity, public-private partnership, corporation, or other business entity. Provided, however, the provisions of this subsection shall not apply to the use of eminent domain by any municipality, housing authority, or other public entity based upon a finding of blight in an area covered by any redevelopment plan or urban renewal plan pursuant to Chapters 2 and 3 of Title 24, but just compensation, in all cases, shall continue to be first made to the owner. Nothing in this article shall limit the exercise of eminent domain by or for the benefit of public utilities or other entities engaged in the generation, transmission, or distribution of telephone, gas, electricity, water, sewer, or other utility products or services. Nothing in this article shall be interpreted to prohibit a municipal or county governing body from exercising the power of eminent domain for the purpose of constructing, maintaining, or operating streets and roadways, government buildings, or park and recreation facilities.

"(c) Property condemned pursuant to the authorizations as described in subsections (a) and (b), if not ever used for the purpose or purposes for which it was condemned or for some other public use, that is subsequently determined to be sold first shall be offered for sale to the person or persons from whom the property was condemned, or his or her known or ascertainable heirs or assigns, at the price which was paid for the property, less such amount, if any, as the person or persons from whom the property was condemned shall show by good and sufficient documentation to be the amount of income and transaction taxes, if any, actually paid in connection therewith, and if the offer shall not be accepted within 90 days from the date it is made, the property may be sold to any other person but only at public sale after legal notice is given."

Section 3.

(a) Neither the State of Alabama, nor any of its departments, divisions, agencies, commissions, corporations, boards, authorities, or other entities, nor any agency, corporation, district, board, or other entity organized by or under the control of any municipality or county in the state and vested by law to any extent whatsoever with the power of eminent domain may condemn property for the purpose of nongovernmental retail, office, commercial, residential, or industrial development or use; provided, however, the foregoing provisions of this subsection shall not apply to the exercise of the powers of eminent domain by any county, municipality, housing authority, or other public entity based upon a finding of blight in an area covered by any redevelopment plan or urban renewal plan pursuant to Chapters 2 and 3 of Title 24, Code of Alabama 1975, or to the exercise of eminent domain by or for the benefit of public utilities or other entities engaged in the generation, transmission, or distribution of telephone, gas, electricity, water, sewer, or other utility products or services. Nothing in this section shall be interpreted to prohibit the state or a municipal or county governing body from exercising the power of eminent domain for the purpose of constructing, maintaining, or operating streets and roadways, government buildings, or park and recreation facilities.

(b) Property condemned by an entity described in subsection (a), if not ever used for the purpose or purposes for which it was condemned

or for some other public use, that is subsequently determined to be sold shall be first offered for sale to the person or persons from whom the property was condemned, or his or her known or ascertainable heirs or assigns, at the price which was paid for the property, less such amount, if any, as the person shall show by good and sufficient documentation to be the amount of income and transaction taxes, if any, actually paid in connection therewith, and if the offer shall not be accepted within 90 days from the date it is made, the property may be sold to any other person or persons but only at public sale after legal notice is given.

Section 4.

This act is declaratory of existing law and shall apply to any pending action for condemnation.

Section 5.

The provisions of this act are severable. If any part of this act is declared invalid or unconstitutional, that declaration shall not affect the part which remains.

Section 6.

This act shall become effective immediately following its passage and approval by the Governor, or its otherwise becoming law.

Bibliography of Key State Cases

Lockridge v. Adrian

638 So. 2d 766 (Ala. 1994)

Brammer v. Housing Authority of Birmingham Dist

239 Ala. 280 (Ala. 1940)

Alaska

Constitutional Takings Language

Alaska CONST. art. I, § 18: Private property shall not be taken or damaged for public use without just compensation.

Statutory Definition of Public Use

No provision found.

Statutory Definition of Blight

Alaska Stat. § 18.55.950 (Michie 2005). "Slum area" means an area where buildings predominate that, by reason of dilapidation, deterioration, age or overcrowding, lack of ventilation, light, air, sanitation, or the existence of conditions that endanger life or property by fire or other causes, or a combination of these factors, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, and crime, and is detrimental to the public health, safety, morals or welfare. "Blighted area" means an area, other than a slum area, that by reason of the predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility, or usefulness, unsanitary or unsafe conditions, deterioration of site or improvements, tax or special assessment delinquency exceeding the fair value of the land, improper subdivision or obsolete platting, or the existence of conditions that endanger life or property by fire and other causes, or any combination of these factors, substantially impairs or arrests the sound growth of the municipality, retards the provision of housing accommodations, or constitutes an economic or social liability and is a menace to the public health, safety, morals, or welfare in its condition and use.

New Eminent Domain Legislation

No final legislation as of 5/5/06.

Bibliography of Key State Cases

No cases found.

Arizona

Constitutional Takings Language

Ariz. CONST. art. II, § 17: 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 mining, agricultural, domestic, or sanitary purposes. No private property shall be taken or damaged for public or private use without just compensation having first been made, paid into court for the owner, secured by bond as may be fixed by the court, or paid into the state treasury for the owner on such terms and conditions as the legislature may provide, and no right of way shall be appropriated to the use of any corporation other than municipal, until full compensation therefore be first made in money, or ascertained and paid into court for the owner, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury, unless a jury be waived as in other civil cases in courts of record, in the manner prescribed by law. Whenever an attempt is made to take private property for a use alleged to be public, the 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.

Statutory Definition of Public Use

No provision found.

Statutory Definition of Blight

Ariz. Rev. Stat. Ann. §36-1471 (2004). 2. "Blighted area" means an area, other than a slum area, where sound municipal growth and the provision of housing accommodations is substantially retarded or arrested in a predominance of the properties by any of the following: (a) A dominance of defective or inadequate street layout. (b) Faulty lot layout in relation to size, adequacy, accessibility or usefulness. (c) Unsanitary or unsafe conditions. (d) Deterioration of site or other improvements. (e) Diversity of ownership. (f) Tax or special assessment delinquency exceeding the fair value of the land. (g) Defective or unusual conditions of title. (h) Improper or obsolete subdivision platting. (i) The existence of conditions that endanger life or property by fire and other causes.

New Eminent Domain Legislation

No final legislation as of 5/5/06.

Bibliography of Key State Cases

City of Pheonix v. Superior Court

671 P.2d. 387 (Az. 1983)

Bailey v. Meyers

76 P.3d 898 (Ariz.Ct.App. 2003)

Arkansas

Constitutional Takings Language

Ark. CONST. art. II, § 22: The right of property is before and higher than any constitutional sanction; and private property shall not be taken, appropriated or damaged for public use, without just compensation therefore.

Ark. CONST. art. II, § 23: The State's ancient right of eminent domain and of taxation is herein fully and expressly conceded; and the General Assembly may delegate the taxing power, with the necessary restriction, to the State's subordinate political and municipal corporations to the extent of providing for their existence, maintenance and well being, but no further.

Statutory Definition of Public Use

No provision found.

Statutory Definition of Blight

Ark. Code Ann. § 14-168-301 (Michie 2004) (3) (A) "Blighted area" means an area in which the structures, buildings, or improvements, by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for access, ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding or the existence of conditions which endanger life or property, are detrimental to the public health, safety, morals, or welfare. (B) "Blighted area" includes any area which, by reason of the presence of a substantial number of substandard, slum, deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility, or usefulness, unsanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax on special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs or arrests the sound growth of a city, retards the provision of housing accommodations, or constitutes an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition and use, or any area which is predominantly open and which because of lack of accessibility, obsolete platting, diversity of ownership, deterioration of structures or of site improvements, or otherwise, substantially impairs or arrests the sound growth of the community;

New Eminent Domain Legislation

No final legislation as of 5/5/06.

Bibliography of Key State Cases

Gray v. Urban Renewal Agency
585 S.W.2d 31 (Ark. 1979)

California

Constitutional Takings Language

Cal. CONST. art. I, § 19: Private property may be taken or damaged for public use only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner. The Legislature may provide for possession by the condemnor following commencement of eminent domain proceedings upon deposit in court and prompt release to the owner of money determined by the court to be the probable amount of just compensation.

Statutory Definition of Public Use

No provision found.

Statutory Definition of Blight

Cal. Health & Safety Code §33030(b) (West 2005). A blighted area is one that contains both of the following: (1) An area that is predominantly urbanized, as that term is defined in Section 33320.1, and is an area in which the combination of conditions set forth in Section 33031 is so prevalent and so substantial that it causes a reduction of, or lack of, proper utilization of the area to such an extent that it constitutes a serious physical and economic burden on the community which cannot reasonably be expected to be reversed or alleviated by private enterprise or governmental action, or both, without redevelopment. (2) An area that is characterized by either of the following: (A) One or more conditions set forth in any paragraph of subdivision (a) of Section 33031 and one or more conditions set forth in any paragraph of subdivision (b) of Section 33031. (B) The condition described in paragraph (4) of subdivision (a) of Section 33031. (c) A blighted area also may be one that contains the conditions described in subdivision (b) and is, in addition, characterized by the existence of inadequate public improvements, parking facilities, or utilities. Cal. Health and Safety Code §33031 (West 2005). Physical conditions that cause blight (a) This subdivision describes physical conditions that cause blight: (1) Buildings in which it is unsafe or unhealthy for persons to live or work. These conditions can be caused by serious building code violations, dilapidation and deterioration, defective design or physical construction, faulty or inadequate utilities, or other similar factors. (2) Factors that prevent or substantially hinder the economically viable use or capacity of buildings or lots. This condition can be caused by a substandard design, inadequate size given present standards and market conditions, lack of parking, or other similar factors. (3) Adjacent or nearby uses that are incompatible with each other and which prevent the economic development of those parcels or other portions of the project area. (4) The existence of subdivided lots of irregular form and shape and inadequate size for proper usefulness and development that are in multiple ownership. (b) This subdivision describes economic conditions that cause blight: (1) Depreciated or stagnant property values or impaired investments, including, but not necessarily limited to, those properties containing hazardous wastes that require the use of agency authority as specified in Article 12.5 (commencing with Section 33459). (2) Abnormally high business vacancies, abnormally low lease rates, high turnover rates, abandoned buildings, or excessive vacant lots within an area developed for urban use and served by utilities. (3) A lack of necessary commercial facilities that are normally found in neighborhoods, including grocery stores, drug stores, and banks and other lending institutions. (4) Residential overcrowding or an excess of bars, liquor stores, or other businesses that cater exclusively to adults, that has led to problems of public safety and welfare. (5) A high crime rate that constitutes a serious threat to the public safety and welfare.

New Eminent Domain Legislation

No final legislation as of 5/5/06.

Bibliography of Key State Cases

People ex rel. Department of Public Works v. Lagiss

35 Cal. Rptr. 554 (Cal. Ct. App. 1963)

99 Cents Only Stores v. Lancaster Redevelopment Agency

237 F.Supp.2d 1123 (C.D.Cal. 2001)

Town of Corte Madera v. Yasin

2002 Cal. App. Unpub. LEXIS 6943 (California Unpublished Opinions, 2002)

San Franciscans Upholding the Downtown Plan v. City and County of San Francisco

125 Cal.Rptr.2d 745

Sweetwater Valley Civic Assoc. v. City of National City

555 P.2d 1099 (Cal. 1976)

Friends of Mammoth v. Town of Mammoth Lakes Redev. Agency

98 Cal.Reptr.2d 334 (Cal.Ct.App. 2000)

Rindge Co. v. Los Angeles Co.

262 U.S. 700 (1923)

City of Oakland v. Oakland Raiders

646 P.2d 835 (Cal. 1982)

Cottonwood Christian Center v. City of Cypress
218 F.Supp.2d 1203 (C.D.Cal. 2002)

Beach-Courchesne v. City of Diamond Bar
95 Cal.Repr.2d 265 (Cal.Ct.App. 2000)

Colorado

Constitutional Takings Language

Colo. CONST. art. 2, § 14, Taking private property for private use: Private property shall not be taken for private use unless by consent of the owner, except for private ways of necessity, and except for reservoirs, drains, flumes or ditches on or across the lands of others, for agricultural, mining, milling, domestic or sanitary purposes.

Colo. CONST. art 2 § 15, Taking property for public use - compensation, how ascertained: Private property shall not be taken or damaged, for public or private use, without just compensation. Such compensation shall be ascertained by a board of commissioners, of not less than three freeholders, or by a jury, when required by the owner of the property, in such manner as may be prescribed by law, and until the same shall be paid to the owner, or into court for the owner, the property shall not be needlessly disturbed, or the proprietary rights of the owner therein divested; and whenever an attempt is made to take private property for a use alleged to be public, the 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.

Statutory Definition of Public Use

No provision found.

Statutory Definition of Blight

Colo. Rev. Stat. Ann. §31-25-103 (2004). (2) "Blighted area" means an area that, in its present condition and use and, by reason of the presence of at least four of the following factors, substantially impairs or arrests the sound growth of the municipality, retards the provision of housing accommodations, or constitutes an economic or social liability, and is a menace to the public health, safety, morals, or welfare: (a) Slum, deteriorated, or deteriorating structures; (b) Predominance of defective or inadequate street layout; (c) Faulty lot layout in relation to size, adequacy, accessibility, or usefulness; (d) Unsanitary or unsafe conditions; (e) Deterioration of site or other improvements; (f) Unusual topography or inadequate public improvements or utilities; (g) Defective or unusual conditions of title rendering the title nonmarketable; (h) The existence of conditions that endanger life or property by fire or other causes; (i) Buildings that are unsafe or unhealthy for persons to live or work in because of building code violations, dilapidation, deterioration, defective design, physical construction, or faulty or inadequate facilities; (j) Environmental contamination of buildings or property; (k) (Deleted by amendment, L. 2004, p. 1745, § 3, effective June 4, 2004.) (k.5) The existence of health, safety, or welfare factors requiring high levels of municipal services or substantial physical underutilization or vacancy of sites, buildings, or other improvements; or (l) If there is no objection by the property owner or owners and the tenant or tenants of such owner or owners, if any, to the inclusion of such property in an urban renewal area, "blighted area" also means an area that, in its present condition and use and, by reason of the presence of any one of the factors specified in paragraphs (a) to (k.5) of this subsection (2), substantially impairs or arrests the sound growth of the municipality, retards the provision of housing accommodations, or constitutes an economic or social liability, and is a menace to the public health, safety, morals, or welfare. For purposes of this paragraph (l), the fact that an owner of an interest in such property does not object to the inclusion of such property in the urban renewal area does not mean that the owner has waived any rights of such owner in connection with laws governing condemnation.

New Eminent Domain Legislation

No final legislation as of 5/5/06.

Bibliography of Key State Cases

City and County of Denver v. Eat Out, Inc.
75 P.3d 1141 (Colo.App. 2003)

In re Arvada Urban Renewal Authority v. Columbine Professional Plaza Assoc.
2004 Colo. LEXIS 113 (Colo. 2004)

Silver Dollar Metropolitan District v. Goltra
66 P.3d 170 (Col.App.Div. 5 2002)

Connecticut

Constitutional Takings Language

Conn. CONST. art. I, § 11: The property of no person shall be taken for public use, without just compensation therefore.

Statutory Definition of Public Use

No provision found.

Statutory Definition of Blight

Conn. Gen. Stat. Ann. § 8-124 (West 2004). It is found and declared that there have existed and will continue to exist in the future in municipalities of the state substandard, insanitary, deteriorated, deteriorating, slum or blighted areas which constitute a serious and growing menace, injurious and inimical to the public health, safety, morals and welfare of the residents of the state; that the existence of such areas contributes substantially and increasingly to the spread of disease and crime, necessitating excessive and disproportionate expenditures of public funds for the preservation of the public health and safety, for crime prevention, correction, prosecution, punishment and the treatment of juvenile delinquency and for the maintenance of adequate police, fire and accident protection and other public services and facilities, and the existence of such areas constitutes an economic and social liability, substantially impairs or arrests the sound growth of municipalities, and retards the provision of housing accommodation; that this menace is beyond remedy and control solely by regulatory process in the exercise of the police power and cannot be dealt with effectively by the ordinary operations of private enterprise without the aids herein provided; that the acquisition of property for the purpose of eliminating substandard, insanitary, deteriorated, deteriorating, slum or blighted conditions thereon or preventing recurrence of such conditions in the area, the removal of structures and improvement of sites, the disposition of the property for redevelopment incidental to the foregoing, the exercise of powers by municipalities acting through agencies known as redevelopment agencies as herein provided, and any assistance which may be given by any public body in connection therewith, are public uses and purposes for which public money may be expended and the power of eminent domain exercised; and that the necessity in the public interest for the provisions of this chapter is hereby declared as a matter of legislative determination.

New Eminent Domain Legislation

No final legislation as of 5/5/06.

Bibliography of Key State Cases

Avalon Bay Communities v. Town of Orange
775 A.2d 284 (Conn. 2001)

Katz v. Brandon
245 A.2d 579 (Conn. 1968)

Kelo v. City of New London
843 A.2d 500 (Conn. 2004)

Aposporos v. Urban Redevelopment Commission
790 A.2d 1167 (Conn. 2002)

Delaware

Constitutional Takings Language

Del. CONST. art. I, § 8, Prosecution by indictment or information; double jeopardy; just compensation for property: No person shall for any indictable offense be proceeded against criminally by information, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger; and no person shall be for the same offense twice put in jeopardy of life or limb; nor shall any person's property be taken or applied to public use without the consent of his or her representatives, and without compensation being made.

Statutory Definition of Public Use

No provision found.

Statutory Definition of Blight

Del. Code Ann. tit. 31 §4501 (2005). (3) "Blighted area" means that portion of a municipality or community which is found and determined to be a social or economic liability to such municipality or community because of any of the following conditions: a. The generality of buildings used as dwellings, or the dwelling accommodations therein, are substandard, unsafe, unsanitary, dilapidated or obsolescent, or possess any of such characteristics, or are so lacking in light, air or space, as to be conducive to unwholesome living; b. The discontinuance of the use of any building previously used for commercial, manufacturing, residential or industrial purposes, the abandonment of a building, or allowing a building to fall into so great a state of disrepair as to render the building untenable and detrimental to the appraised market value of surrounding property; c. Unimproved vacant land, which has remained so for a period of 10 years prior to the date of the public hearing as provided in § 4524 of this title, and which land by reason of its location, or remoteness from developed sections or portions of such municipality or community, or lack of means of access to such other parts thereof, topography, or nature of the soil is not likely to be developed through the instrumentality of private capital; d. Areas (including slum areas) with buildings or improvements which by reason of dilapidation, obsolescence, deteriorated or deteriorating structures, overcrowding, faulty arrangement or design in relation to size, adequacy, accessibility or usefulness, lack of ventilation, light and sanitary facilities, excessive land coverage, deleterious land use or obsolete layout, predominance or defective or inadequate street layout, or any combination of these or other factors are detrimental to the safety, health, morals, or welfare of the municipality or community; e. A growing or total lack of proper utilization of areas caused by the condition of the title, diverse ownership of the real property therein, tax or special assessment delinquency exceeding the fair value of the land, or the existence of conditions which endanger life or property by fire or other causes and other conditions, resulting in a stagnant and unproductive condition of land potentially useful and valuable for contributing to and serving the public health, safety and welfare; and f. Vacant or unimproved lot, parcel of ground or structure in a predominantly built-up-neighborhood, which by reason of neglect or lack of maintenance: 1. Has become a place for accumulation of trash and debris or a haven for rodents or other vermin; 2. Depreciates assessable and/or fair market value of the surrounding property, as certified by a licensed appraiser; 3. Is a public nuisance, as defined by common law or declaration in accordance with the local housing, building, plumbing, fire and related codes; 4. Is an attractive nuisance to children, as defined by common law; 5. Has had its utilities, plumbing, heating, sewerage or other facilities disconnected, destroyed, removed from the structure, or rendered ineffective so that the property is unfit for its intended use; 6. Requires a disproportionate expenditure of public funds for public health and safety, crime prevention, correction, and prosecution; and 7. Has contributed to a quantified disproportionate exodus of families and businesses from the surrounding neighborhood.

New Eminent Domain Legislation SB 217, Signed 7/21/05

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO REAL PROPERTY ACQUISITION AND THE EXERCISE OF EMINENT DOMAIN.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 9505, Title 29 of the Delaware Code, by inserting therein a new paragraph to read as follows:

"(14)Notwithstanding any other provision of law to the contrary, the acquisition of real property through the exercise of eminent domain by any agency shall be undertaken, and the property used, only for the purposes of a recognized public use as described at least 6 months in advance of the institution of condemnation proceedings: (i) in a certified planning document, (ii) at a public hearing held specifically to address the acquisition, or (iii) in a published report of the acquiring agency. This paragraph shall not apply to the obtaining of right-of-ways or easements by an agency for public utilities, such as sewer, water, or electric."

Section 2. Amend § 9503, Title 29 of the Delaware Code, by striking the phrase "in the opinion of the agency" as it appears therein and by substituting in lieu thereof the phrase "in the opinion of the court".

Bibliography of Key State Cases

Wilmington Park Authority v. Land With Improvements

521 A.2d 227 (Del. 1987)

Randolph v. Wilmington Housing Authority

139 A.2d 476 (Del. 1958)

District of Columbia

Constitutional Takings Language

5th Amendment

Statutory Definition of Public Use

No provision found.

Statutory Definition of Blight

D.C. Code Ann. § 2-1219.06 (2004) Blighted area means an area within the District in which there is a predominance of buildings or improvements, whether residential or nonresidential, which by reason of dilapidation, deterioration, age, or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, or the existence of conditions which endanger life or property, by fire or other causes, or any combination of such factors, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime, and is detrimental to public health, safety, morals, or welfare, or in which area by reason of the presence of a substantial number of slums, deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility, or usefulness, excessive vacant land, abandoned or vacant buildings, substandard structures, vacancies, unsanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, excessive tax or special assessment delinquency, defective or unusual conditions of title, or the existence of conditions that endanger life or property by fire and other causes, or any combination of such factors that substantially impairs or arrests the sound growth of the District, retards the provision of housing accommodations, or constitutes an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition and use.

New Eminent Domain Legislation

No final legislation as of 5/5/06.

Bibliography of Key State Cases

Berman v. Parker

348 U.S. 26 (1954)

Southeast Land Development Associates, L.P. v. District of Columbia

Slip Copy, 2005 WL 3211458 (D.D.C. 2005)

Florida

Constitutional Takings Language

Fla. Const. Art. X, § 6, Eminent domain:

(a) No private property shall be taken except for a public purpose and with full compensation therefor paid to each owner or secured by deposit in the registry of the court and available to the owner.

(b) Provision may be made by law for the taking of easements, by like proceedings, for the drainage of the land of one person over or through the land of another.

Statutory Definition of Public Use

No provision found.

Statutory Definition of Blight

Fla. Stat. Ann. § 163.340 (8) (2005). "Blighted area" means an area in which there are a substantial number of deteriorated, or deteriorating structures, in which conditions, as indicated by government-maintained statistics or other studies, are leading to economic distress or endanger life or property, and in which two or more of the following factors are present: (a) Predominance of defective or inadequate street layout, parking facilities, roadways, bridges, or public transportation facilities; (b) Aggregate assessed values of real property in the area for ad valorem tax purposes have failed to show any appreciable increase over the 5 years prior to the finding of such conditions; (c) Faulty lot layout in relation to size, adequacy, accessibility, or usefulness; (d) Unsanitary or unsafe conditions; (e) Deterioration of site or other improvements; (f) Inadequate and outdated building density patterns; (g) Falling lease rates per square foot of office, commercial, or industrial space compared to the remainder of the county or municipality; (h) Tax or special assessment delinquency exceeding the fair value of the land; (i) Residential and commercial vacancy rates higher in the area than in the remainder of the county or municipality; (j) Incidence of crime in the area higher than in the remainder of the county or municipality; (k) Fire and emergency medical service calls to the area proportionately higher than in the remainder of the county or municipality; (l) A greater number of violations of the Florida Building Code in the area than the number of violations recorded in the remainder of the county or municipality; (m) Diversity of ownership or defective or unusual conditions of title which prevent the free alienability of land within the deteriorated or hazardous area; or (n) Governmentally owned property with adverse environmental conditions caused by a public or private entity. However, the term "blighted area" also means any area in which at least one of the factors identified in paragraphs (a) through (n) are present and all taxing authorities subject to s. 163.387(2)(a) agree, either by interlocal agreement or agreements with the agency or by resolution, that the area is blighted. Such agreement or resolution shall only determine that the area is blighted. For purposes of qualifying for the tax credits authorized in chapter 220, "blighted area" means an area as defined in this subsection.

New Eminent Domain Legislation

No final legislation as of 5/5/06.

Bibliography of Key State Cases

Zamecnik v. Palm Beach County

768 So.2d 1217 (Fla. 4th DCA 2000)

Grubstein v. Urban Renewal Agency of Tampa Bay

115 So.2d 745 (Fla. 1959)

State v. Miami Beach Redevelopment Agency

392 So.2d 875 (Fla. 1980)

JFR Investment v. Delray Beach Community Development Agency

652 So.2d 1261 (Fla. 4th DCA 1995)

Adams v. Housing Authority of City of Daytona Beach

60 So.2d 663 (Fla. 1952)

Baycol Inc. v. Downtown Development Authority of the City of Ft. Lauderdale

315 So.2d 451 (Fla. 1975)

Rukab v. City of Jacksonville Beach

811 So.2d 727 (Fla. 1st DCA 2002)

Poe v. Hillsborough County

695 So.2d 672 (Fla. 1997)

Holloway v. Lakeland Downtown Development Authority

417 So.2d 963 (Fla. 1982)

City of Jacksonville v. Moman

290 So.2d 105 (Fla. 1st DCA 1974)

Georgia

Constitutional Takings Language

Ga. Const. Art. I, § III, Para. I, Eminent domain:

(a) Except as otherwise provided in this Paragraph, private property shall not be taken or damaged for public purposes without just and adequate compensation being first paid.

(b) When private property is taken or damaged by the state or the counties or municipalities of the state for public road or street purposes, or for public transportation purposes, or for any other public purposes as determined by the General Assembly, just and adequate compensation therefor need not be paid until the same has been finally fixed and determined as provided by law; but such just and adequate compensation shall then be paid in preference to all other obligations except bonded indebtedness.

(c) The General Assembly may by law require the condemnor to make prepayment against adequate compensation as a condition precedent to the exercise of the right of eminent domain and provide for the disbursement of the same to the end that the rights and equities of the property owner, lien holders, and the state and its subdivisions may be protected.

(d) The General Assembly may provide by law for the payment by the condemnor of reasonable expenses, including attorney's fees, incurred by the condemnee in determining just and adequate compensation.

(e) Notwithstanding any other provision of the Constitution, the General Assembly may provide by law for relocation assistance and payments to persons displaced through the exercise of the power of eminent domain or because of public projects or programs; and the powers of taxation may be exercised and public funds expended in furtherance thereof.

Statutory Definition of Public Use

No provision found.

Statutory Definition of Blight

Ga. Code Ann. §8-4-3(1) (2004). "Blighted areas" means: (A) Areas in which there is a predominance of buildings or improvements, or which are predominantly residential in character, and which, by reason of: (i) Dilapidation, deterioration, age, or obsolescence; (ii) Inadequate provision for ventilation, light, air, sanitation, or open spaces; (iii) High density of population and overcrowding; (iv) The existence of conditions which endanger life or property by fire and other causes; or (v) Any combination of such factors, are conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, and crime and are detrimental to the public health, safety, morals, or welfare; and (B) Areas which, by reason of: (i) The predominance of defective or inadequate street layout; (ii) Faulty lot layout in relation to size, adequacy, accessibility, or usefulness; (iii) Insanitary or unsafe conditions; (iv) Deterioration of site improvements; (v) Diversity of ownership; (vi) Tax or special assessment delinquency exceeding the fair value of the land; (vii) Defective or unusual conditions of title; (viii) Improper subdivision or obsolete platting; (ix) The existence of conditions which endanger life or property by fire or other causes; or (x) Any combination of such factors, substantially impair or arrest the sound growth of the community, retard the provision of housing accommodations, or constitute an economic or social liability and are a menace to the public health, safety, morals, or welfare in their present condition and use.

New Eminent Domain Legislation* **HB 1313, Signed 4/4/06*

AN ACT to amend Titles 8, 22, 23, and 36 of the Official Code of Georgia Annotated, relating to buildings and housing, eminent domain, equity, and local government, respectively, so as to provide for the comprehensive revision of provisions regarding the power of eminent domain; to provide for a short title; to change certain provisions regarding a housing authority's power of eminent domain; to provide for a new definition of blighted properties; to provide for other definitions; to provide for a public use requirement for exercising the power of eminent domain; to change certain provisions relating to the power of eminent domain and the presumption of a public use; to provide for attorney fees in certain cases challenging the use of eminent domain; to provide certain exemptions to the applicability of the power of eminent domain to public utilities; to provide for certain changes regarding eminent domain to require a public use; to change certain provisions regarding when the use of eminent domain is allowed; to provide guidelines for the use of condemnation; to provide for practice and procedure relative to condemnation; to provide for testimony relative to the value of condemned property; to provide for expedited hearings; to provide that the Department of Community Affairs produce a standard notice of rights form; to repeal provisions relating to certain appeals from assessor's awards; to change compensation for special masters; to change provisions relating to the right of appealing the award of the special master in condemnation proceedings; to change provisions relating to the use of condemnation for waterworks; to grant standing to municipalities, counties, and housing authorities to seek certain equitable remedies and proceedings; to provide for certain notification requirements; to provide for certain restrictions regarding the use of eminent domain under or in connection with a redevelopment plan and urban redevelopment; to change certain provisions regarding public hearings relating to redevelopment plans; to provide for the reconveyance of condemned property under certain circumstances; to provide for reimbursement of reasonable costs and expenses incurred because of condemnation proceedings; to provide for certain exemptions; to provide for revisions for purposes of conformity; to provide for related matters; to provide for an effective date and for applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

This Act shall be known and may be cited as "The Landowner's Bill of Rights and Private Property Protection Act."

SECTION 2.

Title 8 of the Official Code of Georgia Annotated, relating to buildings and housing, is amended by inserting a new Code section in Part 2 of Article 1 of Chapter 3, relating to the powers of housing authorities generally, to read as follows:

"8-3-31.1.

(a) As used in this Code section, the term 'public use' shall have the meaning specified in Code Section 22-1-1.

(b) Any exercise of the power of eminent domain under this chapter or Chapter 4 of this title must:

- (1) Be for a public use; and
- (2) Be approved by resolution of the governing body of the municipality or county in conformity with the procedures specified in Code Section 22-1-10."

SECTION 3.

Title 22 of the Official Code of Georgia Annotated, relating to eminent domain, is amended by striking Code Section 22-1-1, relating to eminent domain definitions, and inserting in its place a new Code section to read as follows:

"22-1-1.

As used in this title, the term:

(1) 'Blighted property,' 'blighted,' or 'blight' means any urbanized or developed property which:

(A) Presents two or more of the following conditions:

- (i) Uninhabitable, unsafe, or abandoned structures;
 - (ii) Inadequate provisions for ventilation, light, air, or sanitation;
 - (iii) An imminent harm to life or other property caused by fire, flood, hurricane, tornado, earthquake, storm, or other natural catastrophe respecting which the Governor has declared a state of emergency under state law or has certified the need for disaster assistance under federal law; provided, however, this division shall not apply to property unless the relevant public agency has given notice in writing to the property owner regarding specific harm caused by the property and the owner has failed to take reasonable measures to remedy the harm;
 - (iv) A site identified by the federal Environmental Protection Agency as a Superfund site pursuant to 42 U.S.C. Section 9601, et seq., or environmental contamination to an extent that requires remedial investigation or a feasibility study;
 - (v) Repeated illegal activity on the individual property of which the property owner knew or should have known; or
 - (vi) The maintenance of the property is below state, county, or municipal codes for at least one year after notice of the code violation; and
- (B) Is conducive to ill health, transmission of disease, infant mortality, or crime in the immediate proximity of the property.

Property shall not be deemed blighted because of esthetic conditions.

(2) 'Common carrier' means any carrier required by law to convey passengers or freight without refusal if the approved fare or charge is paid.

(3) 'Condemnor' or 'condemning authority' means:

- (A) The State of Georgia or any branch or any department, board, commission, agency, or authority of the executive branch of the government of the State of Georgia;
- (B) Any county or municipality of the State of Georgia;
- (C) Any housing authority with approval of the governing authority of the city or county as provided in Code Section 8-3-31.1;
- (D) Any other political subdivision of the State of Georgia which possesses the power of eminent domain; and
- (E) All public utilities that possess the right or power of eminent domain.

(4) 'Economic development' means any economic activity to increase tax revenue, tax base, or employment or improve general economic health, when the activity does not result in:

- (A) Transfer of land to public ownership;
- (B) Transfer of property to a private entity that is a public utility;
- (C) Lease of property to private entities that occupy an incidental area within a public project; or
- (D) The remedy of blight.

(5) 'Each person with a legal claim' means the owner of the property or of any remainder, reversion, mortgage, lease, security deed, or other claim in the property.

(1)(6) 'Interest' means any title or nontitle interest other than fee simple title.

(2)(7) 'Persons' means individuals, partnerships, associations, and corporations, domestic or foreign.

(3)(8) 'Property' means fee simple title.

(9)(A) 'Public use' means:

- (i) The possession, occupation, or use of the land by the general public or by state or local governmental entities;
- (ii) The use of land for the creation or functioning of public utilities;
- (iii) The opening of roads, the construction of defenses, or the providing of channels of trade or travel;
- (iv) The acquisition of property where title is clouded due to the inability to identify or locate all owners of the property;
- (v) The acquisition of property where unanimous consent is received from each person with a legal claim that has been identified and found; or
- (vi) The remedy of blight.

(B) The public benefit of economic development shall not constitute a public use.

(10) 'Public utility' means any publicly, privately, or cooperatively owned line, facility, or system for producing, transmitting, or distributing communications, power, electricity, light, heat, gas, oil products, water, steam, clay, waste, storm water not connected with highway drainage, and other similar services and commodities, including publicly owned fire and police and traffic signals and street lighting systems, which directly or indirectly serve the public. This term also means a person, municipal corporation, county, state agency, or public authority which owns or manages a utility as defined in this paragraph. This term shall also include common carriers and railroads."

SECTION 4.

Said title is further amended by striking Code Section 22-1-2, relating to the nature of eminent domain, and inserting in its place a new Code section to read as follows:

"22-1-2.

(a) The right of eminent domain is the right of the state, through its regular organization, to reassert, either temporarily or permanently, its dominion over any portion of the soil of the state on account of public exigency and for the public good. Thus, in time of war or insurrection the proper authorities may possess and hold any part of the territory of the state for the common safety. Notwithstanding any other provisions of law, neither this state nor any political subdivision thereof nor any other condemning authority shall use eminent domain unless it is for public use. Public use is a matter of law to be determined by the court and the condemnor bears the burden of proof.

(b) All condemnations shall not be converted to any use other than a public use for 20 years from the initial condemnation.

(c)(1) If property acquired through the power of eminent domain from an owner fails to be put to a public use within five years, the former property owner may apply to the condemnor or its successor or assign for reconveyance or quitclaim of the property to the former property owner or for additional compensation for such property. For purposes of this subsection, property shall be considered to have been put to a

public use at the point in time when substantial good faith effort has been expended on a project to put the property to public use, notwithstanding the fact that the project may not have been completed. The application shall be in writing, and the condemnor or its successor or assign shall act on the application within 60 days by:

- (A) Executing a reconveyance or quitclaim of the property upon receipt of compensation not to exceed the amount of the compensation paid by the condemnor at the time of acquisition; or
- (B) Paying additional compensation to the former owner of the property, such compensation to be calculated by subtracting the price paid by the condemnor for the property at the time of acquisition from the fair market value of the property at the time the application is filed.
- (2) If the condemnor fails to take either action within 60 days, the former property owner may, within the next 90 days following, initiate an action in the superior court in the county in which the property is located to reacquire the property or receive additional compensation.
- (3) The condemnor shall provide notice to each former owner of the property prior to acquisition if the condemnor fails to put such property to a public use within five years. The condemnee shall have one year from the date notice is received to bring an application under this subsection.
- (d) In the case that property is acquired from more than one owner for the same public use and reconveyance or additional compensation to a single owner is impracticable, any party to the original condemnation or each person with a legal claim in such condemnation may file an action in the superior court in the county in which the property is located for an equitable resolution.
- (e) This Code section shall not apply to condemnations subject to Code Section 22-3-162 or Title 32."

SECTION 5.

Said title is further amended by inserting new Code sections to read as follows:

"22-1-9.

In order to encourage and expedite the acquisition of real property by agreements with owners, to avoid litigation and relieve congestion in the courts, to assure consistent treatment for property owners, and to promote public confidence in land acquisition practices, all condemnations and potential condemnations shall, to the greatest extent practicable, be guided by the following policies and practices:

- (1) The condemning authority shall make every reasonable effort to acquire expeditiously real property by negotiation;
- (2) Where the condemning authority seeks to obtain a fee simple interest in real property, real property shall be appraised before the initiation of negotiations, and the owner or his or her designated representatives shall be given an opportunity to accompany the appraiser during his or her inspection of the property, except that the condemning authority may, by law, rule, regulation, or ordinance, prescribe a procedure to waive the appraisal in cases involving the acquisition by sale or donation of property with a low fair market value;
- (3) Before the initiation of negotiations for fee simple interest for real property the condemning authority shall establish an amount which it believes to be just compensation and shall make a prompt offer to acquire the property for the full amount so established. In no event shall such amount be less than the condemning authority's independent appraisal of the fair market value of such property. The condemning authority shall provide the owner of real property to be acquired with a written statement of, and summary of the basis for, the amount he or she established as just compensation. Where appropriate, the just compensation for the real property acquired and for damages to remaining real property shall be separately stated. The condemning authority shall consider alternative sites suggested by the owner of the property as of the compensation offered;
- (4) No owner shall be required to surrender possession of real property before the condemning authority pays the agreed purchase price or deposits with the court in accordance with this title, for the benefit of the owner, an amount not less than the condemning authority's appraisal of the fair market value of such property or the amount of the award of compensation in the condemnation proceeding for such property;
- (5) The construction or development of a project for public use shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling or to move his or her business or farm operation without at least 90 days' written notice from the condemning authority of the date by which such move is required;
- (6) If the condemning authority permits an owner or tenant to occupy the real property acquired on a rental basis for a short term or for a period subject to termination by the condemning authority on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier;
- (7) In no event shall the condemnor act in bad faith in order to compel an agreement on the price to be paid for the property;
- (8) If any legal interest in real property is to be acquired by exercise of the power of eminent domain, the condemning authority shall institute formal condemnation proceedings. No condemnor shall intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his or her real property; and
- (9) A person whose real property is being acquired in accordance with this title may, after the person has been fully informed of his or her right to receive just compensation for such property, donate such property, any part thereof, any legal interest therein, or any compensation paid to a condemning authority, as such person shall determine.

22-1-10.

(a) Prior to exercising the power of eminent domain, a governmental condemnor shall:

- (1) Not less than 15 days before any meeting at which a resolution approving the exercise of eminent domain is to be considered, post a sign, if possible, in the right of way adjacent to each property that is subject to the proposed use of the eminent domain power stating the time, date, and place of such meeting;
- (2) Attempt to serve the condemnee personally with notice of the meeting not less than 15 days before any meeting at which such resolution is to be considered, unless service is acknowledged or waived by the condemnee. If the attempted service is unsuccessful, service of notice may be satisfied by mail or statutory overnight delivery to the property owner at the address of record and, if different from the property owner, to the parties in possession of the property, return receipt requested;
- (3) Ensure that any notice that is required by law to be published be placed in the county legal organ, but such notice shall not be published in the legal notices section of such newspaper; and
- (4) Ensure that any meeting at which such resolution is to be considered and voted on shall commence after 6:00 P.M.

Any such resolution shall specifically and conspicuously delineate each parcel to be affected.

(b) A nongovernmental condemnor shall, with respect to its exercise of the power of eminent domain in general, by action of the governing body or chief executive officer of the condemnor designate who is authorized to approve the exercise of the power of eminent domain by the condemnor and provide a method for documenting the time of the exercise of final approval of a particular exercise of the power of eminent domain by that individual or group of individuals. Such a condemning authority shall with respect to any particular exercise of the power of eminent domain:

- (1) Not less than 15 days before the documented time of approval of the exercise of eminent domain, post a sign, if possible, in the right of

way adjacent to each property that is subject to the proposed use of the eminent domain power stating: (A) that the property is subject to a proposed condemnation which may be initiated after 15 days from the date of posting; (B) the date of posting; and (C) the name, business address, and telephone number of the condemner;

(2) Not less than 15 days before the documented time of approval of the exercise of eminent domain serve the condemnee personally with notice of the proposed condemnation stating: (A) that the property is subject to a proposed condemnation which may be initiated after 15 days from the date of service; (B) the date of service; and (C) the name, business address, and telephone number of the condemner. If the attempted service is unsuccessful, service of notice may be satisfied by mail or statutory overnight delivery to the property owner at the address of record and, if different from the property owner, to the parties in possession of the property, return receipt requested; and

(3) Provide the condemnee with an opportunity to meet with the individual or group of individuals having the power of documented approval or a representative of such individual or individuals.

(c) The condemnee may in writing waive any rights of the condemnee under this Code section.

(d) Any notice required to be personally served or mailed under this Code section shall be accompanied by a written statement of the rights that the condemnee possesses including but not limited to the right to notice, damages, hearing, and appeal of any award entered by the special master as described in this title. The written statement of rights shall also include the right to bring a motion pursuant to Code Section 22-1-11 as well as a sample motion. The Department of Community Affairs shall promulgate written notice of rights forms that shall be used for purposes of this subsection. The Department of Community Affairs shall promulgate different notice forms for each of the types of condemnation proceedings authorized by law. This subsection shall not become effective until the Department of Community Affairs has promulgated the written notice of rights forms contemplated under this subsection and such forms shall be promulgated no later than January 1, 2007.

(e) This Code section shall not apply to condemnations for the purposes of constructing or expanding one or more electric transmission lines, to condemnations pursuant to Code Section 46-8-121, or to any condemnations under Title 32.

22-1-10.1.

(a) Except as provided in subsections (b) and (c) of this Code section, no action for condemnation may be brought in any court of this state until at least 30 days after the date of the resolution or documented approval described in Code Section 22-1-10.

(b) If an emergency condition exists requiring the acquisition of property for the protection of the public health and safety, the condemner may declare the existence of an emergency and adopt a resolution defining the emergency. Notice and hearing as required by Code Section 22-1-10 may be waived by the condemning body in an emergency condition.

(c) This Code section shall not apply to the acquisition or condemnation of property where consent is received from each person with a legal claim that has been identified or found.

22-1-11.

Before the vesting of title in the condemner and upon motion of the condemnee, or within ten days of the entry of the special master's award by entry of exception to the case, the court shall determine whether the exercise of the power of eminent domain is for a public use and whether the condemning authority has the legal authority to exercise the power of eminent domain and may stay other proceedings of the condemnation pending the decision of the court. The condemning authority shall bear the burden of proof by the evidence presented that the condemnation is for a public use as defined in Code Section 22-1-1. Nothing in this Code section shall be construed to require the condemnee to seek or obtain a special master's award prior to a hearing or decision by the court under this Code section.

22-1-12.

In all actions where a condemning authority exercises the power of eminent domain, the court having jurisdiction of a proceeding instituted by a condemner to acquire real property by condemnation shall award the owner of any right or title to or interest in such real property such sum as will in the opinion of the court reimburse such owner for his or her reasonable costs and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of the condemnation proceedings, if:

- (1) The final judgment is that the condemning authority cannot acquire the real property by condemnation; or
- (2) The proceeding is abandoned by the condemning authority.

22-1-13.

In addition to the types of relocation damages permissible under law, any condemnee that is displaced as a result of the condemnation shall be entitled to:

- (1) Actual reasonable expenses in moving himself or herself, his or her family, business, farm operation, or other personal property within a reasonable distance from the property condemned;
- (2) Actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation;
- (3) Such other relocation expenses as authorized by law; and
- (4) With the consent of the condemnee, the condemner may provide alternative site property as full or partial compensation.

22-1-14.

(a) When property is condemned under this title or any other title of this Code, the value of the condemned property may be determined through lay or expert testimony and its admissibility shall be addressed to the sound discretion of the court.

(b) If any party to a condemnation proceeding seeks to introduce expert testimony as to the issue of just and adequate compensation, Code Section 24-9-67.1 shall not apply."

SECTION 6.

Said title is further amended by repealing Code Section 22-2-84.1, relating to appeals to superior court from assessors award, reasonable expenses, and liability of cost relating to issues of law.

SECTION 7.

Said title is further amended by striking Code Section 22-2-100, relating to the definition of "condemning body" and "condemnor," and inserting in its place a new Code section to read as follows:

"22-2-100.

As used in this article, 'condemning body' or 'condemnor' means:

- (1) The State of Georgia or any branch or any department, board, commission, agency, or authority of the executive branch of the

government of the State of Georgia;

- (2) Any county or municipality of the State of Georgia;
- (3) Any housing authority with approval of the governing authority of the city or county as provided in Code Section 8-3-31.1;
- (4) Any other political subdivision of the State of Georgia which possesses the power of eminent domain; and
- (5) All public utilities that possess the right or power of eminent domain.

SECTION 8.

Said title is further amended by striking Code Section 22-2-102, relating to filing a petition of condemnation and certain requirements and rights attached to said petition, and inserting in its place a new Code section to read as follows:

"22-2-102.

(a) In addition to the requirements set forth in Chapter 1 of this title, whenever it is desirable, for any reason, to arrive at a quick and certain determination of the compensation to be paid first to the condemnee for the taking or damaging of private property, the condemnor shall:

- (1) File a petition in a superior court having jurisdiction for a judgment in rem against the property or interest therein, as provided in Code Section 22-2-130.; and
- (2) At or before the filing of the petition, present a copy of the petition to a judge of the superior court of the county wherein the property or interest sought to be condemned is located. Thereupon, unless waived by the parties the judge shall have a hearing in court, in chambers, or by telephone with the parties not less than ten days nor more than 30 days from the filing of the petition to appoint a special master. After such hearing, the judge shall make an order requiring the condemnor, the person in possession of the property or interest, and each person with a legal claim or interest to appear at a hearing before a special master at a time and place specified in the order and to make known their rights, if any, in and to the property or interest sought to be condemned, their claims as to the value of the property or interest, and any other matters material to their respective rights.
- (b) The hearing before the special master shall take place not less than 30 days nor more than 15 60 days after the date of the entry of the order appointing the special master.
- (c) The order shall give such directions for notice and the service thereof as are appropriate and as are consistent with this article, in such manner as to provide most effectively an opportunity to all parties at interest to be heard. In condemnations for purposes of constructing or expanding one or more electric transmission lines, in addition to service of the order, a copy of the order shall be mailed by certified mail or sent by statutory overnight delivery to any person shown by the public ad valorem tax records of the county in which the property is located to have an interest in the property and to any other person having open and obvious possession of the property. It shall not be necessary to attach any other process to the petition except the order so made, and the cause shall proceed as in rem."

SECTION 9.

Said title is further amended by striking Code Section 22-2-102.1, relating to petitioning superior court for judgment in rem in cases of eminent domain, and inserting in its place a new Code section to read as follows:

"22-2-102.1.

In addition to the requirements set forth in Code Section 22-1-10, whenever it shall be necessary for such condemning body to take or damage private property, or any interest or easement therein, in pursuance of any law so authorizing, for any public use, and where, by reason of the necessities of the public needs, of which the condemning body shall be the exclusive judge, and it shall be desirable for these reasons to have a quick and effective adjudication of the just and adequate compensation to be paid the owner or owners of such property before taking the same, and it shall be desirable to have a judicial ascertainment and judicial supervision of all questions and proceedings connected with the matter, such condemning body may, through any authorized representative, petition the superior court of the county having jurisdiction, for a judgment in rem against said property, or any easement or other interest in said property, condemning the same in fee simple to the use of the petitioner upon payment of just and adequate compensation therefor."

SECTION 10.

Said title is further amended by striking Code Section 22-2-102.2, relating to contents of petition to superior court for judgment in rem in cases of eminent domain, and inserting in its place a new Code section to read as follows:

"22-2-102.2.

The petition referred to in Code Section 22-2-102.1 shall set forth:

- (1) The facts showing the right to condemn;
- (2) The property or interest to be taken or damaged;
- (3) The names and residences of the persons whose property or interests are to be taken or otherwise affected, so far as known;
- (4) A description of any unknown persons or classes of unknown persons whose rights in the property or interest are to be affected;
- (5) A statement setting forth the necessity to condemn the private property and describing the public use for which the condemnor seeks the property; and
- (6) Such other facts as are necessary for a full understanding of the cause."

SECTION 11.

Said title is further amended by striking Code Section 22-2-106, relating to compensation for special masters, and inserting in its place a new Code section to read as follows:

"22-2-106.

- (a) The compensation of the special master shall be provided for by a proper order of the judge of the superior court; shall be included in and made a part of the judgment of the court condemning the property or any interest therein sought to be taken, such judgment to be based on the award of the special master; and shall be paid by the condemning body. Such compensation shall be left to the discretion of the court and shall not exceed a reasonable hourly rate consistent with local standards unless otherwise agreed upon by the parties with consent of the court. The compensation of the special master shall be assessed as court costs and shall be paid prior to the filing of any appeal from the judgment of the court; provided, however, that if such compensation has not been determined and assessed at the time of filing any such appeal, the same shall be paid within 30 days from the date of assessment.
- (b) The judge may allow the special master a reasonable period of time for personal inspection of the premises and may compensate the special master for his or her time spent inspecting the premises and for any actual expenses incurred by the special master in connection with the inspection, provided that the special master shall file an affidavit with the court showing his or her time spent in inspection and itemizing his or her expenses."

SECTION 12.

Said title is further amended by striking Code Section 22-2-110, relating to the award of the special master in a condemnation hearing and the form used therein, and inserting in its place a new Code section to read as follows:

"22-2-110.

(a) The award of the special master or the special master panel, in the event such a panel exists, shall be served in a manner consistent with Code Section 9-11-5 upon all the parties and filed with the clerk of the superior court of the county where the property or interest is situated within three days after the date on which such hearing is completed. The special master or the special master panel shall mail the award to the condemnor and any condemnees on the date of filing of the award and provide a certificate of service evidencing the mailing of such award.

(b) The award shall become a part of the record of the proceedings in said matter and shall condemn and vest title to the property or other interest in the condemning body upon the deposit by that body of the amount of the award into the registry of the court, subject to the demand of such condemnee or condemnees, according to their respective interests.

(c) The award shall be in the following form:

AWARD

The special master appointed and chosen by the court to hear evidence and give full consideration to all matters touching upon the value of the property or interest sought to be condemned, as shown by the description of the property or interest in the case of

_____ (condemning body) versus _____ (acres of land or other described interest in said land) and _____ (condemnee), Civil action file no. _____ in superior court, having first taken the oath as required by law of the special master, the same having been filed with the clerk of the Superior Court of _____ County, and the special master panel, in the event such a panel exists, having heard evidence under oath and given consideration to the value of such property or interest on the _____ day of _____, at _____:_____.M., as provided for in the order of the court, do decide and recommend to the court as follows:

(1) I/We find and award to _____, condemnee, the sum of \$ _____, as the actual market value of the property or interest sought to be condemned;

(2) I/We find consequential damages to the remaining property or interest in the amount of \$ _____;

(3) I/We find consequential benefits to the remaining property or interest in the amount of \$ _____ (never to exceed the amount of the consequential damages);

(4) I/We find and award to _____, condemnee, the sum of \$ _____, as the value of any associated moving costs;

(4)(5) Balancing the consequential benefits against the consequential damages, I/we find and award to the condemnee in this case in the total sum of \$ _____, and I/we respectfully recommend to the court that the said property or interest be condemned by a judgment in rem to the use of the condemnor upon the payment of the last stated sum into the registry of the court, subject to the demands of the condemnee.

This _____ day of _____, _____.

Special Master

Assessor

Assessor

(d) In any case where there is an appeal from the award of the special master or the special master panel, in the event such a panel exists, to a jury in the superior court, such award shall not be competent evidence. Any such appeal shall be a de novo investigation, and such award shall be detached from the papers in the case before the same are delivered to the jury."

SECTION 13.

Said title is further amended by striking Code Section 22-2-112, relating to the right of appealing the award of the special master in condemnation proceedings, and inserting in its place a new Code section to read as follows:

"22-2-112.

(a) If the condemnor or any condemnee is dissatisfied with the amount of the award, an appeal shall be filed in the superior court and such appeal shall be filed within ten calendar days from the service of the award, plus three additional calendar days for mailing of the award. At the term succeeding the filing of the appeal, it shall be the duty of the judge to cause an issue to be made and tried by a jury as to the value of the property or interest taken or the amount of damage done, with the same right to move for a new trial and file an appeal as in other cases at law. The entering of an appeal and the proceedings thereon shall not hinder or delay in any way the condemnor's work or the progress thereof.

(b) The condemnee shall have the right to a jury trial on the issue of just and adequate compensation before the superior court having jurisdiction over the property sought to be condemned during the next term of court following the vesting of title in the condemnor. This right to a jury trial at the next term of court may be waived by the condemnee."

SECTION 14.

Said title is further amended by striking Code Section 22-2-131, relating to contents in a petition to the superior court for a judgment in rem, and inserting in its place a new Code section to read as follows:

"22-2-131.

(a) The petition referred to in Code Section 22-2-130 shall set forth:

(1) The facts showing the right to condemn;

(2) The property or interest to be taken or damaged;

(3) The names and residences of the persons whose property or interests are to be taken or otherwise affected, so far as known;

(4) A description of any unknown persons or classes of unknown persons whose rights in the property or interest are to be affected;

(5) Such other facts as are necessary for a full understanding of the cause;

(6) A statement setting forth the necessity to condemn the private property and describing the public use for which the condemnor seeks the property; and

(7) A prayer for such judgment of condemnation as may be proper and desired.

(b) If any of the persons referred to in this Code section are minors or under disability, the fact shall be stated."

SECTION 15.

Said title is further amended by striking Code Section 22-2-132, relating to requirements of notice and service upon presenting a petition for a judgment in rem, and inserting in its place a new Code section to read as follows:

"22-2-132.

(a) Upon presentation of the petition, the presiding judge shall issue an order requiring the condemnor, the owner of the property or of any interest therein, and the representative of any owner to appear at a time and place named in the order and make known their objections if any, rights, or claims as to the value of the property or of their interest therein, and any other matters material to their respective rights; provided, however, that if the petition includes affidavits from known and located persons with a legal claim, stating that such condemnees do not oppose the condemnation, no hearing pursuant to this Code section shall be required.

(b) The day named in the order shall be as early as may be convenient but shall be no less than 20 days from the date of the petition, due regard being given to the necessities of notice.

(c) The order shall give appropriate directions for notice and the service thereof.

(d) It shall not be necessary to attach any other process to the petition except the order referred to in subsection (a) of this Code section, and the cause shall proceed as in rem."

SECTION 16.

Said title is further amended by striking Code Sections 22-3-60 and 22-3-63, relating to persons constructing and operating waterworks and sewerage systems authorized to lease, purchase, or condemn property or interests, and inserting in their place new Code sections to read as follows:

"22-3-60.

Any nongovernmental entity constructing, owning, or operating any waterworks or sanitary sewerage system, or both, in this state shall have the right, power, privilege, and authority to lease, purchase, or condemn property or any interest therein, including easements, or to receive donations or grants of property or any interest therein, including easements, for the purpose of constructing and operating a waterworks, a water distribution system, a sewerage collection system, or a sewage treatment and disposal system, or any combination of such systems or facilities; provided, however, that prior to condemning property in any political subdivision, any such entity shall first obtain the consent of the governing authority of such political subdivision after the requirements of Code Section 22-1-10 have been satisfied. Consent shall be granted by resolution or ordinance."

"22-3-63.

Any other provision of law to the contrary notwithstanding, any nongovernmental entity which:

(1) Is privately owned and is operated under the collective management and control of the owners;

(2) Was in the business of providing water supply and sewerage collection and disposal prior to July 1, 1978;

(3) Has continuously owned a sanitary sewerage system since July 1, 1978, permitted by the Environmental Protection Division of the Department of Natural Resources; and

(4) On May 1, 2000, owns and operates one or more sewerage collection treatment and disposal systems serving 1,000 or more customers shall have the authority to condemn property or any interest therein, including easements, for the purpose of constructing and operating a waterworks, a water distribution system, a sewerage collection system, or a sewage treatment and disposal system, or any combination of such systems or facilities; provided, however, that such authority shall obtain the consent of the governing authority of the county or municipality that controls the land sought to be condemned in accordance with Code Section 22-3-60. The authority granted by this Code section shall extend only to such counties and those counties immediately adjacent to such counties in which such entity owned or operated such waterworks or systems or combination as of January 1, 2000; and provided, further, that the authority provided for in this Code section shall terminate with respect to any entity if any interest in such business is transferred to another person or entity except through inheritance."

SECTION 17.

Said title is further amended by striking Code Section 22-4-3, relating to the applicability of Code Section 22-1-1, and inserting in its place a new Code section to read as follows:

"22-4-3.

The definitions contained in paragraphs (6) and (8) of Code Section 22-1-1 shall not apply to this chapter."

SECTION 18.

Title 23 of the Official Code of Georgia Annotated, relating to equity, is amended by adding a new Code section to read as follows:

"23-3-73.

All municipalities, counties, and housing authorities shall have standing pursuant to this article."

SECTION 19.

Title 36 of the Official Code of Georgia Annotated, relating to local government, is amended by striking subsection (b) of Code Section 36-42-8, relating to the powers of downtown development authorities generally, and inserting a new subsection (b) to read as follows:

"(b) The powers enumerated in each paragraph of subsection (a) of this Code section are cumulative of and in addition to those powers enumerated in the other paragraphs of subsection (a) of this Code section and elsewhere in this chapter; and no such power limits or restricts any other power of the authority except that, notwithstanding any other provision of this chapter, no authority described in this chapter shall be granted the power of eminent domain."

SECTION 20.

Said title is further amended by repealing Code Section 36-42-8.1, relating to the use of the power of eminent domain by a municipality or downtown development authority.

SECTION 21.

Said title is further amended by repealing subsection (c) of Code Section 36-44-6, relating to a redevelopment agency's ability to delegate the power of eminent domain, which reads as follows:

"(c) A downtown development authority which has been designated as a redevelopment agency pursuant to this chapter may exercise the

powers of eminent domain subject to the procedures established in Chapter 42 of this title."

SECTION 22.

Said title is further amended in Chapter 61, the "Urban Redevelopment Law," by adding after Code Section 36-61-3 a new Code Section 36-61-3.1 to read as follows:

"36-61-3.1.

(a) As used in this Code section, the term 'public use' shall have the meaning specified in Code Section 22-1-1.

(b) Any exercise of the power of eminent domain under this chapter must:

(1) Be for a public use; and

(2) Be approved by resolution of the governing body of the municipality or county in conformity with the procedures specified in Code Section 22-1-10."

SECTION 23.

Said title is further amended by designating the existing text of Code Section 36-62-6, relating to the general powers of a development authority, as subsection (a) and by adding a new subsection, to be designated subsection (b), to read as follows:

"(b) This Code section shall not be construed as authorizing an authority as defined in this chapter to exercise the power of eminent domain."

SECTION 24.

Said title is further amended by striking paragraph (1) of subsection (a) of Code Section 36-82-62, relating to power as to undertakings and issuance of revenue bonds by government bodies, and inserting in its place a new paragraph (1) to read as follows:

"(1) To acquire, by gift, purchase, or the exercise of the right of eminent domain, and to construct, to reconstruct, to improve, to better, and to extend any undertaking wholly within or wholly outside the governmental body or partially within and partially outside the governmental body; and to acquire, by gift, purchase, or the exercise of the right of eminent domain, lands, easements, rights in lands, and water rights in connection therewith. For property located within a city, the extraterritorial exercise of eminent domain for redevelopment purposes shall be approved by resolution by the governing authority of the city. For property located in an unincorporated area of a county, the extraterritorial exercise of eminent domain for redevelopment purposes shall be approved by resolution by the governing authority of the county. Any such resolution shall be adopted under the procedures specified in Code Section 22-1-10 and shall specifically and conspicuously delineate each parcel to be affected. The requirement for approval by a governing authority under this Code section shall be in addition to any other approval required by Title 22;".

SECTION 25.

Except as provided in this section, this Act shall become effective upon its approval by the Governor or upon its becoming law without such approval and shall only apply to petitions for condemnation filed on or after that date. Sections 2, 3, 6, 12, 13, 17, and 22 and Code Sections 22-1-11, 22-1-12, 22-1-13, and 22-1-14 as enacted by Section 5 of this Act shall apply to those condemnation proceedings filed on or after February 9, 2006, where title has not vested in the condemning authority unless constitutionally prohibited.

SECTION 26.

All laws and parts of laws in conflict with this Act are repealed.

Bibliography of Key State Cases

Allright Auto Parks, Inc. v. Atlanta

257 Ga. 315 (Ga. 1987)

Nations v. Downtown Dev. Authority

338 S.E.2d 240 (Ga. 1985)

Hawaii

Constitutional Takings Language

Haw. CONST. art. I, § 20: Private property shall not be taken or damaged for public use without just compensation.

Statutory Definition of Public Use

No provision found.

Statutory Definition of Blight

Haw. Rev. Stat. §53-1 (2004). "Blighted area" means an area (including a slum area), whether it is improved or unimproved, in which conditions such as: the dilapidation, deterioration, age, or obsolescence of the buildings or improvements thereon; inadequate ventilation, light, sanitation, or open spaces, or other insanitary or unsafe conditions; high density of population and overcrowding; defective or inadequate street layout; faulty lot layout in relation to size, adequacy, accessibility, or usefulness; diversity of ownership; tax or special assessment delinquency exceeding the fair value of the land; defective or unusual conditions of title; improper subdivision or obsolete platting; existence of conditions which endanger life or property by fire or other causes; or any combination of these factors or conditions predominate, thus making the area an economic or social liability, or conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime, or otherwise detrimental to the public health, safety, morals, and welfare.

New Eminent Domain Legislation

No final legislation as of 5/5/06.

Bibliography of Key State Cases

Hawaii Housing Authority v. Midkiff

467 U.S. 229 (1984)

Idaho

Constitutional Takings Language

Idaho. CONST. art. I, § 14: The necessary use of lands for the construction of reservoirs or storage basins, for the purpose of irrigation, or for rights of way for the construction of canals, ditches, flumes or pipes, to convey water to the place of use for any useful, beneficial or necessary purpose, or for drainage; or for the drainage of mines, or the working thereof, by means of roads, railroads, tramways, cuts, tunnels, shafts, hoisting works, dumps, or other necessary means to their complete development, or any other use necessary to the complete development of the material resources of the state, or the preservation of the health of its inhabitants, is hereby declared to be a public use, and subject to the regulation and control of the state. Private property may be taken for public use, but not until a just compensation, to be ascertained in the manner prescribed by law, shall be paid therefor.

Idaho. CONST. art. I, § 8: The right of eminent domain shall never be abridged, nor so construed as to prevent the legislature from taking the property and franchises of incorporated companies, and subjecting them to public use, the same as the property of individuals; and the police powers of the state shall never be abridged or so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals, or the general well being of the state.

Statutory Definition of Public Use

Idaho Code §7-701. USES FOR WHICH AUTHORIZED. Subject to the provisions of this chapter, the right of eminent domain may be exercised in behalf of the

following public uses:

1. Public buildings and grounds for the use of the state, and all other public uses authorized by the legislature.
2. Public buildings and grounds for the use of any county, incorporated city or school district; canals, aqueducts, flumes, ditches or pipes for conducting water for use on state property or for the use of the inhabitants of any county or incorporated city, or for draining state property for any county or incorporated city, raising the banks of streams, removing obstructions therefrom and widening, deepening or straightening their channels, roads, streets, alleys, and all other public uses for the benefit of the state or of any county, incorporated city or the inhabitants thereof.
3. Wharves, docks, piers, chutes, booms, ferries, bridges, toll roads, byroads, plank and turnpike roads, steam, electric and horse railroads, reservoirs, canals, ditches, flumes, aqueducts and pipes, for public transportation supplying mines and farming neighborhoods with water, and draining and reclaiming lands, and for storing and floating logs and lumber on streams not navigable.
4. Roads, tunnels, ditches, flumes, pipes and dumping places for working mines; also outlets, natural or otherwise, for the flow, deposit or conduct of tailings or refuse matter from mines; also, an occupancy in common by the owners or possessors of different mines of any place for the flow, deposit or conduct of tailings or refuse matter from their several mines.
5. Byroads, leading from highways to residences and farms.
6. Telephones, telegraph and telephone lines.
7. Sewerage of any incorporated city.
8. Cemeteries for the burial of the dead, and enlarging and adding to the same and the grounds thereof.
9. Pipe lines for the transmission, delivery, furnishing or distribution of natural or manufactured gas for light, heat or power, or for the transportation of crude petroleum or petroleum products; also for tanks, reservoirs, storage, terminal and pumping facilities, telephone, telegraph and power lines necessarily incident to such pipe lines.
10. Snow fences or barriers for the protection of highways from drifting snow.
11. Electric distribution and transmission lines for the delivery, furnishing, distribution, and transmission of electric current for power, lighting, heating or other purposes; and structures, facilities and equipment for the production, generation, and manufacture of electric current for power, lighting, heating or other purposes.

Statutory Definition of Blight

Idaho Code §50-2018 (2005). (h) "Deteriorated area" shall mean an area in which there is a predominance of buildings or improvements, whether residential or nonresidential, which by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime, and is detrimental to the public health, safety, morals or welfare.

(i) "Deteriorating area" shall mean an area which by reason of the presence of a substantial number of deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, insanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs or arrests the sound growth of a municipality, retards the provision of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals or welfare in its present condition and use; provided, that if such deteriorating area consists of open land the conditions contained in the proviso in section 50-2008(d), Idaho Code, shall apply; and provided further, that any disaster area referred to in section 50-2008(g), Idaho Code, shall constitute a deteriorating area.

New Eminent Domain Legislation HB 555, Signed 3/21/06

AN ACT RELATING TO EMINENT DOMAIN; AMENDING CHAPTER 7, TITLE 7, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 7-701A, IDAHO CODE, TO PROVIDE LIMITATIONS ON EMINENT DOMAIN FOR PRIVATE PARTIES, URBAN RENEWAL OR ECONOMIC DEVELOPMENT PURPOSES AND TO PROVIDE FOR REVIEW AT JUDICIAL PROCEEDINGS INVOLVING THE EXERCISE OF THE POWER OF EMINENT DOMAIN.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 7, Title 7, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 7-701A, Idaho Code, and to read as follows:

7-701A. LIMITATION ON EMINENT DOMAIN FOR PRIVATE PARTIES, URBAN RENEWAL OR ECONOMIC DEVELOPMENT PURPOSES.

(1) This section limits and restricts the use of eminent domain under the laws of this state or local ordinance by the state of Idaho, its instrumentalities, political subdivisions, public agencies, or bodies corporate and politic of the state to condemn any interest in property in order to convey the condemned interest to a private interest or person as provided herein.

(2) Eminent domain shall not be used to acquire private property:

(a) For any alleged public use which is merely a pretext for the transfer of the condemned property or any interest in that property to a private party; or

(b) For the purpose of promoting or effectuating economic development; provided however, that nothing herein shall affect the exercise of eminent domain:

(i) Pursuant to chapter 15, title 70, Idaho Code, and title 42, Idaho Code; or

(ii) Pursuant to chapters 19, 20 or 29, title 50, Idaho Code, except that no private property shall be taken through exercise of eminent domain within the area of operation of a housing authority or within

an urban renewal area or within a deteriorated or deteriorating area or within a competitively disadvantaged border community area unless the specific property to be condemned is proven by clear and convincing evidence to be in such condition that it meets all of the requirements:

1. The property, due to general dilapidation, compromised structural integrity, or failed mechanical systems, endangers life or endangers property by fire or by other perils that pose

an actual identifiable threat to building occupants; and

2. The property contains specifically identifiable conditions that pose an actual risk to human health, transmission of disease, juvenile delinquency or criminal content; and

3. The property presents an actual risk of harm to the public health, safety, morals or general welfare;

or

(iii) For those public and private uses for which eminent domain is

expressly provided in the constitution of the state of Idaho.

(3) This section shall not affect the authority of a governmental entity to condemn a leasehold estate on property owned by the governmental entity.

(4) The rationale for condemnation by the governmental entity proposing to condemn property shall be freely reviewable in the course of judicial proceedings involving exercise of the power of eminent domain.

Bibliography of Key State Cases

No cases found.

Illinois

Constitutional Takings Language

Ill. CONST. art. 1, § 15. Private property shall not be taken or damaged for public use without just compensation as provided by law. Such compensation shall be determined by a jury as provided by law.

Statutory Definition of Public Use

No provision found.

Statutory Definition of Blight

315 Ill. Comp. Stat. Ann. §5/3 (2005). (j) "Slum and Blighted Area" means any area of not less in the aggregate than two (2) acres located within the territorial limits of a municipality where buildings or improvements, by reason of dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light and sanitary facilities, excessive land coverage, deleterious land use or layout or any combination of these factors, are detrimental to the public safety, health, morals or welfare.

New Eminent Domain Legislation

No final legislation as of 5/5/06.

Bibliography of Key State Cases

Southwestern Illinois Development Authority v. National City Environmental, LLC
768 N.E.2d 1 (Ill. 2002)

Village of Wheeling v. Exchange National Bank
572 N.E.2d 966 (Ill.App. 1991)

People ex rel. Tuohy v. City of Chicago
68 N.E.2d 761 (Ill. 1946)

Indiana

Constitutional Takings Language

Ind. CONST. art. I, § 21: No person's particular services shall be demanded, without just compensation. No person's property shall be taken by law, without just compensation; nor, except in case of the State, without such compensation first assessed and tendered.

Statutory Definition of Public Use

No provision found.

Statutory Definition of Blight

Ind. Code Ann. § 36-7-1-3 (Michie 2004). "Blighted area" means an area in which normal development and occupancy are undesirable or impossible because of: (1) Lack of development; (2) Cessation of growth; (3) Deterioration of improvements; (4) Character of occupancy; (5) Age; (6) Obsolescence; (7) Substandard buildings; or (8) Other factors that impair values or prevent a normal use or development of property.

***New Eminent Domain Legislation* HB 1010, Signed 3/24/06**

AN ACT to amend the Indiana Code concerning property.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 22-13-2-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1.5. A state agency or political subdivision may not require that a lawfully erected sign be removed or altered as a condition of issuing:

- (1) a permit;
- (2) a license;
- (3) a variance; or
- (4) any other order concerning land use or development;

unless the owner of the sign is compensated in accordance with IC 32-24 or has waived the right to and receipt of damages in writing.

SECTION 2. IC 23-14-60-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) If:

- (1) any number of persons have:
 - (A) acted together as an association or corporation;
 - (B) acquired, as an association or corporation, land for cemetery purposes;
 - (C) sold and granted to persons the right to bury the dead in lots located on the land; and
 - (D) actually managed and controlled the land as a cemetery for at least thirty (30) years; but
 - (2) the organization that the persons attempted to establish as a corporation or cemetery association is defective and incomplete because of a failure to comply with the formalities required by law in force at some time since the original parties first assumed to act as an association or corporation;
- the owners of the right to bury the dead on lots in the cemetery and those who may acquire the right become and continue to be a cemetery association or corporation from March 14, 1913.
- (b) The owners of the right to bury the dead on lots in a cemetery referred to in subsection (a) have all the rights and powers of a cemetery association or corporation organized under this article, IC 23-1, or IC 23-17.

SECTION 3. IC 23-14-75-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. This chapter applies to a city, town, or township that:

- (1) owns a cemetery that has been in existence for at least thirty (30) years; or
- (2) desires to own a public cemetery.

SECTION 4. IC 23-14-75-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. If land has not been appropriated or set apart by the owners by platting for a public cemetery and it is necessary to purchase real estate for the cemetery:

- (1) the legislative body of the city or town; or
- (2) the executive of the township;

has the power of eminent domain to condemn and appropriate the land for cemetery purposes under proceedings provided by statute.

SECTION 5. IC 32-24-1-3 IS AMENDED TO READ AS

FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) Any person that may exercise the power of eminent domain for any public use under any statute may exercise the power only in the manner provided in this article, except as otherwise provided by law.

(b) Before proceeding to condemn, the person:

- (1) may enter upon any land to examine and survey the property sought to be acquired; and
- (2) must make an effort to purchase for the use intended the land, right-of-way, easement, or other interest, in the property.

(c) The effort to purchase under subsection (b)(2) must include the following:

- (1) Establishing a proposed purchase price for the property.
- (2) Providing the owner of the property with an appraisal or other evidence used to establish the proposed purchase price.
- (3) Conducting good faith negotiations with the owner of the property.

(c) (d) If the land or interest in the land, or property or right is owned by a person who is an incapacitated person (as defined in IC 29-3-1-7.5) or less than eighteen (18) years of age, the person seeking to acquire the property may purchase the property from the guardian of the incapacitated person or person less than eighteen (18) years of age. If the purchase is approved by the court appointing the guardian and the approval is written upon the face of the deed, the conveyance of the property purchased and the deed made and approved by the court are valid and binding upon the incapacitated person or persons less than eighteen (18) years of age.

BY:

(signature)

(printed name and title)

Agent of: _____

(condemnor)

If you decide to accept the offer of \$ _____ made by _____ (condemnor) sign your name below and mail this form to the address indicated above. An additional copy of this offer has been provided for your file.

ACCEPTANCE OF OFFER

I (We), _____, _____, _____, owner(s) of the above described property or interest in property, hereby accept the offer of \$ _____ made by _____ (condemnor) on this _____ day of _____, 20____.

NOTARY'S CERTIFICATE

STATE OF _____)

Notary Public

COUNTY OF _____)

Subscribed and sworn to before me this _____ day of _____, 20____.

My Commission Expires: _____

(Signature)

(Printed) NOTARY PUBLIC

(d) If the condemnor has a compelling need to enter upon property to restore utility or transportation services interrupted by disaster or unforeseeable events, the provisions of subsections (a), (b), and (c) do not apply for the purpose of restoration of utility or transportation services interrupted by the disaster or unforeseeable events. However, the condemnor shall be responsible to the property owner for all damages occasioned by the entry, and the condemnor shall immediately vacate the property entered upon as soon as utility or transportation services interrupted by the disaster or unforeseeable event have been restored.

SECTION 7. IC 32-24-1-5.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5.5. (a) Except as provided in sections 5.8 and 5.9 of this chapter, this section applies to every person that may exercise the power of eminent domain.

- (b) If:
 - (1) a person that may exercise the power of eminent domain submits a written acquisition offer to the owner of a parcel of real estate under section 5 of this chapter; and
 - (2) the owner rejects the offer;
 the person shall file a complaint under this article to acquire the parcel by the exercise of eminent domain not more than two (2) years after the date the person submitted the written acquisition offer to the owner.
- (c) If a person that may exercise the power of eminent domain fails to meet the requirements described in subsection (b) concerning a parcel of real estate, the person may not initiate an action under this article to acquire the parcel through the power of eminent domain for the same project or a substantially similar project for at least three (3) years after the date the two (2) year period described in subsection (b) expires.

SECTION 8. IC 32-24-1-5.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5.8. (a) This section applies only to:

- (1) the Indiana department of transportation when the department seeks to acquire a parcel of land or a property right for the construction, reconstruction, improvement, maintenance, or repair of a:
 - (A) state highway; or
 - (B) toll road project or toll bridge; and
- (2) any other person that may exercise the power of eminent domain when the person seeks to acquire a parcel of land or a property right for the construction, reconstruction, improvement, maintenance, or repair of a feeder road for an Indiana department of transportation project described in subdivision (1) if the construction, reconstruction, improvement, maintenance, or repair of the feeder road begins not later than five (5) years from the conclusion of the project.

- (b) If:
 - (1) the Indiana department of transportation or other person described in subsection (a)(2) submits a written acquisition offer to the owner of a parcel of real estate under section 5 of this chapter; and
 - (2) the owner rejects the offer;
 the department or other person shall file a complaint under this article to acquire the parcel by the exercise of eminent domain not more than six (6) years after the date the department or other person submitted the written acquisition offer to the owner.

(c) If the Indiana department of transportation or other person fails to meet the requirements described in subsection (b) concerning a parcel of real estate, the department or other person may not initiate an action under this article to acquire the parcel through the power of eminent domain for the same or a substantially similar project for at least three (3) years after the date the six (6) year period described in subsection (b) expires.

SECTION 9. IC 32-24-1-5.9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5.9. (a) As used in this section, "public utility" means a public utility, municipally owned utility, cooperatively owned utility, joint agency created under IC 8-1-2.2, municipal sanitation department operating under IC 36-9-23, sanitary district operating under IC 36-9-25, or an agency operating as a stormwater utility.

(b) This section applies only to a public utility or pipeline company.

(c) If:

(1) a public utility or pipeline company submits a written acquisition offer to the owner of a parcel of real estate under section 5 of this chapter; and

(2) the owner rejects the offer in writing;

the public utility or pipeline company, to acquire the parcel by the exercise of eminent domain, must file a complaint under this article not more than six (6) years after the date on which the public utility or pipeline company submitted the written acquisition offer to the owner.

(d) If a public utility or pipeline company fails to meet the requirements set forth in subsection (c) concerning a parcel of real estate, the public utility or pipeline company may not initiate an action under this article to acquire the parcel through the power of eminent domain for the same project or a substantially similar project for at least two (2) years after the date on which the six (6) year period described in subsection (c) expires.

SECTION 10. IC 32-24-1-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. (a) A defendant may object to the proceedings:

(1) because the court does not have jurisdiction either of the subject matter or of the person;

(2) because the plaintiff does not have the right to exercise the power of eminent domain for the use sought; or

(3) for any other reason disclosed in the complaint or set up in the objections.

(b) Objections under subsection (a) must be:

(1) in writing;

(2) separately stated and numbered; and

(3) filed not later than thirty (30) days after the date the notice required in section 6 of this chapter is served on the defendant. However, the court may extend the period for filing objections by not more than thirty (30) days upon written motion of the defendant.

(c) The court may not allow pleadings in the cause other than the complaint, any objections, and the written exceptions provided for in section 11 of this chapter. However, the court may permit amendments to the pleadings.

(d) If an objection is sustained, the plaintiff may amend the complaint or may appeal from the decision in the manner that appeals are taken from final judgments in civil actions. All the parties shall take notice and are bound by the judgment in an appeal.

(e) If the objections are overruled, the court shall appoint appraisers as provided for in this chapter. Any defendant may appeal the interlocutory order overruling the objections and appointing appraisers in the manner that appeals are taken from final judgments in civil actions upon filing with the circuit court clerk a bond:

(1) with the penalty that the court fixes;

(2) with sufficient surety;

(3) payable to the plaintiff; and

(4) conditioned for the diligent prosecution of the appeal and for the payment of the judgment and costs that may be affirmed and adjudged against the appellants.

The appeal bond must be filed not later than ten (10) days after the appointment of the appraisers.

(f) All the parties shall take notice of and be bound by the judgment in the appeal.

(g) The transcript must be filed in the office of the clerk of the supreme court not later than thirty (30) days after the filing of the appeal bond. The appeal does not stay proceedings in the cause.

SECTION 11. IC 32-24-1-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 12. (a) Not later than forty-five (45) days before a trial involving the issue of damages, the plaintiff shall, and a defendant may, file and serve on the other party an offer of settlement. Not more than five (5) days after the date offer of settlement is served, the party served may respond by filing and serving upon the other party an acceptance or a counter offer of settlement. The offer must state that it is made under this section and specify the amount, exclusive of interest and costs, that the party serving the offer is willing to accept as just compensation and damages for the property sought to be acquired. The offer or counter offer supersedes any other offer previously made under this chapter by the party.

(b) An offer of settlement is considered rejected unless an acceptance in writing is filed and served on the party making the offer before the trial on the issue of the amount of damages begins.

(c) If the offer is rejected, it may not be referred to for any purpose at the trial but may be considered solely for the purpose of awarding costs and litigation expenses under section 14 of this chapter.

(d) This section does not limit or restrict the right of a defendant to payment of any amounts authorized by law in addition to damages for the property taken from the defendant.

(e) This section does not apply to an action brought under IC 8-1-13-19 (repealed).

SECTION 12. IC 32-24-1-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 14. (a) Except as provided in subsection (b), the plaintiff shall pay the costs of the proceedings.

(b) If there is a trial, the additional costs caused by the trial shall be paid as ordered by the court. However, if there is a trial and the amount of damages awarded to the defendant by the judgment, exclusive of interest and costs, is greater than the amount specified in the last offer of settlement made by the plaintiff under section 12 of this chapter, the court shall allow the defendant the defendant's litigation expenses, including reasonable attorney's fees, in an amount not to exceed the lesser of:

(1) twenty-five thousand dollars (\$25,000); or

(2) the fair market value of the defendant's property or easement as determined under this chapter.

SECTION 13. IC 32-24-1-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 15. (a) If the person seeking to take property under this article fails:

(1) to pay the assessed damages and, if applicable, the attorney's fees payable under section 14 of this chapter not later than one (1) year after the appraisers' report is filed, if exceptions are not filed to the report;

(2) to pay:

(A) the damages assessed and, if applicable, attorney's fees payable under section 14 of this chapter if exceptions are filed to the appraisers' report and the exceptions are not sustained; or

(B) the damages assessed and, if applicable, attorney's fees payable under section 14 of this chapter and costs if exceptions are filed to the appraisers' report and the exceptions are sustained;

not later than one (1) year after the entry of the judgment, if an appeal is not taken from the judgment;

(3) to pay the damages assessed and, if applicable, attorney's fees payable under section 14 of this chapter or the judgment rendered in

the trial court not later than one (1) year after final judgment is entered in the appeal if an appeal is taken from the judgment of the trial court; or

(4) to take possession of the property and adapt the property for the purpose for which it was acquired not later than six (6) years after the payment of the award or judgment for damages, except where a fee simple interest in the property is authorized to be acquired and is acquired;

the person seeking to acquire the property forfeits all rights in the property as fully and completely as if the procedure to take the property had not begun.

(b) An action to declare a forfeiture under this section may be brought by any person having an interest in the property sought to be acquired, or the question of the forfeiture may be raised and determined by direct allegation in any subsequent proceedings, by any other person to acquire the property for a public use. In the subsequent proceedings the person seeking the previous acquisition or the person's proper representatives, successors, or assigns shall be made parties.

SECTION 14. IC 32-24-2-17 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 17. If applicable, a landowner who incurs attorney's fees through the exercise of eminent domain under this chapter is entitled to reasonable attorney's fees in accordance with IC 32-24-1-14.

SECTION 15. IC 32-24-3-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) After the appraisers file their report, any of the defendants may, within a reasonable time fixed by the court, file exceptions to the report, alleging that the appraisal of the property, as made by the appraisers, is not the true cash value of the property. If exceptions are filed, a trial on the exceptions shall be held by the court or before a jury, if asked by either party.

(b) The circuit court clerk shall give notice of filing of the appraisers' report to all known parties to the action and their attorneys of record by certified mail.

(c) Upon the trial of the exceptions, the court may revise, correct, amend, or confirm the appraisal in accordance with the finding of the court or verdict of the jury.

(d) The court shall apportion the costs accruing in the proceedings as justice may require. However, if applicable, a landowner who incurs attorney's fees through the exercise of eminent domain under this chapter is entitled to reasonable attorney's fees in accordance with IC 32-24-1-14.

(e) Changes of venue may be had as in other cases.

SECTION 16. IC 32-24-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) A person, firm, partnership, limited liability company, or corporation authorized to do business in Indiana and authorized to:

(1) furnish, supply, transmit, transport or distribute electrical energy, gas, oil, petroleum, water, heat, steam, hydraulic power, or communications by telegraph or telephone to the public or to any town or city; or

(2) construct, maintain or operate turnpikes, toll bridges, canals, public landings, wharves, ferries, dams, aqueducts, street railways, or interurban railways for the use of the public or for the use of any town or city;

may take, acquire, condemn, and appropriate land, real estate, or any interest in the land or real estate to accomplish the essential delivery of services described in subdivisions (1) and (2).

(b) A person described in subsection (a) has all accommodations, rights, and privileges necessary to accomplish the use for which the property is taken. A person acting under subsection (a) may use acquired, condemned, or appropriated land to construct railroad siding, switch, or industrial tracks connecting its plant or facilities with the tracks of any common carrier.

SECTION 17. IC 32-24-4.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 4.5. Procedures for Transferring Ownership or Control of Real Property Between Private Persons

Sec. 1. (a) As used in this section, "public use" means the:

(1) possession, occupation, and enjoyment of a parcel of real property by the general public or a public agency for the purpose of providing the general public with fundamental services, including the construction, maintenance, and reconstruction of highways, bridges, airports, ports, certified technology parks, intermodal facilities, and parks;

(2) leasing of a highway, bridge, airport, port, certified technology park, intermodal facility, or park by a public agency that retains ownership of the parcel by written lease with right of forfeiture; or

(3) use of a parcel of real property to create or operate a public utility, an energy utility (as defined in IC 8-1-2.5-2), or a pipeline company. The term does not include the public benefit of economic development, including an increase in a tax base, tax revenues, employment, or general economic health.

(b) This chapter applies to a condemnor that exercises the power of eminent domain to acquire a parcel of real property:

(1) from a private person;

(2) with the intent of ultimately transferring ownership or control to another private person; and

(3) for a use that is not a public use.

(c) This chapter does not apply thirty (30) years after the acquisition of the real property.

Sec. 2. As used in this chapter, "condemnor" means a person authorized to exercise the power of eminent domain.

Sec. 3. As used in this chapter, "parcel of real property" means real property that:

(1) is under common ownership; and

(2) a condemnor is seeking to acquire.

Sec. 4. As used in this chapter, "private person" means a person other than a public agency.

Sec. 5. (a) As used in this chapter, "public agency" means:

(1) a state agency (as defined in IC 4-13-1-1);

(2) a unit (as defined in IC 36-1-2-23);

(3) a body corporate and politic created by state statute;

(4) a school corporation (as defined in IC 20-26-2-4); or

(5) another governmental unit or district with eminent domain powers.

(b) The term does not include a state educational institution (as defined in IC 20-12-0.5-1).

Sec. 6. As used in this chapter, "relocation costs" means relocation expenses payable in accordance with the federal Uniform Relocation

Assistance Act (42 U.S.C. 4601 through 42 U.S.C. 4655).

Sec. 7. A condemnor may acquire a parcel of real property by the exercise of eminent domain under this chapter only if all the following conditions are met:

(1) At least one (1) of the following conditions exists on the parcel of real property:

(A) The parcel contains a structure that, because of:

- (i) physical condition;
 - (ii) use; or
 - (iii) occupancy;
- constitutes a public nuisance.

(B) The parcel contains a structure that is unfit for human habitation or use because the structure:

- (i) is dilapidated;
- (ii) is unsanitary;
- (iii) is unsafe;
- (iv) is vermin infested; or
- (v) does not contain the facilities or equipment required by applicable building codes or housing codes.

(C) The parcel contains a structure that is:

- (i) a fire hazard; or
- (ii) otherwise dangerous to the safety of persons or property.

(D) The parcel contains a structure that is not fit for its intended use because:

- (i) the utilities;
 - (ii) the sewerage;
 - (iii) the plumbing;
 - (iv) the heating; or
 - (v) any other similar services or facilities;
- have been disconnected, destroyed, removed, or rendered ineffective.

(E) The parcel:

- (i) is located in a substantially developed neighborhood;
- (ii) is vacant or unimproved; and
- (iii) because of neglect or lack of maintenance, has become a place for the accumulation of trash, garbage, or other debris or become infested by rodents or other vermin, and the neglect or lack of maintenance has not been corrected by the owner of the parcel within a reasonable time after the owner receives notice of the accumulation or infestation.

(F) The parcel and any improvements on the parcel are the subject of tax delinquencies that exceed the assessed value of the parcel and its improvements.

(G) The parcel poses a threat to public health or safety because the parcel contains environmental contamination.

(H) The parcel has been abandoned.

(2) The acquisition of the parcel of real property through the exercise of eminent domain is expected to accomplish more than only increasing the property tax base of a government entity.

(3) If the owner files a request for mediation at the time the owner files an objection or exception to an eminent domain proceeding, the mediation occurs as follows:

(A) The court shall appoint a mediator not later than ten (10) days after the request for mediation is filed.

(B) The condemnor shall engage in good faith mediation with the owner, including the consideration of a reasonable alternative to the exercise of eminent domain.

(C) The mediation must be concluded not later than ninety (90) days after the appointment of the mediator.

(D) The condemnor shall pay the costs of the mediator.

A determination concerning whether a condition described in this section has been met is subject to judicial review in an eminent domain proceeding concerning the parcel of real property. If a court determines that an eminent domain proceeding brought under this chapter is unauthorized because the condemnor did not meet the conditions described in this section, the court shall order the condemnor to reimburse the owner for the owner's reasonable attorney's fees that the court finds were necessary to defend the action.

Sec. 8. Notwithstanding IC 32-24-1, a condemnor that acquires a parcel of real property through the exercise of eminent domain under this chapter shall compensate the owner of the parcel as follows:

(1) For agricultural land:

(A) either:

(i) payment to the owner equal to one hundred twenty-five percent (125%) of the fair market value of the parcel as determined under IC 32-24-1; or

(ii) upon the request of the owner and if the owner and condemnor both agree, transfer to the owner of an ownership interest in agricultural land that is equal in acreage to the parcel acquired through the exercise of eminent domain;

(B) payment of any other damages determined under IC 32-24-1 and any loss incurred in a trade or business that is attributable to the exercise of eminent domain; and

(C) payment of the owner's relocation costs, if any.

(2) For a parcel of real property occupied by the owner as a residence:

(A) payment to the owner equal to one hundred fifty percent (150%) of the fair market value of the parcel as determined under IC 32-24-1;

(B) payment of any other damages determined under IC 32-24-1 and any loss incurred in a trade or business that is attributable to the exercise of eminent domain; and

(C) payment of the owner's relocation costs, if any.

(3) For a parcel of real property not described in subdivision (1) or (2):

(A) payment to the owner equal to one hundred percent (100%) of the fair market value of the parcel as determined under IC 32-24-1;

(B) payment of any other damages determined under IC 32-24-1 and any loss incurred in a trade or business that is attributable to the exercise of eminent domain; and

(C) payment of the owner's relocation costs, if any.

Sec. 9. (a) Not later than forty-five (45) days before a trial involving the issue of compensation, the condemnor shall, and an owner may, file and serve on the other party an offer of settlement. Not more than five (5) days after the date the offer of settlement is served, the party served may respond by filing and serving upon the other party an acceptance or a counter offer of settlement. The offer must state that it is

made under this section and specify the amount, exclusive of interest and costs, that the party serving the offer is willing to accept as just compensation and damages for the property sought to be acquired. The offer or counter offer supersedes any other offer previously made under this chapter by the party.

(b) An offer of settlement is considered rejected unless an acceptance in writing is filed and served on the party making the offer before the trial on the issue of the amount of damages begins.

(c) If the offer is rejected, it may not be referred to for any purpose at the trial but may be considered solely for the purpose of awarding costs and litigation expenses under section 10 of this chapter.

(d) This section does not limit or restrict the right of an owner to payment of any amounts authorized by law in addition to damages for the property taken from the owner.

Sec. 10. (a) Except as provided in subsection (b), the condemnor shall pay the costs of the proceedings.

(b) If there is a trial, the additional costs caused by the trial shall be paid as ordered by the court. However, if there is a trial and the amount of damages awarded to the owner by the judgment, exclusive of interest and costs, is greater than the amount specified in the last offer of settlement made by the condemnor under section 9 of this chapter, the court shall require the condemnor to pay the owner's litigation expenses, including reasonable attorney's fees, in an amount that does not exceed twenty-five percent (25%) of the cost of the acquisition.

Sec. 11. (a) This section applies to a parcel of real property located in a project area:

(1) that is located in only one (1) county;

(2) that is at least ten (10) acres in size; and

(3) in which a condemnor or its agents has acquired clear title to at least ninety percent (90%) of the parcels in the project area.

(b) As used in this section, "project area" means an area designated by a condemnor and the legislative body for the condemnor for economic development.

(c) Notwithstanding sections 7 and 8 of this chapter, a condemnor may acquire a parcel of real property by the exercise of eminent domain under this section only if all of the following conditions are met:

(1) The parcel of real property is not occupied by the owner of the parcel as a residence.

(2) The legislative body for the condemnor adopts a resolution by a two-thirds (2/3) vote that authorizes the condemnor to exercise eminent domain over a particular parcel of real property.

(d) A condemnor that acquires a parcel of real property through the exercise of eminent domain under this section shall compensate the owner of the parcel as follows:

(1) Payment to the owner equal to one hundred twenty five percent (125%) of the fair market value of the parcel as determined under IC 32-24-1.

(2) Payment of any other damages as determined under IC 32-24-1 and any loss incurred in a trade or business that is attributable to the exercise of eminent domain.

(3) Payment of the owner's relocation costs, if any.

(e) The condemnor may not acquire a parcel of real property through the exercise of eminent domain under this section if the owner of the parcel demonstrates by clear and convincing evidence that:

(1) the location of the parcel is essential to the viability of the owner's commercial activity; and

(2) the payment of damages and relocation costs cannot adequately compensate the owner of the parcel.

(f) The court shall award the payment of reasonable attorney's fees to the owner of a parcel in accordance with this chapter.

SECTION 18. IC 32-24-7 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 7. Procedure for Libraries

Sec. 1. This chapter applies to the exercise of eminent domain by a library board (as defined in IC 36-12-1-3). Notwithstanding any other law, a library board may exercise eminent domain only if it complies with this chapter.

Sec. 2. A library board may exercise eminent domain only if one (1) of the following legislative bodies adopts a resolution specifically authorizing the library board to exercise eminent domain over a particular parcel of land for a specific purpose:

(1) If the library district is located entirely within the corporate boundaries of a municipality, the legislative body of the municipality.

(2) If the library district:

(A) is not described by subdivision (1); and

(B) is located entirely within the boundaries of a township;

the legislative body of the township.

(3) If the library district is not described by subdivision (1) or (2), the legislative body of each county in which the library district is located.

Sec. 3. The resolution described in section 2 of this chapter must specifically describe:

(1) the parcel of land that the library board seeks to acquire by exercising eminent domain;

(2) the purpose for which the parcel of land is to be acquired; and

(3) why the exercise of eminent domain is necessary to accomplish the library board's purpose.

SECTION 19. IC 36-7-2-5.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5.5. A unit may not require that a lawfully erected sign be removed or altered as a condition of issuing:

(1) a permit;

(2) a license;

(3) a variance; or

(4) any other order concerning land use or development;

unless the owner of the sign is compensated in accordance with IC 32-24 or has waived the right to and receipt of damages in writing.

SECTION 20. IC 36-7-14-32.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 32.5. (a) The commission may acquire a parcel of real property by the exercise of eminent domain when the real property has all of the following characteristics:

(1) The real property meets at least one (1) of the conditions described in IC 32-24-4.5-7(1).

(2) The real property is capable of being developed or rehabilitated to provide affordable housing for low or moderate income families or to provide other development that will benefit or serve low or moderate income families.

(3) The condition of the real property has a negative impact on the use or value of the neighboring properties or other properties in the

community.

(b) The commission or the commission's designated hearing examiner shall conduct a public meeting to determine whether a parcel of real property has the characteristics set forth in subsection (a). Each person holding a fee or life estate interest of record in the property must be given notice by first class mail of the time and date of the hearing at least ten (10) days before the hearing and is entitled to present evidence and make arguments at the hearing.

(c) If the commission considers it necessary to acquire real property under this section, the commission shall adopt a resolution setting out the commission's determination to exercise that power and directing the commission's attorney to file a petition in the name of the city on behalf of the department in the circuit or superior court with jurisdiction in the county.

(d) Eminent domain proceedings under this section are governed by IC 32-24.

(e) The commission shall use real property acquired under this section for one (1) of the following purposes:

(1) Sale in an urban homestead program under IC 36-7-17.

(2) Sale to a family whose income is at or below the county's median income for families.

(3) Sale or grant to a neighborhood development corporation with a condition in the granting clause of the deed requiring the nonprofit development corporation to lease or sell the property to a family whose income is at or below the county's median income for families or to cause development that will serve or benefit families whose income is at or below the unit's median income for families.

(4) Any other purpose appropriate under this chapter so long as it will serve or benefit families whose income is at or below the unit's median income for families.

(f) A neighborhood development corporation or nonprofit corporation that receives property under this section must agree to rehabilitate or otherwise develop the property in a manner that is similar to and consistent with the use of the other properties in the area served by the corporation.

SECTION 21. IC 36-7-15.1-22.5, AS AMENDED BY P.L.185-2005, SECTION 37, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 22.5. (a) The commission may acquire a parcel of real property by the exercise of eminent domain when the following conditions exist:

(1) The real property meets at least one (1) of the conditions described in IC 32-24-4.5-7(1).

(2) The real property is capable of being developed or rehabilitated to provide affordable housing for low or moderate income families or to provide other development that will benefit or serve low or moderate income families.

(3) The real property suffers from one (1) or more of the conditions listed in IC 36-7-1-3, resulting in a negative impact on the use or value of the neighboring properties or other properties in the community.

(b) The commission or its designated hearing examiner shall conduct a public meeting to determine whether the conditions set forth in subsection (a) exist relative to a parcel of real property. Each person holding a fee or life estate interest of record in the property must be given notice by first class mail of the time and date of the hearing at least ten (10) days before the hearing, and is entitled to present evidence and make arguments at the hearing.

(c) If the commission considers it necessary to acquire real property under this section, it shall adopt a resolution setting out its determination to exercise that power and directing its attorney to file a petition in the name of the city on behalf of the department in the circuit or superior court in the county.

(d) Eminent domain proceedings under this section are governed by IC 32-24.

(e) The commission shall use real property acquired under this section for one (1) of the following purposes:

(1) Sale in an urban homestead program under IC 36-7-17.

(2) Sale to a family whose income is at or below the county's median income for families.

(3) Sale or grant to a neighborhood development corporation or other nonprofit corporation, with a condition in the granting clause of the deed requiring the nonprofit organization to lease or sell the property to a family whose income is at or below the county's median income for families or to cause development that will serve or benefit families whose income is at or below the county's median income for families. However, a nonprofit organization is eligible for a sale or grant under this subdivision only if the county fiscal body has determined that the nonprofit organization meets the criteria established under subsection (f).

(4) Any other purpose appropriate under this chapter so long as it will serve or benefit families whose income is at or below the county's median income for families.

(f) The county fiscal body shall establish criteria for determining the eligibility of neighborhood development corporations and other nonprofit corporations for sales and grants of real property under subsection (e)(3). A neighborhood development corporation or other nonprofit corporation may apply to the county fiscal body for a determination concerning the corporation's compliance with the criteria established under this subsection.

(g) A neighborhood development corporation or nonprofit corporation that receives property under this section must agree to rehabilitate or otherwise develop the property in a manner that is similar to and consistent with the use of the other properties in the area served by the corporation.

SECTION 22. An emergency is declared for this act.

Bibliography of Key State Cases

Daniels v. Area Plan Commission of Allen County

306 F.3d 445 (7th Cir. 2002)

Iowa

Constitutional Takings Language

Iowa CONST. art. I, § 18: Private property shall not be taken for public use without just compensation first being made, or secured to be made to the owner thereof, as soon as the damages shall be assessed by a jury, who shall not take into consideration any advantages that may result to said owner on account of the improvement for which it is taken.

The general assembly, however, may pass laws permitting the owners of lands to construct drains, ditches, and levees for agricultural, sanitary or mining purposes across the lands of others, and provide for the organization of drainage districts, vest the proper authorities with power to construct and maintain levees, drains and ditches and to keep in repair all drains, ditches, and levees heretofore constructed under the laws of the state, by special assessments upon the property benefited thereby. The general assembly may provide by law for the condemnation of such real estate as shall be necessary for the construction and maintenance of such drains, ditches and levees, and prescribe the method of making such condemnation.

Statutory Definition of Public Use

No provision found.

Statutory Definition of Blight

Iowa Code Ann. §403.17(5) (2004). "Blighted area" means an area of a municipality within which the local governing body of the municipality determines that the presence of a substantial number of slum, deteriorated, or deteriorating structures; defective or inadequate street layout; faulty lot layout in relation to size, adequacy, accessibility, or usefulness; insanitary or unsafe conditions; deterioration of site or other improvements; diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land; defective or unusual conditions of title; or the existence of conditions which endanger life or property by fire and other causes; or any combination of these factors; substantially impairs or arrests the sound growth of a municipality, retards the provision of housing accommodations, or constitutes an economic or social liability and is a menace to the public health, safety, or welfare in its present condition and use. A disaster area referred to in section 403.5, subsection 7, constitutes a "blighted area". "Blighted area" does not include real property assessed as agricultural property for purposes of property taxation.

New Eminent Domain Legislation

No final legislation as of 5/5/06.

Bibliography of Key State Cases

No cases found.

Kansas

Constitutional Takings Language

K.S.A. § 26-513, Same; compensation required for taking and damage; determination: (a) Necessity. Private property shall not be taken or damaged for public use without just compensation. (Remainder omitted)

Statutory Definition of Public Use

No provision found.

Statutory Definition of Blight

Kan. Stat. Ann. §12-1770a (2004). (c) "Blighted area" means an area which: (1) Because of the presence of a majority of the following factors, substantially impairs or arrests the development and growth of the municipality or constitutes an economic or social liability or is a menace to the public health, safety, morals or welfare in its present condition and use: (A) A substantial number of deteriorated or deteriorating structures; (B) predominance of defective or inadequate street layout; (C) unsanitary or unsafe conditions; (D) deterioration of site improvements; (E) tax or special assessment delinquency exceeding the fair market value of the real property; (F) defective or unusual conditions of title including but not limited to cloudy or defective titles, multiple or unknown ownership interests to the property; (G) improper subdivision or obsolete platting or land uses; (H) the existence of conditions which endanger life or property by fire or other causes; or (I) conditions which create economic obsolescence; or (2) has been identified by any state or federal environmental agency as being environmentally contaminated to an extent that requires a remedial investigation; feasibility study and remediation or other similar state or federal action; or (3) previously was found by resolution of the governing body to be a slum or a blighted area under K.S.A. 17-4742 et seq., and amendments thereto.

New Eminent Domain Legislation

No final legislation as of 5/5/06.

Bibliography of Key State Cases

State ex rel. Tomasic v. Unified Gov't of Wyandotte Co.

962 P.2d 543 (Kan. 1998)

General Building Contractors v. Board of Shawnee County Commissioners

66 P.3d 873 (Kan. 2003)

Kentucky

Constitutional Takings Language

Ky. CONST. pt. 1, § 13: No person shall, for the same offense, be twice put in jeopardy of his life or limb, nor shall any man's property be taken or applied to public use without the consent of his representatives, and without just compensation being previously made to him.

Statutory Definition of Public Use

No provision found.

Statutory Definition of Blight

Ky. Rev. Stat. Ann. § 99.340(2) (2004). "Blighted area" means an area (other than a slum area as defined in this section) where by reason of the predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility, or usefulness, submergency of lots by water or other unsanitary or unsafe conditions, deterioration of site improvements, diversity of ownership, tax delinquency, defective or unusual conditions of title, improper subdivision or obsolete platting, or any combination of such reasons, development of such blighted area (which may include some incidental buildings or improvements) into predominantly housing uses is being prevented.

***New Eminent Domain Legislation* HB 508, Signed 3/28/06**

AN ACT relating to eminent domain.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS 416.540 TO 416.680 IS CREATED TO READ AS FOLLOWS:

(1)Every grant of authority contained in the Kentucky Revised Statutes to exercise the power of eminent domain shall be subject to the condition that the authority be exercised only to effectuate a public use of the condemned property.

(2)Public use shall mean the following:

- (a)Ownership of the property by the Commonwealth, a political subdivision of the Commonwealth, or other governmental entity;
- (b)The possession, occupation, or enjoyment of the property as a matter of right by the Commonwealth, a political subdivision of the Commonwealth, or other governmental entity;
- (c)The acquisition and transfer of property for the purpose of eliminating blighted areas, slum areas, or substandard and insanitary areas in accordance with KRS Chapter 99;
- (d)The use of the property for the creation or operation of public utilities or common carriers; or
- (e)Other use of the property expressly authorized by statute.

(3)No provision in the law of the Commonwealth shall be construed to authorize the condemnation of private property for transfer to a private owner for the purpose of economic development that benefits the general public only indirectly, such as by increasing the tax base, tax revenues, employment, or by promoting the general economic health of the community. However, this provision shall not prohibit the sale or lease of property to private entities that occupy an incidental area within a public project or building, provided that no property may be condemned primarily for the purpose of facilitating an incidental private use.

(4)The exercise of the power of eminent domain for the acquisition of property financed by state road funds or federal highway funds shall be exempt from the provisions of this section.

Section 2. KRS 416.540 is amended to read as follows:

- (1)"Condemn" means to take private property for a public use under the right of eminent domain;
- (2)"Condemnor" shall mean and include any person, corporation or entity, including the Commonwealth of Kentucky, its agencies and departments, county, municipality and taxing district authorized and empowered by law to exercise the right of eminent domain;
- (3)"Condemnee" means the owner of the property interest being taken;
- (4)"Court" means the Circuit Court;
- (5)"Property" means real or personal property, or both, of any nature or kind that is subject to condemnation;
- (6)"Eminent domain" means the right of the Commonwealth to take for a public use and shall include the right of private persons, corporations or business entities to do so under authority of law.

Bibliography of Key State Cases

Owensboro v. McCormick
581 S.W.2d 3 (Ky. 1979)

God's Center Foundation, Inc. v. Lexington Fayette Urban County Government
125 S.W.3d 295 (Ky. Ct. App., 2002)

City of Bowling Green v. Cooksey
858 S.W.2d 190 (Ky. Ct. App., 1992)

Henn v. City of Highland Heights (Overturned on jurisdictional grounds)
69 F.Supp.2d 908 (E.D.Ky. 1999)

Louisiana

Constitutional Takings Language

La. CONST. art. I, § 4:

(A) Every person has the right to acquire, own, control, use, enjoy, protect, and dispose of private property. This right is subject to reasonable statutory restrictions and the reasonable exercise of the police power.

(B) Property shall not be taken or damaged by the state or its political subdivisions except for public purposes and with just compensation paid to the owner or into court for his benefit. Property shall not be taken or damaged by any private entity authorized by law to expropriate, except for a public and necessary purpose and with just compensation paid to the owner; in such proceedings, whether the purpose is public and necessary shall be a judicial question. In every expropriation, a party has the right to trial by jury to determine compensation, and the owner shall be compensated to the full extent of his loss. No business enterprise or any of its assets shall be taken for the purpose of operating that enterprise or halting competition with a government enterprise. However, a municipality may expropriate a utility within its jurisdiction.

(C) Personal effects, other than contraband, shall never be taken.

(D) But the following property may be forfeited and disposed of in a civil proceeding, as provided by law: contraband drugs; property derived in whole or in part from contraband drugs; property used in the distribution, transfer, sale, felony possession, manufacture, or transportation of contraband drugs; property furnished or intended to be furnished in exchange for contraband drugs; property used or intended to be used to facilitate any of the above conduct; or other property because the above-described property has been rendered unavailable.

(E) This Section shall not apply to appropriation of property necessary for levee and levee drainage purposes.

(F) Further, the legislature may place limitations on the extent of recovery for the taking of, or loss or damage to, property rights affected by coastal wetlands conservation, management, preservation, enhancement, creation, or restoration activities.

Statutory Definition of Public Use

No provision found.

Statutory Definition of Blight

La. Rev. Stat. Ann. § 33:4625 (P)(8)(i) (West 2004). "Blighted area" means an area which by reason of the presence of a substantial number of slum, deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, insanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors substantially impairs or arrests the sound growth of the municipality, retards the provision of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition and use; but if the area consists of any disaster area referred to in Subsection C(5),8 it shall constitute a "blighted area."

New Eminent Domain Legislation

No final legislation as of 5/5/06.

Bibliography of Key State Cases

Shreveport v. Chanse Gas Corp.

794 So.2d 962 (La.Ct.App. 2001)

Maine

Constitutional Takings Language

Me. CONST. art. I, § 21: Private property shall not be taken for public uses without just compensation; nor unless the public exigencies require it.

Statutory Definition of Public Use

No provision found.

Statutory Definition of Blight

Me. Rev. Stat. Ann. tit. 30-A, §5101 (2) (West 2004). BLIGHTED AREA. "Blighted area" means: A. An area in which there is a predominance of buildings or improvements which are conducive to ill health, the transmission of disease, infant mortality or juvenile delinquency and crime and are detrimental to the public health, safety, morals or welfare because of: 1) Dilapidation, deterioration, age or obsolescence; 2) Inadequate provision for ventilation, light, air, sanitation or open spaces; 3) High density of population and overcrowding; 4) The existence of conditions which endanger life or property by fire and other causes; or 5) Any combination of these factors; B. An area which is a menace to the public health, safety, morals or welfare in its present condition and use because of: 1) The predominance of inadequate street layout; 2) Insanitary or unsafe conditions; 3) Tax or special assessment delinquency exceeding the fair value of the land; 4) The existence of conditions which endanger life or property by fire and other causes; or 5) Any combination of these factors; C. Undeveloped vacant land as provided in section 5109; or D. Any disaster area as provided in section 5109.

New Eminent Domain Legislation LD 1870, Signed 4/13/06

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 1 MRSA §816 is enacted to read:

§816. Limitations on eminent domain authority

1. Purposes. Except as provided in subsections 2 and 3 and notwithstanding any other provision of law, the State, a political subdivision of the State and any other entity with eminent domain authority may not condemn property:

- A. For the purposes of private retail, office, commercial, industrial or residential development;
- B. Primarily for the enhancement of tax revenue; or
- C. For transfer to a person, nongovernmental entity, public-private partnership, corporation or other business entity.

2. Blight exception. Subsection 1 does not apply to the use of eminent domain by any municipality, housing authority or other public entity based upon a finding of blight in an area covered by any redevelopment plan or urban renewal plan pursuant to Title 30-A, chapter 203 or 205, but just compensation, in all cases, must continue to be first made to the owner.

3. Utilities exception. Subsection 1 does not limit the exercise of eminent domain by or for the benefit of public utilities or other entities engaged in the generation, transmission or distribution of telephone, gas, electric, water, sewer or other utility products or services.

4. Governmental purposes not affected. Nothing in this section may be interpreted to prohibit a municipal or county governing body from exercising the power of eminent domain for the purpose of constructing, maintaining or operating streets and roadways, government buildings, schools or park and recreation facilities.

Bibliography of Key State Cases

Blanchard v. Department of Transportation

798 A.2d 1119 (Me. 2002)

Maryland

Constitutional Takings Language

Md. Const. art. III, § 40, Eminent domain: The General Assembly shall enact no Law authorizing private property, to be taken for public use, without just compensation, as agreed upon between the parties, or awarded by a Jury, being first paid or tendered to the party entitled to such compensation.

Statutory Definition of Public Use

No provision found.

Statutory Definition of Blight

Md. Code Ann. § 14-805 (2004). Designation of blighted area. (a) Designation of blighted area; redevelopment plan.- Before issuing any bonds under this subtitle the local governing body shall by ordinance or administrative resolution: (1) Designate the area within its jurisdiction with respect to which the bonds are to be issued as a designated blighted area, based on the substantial presence of one or more of the following: (i) Excessive vacant land on which structures were previously located; (ii) Abandoned or vacant buildings; (iii) Substandard structures; (iv) Delinquencies in the payment of real property taxes; or (v) Similar factors that the local governing body determines to be indicative of blight; (2) Designate and determine the financed area with respect to which the proceeds of the bonds are to be used; and (3) Adopt a redevelopment plan with respect to the designated blighted area. (b) Cooperation with municipalities.- If a county designates a blighted area or financed area that also is situated, in whole or in part, within the jurisdiction of a municipality, the municipality by ordinance or administrative resolution must consent to the designation of the blighted area or the financed area to the extent that either is situated within the jurisdiction of the municipality. The county within which the municipality is located must by ordinance or administrative resolution consent to the designation by the municipality of a designated blighted area or a financed area. (c) Applicability of federal law.- In the event that bonds are issued by a local governing body under this subtitle as qualified redevelopment bonds under the Internal Revenue Code of 1986, as amended, the local governing body, in determining the designated blighted area and the financed area to which the bonds relate, and in determining other designated blighted areas, if any, within its jurisdiction, shall observe applicable restrictions set forth in federal law.

New Eminent Domain Legislation

No final legislation as of 5/5/06.

Bibliography of Key State Cases

Baltimore v. Chertkof

441 A.2d 1044 (Md. Ct. App. 1982)

Prince George's County v. Collington Crossroads, Inc.

275 Md. 171 (Md., 1975)

Massachusetts

Constitutional Takings Language

Mass. CONST. pt. I, art. X, amended by Mass. CONST. pt. I, art. XXXIX: Each individual of the society has a right to be protected by it in the enjoyment of his life, liberty and property, according to standing laws. He is obliged, consequently, to contribute his share to the expense of this protection; to give his personal service, or an equivalent, when necessary: but no part of the property of any individual can, with justice, be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people. In fine, the people of this commonwealth are not controllable by any other laws than those to which their constitutional representative body have given their consent. And whenever the public exigencies require that the property of any individual should be appropriated to public uses, he shall receive a reasonable compensation therefore

Mass. CONST. pt. I, art. XXXIX: Article ten of part one of the constitution is hereby amended by adding to it the following words: -- The legislature may by special acts for the purpose of laying out, widening or relocating highways or streets, authorize the taking in fee by the commonwealth, or by a county, city or town, of more land and property than are needed for the actual construction of such highway or street: provided, however, that the land and property authorized to be taken are specified in the act and are no more in extent than would be sufficient for suitable building lots on both sides of such highway or street, and after so much of the land or property has been appropriated for such highway or street as is needed therefor, may authorize the sale of the remainder for value with or without suitable restrictions.

Mass. CONST. pt. I, art. XLIII: The general court shall have power to authorize the commonwealth to take land and to hold, improve, subdivide, build upon and sell the same, for the purpose of relieving congestion of population and providing homes for citizens; provided, however, that this amendment shall not be deemed to authorize the sale of such land or buildings at less than the cost thereof.

Statutory Definition of Public Use

No provision found.

Statutory Definition of Blight

Mass. Gen. Laws Ann. chap. 121A, §1 (West 2005). "Blighted open area", a predominantly open area which is detrimental to the safety, health, morals, welfare or sound growth of a community because it is unduly costly to develop it soundly through the ordinary operations of private enterprise by reason of the existence of ledge, rock, unsuitable soil, or other physical conditions, or by reason of the necessity for unduly expensive excavation, fill or grading, or by reason of the need for unduly expensive foundations, retaining walls or unduly expensive measures for waterproofing structures or for draining the area or for the prevention of the flooding thereof or for the protection of adjacent properties and the water table therein or for unduly expensive measures incident to building around or over rights of way through the area, or for otherwise making the area appropriate for sound development, or by reason of obsolete, inappropriate or otherwise faulty platting or subdivision, deterioration of site improvements or facilities, division of the area by rights of way, diversity of ownership of plots, or inadequacy of transportation facilities or other utilities, or by reason of tax and special assessment delinquencies, or because there has been a substantial change in business or economic conditions or practices, or an abandonment or cessation of a previous use or of work on improvements begun but not feasible to complete without the aids provided by this chapter, or by reason of any combination of the foregoing or other conditions; or a predominantly open area which by reason of any condition or combination of conditions which are not being remedied by the ordinary operations of private enterprise is of such a character that in essence it is detrimental to the safety, health, morals, welfare or sound growth of the community in which it is situated.

New Eminent Domain Legislation

No final legislation as of 5/5/06.

Bibliography of Key State Cases

Omartian v. Mayor of Springfield

354 Mass. 439 (Mass., 1968)

HTA Ltd. Partnership v. Massachusetts Turnpike Authority

747 N.E.2d 707 (Mass.App.Ct. 2001)

Michigan

Constitutional Takings Language

MCLS Const. Art. X, § 2, Eminent domain; compensation: Private property shall not be taken for public use without just compensation therefor being first made or secured in a manner prescribed by law. Compensation shall be determined in proceedings in a court of record.

Statutory Definition of Public Use

No provision found.

Statutory Definition of Blight

Mich. Comp. Laws. Ann. §125.72(a) (West 2005). "Blighted area" means a portion of a municipality, developed or undeveloped, improved or unimproved, with business or residential uses, marked by a demonstrated pattern of deterioration in physical, economic, or social conditions, and characterized by such conditions as functional or economic obsolescence of buildings or the area as a whole, physical deterioration of structures, substandard building or facility conditions, improper or inefficient division or arrangement of lots and ownerships and streets and other open spaces, inappropriate mixed character and uses of the structures, deterioration in the condition of public facilities or services, or any other similar characteristics which endanger the health, safety, morals, or general welfare of the municipality, and which may include any buildings or improvements not in themselves obsolescent, and any real property, residential or nonresidential, whether improved or unimproved, the acquisition of which is considered necessary for rehabilitation of the area. It is expressly recognized that blight is observable at different stages of severity, and that moderate blight unremedied creates a strong probability that severe blight will follow. Therefore, the conditions that constitute blight are to be broadly construed to permit a municipality to make an early identification of problems and to take early remedial action to correct a demonstrated pattern of deterioration and to prevent worsening of blight conditions.

New Eminent Domain Legislation

No final legislation as of 5/5/06.

Bibliography of Key State Cases

Poletown Neighborhood Council v. City of Detroit
304 N.W.2d 455 (Mich. 1981) (per curiam)

City of Center Line v. Chmelko
416 N.W.2d 401 (Mich.Ct.App. 1987)

County of Wayne v. Hathcock
684 N.W.2d 765 (Mich. 2004)

City of Novi v. Robert Adell Children's Funded Trust
659 N.W.2d 615 (Mich.App. 2002)

Minnesota

Constitutional Takings Language

Minn. CONST. art. I, § 13: Private property shall not be taken, destroyed or damaged for public use without just compensation therefor, first paid or secured.

Statutory Definition of Public Use

No provision found

Statutory Definition of Blight

Minn. Stat. Ann. § 469.002 (West 2004). Subd. 11. Blighted area. "Blighted area" means any area with buildings or improvements which, by reason of dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light, and sanitary facilities, excessive land coverage, deleterious land use, or obsolete layout, or any combination of these or other factors, are detrimental to the safety, health, morals, or welfare of the community.

New Eminent Domain Legislation

No final legislation as of 5/5/06.

Bibliography of Key State Cases

City of Deluth v. State

390 N.W.2d 757 (Minn. 1986)

Minneapolis Community Dev. Agency v. Opus Northwest LLC

582 N.W.2d 596 (Minn.Ct.App. 1998)

County of Dakota v. City of Lakeville

559 N.W.2d 716 (Minn.Ct.App. 1997)

Housing & Redevelopment Authority v. Schapiro

210 N.W.2d 211 (Minn. 1973)

Johnson v. City of Minneapolis

667 N.W.2d 109 (Minn. 2003)

Walser Auto Sales v. City of Richfield

635 N.W.2d 391 (Minn.Ct.App. 2001)

Housing & Redevelopment Authority v. Walser Auto Sales, Inc.

630 N.W.2d 662 (Minn.Ct.App. 2001), aff'd, 641 N.W.2d 885 (Minn. 2002)

Mississippi

Constitutional Takings Language

Miss. CONST. art. III, § 17: Private property shall not be taken or damaged for public use, except on due compensation being first made to the owner or owners thereof, in a manner to be prescribed by law; and whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be public shall be a judicial question, and, as such, determined without regard to legislative assertion that the use is public.

Statutory Definition of Public Use

No provision found.

Statutory Definition of Blight

Miss. Code Ann. § 43-35-3 (i) (2005). "Blighted area" shall mean an area which by reason of the presence of a substantial number of slum, deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, unsanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs or arrests the sound growth of a municipality, retards the provision of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition and use. If such blighted area consists of open land the conditions contained in the proviso in subsection (d) of Section 43-35-13 shall apply. Any disaster area referred to in subsection (g) of Section 43-35-13 shall constitute a "blighted area."

New Eminent Domain Legislation

No final legislation as of 5/5/06.

Bibliography of Key State Cases

Mayor of Vicksburg v. Thomas
645 So. 2d 940 (Miss. 1994)

Missouri

Constitutional Takings Language

Mo. CONST. art. I, § 26: That private property shall not be taken or damaged for public use without just compensation. Such compensation shall be ascertained by a jury or board of commissioners of not less than three freeholders, in such manner as may be provided by law; and until the same shall be paid to the owner, or into court for the owner, the property shall not be disturbed or the proprietary rights of the owner therein divested. The fee of land taken for railroad purposes without consent of the owner thereof shall remain in such owner subject to the use for which it is taken.

Statutory Definition of Public Use

No provision found.

Statutory Definition of Blight

Mo. Ann. Stat. §99.020(3) (West 2005) "Blighted" shall mean any area where dwellings predominate which, by reason of dilapidation, overcrowding, lack of ventilation, light or sanitary facilities or any combination of these factors are detrimental to safety, health and morals;

New Eminent Domain Legislation

No final legislation as of 5/5/06.

Bibliography of Key State Cases

State ex rel. State Highway Comm'n v. Eakin
357 S.W.2d 129 (Mo. 1962)

Curators of the University of Missouri v. Bound
809 S.W.2d 64 (Mo.Ct.App. 1991)

St. Louis v. Butler Co.
223 S.W.2d 831 (Mo. Ct. App. 1949)

Crestwood Commons v. 66 Drive-in
812 S.W.2d 903 (Mo.Ct.App. 1991)

City of Kansas City v. Hon
972 S.W.2d 407 (Mo.Ct.App. 1998)

Montana

Constitutional Takings Language

Mont. CONST. art. II, § 29: Private property shall not be taken or damaged for public use without just compensation to the full extent of the loss having been first made to or paid into court for the owner. In the event of litigation, just compensation shall include necessary expenses of litigation to be awarded by the court when the private property owner prevails.

Statutory Definition of Public Use

No provision found.

Statutory Definition of Blight

Mont. Code Ann. § 7-15-4206 (2004). (2) "Blighted area" means an area that is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, and crime; substantially impairs or arrests the sound growth of the city or its environs; retards the provision of housing accommodations; or constitutes an economic or social liability or is detrimental or constitutes a menace to the public health, safety, welfare, and morals in its present condition and use, by reason of: (a) the substantial physical dilapidation; deterioration; defective construction, material, and arrangement; or age obsolescence of buildings or improvements, whether residential or nonresidential; (b) inadequate provision for ventilation, light, proper sanitary facilities, or open spaces as determined by competent appraisers on the basis of an examination of the building standards of the municipality; (c) inappropriate or mixed uses of land or buildings; (d) high density of population and overcrowding; (e) defective or inadequate street layout; (f) faulty lot layout in relation to size, adequacy, accessibility, or usefulness; (g) excessive land coverage; (h) unsanitary or unsafe conditions; (i) deterioration of site; (j) diversity of ownership; (k) tax or special assessment delinquency exceeding the fair value of the land; (l) defective or unusual conditions of title; (m) improper subdivision or obsolete platting; (n) the existence of conditions that endanger life or property by fire or other causes; or (o) any combination of the factors listed in this subsection (2).

New Eminent Domain Legislation

No final legislation as of 5/5/06.

Bibliography of Key State Cases

Montana Power Co. v. Bokma
153 Mont. 390 (Mont. 1969)

Nebraska

Constitutional Takings Language

Not yet addressed (DB says not sufficient justification?)

Statutory Definition of Public Use

No provision found.

Statutory Definition of Blight

Neb. Rev. Stat. § 58-209.01 (2005). Blighted area shall mean an area within a city or village (1) which by reason of the presence of a substantial number of deteriorated or deteriorating structures, defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, unsanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, improper subdivision or obsolete platting, or conditions which endanger life or property by fire and other causes or any combination of such factors substantially impairs or arrests the sound growth of the community, retards the provision of housing accommodations, or constitutes an economic or social liability and is detrimental to the public health, safety, morals, or welfare in its present condition and use and (2) in which there is at least one of the following conditions: (a) Unemployment in the designated area is at least one hundred twenty percent of the state or national average; (b) the average age of the residential or commercial units in the area is at least forty years; (c) more than half of the plotted and subdivided property in the area is unimproved land that has been within the city or village for forty years and has remained unimproved during that time; (d) the per capita income of the area is lower than the average per capita income of the municipality in which the area is designated; or (e) the area has had either stable or decreasing population based on the last two decennial censuses. A city of the metropolitan, primary, or first class shall not designate more than thirty-five percent of the city as blighted, a city of the second class shall not designate an area larger than fifty percent of the city as blighted, and a village shall not designate an area larger than one hundred percent of the village as blighted.

New Eminent Domain Legislation LB 924, Signed 4/13/06

AN ACT relating to real property; to amend sections 76-701 and 76-883, Reissue Revised Statutes of Nebraska; to provide restrictions on the use of eminent domain; to provide certain rights for purchasers of condominiums; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 76-701, Reissue Revised Statutes of Nebraska, is amended to read:

76-701 As used 4., c-s 76-701 to 76 72-r unless the c- requires For purposes of sections 76-701 to 76-726 and section 2 of otherwise this act:

- (1) Condemner means any legal entity that by law has been granted the right to exercise the power of eminent domain: and includes the state and any governmental or political subdivision thereof;
- (2) Condemnee means any person, partnership, limited liability company, corporation, or association owning or having an encumbrance on any interest in property that is sought to be acquired by a condemner or in possession of or occupying any such property;
- (3) Property means any such interest in real or personal property as the condemner is empowered by law to acquire for public use; and
- (4) County judge means the county judge of the county where condemnation proceedings provided by such sections 76 701 to 36-724 are had.

Sec. 2. (1) A condemner may not take property through the use of eminent domain under sections 76-704 to 76-724 if the taking is primarily for an economic development purpose.

(2) For purposes of this section, economic development purpose means taking property for subsequent use by a commercial for-profit enterprise or to increase tax revenue, tax base, employment, or general economic conditions. (3) This section does not affect the use of eminent domain for: (a) Public projects or private projects that make all or a majorportion of the property available for use by the general public or for use asa right-of-way, aqueduct, pipeline, or similar use;

(b) Removing harmful uses of property if such uses constitute an immediate threat to public health and safety;

(c) Leasing property to a private person who occupies an incidentalpart of public property or a public facility, such as a retail establishment on the ground floor of a public building;

(d) Acquiring abandoned property;

(e) Clearing defective property title;

(f) Taking private property for use by a utility or railroad; and (q) Taking private property based upon a finding of blighted or substandard conditions under the Community Development Law if the private property is not agricultural land or horticultural land as defined in section 77-1359.

Sec. 3. Section 76-883, Reissue Revised Statutes of Nebraska, is amended to read:

76-883 (a) A person required to deliver a public-offering statement pursuant to subsection (c) of section 76-879 shall provide a purchaser of a unit with a copy of the public-offering statement and all amendments thereto before conveyance of that unit and not later than the date of any contract of sale. Unless a purchaser is given the public-offering statement more than fifteen days before execution of a contract for the purchase of a unit, the purchaser, before conveyance, may cancel the contract within fifteen days after first receiving the public-offering statement.

(b) After receiving the public-offering statement and all amendments, a purchaser has the right to have an independent inspection of the building's structure and mechanical systems conducted at the purchaser's exile se.

(c) If a purchaser elects to cancel a contract pursuant to subsection (a) of this section, he or she may do so by hand-delivering notice

thereof to the offeror or by mailing notice thereof by mail postage prepaid to the offeror or to his or her agent for service of process.

Cancellation is without penalty, and all payments made by the purchaser before cancellation shall be refunded promptly.

(d) If a person required to deliver a public-offering statement pursuant to subsection (c) of section 76-879 fails to provide a purchaser to whom a unit is conveyed with that public-offering statement and all amendments thereto as required by subsection (a) of this section, the purchaser is entitled to receive damages and other relief from that person.

Sec. 4. Original sections 76-701 and 76-883, Reissue Revised Statutes of Nebraska, are repealed.

Bibliography of Key State Cases

No cases found.

Nevada

Constitutional Takings Language

Nev. CONST. art. I, § 8: No person shall be deprived of life, liberty, or property, without due process of law. Private property shall not be taken for public use without just compensation having been first made, or secured, except in cases of war, riot, fire, or great public peril, in which case compensation shall be afterward made.

Statutory Definition of Public Use

NRS 37.010 Public purposes for which right of eminent domain may be exercised. Subject to the provisions of this chapter, the right of eminent domain may be exercised in behalf of the following public purposes:

1. Federal activities. All public purposes authorized by the Government of the United States.
2. State activities. Public buildings and grounds for the use of the State, the University and Community College System of Nevada and all other public purposes authorized by the Legislature.
3. County, city, town and school district activities. Public buildings and grounds for the use of any county, incorporated city or town, or school district, reservoirs, water rights, canals, aqueducts, flumes, ditches or pipes for conducting water for the use of the inhabitants of any county, incorporated city or town, for draining any county, incorporated city or town, for raising the banks of streams, removing obstructions therefrom, and widening, deepening or straightening their channels, for roads, streets and alleys, and all other public purposes for the benefit of any county, incorporated city or town, or the inhabitants thereof.
4. Bridges, toll roads, railroads, street railways and similar uses. Wharves, docks, piers, chutes, booms, ferries, bridges, toll roads, byroads, plank and turnpike roads, roads for transportation by traction engines or locomotives, roads for logging or lumbering purposes, and railroads and street railways for public transportation.
5. Ditches, canals, aqueducts for smelting, domestic uses, irrigation and reclamation. Reservoirs, dams, water gates, canals, ditches, flumes, tunnels, aqueducts and pipes for supplying persons, mines, mills, smelters or other works for the reduction of ores, with water for domestic and other uses, for irrigating purposes, for draining and reclaiming lands, or for floating logs and lumber on streams not navigable.
6. Mining, smelting and related activities. Mining, smelting and related activities as follows:
 - (a) Mining and related activities, which are recognized as the paramount interest of this State.
 - (b) Roads, railroads, tramways, tunnels, ditches, flumes, pipes, reservoirs, dams, water gates, canals, aqueducts and dumping places to facilitate the milling, smelting or other reduction of ores, the working, reclamation or dewatering of mines, and for all mining purposes, outlets, natural or otherwise, for the deposit or conduct of tailings, refuse, or water from mills, smelters, or other work for the reduction of ores from mines, mill dams, pipelines, tanks or reservoirs for natural gas or oil, an occupancy in common by the owners or possessors of different mines, mills, smelters or other places for the reduction of ores, or any place for the flow, deposit or conduct of tailings or refuse matter and the necessary land upon which to erect smelters and to operate them successfully, including the deposit of fine flue dust, fumes and smoke.
7. Byroads. Byroads leading from highways to residences and farms.
8. Public utilities. Lines for telegraph, telephone, electric light and electric power and sites for plants for electric light and power.
9. Sewerage. Sewerage of any city, town, settlement of not less than 10 families or any public building belonging to the State or college or university.
10. Water for generation and transmission of electricity. Canals, reservoirs, dams, ditches, flumes, aqueducts and pipes for supplying and storing water for the operation of machinery to generate and transmit electricity for power, light or heat.
11. Cemeteries, public parks. Cemeteries or public parks.
12. Pipelines of beet sugar industry. Pipelines to conduct any liquids connected with the manufacture of beet sugar.
13. Pipelines for petroleum products, natural gas. Pipelines for the transportation of crude petroleum, petroleum products or natural gas, whether interstate or intrastate.
14. Aviation. Airports, facilities for air navigation and aerial rights-of-way.
15. Monorails. Monorails and any other overhead or underground system used for public transportation.
16. Community antenna television companies. Community antenna television companies which have been granted a franchise from the governing body of the jurisdictions in which they provide services. The exercise of the power of eminent domain may include the right to use the wires, conduits, cables or poles of any public utility if:
 - (a) It creates no substantial detriment to the service provided by the utility;

(b) It causes no irreparable injury to the utility; and

(c) The Public Utilities Commission of Nevada, after giving notice and affording a hearing to all persons affected by the proposed use of the wires, conduits, cables or poles, has found that it is in the public interest.

17. Redevelopment. The acquisition of property pursuant to NRS 279.382 to 279.685, inclusive.

Statutory Definition of Blight

Nev. Rev. Stat. § 279.388 (2004). "Blighted area" means an area which is characterized by one or more of the following factors: 1. The existence of buildings and structures, used or intended to be used for residential, commercial, industrial or other purposes, or any combination thereof, which are unfit or unsafe for those purposes and are conducive to ill health, transmission of disease, infant mortality, juvenile delinquency or crime because of one or more of the following factors: (a) Defective design and character of physical construction. (b) Faulty arrangement of the interior and spacing of buildings. (c) Overcrowding. (d) Inadequate provision for ventilation, light, sanitation, open spaces and recreational facilities. (e) Age, obsolescence, deterioration, dilapidation, mixed character or shifting of uses. 2. An economic dislocation, deterioration or disuse, resulting from faulty planning. 3. The subdividing and sale of lots of irregular form and shape and inadequate size for proper usefulness and development. 4. The laying out of lots in disregard of the contours and other physical characteristics of the ground and surrounding conditions. 5. The existence of inadequate streets, open spaces and utilities. 6. The existence of lots or other areas which may be submerged. 7. Prevalence of depreciated values, impaired investments and social and economic maladjustment to such an extent that the capacity to pay taxes is reduced and tax receipts are inadequate for the cost of public services rendered. 8. A growing or total lack of proper utilization of some parts of the area, resulting in a stagnant and unproductive condition of land which is potentially useful and valuable for contributing to the public health, safety and welfare. 9. A loss of population and a reduction of proper use of some parts of the area, resulting in its further deterioration and added costs to the taxpayer for the creation of new public facilities and services elsewhere.

New Eminent Domain Legislation

No final legislation as of 5/5/06.

Bibliography of Key State Cases

City of Las Vegas Downtown Redevelopment Agency v. Pappas
76 P.3d 1 (Nev. 2003)

New Hampshire

Constitutional Takings Language

N.H. CONST. art. I, § 12: Every member of the community has a right to be protected by it, in the enjoyment of his life, liberty, and property; But no part of a man's property shall be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people. Nor are the inhabitants of this state controllable by any other laws than those to which they, or their representative body, have given their consent.

Statutory Definition of Public Use

No provision found.

Statutory Definition of Blight

N.H. Revised Stat. Ann. §205:1 (2004). It is hereby found and declared (a) that there exist in many communities within this state blighted areas (as defined herein) or areas in the process of becoming blighted; (b) that such areas impair economic values and tax revenues; that such areas cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals and welfare of the residents of the state, that these conditions necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and safety, fire and accident protection, and other public services and facilities; (c) that the clearance, replanning and preparation for rebuilding of these areas, and the prevention or the reduction of blight and its causes, are public uses and purposes for which public money may be spent and private property acquired and are governmental functions of state concern; (d) that there are also certain areas where the condition of the title, the diverse ownership of the land to be assembled, the street or lot layouts, or other conditions prevent a proper development of the land, and that it is in the public interest that such areas, as well as blighted areas, be acquired by eminent domain and made available for sound and wholesome development in accordance with a redevelopment plan, and that the exercise of the power of eminent domain and the financing of the acquisition and preparation of land by a public agency for such redevelopment is likewise a public use and purpose; (e) that redevelopment activities will stimulate residential construction which is closely correlated with general economic activity; and that such undertakings authorized by this chapter will aid the production of better housing and more desirable neighborhoods and community development at lower costs and will make possible a more stable and larger volume of residential construction, which will assist materially in achieving and maintaining full employment; and (f) that it is in the public interest that advance preparation for such projects and activities be made now, and that the necessity in the public interest for the provisions hereinafter enacted is hereby declared as a matter of legislative determination.

New Eminent Domain Legislation

No final legislation as of 5/5/06.

Bibliography of Key State Cases

Merrill v. City of Manchester
499 A.2d 216 (N.H. 1985)

New Jersey

Constitutional Takings Language

N.J. CONST. art. I, para. 20: Private property shall not be taken for public use without just compensation. Individuals or private corporations shall not be authorized to take private property for public use without just compensation first made to the owners.

Statutory Definition of Public Use

No provision found.

Statutory Definition of Blight

NJC 40:55-21.1 repealed and replaced with public law (P.L. 1949, c.187). Unable to locate language.

New Eminent Domain Legislation

No final legislation as of 5/5/06.

Bibliography of Key State Cases

Casino Reinvestment Dev. Authority v. Banin
727 A.2d 102 (N.J. Super.Ct.Law.Div. 1998)

Quagliariello v. Township of Edison
2004 WL 842000 (N.J. Super.)

New Mexico

Constitutional Takings Language

N.M. CONST. art. II, § 20: Private property shall not be taken or damaged for public use without just compensation.

Statutory Definition of Public Use

No provision found.

Statutory Definition of Blight

N.M. Stat. Ann. §3-46-10 (Michie 2004). As used in the Urban Renewal Law [3-46-1 to 3-46-45 NMSA 1978], "blighted area" means an area, other than a slum area, which, by reason of the presence of a substantial number of slum, deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, unsanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, improper subdivisions or obsolete platting, or the existence of conditions which endanger life or property by fire or other causes, or any combination of such factors, substantially impairs or arrests the sound growth of a municipality, retards the provisions of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals or welfare in its present condition and use; provided, that if such blighted area consists of open or predominantly open land the conditions contained in the proviso in Subsection D of Section 3-46-30 NMSA 1978 shall apply.

New Eminent Domain Legislation* **HB 746, Signed 3/7/06*

AN ACT RELATING TO ECONOMIC DEVELOPMENT; RESTRICTING THE USE OF EMINENT DOMAIN WHEN USED TO PROMOTE ECONOMIC DEVELOPMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Eminent Domain Code is enacted to read:

"LIMITATION ON THE USE OF EMINENT DOMAIN FOR PURPOSES OF ECONOMIC DEVELOPMENT.--The state or a local public body shall not condemn private property if the taking is to promote private or commercial development and title to the property is transferred to another private entity within five years following condemnation of the property."

Bibliography of Key State Cases

No cases found.

New York

Constitutional Takings Language

N.Y. CONST. art. I, § 7.

(a) Private property shall not be taken for public use without just compensation.

(b) Repealed.

(c) Private roads may be opened in the manner to be prescribed by law; but in every case the necessity of the road and the amount of all damage to be sustained by the opening thereof shall be first determined by a jury of freeholders, and such amount, together with the expenses of the proceedings, shall be paid by the person to be benefited.

(d) The use of property for the drainage of swamp or agricultural lands is declared to be a public use, and general laws may be passed permitting the owners or occupants of swamp or agricultural lands to construct and maintain for the drainage thereof, necessary drains, ditches and dykes upon the lands of others, under proper restrictions, on making just compensation, and such compensation together with the cost of such drainage may be assessed, wholly or partly, against any property benefited thereby; but no special laws shall be enacted for such purposes.

Statutory Definition of Public Use

No provision found.

Statutory Definition of Blight

N.Y. Gen. Mun. Law § 970c (McKinney 2005). a) Blighted area means an area within a municipality in which one or more of the following conditions exist: (i) a predominance of buildings and structures which are deteriorated or unfit or unsafe for use or occupancy; or (ii) a predominance of economically unproductive lands, buildings or structures, the redevelopment of which is needed to prevent further deterioration which would jeopardize the economic well being of the people.

New Eminent Domain Legislation

No final legislation as of 5/5/06.

Bibliography of Key State Cases

Rosenthal & Rosenthal, Inc. v. New York State Urban Dev. Corp.

771 F.2d 44 (2d Cir. 1985)

Settco v. New York State Urban Development Corporation

759 N.Y.S.2d 833 (N.Y.A.D. 4 Dept. 2003)

City of Yonkers v. Otis Elevator Co.

649 F.Supp. 716 (S.D.N.Y. 1986)

Yonkers Community Dev. Agency v. Morris

335 N.E.2d 327 (N.Y. 1975)

In re Fisher

730 N.Y.S.2d 516 (N.Y.App.Div. 2001)

Courtesy Sandwich Shop v. Port of NY Authority

190 N.E.2d 402 (N.Y. 1963)

Rafferty v. Town of Colonie

300 A.D.2d 719 (N.Y.A.D. 3 Dept. 2002)

Russin v. Union

133 A.D.2d 1014 (N.Y. App. Div., 1987)

Bergen v. Swamp Preservatio Society v. Village of Bergen

294 A.D.2d 827 (N.Y.A.D.4 Dept. 2002)

Waldo's Inc. v. Johnson City

543 N.E.2d 74 (N.Y. 1989)

North Carolina

Constitutional Takings Language

Rhyne v. K-Mart Corp., 358 N.C. 160, 179 (2004): "The North Carolina Constitution does not contain an express 'taking' provision. This Court has, however, allowed taking challenges on the basis of constitutional and common-law principles, declaring that 'this principle is considered in North Carolina as an integral part of 'the law of the land' within the meaning of Article I, Section 19 of our State Constitution.' Long v. City of Charlotte, 306 N.C. 187, 196, 293 S.E.2d 101, 107-08 (1982) (quoting N.C. Const. art. I, § 19)."

Statutory Definition of Public Use

No provision found.

Statutory Definition of Blight

N.C. Gen. Stat. §160A-503 (2004). (2) "Blighted area" shall mean an area in which there is a predominance of buildings or improvements (or which is predominantly residential in character), and which, by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, unsanitary or unsafe conditions, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs the sound growth of the community, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency and crime, and is detrimental to the public health, safety, morals or welfare; provided, no area shall be considered a blighted area nor subject to the power of eminent domain, within the meaning of this Article, unless it is determined by the planning commission that at least two thirds of the number of buildings within the area are of the character described in this subdivision and substantially contribute to the conditions making such area a blighted area; provided that if the power of eminent domain shall be exercised under the provisions of this Article, the property owner or owners or persons having an interest in property shall be entitled to be represented by counsel of their own selection and their reasonable counsel fees fixed by the court, taxed as a part of the costs and paid by the petitioners.

New Eminent Domain Legislation

No final legislation as of 5/5/06.

Bibliography of Key State Cases

Carolina Telephone and Telegraph Co. v. McLeod

364 SE. 2d 399 (NC 1988)

Tucker v. Kannapolis

582 S.E.2d 697 (N.C.App. 2003)

Pelham Realty Corp. v. Board of Transp.

303 N.C. 424 (N.C. 1981)

Redevelopment Com. of Greensboro v. Security Nat'l Bank

252 N.C. 595 (N.C. 1960)

Piedmont Triad Reg'l Water Authority v. Sumner Hills, Inc.

543 S.E.2d 844 (N.C. 2001)

North Dakota

Constitutional Takings Language

N.D. Const. Art. I, § 16: Private property shall not be taken or damaged for public use without just compensation having been first made to, or paid into court for the owner, unless the owner chooses to accept annual payments as may be provided for by law. No right of way shall be appropriated to the use of any corporation until full compensation therefor be first made in money or ascertained and paid into court for the owner, unless the owner chooses annual payments as may be provided by law, irrespective of any benefit from any improvement proposed by such corporation. Compensation shall be ascertained by a jury, unless a jury be waived. When the state or any of its departments, agencies or political subdivisions seeks to acquire right of way, it may take possession upon making an offer to purchase and by depositing the amount of such offer with the clerk of the district court of the county wherein the right of way is located. The clerk shall immediately notify the owner of such deposit. The owner may thereupon appeal to the court in the manner provided by law, and may have a jury trial, unless a jury be waived, to determine the damages, which damages the owner may choose to accept in annual payments as may be provided for by law. Annual payments shall not be subject to escalator clauses but may be supplemented by interest earned.

Statutory Definition of Public Use

No provision found.

Statutory Definition of Blight

N.D. Cent. Code. § 40-58-01.1 (2003). 2. "Blighted area" means an area other than a slum area which by reason of the presence of a substantial number of slums, deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility, or usefulness, insanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, improper subdivision or obsolete platting, or the existence of conditions which endanger life or property by fire and other causes, or any combination of these factors, substantially impairs or arrests the sound growth of a municipality, retards the provision of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition and use.

New Eminent Domain Legislation

No final legislation as of 5/5/06.

Bibliography of Key State Cases

City of Jamestown v. Leever's Supermarkets
552 N.W.2d 365 (N.D., 1996)

Ohio

Constitutional Takings Language

Ohio CONST. art. I, § 19: Private property shall ever be held inviolate, but subservient to the public welfare. When taken in time of war or other public exigency, imperatively requiring its immediate seizure or for the purpose of making or repairing roads, which shall be open to the public, without charge, a compensation shall be made to the owner, in money, and in all other cases, where private property shall be taken for public use, a compensation therefor shall first be made in money, or first secured by a deposit of money; and such compensation shall be assessed by a jury, without deduction for benefits to any property of the owner.

Statutory Definition of Public Use

No provision found.

Statutory Definition of Blight

Ohio Rev. Code Ann. §725.01 (Anderson 2005). (B) "Blighted area" means an area within a municipal corporation, which area by reason of the presence of a substantial number of slums, deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility, or usefulness, unsanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions to title, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs or arrests the sound growth of a municipal corporation, retards the provision of housing accommodations, or constitutes an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition and use.

New Eminent Domain Legislation SB 167, Signed 11/16/05

AN ACT To establish, until December 31, 2006, a moratorium on the use of eminent domain by any entity of the state government or any political subdivision of the state to take, without the owner's consent, private property that is in an unblighted area when the primary purpose for the taking is economic development that will ultimately result in ownership of the property being vested in another private person, to create the Legislative Task Force to Study Eminent Domain and Its Use and Application in the State, and to declare an emergency.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. As used in Sections 2 to 7 of this act:

(A) "Blighted area" has the same meaning as in section 303.26 of the Revised Code, but also includes an area in a municipal corporation.

(B) "Public body" means any entity of the state government, and any county, municipal corporation, township, commission, district, authority, or other political subdivision of the state, that has the power to take private property by eminent domain.

SECTION 2.

(A) Notwithstanding any provision of the Revised Code to the contrary, until December 31, 2006, no public body shall use eminent domain to take, without the consent of the owner, private property that is not within a blighted area, as determined by the public body, when the primary purpose for the taking is economic development that will ultimately result in ownership of that property being vested in another private person.

(B)

(1) Until December 31, 2006, if any public body uses eminent domain to take, without the consent of the owner, private property that is not within a blighted area, as determined by the public body, when the primary purpose for the taking is economic development that will ultimately result in ownership of that property being vested in another private person, each of the following shall apply:

(a) The Ohio Public Works Commission shall not award or distribute to the public body any funding under a capital improvement program created under Chapter 164. of the Revised Code.

(b) The Department of Development shall not award or distribute to the public body any funding under a shovel ready sites program created under section 122.083 of the Revised Code.

(c) The public body shall not receive any funding designated for capital purposes in any act of the General Assembly.

(2) Until December 31, 2006, any public body seeking to obtain funds described in division (B)(1) of this section, shall certify in writing to the grantor of the funds that the public body has not used its eminent domain authority on or after the effective date of this act to take private property in violation of the moratorium established by this act.

(C) Divisions (A) and (B) of this section do not apply to the use of eminent domain for the taking of private property to be used as follows:

(1) In the construction, maintenance, or repair of streets, roads, or walkways, paths, or other ways open to the public's use, including rights of way immediately adjacent to those public ways, including, but not limited to, such use pursuant to authority granted under Title LV of the Revised Code;

(2) For a public utility purpose;

(3) By a common carrier;

(4) For parks or recreation areas open to the public;

(5) In the construction, maintenance, or repair of buildings and grounds used for governmental purposes.

SECTION 3.

(A) There is hereby created the Legislative Task Force to Study Eminent Domain and Its Use and Application in the State. The Task Force shall consist of the following twenty-five members:

(1) Three members of the House of Representatives, appointed by the Speaker of the House of Representatives in consultation with the Minority Leader of the House of Representatives. The Speaker of the House of Representatives shall designate one of the members the Speaker appoints to serve as co-chairperson of the Task Force.

(2) Three members of the Senate, appointed by the President of the Senate in consultation with the Minority Leader of the Senate. The President of the Senate shall designate one of the members the President appoints to serve as co-chairperson of the Task Force.

- (3) One member representing the home building industry in the state, appointed jointly by the Speaker of the House of Representatives and the President of the Senate;
- (4) One member who shall be a statewide advocate on the issues raised in *Kelo v. City of New London* (2005), 125 S. Ct. 2655, insofar as they affect eminent domain, appointed jointly by the Speaker of the House of Representatives and the President of the Senate;
- (5) One member representing the agricultural industry in the state, appointed jointly by the Speaker of the House of Representatives and the President of the Senate;
- (6) One member representing the commercial real estate industry in the state, appointed jointly by the Speaker of the House of Representatives and the President of the Senate;
- (7) One member representing licensed realtors in the state, appointed jointly by the Speaker of the House of Representatives and the President of the Senate;
- (8) One member representing the Ohio Prosecuting Attorneys Association or the Ohio Association of Probate Judges, appointed jointly by the Speaker of the House of Representatives and the President of the Senate;
- (9) One member who shall be an attorney who is knowledgeable on the issues confronting the Task Force and who represents persons who own property and reside within Ohio, appointed jointly by the Speaker of the House of Representatives and the President of the Senate;
- (10) One member knowledgeable on the issues confronting the Task Force who represents persons who own property and reside within Ohio, appointed jointly by the Speaker of the House of Representatives and the President of the Senate;
- (11) One member representing the planning industry in the state, one member representing an Ohio labor organization, one member representing a statewide historic preservation organization that works within commercial districts, one member representing municipal corporations, one member representing counties, and one member representing townships, each appointed by the Governor;
- (12) The Director of Development or the Director's designee;
- (13) The Director of Transportation or the Director's designee;
- (14) Two members who shall be attorneys with expertise in eminent domain issues, each appointed by the Attorney General;
- (15) One member representing small businesses, appointed jointly by the Speaker of the House of Representatives and the President of the Senate.

(B) Appointments to the Task Force shall be made not later than thirty days after the effective date of this section. Any vacancy in the membership of the Task Force shall be filled in the same manner as the original appointment. Members of the Task Force shall serve without compensation.

- (C)
- (1) The Task Force shall study each of the following:
 - (a) The use of eminent domain and its impact on the state;
 - (b) How the decision of the United States Supreme Court in *Kelo v. City of New London* (2005), 125 S. Ct. 2655, affects state law governing the use of eminent domain in the state;
 - (c) The overall impact of state laws governing the use of eminent domain on economic development, residents, and local governments in Ohio.
 - (2) The Task Force shall prepare and submit to the General Assembly by not later than April 1, 2006, a report that shall include the findings of its study and recommendations concerning the use of eminent domain and its impact on the state, and by not later than August 1, 2006, a report that shall include findings and recommendations regarding the updating of state law governing eminent domain. On submission of the report due not later than August 1, 2006, the Task Force shall cease to exist.
- (D) The Legislative Service Commission shall provide any technical, professional, and clerical employees that are necessary for the Task Force to perform its duties.

(E) All meetings of the Task Force are declared to be public meetings open to the public at all times. A member of the Task Force shall be present in person at a meeting that is open to the public in order to be considered present or to vote at the meeting and for the purposes of determining whether a quorum is present. The Task Force shall promptly prepare and maintain the minutes of its meetings, which shall be public records under section 149.43 of the Revised Code. The Task Force shall give reasonable notice of its meetings so that any person may determine the time and place of all scheduled meetings. The Task Force shall not hold a meeting unless it gives at least twenty-four hours advance notification to the news media organizations that have requested such notification.

SECTION 4. The General Assembly hereby makes the following statements of findings and intent:

(A) On June 23, 2005, the United States Supreme Court rendered its decision in *Kelo v. City of New London* (2005), 125 S. Ct. 2655, which allows the taking of private property that is not within a blighted area by eminent domain for the purpose of economic development even when the ultimate result of the taking is ownership of the property being vested in another private person. As a result of this decision, the General Assembly believes the interpretation and use of the state's eminent domain law could be expanded to allow the taking of private property that is not within a blighted area, ultimately resulting in ownership of that property being vested in another private person in violation of Sections 1 and 19 of Article I, Ohio Constitution, which protect the rights of Ohio citizens to maintain property as inviolate, subservient only to the public welfare. Thus, the General Assembly finds it is necessary to enact a moratorium on any takings of this nature by any public body until further legislative remedies may be considered.

(B) The General Assembly finds that it is a matter of statewide concern to enact the moratorium. The moratorium is necessary to protect the general welfare and the rights of citizens under Sections 1 and 19 of Article I, Ohio Constitution, and to ensure that these rights are not violated due to the *Kelo* decision. In enacting this provision, the General Assembly wishes to ensure uniformity throughout the state.

SECTION 5. Section 2 of this act applies only to taking actions initiated on or after the effective date of this act. As used in this section, "initiated" means the adoption of a resolution or ordinance of necessity by the public body or filing of a court action, but excludes taking actions for which a resolution or ordinance of necessity or other official action of a public body has been taken and public funds have been expended in connection with that taking action prior to the effective date of this act.

SECTION 6. If any item of law that constitutes the whole or part of an uncodified section of law contained in this act, or if any application of any item of law that constitutes the whole or part of an uncodified section of law contained in this act, is held invalid, the invalidity does not affect other items of law or applications of items of law that can be given effect without the invalid item of law or application. To this end, the items of law of which the uncodified sections contained in this act are composed, and their applications, are independent and severable.

SECTION 7. Nothing in this act shall be construed to imply that any public body with eminent domain authority has prior to the enactment of this act abused that authority or engaged in any wrongdoing in the exercise of its eminent domain authority conferred by statute or the Ohio Constitution.

SECTION 8. This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety. The reason for the necessity is that the United States Supreme Court decision in *Kelo v. City of New London* (2005),

125 S. Ct. 2655, could allow the taking of private property that is not within a blighted area, ultimately resulting in ownership of that property being vested in another private person in violation of Sections 1 and 19 of Article I, Ohio Constitution, and, as a result, warrants a moratorium on any takings of this type until further legislative remedies may be considered. Therefore, this act shall go into immediate effect.

Bibliography of Key State Cases

City of Cincinnati v. Vester

281 U.S. 439 (1930)

City of Akron v. The Tractor Place, Inc.

2003 Ohio 4531 (Ohio App. 2003)

City of Willoughby Hills v. Andolsek

2003 Ohio 323 (Ohio App. 2003)

City of Toledo v. Kim's Auto & Truck Service

2003 Ohio 5604 (Ohio App. 2003) CERT PENDING

City of Worthington v. City of Columbus

769 N.E.2d 920 (Ohio 2003)

Oklahoma

Constitutional Takings Language

Okla. CONST. art. II, § 23: No private property shall be taken or damaged for private use, with or without compensation, unless by consent of the owner, except for private ways of necessity, or for drains and ditches across lands of others for agricultural, mining, or sanitary purposes, in such manner as may be prescribed by law.

Okla. CONST. art. II, § 24: Private property shall not be taken or damaged for public use without just compensation. Just compensation shall mean the value of the property taken, and in addition, any injury to any part of the property not taken. Any special and direct benefits to the part of the property not taken may be offset only against any injury to the property not taken. Such compensation shall be ascertained by a board of commissioners of not less than three freeholders, in such manner as may be prescribed by law. Provided however, in no case shall the owner be required to make any payments should the benefits be judged to exceed damages. The commissioners shall not be appointed by any judge or court without reasonable notice having been served upon all parties in interest. The commissioners shall be selected from the regular jury list of names prepared and made as the Legislature shall provide. Any party aggrieved shall have the right of appeal, without bond, and trial by jury in a court of record. Until the compensation shall be paid to the owner, or into court for the owner, the property shall not be disturbed, or the proprietary rights of the owner divested. When possession is taken of property condemned for any public use, the owner shall be entitled to the immediate receipt of the compensation awarded, without prejudice to the right of either party to prosecute further proceedings for the judicial determination of the sufficiency or insufficiency of such compensation. The fee of land taken by common carriers for right of way, without the consent of the owner, shall remain in such owner subject only to the use for which it is taken. In all cases of condemnation of private property for public or private use, the determination of the character of the use shall be a judicial question.

Statutory Definition of Public Use

Statutory Definition of Blight

Okla. Stat. Ann. tit. 11, §38-101 (West 2004). 8. "Blighted area" shall mean an area in which there are properties, buildings, or improvements, whether occupied or vacant, whether residential or nonresidential, which by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation or open spaces; population overcrowding; improper subdivision or obsolete platting of land, inadequate parcel size; arrested economic development; improper street layout in terms of existing or projected traffic needs, traffic congestion or lack of parking or terminal facilities needed for existing or proposed land uses in the area, predominance of defective or inadequate street layouts; faulty lot layout in relation to size, adequacy, accessibility or usefulness; insanitary or unsafe conditions, deterioration of site or other improvements; diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land; defective or unusual conditions of title; any one or combination of such conditions which substantially impair or arrest the sound growth of municipalities, or constitutes an economic or social liability, or which endangers life or property by fire or other causes, or is conducive to ill health, transmission of disease, mortality, juvenile delinquency, or crime and by reason thereof, is detrimental to the public health, safety, morals or welfare;

New Eminent Domain Legislation

No final legislation as of 5/5/06.

Bibliography of Key State Cases

City of Oklahoma City v. Shadid
439 P.2d 190 (Ok. 1966)

Muskogee Urban Renewal Authority v. Garrett
821 P.2d 1067 (Okla.App.1989)

Guymon v. Cal Farley's Boys Ranch
Slip Copy, 2005 WL 3590942 (W.D.Okla. 2005)

Oregon

Constitutional Takings Language

Or. CONST. art. I, § 18: Private property shall not be taken for public use, nor the particular services of any man be demanded, without just compensation; nor except in the case of the state, without such compensation first assessed and tendered; provided, that the use of all roads, ways and waterways necessary to promote the transportation of the raw products of mine or farm or forest or water for beneficial use or drainage is necessary to the development and welfare of the state and is declared a public use.

Statutory Definition of Public Use

No provision found.

Statutory Definition of Blight

Or. Rev. Stat. §457.010 (2003). (1) "Blighted areas" means areas that, by reason of deterioration, faulty planning, inadequate or improper facilities, deleterious land use or the existence of unsafe structures, or any combination of these factors, are detrimental to the safety, health or welfare of the community. A blighted area is characterized by the existence of one or more of the following conditions: (a) The existence of buildings and structures, used or intended to be used for living, commercial, industrial or other purposes, or any combination of those uses, that are unfit or unsafe to occupy for those purposes because of any one or a combination of the following conditions: (A) Defective design and quality of physical construction; (B) Faulty interior arrangement and exterior spacing; (C) Overcrowding and a high density of population; (D) Inadequate provision for ventilation, light, sanitation, open spaces and recreation facilities; or (E) Obsolescence, deterioration, dilapidation, mixed character or shifting of uses; (b) An economic dislocation, deterioration or disuse of property resulting from faulty planning; (c) The division or subdivision and sale of property or lots of irregular form and shape and inadequate size or dimensions for property usefulness and development; (d) The laying out of property or lots in disregard of contours, drainage and other physical characteristics of the terrain and surrounding conditions; (e) The existence of inadequate streets and other rights of way, open spaces and utilities; (f) The existence of property or lots or other areas that are subject to inundation by water; (g) A prevalence of depreciated values, impaired investments and social and economic maladjustments to such an extent that the capacity to pay taxes is reduced and tax receipts are inadequate for the cost of public services rendered; (h) A growing or total lack of proper utilization of areas, resulting in a stagnant and unproductive condition of land potentially useful and valuable for contributing to the public health, safety and welfare; or (i) A loss of population and reduction of proper utilization of the area, resulting in its further deterioration and added costs to the taxpayer for the creation of new public facilities and services elsewhere.

New Eminent Domain Legislation

No final legislation as of 5/5/06.

Bibliography of Key State Cases

No cases found.

Pennsylvania

Constitutional Takings Language

Pa. CONST. art. I, § 10: Except as hereinafter provided no person shall, for any indictable offense, be proceeded against criminally by information, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger, or by leave of the court for oppression or misdemeanor in office. Each of the several courts of common pleas may, with the approval of the Supreme Court, provide for the initiation of criminal proceedings therein by information filed in the manner provided by law. No person shall, for the same offense, be twice put in jeopardy of life or limb; nor shall private property be taken or applied to public use, without authority of law and without just compensation being first made or secured.

Statutory Definition of Public Use

No provision found.

Statutory Definition of Blight

Pa. Cons. Stat. ann. tit. 35, §1712.1(c) (West 2004). (c) Blighted property shall include: (1) Any premises which because of physical condition or use is regarded as a public nuisance at common law or has been declared a public nuisance in accordance with the local housing, building, plumbing, fire and related codes. (2) Any premises which because of physical condition, use or occupancy is considered an attractive nuisance to children, including but not limited to abandoned wells, shafts, basements, excavations, and unsafe fences or structures. (3) Any dwelling which because it is dilapidated, unsanitary, unsafe, vermin-infested or lacking in the facilities and equipment required by the housing code of the municipality, has been designated by the department responsible for enforcement of the code as unfit for human habitation. (4) Any structure which is a fire hazard, or is otherwise dangerous to the safety of persons or property. (5) Any structure from which the utilities, plumbing, heating, sewerage or other facilities have been disconnected, destroyed, removed, or rendered ineffective so that the property is unfit for its intended use. (6) Any vacant or unimproved lot or parcel of ground in a predominantly built-up neighborhood, which by reason of neglect or lack of maintenance has become a place for accumulation of trash and debris, or a haven for rodents or other vermin. (7) Any unoccupied property which has been tax delinquent for a period of two years prior to the effective date of this act, and those in the future having a two year tax delinquency. (8) Any property which is vacant but not tax delinquent, which has not been rehabilitated within one year of the receipt of notice to rehabilitate from the appropriate code enforcement agency. (9) Any abandoned property. A property shall be considered abandoned if: (i) it is a vacant or unimproved lot or parcel of ground on which a municipal lien for the cost of demolition of any structure located on the property remains unpaid for a period of six months; (ii) it is a vacant property or vacant or unimproved lot or parcel of ground on which the total of municipal liens on the property for tax or any other type of claim of the municipality are in excess of 150% of the fair market value of the property as established by the Board of Revisions of Taxes or other body with legal authority to determine the taxable value of the property; or (iii) the property has been declared abandoned by the owner, including an estate that is in possession of the property.

New Eminent Domain Legislation **HB 2054 & SB 881, Signed 5/4/06**

NOTE: Statutory language too voluminous to be included. In summary: HB 2054 outlines the proceedings and process for taking property through eminent domain. This bill defines "just compensation" as consisting of the difference between the fair market value of the condemnee's entire property interest immediately before the condemnation and as unaffected by the condemnation and the fair market value of the property interest remaining immediately after the condemnation and as affected by the condemnation. SB 881 limits in most cases the transfer of private property through eminent domain to private entities, other than public utilities, railroads, and common carriers.

Bibliography of Key State Cases

Farquhar v. Bucks County Airport Authority

52 Pa.D.&C.2d 342 (Common Pleas Court of Bucks County 1970)

Redevelopment Authority of the City of Erie v. Parties in Interest

274 A.2d 244 (Commw. Court of Penn. 1971)

Re Wahsington Park, Inc Appeal

229 A.2d 1 (Pa. 1967)

In re Redevelopment Authority of City of Philadelphia

2005 WL 3734901 (Pa.Cmwlth. 2006)

Condemnation of 110 Washington Street

767 A.2d 1154 (Pa.Comm. Ct. 2001), appeal denied, 788 A.2d 379 (2001)

In re Condemnation by the City of Coatesville

822 A.2d 846 (Pa.Comm. Ct. 2003)

Rhode Island

Constitutional Takings Language

R.I. CONST. art. I, § 16: Compensation for taking of private property for public use -- Regulation of fishery rights and shore privileges not public taking. -- Private property shall not be taken for public uses, without just compensation. The powers of the state and of its municipalities to regulate and control the use of land and waters in the furtherance of the preservation, regeneration, and restoration of the natural environment, and in furtherance of the protection of the rights of the people to enjoy and freely exercise the rights of fishery and the privileges of the shore, as those rights and duties are set forth in section 17, shall be an exercise of the police powers of the state, shall be liberally construed, and shall not be deemed to be a public use of private property.

Statutory Definition of Public Use

No provision found.

Statutory Definition of Blight

R.I. Gen. Laws §45-31-8 (2004).

(2) "Arrested blighted area" means any area which, by reason of the existence of physical conditions including, but not by way of limitation, the existence of unsuitable soil conditions, the existence of dumping or other insanitary or unsafe conditions, the existence of ledge or rock, the necessity of unduly expensive excavation, fill or grading, or the necessity of undertaking unduly expensive measures for the drainage of the area or for the prevention of flooding or for making the area appropriate for sound development, or by reason of obsolete, inappropriate, or otherwise faulty platting or subdivision, deterioration of site improvements, inadequacy of utilities, diversity of ownership of plots, or tax delinquencies, or by reason of any combination of any of the foregoing conditions, is unduly costly to develop soundly through the ordinary operations of private enterprise and impairs the sound growth of the community.

(6) "Deteriorated blighted area" means any area in which there exist buildings or improvements, either used or intended to be used for living, commercial, industrial, or other purposes, or any combination of these uses, which by reason of: (i) Dilapidation, deterioration, age, or obsolescence; (ii) Inadequate provision for ventilation, light, sanitation, open spaces, and recreation facilities; (iii) High density of population and overcrowding; (iv) Defective design or unsanitary or unsafe character or conditions of physical construction; (v) Defective or inadequate street and lot layout; and (vi) Mixed character, shifting, or deterioration of uses to which they are put, or any combination of these factors and characteristics, are conducive to the further deterioration and decline of the area to the point where it may become a slum blighted area as defined in subdivision (18), and are detrimental to the public health, safety, morals, and welfare of the inhabitants of the community and of the state generally. A deteriorated blighted area need not be restricted to, or consist entirely of, lands, buildings, or improvements which of themselves are detrimental or inimical to the public health, safety, morals, or welfare, but may consist of an area in which these conditions exist and injuriously affect the entire area.

(18) "Slum blighted area" means any area in which there is a predominance of buildings or improvements, either used or intended to be used for living, commercial, industrial, or other purposes, or any combination of these uses, which by reason of: (i) dilapidation, deterioration, age, or obsolescence; (ii) inadequate provision for ventilation, light, sanitation, open spaces, and recreation facilities; (iii) high density of population and overcrowding; (iv) defective design or unsanitary or unsafe character or condition of physical construction; (v) defective or inadequate street and lot layout; and (vi) mixed character or shifting of uses to which they are put, or any combination of these factors and characteristics, are conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, and crime; injuriously affect the entire area and constitute a menace to the public health, safety, morals, and welfare of the inhabitants of the community and of the state generally. A slum blighted area need not be restricted to, or consist entirely of, lands, buildings, or improvements which of themselves are detrimental or inimical to the public health, safety, morals, or welfare, but may consist of an area in which these conditions predominate and injuriously affect the entire area.

New Eminent Domain Legislation

No final legislation as of 5/5/06.

Bibliography of Key State Cases

Rhode Island Economic Development Corp v. The Parking Co.
2006 WL 504958 (R.I. 2006)

South Carolina

Constitutional Takings Language

S.C. Const. Ann. Art. I, § 13, Taking private property: Except as otherwise provided in this Constitution, private property shall not be taken for private use without the consent of the owner, nor for public use without just compensation being first made therefor.

Statutory Definition of Public Use

No provision found.

Statutory Definition of Blight

S.C. Code Ann. §31-10-20 (2004) (2) "Blighted area" means any improved or vacant area where if improved, industrial, commercial, and residential buildings or improvements, because of a combination of five or more of the following factors: age; dilapidation; obsolescence; deterioration; illegal use of individual structures; presence of structures below minimum code standards; excessive vacancies; overcrowding of structures and community facilities; lack of ventilation, light, or sanitary facilities; inadequate utilities; excessive land coverage; deleterious land use or layout; depreciation of physical maintenance; lack of community planning, are detrimental to the public safety, health, morals, or welfare or, if vacant, the sound growth is impaired by (a) a combination of two or more of the following factors: obsolete platting of the vacant land; diversity of ownership of such land; tax and special assessment delinquencies on such land; deterioration of structures or site improvements in neighboring areas adjacent to the vacant land; or (b) the area immediately prior to becoming vacant qualified as a blighted area.

New Eminent Domain Legislation

No final legislation as of 5/5/06.

Bibliography of Key State Cases

Karesh v. City Council of Charleston
271 S.C. 339 (S.C. 1978)

Georgia DOT v. Jasper County
586 S.E.2d 853 (S.C. 2003)

Timmons v. South Carolina Tricentennial Com.
254 S.C. 378 (S.C. 1970)

South Dakota

Constitutional Takings Language

S.D. CONST. art. VI, § 13, Private property not taken without just compensation--Benefit to owner--Fee in highways: Private property shall not be taken for public use, or damaged, without just compensation, which will be determined according to legal procedure established by the Legislature and according to § 6 of this article. No benefit which may accrue to the owner as the result of an improvement made by any private corporation shall be considered in fixing the compensation for property taken or damaged. The fee of land taken for railroad tracks or other highways shall remain in such owners, subject to the use for which it is taken.

Statutory Definition of Public Use

No provision found.

Statutory Definition of Blight

S.D. Codified Laws § 11-7-3 (Michie 2004). Unless the context clearly indicates otherwise, for the purpose of this chapter, "blighted area" means an area (other than a slum area as defined in § 11-7-2) where by reason of the predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility, or usefulness, or other insanitary or unsafe conditions, deterioration of site improvements, diversity of ownership, tax delinquency, defective or unusual conditions of title, improper subdivision or obsolete platting, or any combination of such reasons, development of such blighted area (which may include some incidental buildings or improvements) into predominantly housing uses is being prevented.

S.D. Codified Laws § 11-8-3 (Michie 2004). Wherever used or referred to in this chapter, unless a different meaning is clearly indicated by the context, "blighted area" shall mean an area which by reason of the presence of a substantial number of slum, deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, insanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, or the existence of conditions which endanger life or property by fire and other cause, or any combination of such factors, substantially impairs or arrests the sound growth of a municipality, retards the provision of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition and use: provided, that if such blighted area consists of open land the conditions contained in § 11-8-17 shall apply: and provided further, that any disaster area referred to in § 11-8-18 shall constitute a "blighted area."

New Eminent Domain Legislation* **HB 1080, Signed 2/17/06*

ENTITLED, An Act to restrict the use of eminent domain under certain circumstances and to protect certain private property rights from acquisition by the use or threat of eminent domain.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. No county, municipality, or housing and redevelopment commission, as provided for in chapter 11-7, may acquire private property by use of eminent domain:

- (1) For transfer to any private person, nongovernmental entity, or other public-private business entity; or
- (2) Primarily for enhancement of tax revenue.

Section 2. No county, municipality, or housing and redevelopment commission, as provided for in chapter 11-7, may transfer any fee interest in property acquired by the use or threat of eminent domain within seven years of acquisition to any private person, nongovernmental entity, or public-private business entity without first offering to sell such fee interest back to the person who originally owned the property, or such person's heirs or assigns, at current fair market value, whether the property has been improved or has remained unimproved during the interval, or at the original transfer value, whichever is less.

Bibliography of Key State Cases

City of Rapid City v. Finn

668 N.W.2d 324 (S.D. 2003)

Benson v. State

2006 WL 213746 (S.D. 2006)

Tennessee

Constitutional Takings Language

Tenn. CONST. art. I, § 21: That no man's particular services shall be demanded, or property taken, or applied to public use, without the consent of his representatives, or without just compensation being made therefore.

Statutory Definition of Public Use

No provision found

Statutory Definition of Blight

Tenn. Code. Ann. §13-20-201(a) (2004). Blighted areas are areas (including slum areas) with buildings or improvements which, by reason of dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light and sanitary facilities, excessive land coverage, deleterious land use, or obsolete layout, or any combination of these or other factors, are detrimental to the safety, health, morals, or welfare of the community.

New Eminent Domain Legislation

No final legislation as of 5/5/06.

Bibliography of Key State Cases

Montgomery v. Carter County
226 F.3d 758 (6th Cir. 2000)

Texas

Constitutional Takings Language

Tex. CONST. art. 1, § 17: No person's property shall be taken, damaged or destroyed for or applied to public use without adequate compensation being made, unless by the consent of such person; and, when taken, except for the use of the State, such compensation shall be first made, or secured by a deposit of money; and no irrevocable or uncontrollable grant of special privileges or immunities, shall be made; but all privileges and franchises granted by the Legislature, or created under its authority shall be subject to the control thereof.

Statutory Definition of Public Use

No provision found.

Statutory Definition of Blight

Tex. Loc. Gov't. Code Ann. §374.003 (West 2005). (3) "Blighted area" means an area that is not a slum area, but that, because of deteriorating buildings, structures, or other improvements; defective or inadequate streets, street layout, or accessibility; unsanitary conditions; or other hazardous conditions, adversely affects the public health, safety, morals, or welfare of the municipality and its residents, substantially retards the provision of a sound and healthful housing environment, or results in an economic or social liability to the municipality. The term includes an area certified as a disaster area as provided by Section 374.903.

New Eminent Domain Legislation SB 7 Signed 9/1/05

AN ACT relating to limits on the use of the power of eminent domain.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle E, Title 10, Government Code, is amended by adding Chapter 2206 to read as follows:

CHAPTER 2206. LIMITATIONS ON USE OF EMINENT DOMAIN

Sec. 2206.001. LIMITATION ON EMINENT DOMAIN FOR PRIVATE PARTIES OR ECONOMIC DEVELOPMENT PURPOSES.

(a) This section applies to the use of eminent domain under the laws of this state, including a local or special law, by any governmental or private entity, including:

- (1) a state agency, including an institution of higher education as defined by Section 61.003, Education Code;
- (2) a political subdivision of this state; or
- (3) a corporation created by a governmental entity to act on behalf of the entity.

(b) A governmental or private entity may not take private property through the use of eminent domain if the taking:

- (1) confers a private benefit on a particular private party through the use of the property;
- (2) is for a public use that is merely a pretext to confer a private benefit on a particular private party; or
- (3) is for economic development purposes, unless the economic development is a secondary purpose resulting from municipal community development or municipal urban renewal activities to eliminate an existing affirmative harm on society from slum or blighted areas under:
 - (A) Chapter 373 or 374, Local Government Code, other than an activity described by Section 373.002(b)(5), Local Government Code; or
 - (B) Section 311.005(a)(1)(I), Tax Code.
- (c) This section does not affect the authority of an entity authorized by law to take private property through the use of eminent domain for:
 - (1) transportation projects, including, but not limited to, railroads, airports, or public roads or highways;
 - (2) entities authorized under Section 59, Article XVI, Texas Constitution, including:
 - (A) port authorities;
 - (B) navigation districts; and
 - (C) any other conservation or reclamation districts that act as ports;
 - (3) water supply, wastewater, flood control, and drainage projects;
 - (4) public buildings, hospitals, and parks;
 - (5) the provision of utility services;
 - (6) a sports and community venue project approved by voters at an election held on or before December 1, 2005, under Chapter 334 or 335, Local Government Code;
 - (7) the operations of:
 - (A) a common carrier subject to Chapter 111, Natural Resources Code, and Section B(3)(b), Article 2.01, Texas Business Corporation Act; or
 - (B) an energy transporter, as that term is defined by Section 186.051, Utilities Code;
 - (8) a purpose authorized by Chapter 181, Utilities Code;
 - (9) underground storage operations subject to Chapter 91, Natural Resources Code;
 - (10) a waste disposal project; or
 - (11) a library, museum, or related facility and any infrastructure related to the facility.

(d) This section does not affect the authority of a governmental entity to condemn a leasehold estate on property owned by the governmental entity.

(e) The determination by the governmental or private entity proposing to take the property that the taking does not involve an act or circumstance prohibited by Subsection (b) does not create a presumption with respect to whether the taking involves that act or circumstance.

SECTION 2. Subchapter A, Chapter 552, Government Code, is amended by adding Section 552.0037 to read as follows:

Sec. 552.0037. CERTAIN ENTITIES AUTHORIZED TO TAKE PROPERTY THROUGH EMINENT DOMAIN. Notwithstanding any other law, information collected, assembled, or maintained by an entity that is not a governmental body but is authorized by law to take private property through the use of eminent domain is subject to this chapter in the same manner as information collected, assembled, or maintained by a governmental body, but only if the information is related to the taking of private property by the entity through the use of eminent domain.

SECTION 3. Section 203.052, Transportation Code, as amended by H.B. No. 2702, Acts of the 79th Legislature, Regular Session, 2005, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) Property necessary or convenient to a state highway for purposes of Subsection (a) includes an interest in real property, a property right, or a material that the commission determines is necessary or convenient to:

- (1) protect a state highway;
- (2) drain a state highway;
- (3) divert a stream, river, or other watercourse from the right-of-way of a state highway;
- (4) store materials or equipment for use or used in the construction or maintenance of a state highway;
- (5) construct or operate a warehouse or other facility used in connection with the construction, maintenance, or operation of a state highway;
- (6) lay out, construct, or maintain a roadside park;
- (7) lay out, construct, or maintain a parking lot that will contribute to maximum use of a state highway with the least possible congestion;
- (8) mitigate an adverse environmental effect that directly results from construction or maintenance of a state highway;
- (9) subject to Subsection (c), provide a location for an ancillary facility that is anticipated to generate revenue for use in the design, development, financing, construction, maintenance, or operation of a toll project, including a gas station, garage, store, hotel, restaurant, or other commercial facility;
- (10) construct or operate a toll booth, toll plaza, service center, or other facility used in connection with the construction, maintenance, or operation of a toll project; or
- (11) accomplish any other purpose related to the location, construction, improvement, maintenance, beautification, preservation, or operation of a state highway.

(c) The commission may not acquire property for an ancillary facility through the exercise of eminent domain, unless the acquisition of the property is for one of multiple ancillary facilities included in a comprehensive development plan approved by the county commissioners court of each county in which the property is located.

SECTION 4. Subsection (b), Section 227.041, Transportation Code, as amended by H.B. No. 2702, Acts of the 79th Legislature, Regular Session, 2005, is amended to read as follows:

(b) An interest in real property or a property right is necessary or convenient for the construction or operation of a facility if it is located in or contiguous to an existing or planned segment of the Trans-Texas Corridor or is needed for mitigation of adverse environmental effects, and if its acquisition will further the primary purposes of the Trans-Texas Corridor. Primary purposes include:

- (1) providing right-of-way or a location for a facility;
- (2) providing land for mitigation of adverse environmental effects;
- (3) providing buffer zones for scenic or safety purposes;
- (4) allowing for possible future expansion of any facility; and
- (5) subject to Section 203.052(c), providing a location for a gas station, convenience store, or similar ancillary facility.

SECTION 5. Subchapter Z, Chapter 51, Education Code, is amended by adding Section 51.9045 to read as follows:

Sec. 51.9045. LIMITATION ON USE OF EMINENT DOMAIN.

(a) In this section:

- (1) "Institution of higher education" has the meaning assigned by Section 61.003.
- (2) "Lodging facility" does not include a dormitory or other student housing facility.

(b) The governing board of an institution of higher education may not use the power of eminent domain to acquire land to be used for a lodging facility or for parking or a parking structure intended to be used in connection with the use of a lodging facility.

SECTION 6. Section 6, Chapter 178, Acts of the 56th Legislature, Regular Session, 1959 (Article 3183b-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6. (a) Except as provided by Subsection (b) of this section, the [The] power of eminent domain granted by this Act shall be exercised in accordance with Chapter 21, Property Code [the procedure, conditions, and provisions as prescribed in Title 52, Revised Civil Statutes of Texas, 1925, as amended].

(b) If a charitable corporation to which this Act applies seeks to acquire any real property by condemnation or seeks to purchase any real property that the corporation intends to use in a manner that would not comply with any deed restriction that applies to the property immediately before the purchase, before the charitable corporation initiates condemnation proceedings or records the deed conveying title

to the property the charitable corporation shall, in addition to providing any other notice required by law, provide written notice by certified mail to the owner of record, as recorded in the real property records of the county, of each unit of real property:

- (1) that the charitable corporation seeks to acquire or purchase; or
- (2) that is not more than 200 feet from any boundary of any unit of real property the charitable corporation seeks to acquire or purchase.

SECTION 7. Subsection (e), Section 227.041, Transportation Code, as added by H.B. No. 2702, Acts of the 79th Legislature, Regular Session, 2005, is repealed.

SECTION 8.

- (a) An interim committee is created to study the use of the power of eminent domain.
- (b) The interim committee consists of:
 - (1) five members of the senate appointed by the lieutenant governor; and
 - (2) five members of the house of representatives appointed by the speaker of the house of representatives.
- (c) The speaker of the house of representatives shall designate one member of the house of representatives appointed to the committee to act as co-chair. The lieutenant governor shall designate one senator appointed to the committee to act as co-chair.
- (d) The interim committee shall:
 - (1) study the use of the power of eminent domain, including the use of the power of eminent domain for economic development purposes and the issue of what constitutes adequate compensation for property taken through the use of eminent domain; and
 - (2) prepare a report of the committee's study for the 80th Legislature.
- (e) The report required by Subdivision (2), Subsection (d) of this section, must be filed with the lieutenant governor and speaker of the house of representatives not later than December 1, 2006.

SECTION 9. The changes in law made by this Act to Chapter 178, Acts of the 56th Legislature, Regular Session, 1959 (Article 3183b-1, Vernon's Texas Civil Statutes), apply to the acquisition of real property by eminent domain or the purchase of real property on or after the effective date of this Act unless condemnation proceedings are initiated or a deed conveying title to the property is filed before the effective date of this Act, in which event the acquisition or purchase is governed by the law in effect at the time the proceedings are initiated or the deed is filed, and the former law is continued in effect for that purpose. The changes in law made by this Act to Chapter 178, Acts of the 56th Legislature, Regular Session, 1959 (Article 3183b-1, Vernon's Texas Civil Statutes), do not apply to acquisition of real property by eminent domain or the purchase of real property before the effective date of this Act.

SECTION 10. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution.

If this Act does not receive the vote necessary for immediate effect, this Act takes effect on the 91st day after the last day of the legislative session.

Bibliography of Key State Cases

Berry v. City of Reno

107 S.W.3d 128 (Tex.App. - Ft. Worth 2003)

Malcolmson Road Utility District v. Newsom

2003 WL 21299939 (Tex.App-Hous. 1st Dist.)

McCord v. Housing Authority of Dallas

234 S.W.2d 108 (Tex. App. 1950)

Utah

Constitutional Takings Language

Utah CONST. art. 1, § 22: Private property shall not be taken or damaged for public use without just compensation.

Statutory Definition of Public Use

Utah Code Ann. § 78-34-1. Uses for which right may be exercised.

Subject to the provisions of this chapter, the right of eminent domain may be exercised in behalf of the following public uses:

- (1) All public uses authorized by the Government of the United States.
- (2) Public buildings and grounds for the use of the state, and all other public uses authorized by the Legislature.
- (3) Public buildings and grounds for the use of any county, city or incorporated town, or board of education; reservoirs, canals, aqueducts, flumes, ditches, or pipes for conducting water for the use of the inhabitants of any county or city or incorporated town, or for the draining of any county, city or incorporated town; the raising of the banks of streams, removing obstructions therefrom, and widening, deepening or straightening their channels; roads, streets and alleys; and all other public uses for the benefit of any county, city or incorporated town, or the inhabitants thereof.
- (4) Wharves, docks, piers, chutes, booms, ferries, bridges, toll roads, byroads, plank and turnpike roads, roads for transportation by traction engines or road locomotives, roads for logging or lumbering purposes, and railroads and street railways for public transportation.
- (5) Reservoirs, dams, watergates, canals, ditches, flumes, tunnels, aqueducts and pipes for the supplying of persons, mines, mills, smelters or other works for the reduction of ores, with water for domestic or other uses, or for irrigation purposes, or for the draining and reclaiming of lands, or for the floating of logs and lumber on streams not navigable, or for solar evaporation ponds and other facilities for the recovery of minerals in solution.
- (6) Roads, railroads, tramways, tunnels, ditches, flumes, pipes and dumping places to facilitate the milling, smelting or other reduction of ores, or the working of mines, quarries, coal mines or mineral deposits including minerals in solution; outlets, natural or otherwise, for the deposit or conduct of tailings, refuse or water from mills, smelters or other works for the reduction of ores, or from mines, quarries, coal mines or mineral deposits including minerals in solution; mill dams; gas, oil or coal pipelines, tanks or reservoirs, including any subsurface stratum or formation in any land for the underground storage of natural gas, and in connection therewith such other interests in property as may be required adequately to examine, prepare, maintain, and operate such underground natural gas storage facilities; and solar evaporation ponds and other facilities for the recovery of minerals in solution; also any occupancy in common by the owners or possessors of different mines, quarries, coal mines, mineral deposits, mills, smelters, or other places for the reduction of ores, or any place for the flow, deposit or conduct of tailings or refuse matter.
- (7) Byroads leading from highways to residences and farms.
- (8) Telegraph, telephone, electric light and electric power lines, and sites for electric light and power plants.
- (9) Sewerage of any city or town, or of any settlement of not less than ten families, or of any public building belonging to the state, or of any college or university.
- (10) Canals, reservoirs, dams, ditches, flumes, aqueducts and pipes for supplying and storing water for the operation of machinery for the purpose of generating and transmitting electricity for power, light or heat.
- (11) Cemeteries and public parks.
- (12) Pipe lines for the purpose of conducting any and all liquids connected with the manufacture of beet sugar.
- (13) Sites for mills, smelters or other works for the reduction of ores and necessary to the successful operation thereof, including the right to take lands for the discharge and natural distribution of smoke, fumes and dust therefrom, produced by the operation of such works; provided, that the powers granted by this subdivision shall not be exercised in any county where the population exceeds twenty thousand, or within one mile of the limits of any city or incorporated town; nor unless the proposed condemner has the right to operate by purchase, option to purchase or easement, at least seventy-five per cent in value of land acreage owned by persons or corporations situated within a radius of four miles from the mill, smelter or other works for the reduction of ores; nor beyond the limits of said four-mile radius; nor as to lands covered by contracts, easements or agreements existing between the condemner and the owner of land within said limit and providing for the operation of such mill, smelter or other works for the reduction of ores; nor until an action shall have been commenced to restrain the operation of such mill, smelter or other works for the reduction of ores.

Amended by Chapter 164, 1981 General Session

Statutory Definition of Blight

Utah Code Ann. § 17B-4-604 (2004). (1) An agency board may not make a finding of blight in a resolution under Section 17B-4-601 unless the board finds that the redevelopment project area: (a) (i) contains buildings or improvements used or intended to be used for residential, commercial, industrial, or other urban purposes, or any combination of those uses; (ii) contains buildings or improvements on at least 50% of the number of parcels of private real property whose acreage is at least 50% of the acreage of the private real property within the proposed redevelopment project area; and (iii) is unfit or unsafe to occupy or may be conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime because of any three or more of the following factors: (A) defective character of physical construction; (B) high density of population or overcrowding; (C) inadequate ventilation, light, or spacing between buildings; (D) mixed character and shifting of uses, resulting in obsolescence, deterioration, or dilapidation; (E) economic deterioration or continued disuse; (F) lots of irregular shape or inadequate size for proper usefulness and development, or laying out of lots in disregard of the contours and other physical characteristics of the ground and surrounding conditions; (G) inadequate sanitation or public facilities which may include streets, open spaces, and utilities; (H) areas that are subject to being submerged by water; and (I) existence of any hazardous or solid waste, defined as any substance defined, regulated, or listed as a hazardous substance, hazardous material, hazardous waste, toxic waste, pollutant, contaminant, or toxic substance, or identified as hazardous to human health or the environment under state or federal law or regulation; or (b) is a superfund site.

New Eminent Domain Legislation SB 117, Signed 3/22/06

Be it enacted by the Legislature of the state of Utah:

Section 1. Section 78-34-1 is amended to read:

78-34-1. Uses for which right may be exercised.

Subject to the provisions of this chapter, the right of eminent domain may be exercised in behalf of the following public uses:

- (1) All public uses authorized by the Government of the United States.
- (2) Public buildings and grounds for the use of the state, and all other public uses authorized by the Legislature.
- (3) Public buildings and grounds for the use of any county, city or incorporated town, or board of education; reservoirs, canals, aqueducts, flumes, ditches, or pipes for conducting water for the use of the inhabitants of any county or city or incorporated town, or for the draining of any county, city or incorporated town; the raising of the banks of streams, removing obstructions therefrom, and widening, deepening or straightening their channels; bicycle paths and sidewalks adjacent to paved roads; roads, streets and alleys for public vehicular use, excluding trails, paths, or other ways for walking, hiking, bicycling, equestrian use, or other recreational uses; and all other public uses for the benefit of any county, city or incorporated town, or the inhabitants thereof.
- (4) Wharves, docks, piers, chutes, booms, ferries, bridges, toll roads, byroads, plank and turnpike roads, roads for transportation by traction engines or road locomotives, roads for logging or lumbering purposes, and railroads and street railways for public transportation.
- (5) Reservoirs, dams, watergates, canals, ditches, flumes, tunnels, aqueducts and pipes for the supplying of persons, mines, mills, smelters or other works for the reduction of ores, with water for domestic or other uses, or for irrigation purposes, or for the draining and reclaiming of lands, or for the floating of logs and lumber on streams not navigable, or for solar evaporation ponds and other facilities for the recovery of minerals in solution.
- (6) Roads, railroads, tramways, tunnels, ditches, flumes, pipes and dumping places to facilitate the milling, smelting or other reduction of ores, or the working of mines, quarries, coal mines or mineral deposits including minerals in solution; outlets, natural or otherwise, for the deposit or conduct of tailings, refuse or water from mills, smelters or other works for the reduction of ores, or from mines, quarries, coal mines or mineral deposits including minerals in solution; mill dams; gas, oil or coal pipelines, tanks or reservoirs, including any subsurface stratum or formation in any land for the underground storage of natural gas, and in connection therewith such other interests in property as may be required adequately to examine, prepare, maintain, and operate such underground natural gas storage facilities; and solar evaporation ponds and other facilities for the recovery of minerals in solution; also any occupancy in common by the owners or possessors of different mines, quarries, coal mines, mineral deposits, mills, smelters, or other places for the reduction of ores, or any place for the flow, deposit or conduct of tailings or refuse matter.
- (7) Byroads leading from highways to residences and farms.
- (8) Telegraph, telephone, electric light and electric power lines, and sites for electric light and power plants.
- (9) Sewerage of any city or town, or of any settlement of not less than ten families, or of any public building belonging to the state, or of any college or university.
- (10) Canals, reservoirs, dams, ditches, flumes, aqueducts and pipes for supplying and storing water for the operation of machinery for the purpose of generating and transmitting electricity for power, light or heat.
- (11) Cemeteries and public parks.
- (12) Pipe lines for the purpose of conducting any and all liquids connected with the manufacture of beet sugar.
- (13) Sites for mills, smelters or other works for the reduction of ores and necessary to the successful operation thereof, including the right to take lands for the discharge and natural distribution of smoke, fumes and dust therefrom, produced by the operation of such works; provided, that the powers granted by this subdivision shall not be exercised in any county where the population exceeds twenty thousand, or within one mile of the limits of any city or incorporated town; nor unless the proposed condemner has the right to operate by purchase, option to purchase or easement, at least seventy-five per cent in value of land acreage owned by persons or corporations situated within a radius of four miles from the mill, smelter or other works for the reduction of ores; nor beyond the limits of said four-mile radius; nor as to lands covered by contracts, easements or agreements existing between the condemner and the owner of land within said limit and providing for the operation of such mill, smelter or other works for the reduction of ores; nor until an action shall have been commenced to restrain the operation of such mill, smelter or other works for the reduction of ores.

Section 2. Section 78-34-4 is amended to read:

78-34-4. Conditions precedent to taking.

(1) Before property can be taken it must appear:

[[1]] (a) that the use to which it is to be applied is a use authorized by law;

[(2)] (b) that the taking is necessary to such use;

[(3)] (c) that construction and use of all property sought to be condemned will commence within a reasonable time as determined by the court, after the initiation of proceedings under this chapter; and

[(4)] (d) if already appropriated to some public use, that the public use to which it is to be applied is a more necessary public use.

(2) (a) As used in this Subsection (2), "governing body" means:

(i) for a county, city, or town, the legislative body of the county, city, or town; and

(ii) for any other political subdivision of the state, the person or body with authority to govern the affairs of the political subdivision.

(b) Property may not be taken by a political subdivision of the state unless the governing body of the political subdivision approves the taking.

(c) Before taking a final vote to approve the filing of an eminent domain action, the governing body of each political subdivision intending to take property shall provide written notice to each owner of property to be taken of each public meeting of the political subdivision's governing body at which a vote on the proposed taking is expected to occur and allow the property owner the opportunity to be heard on the proposed taking.

(d) The requirement under Subsection (2)(c) to provide notice to a property owner is satisfied by the governing body mailing the written notice to the property owner:

(i) at the owner's address as shown on the records of the county assessor's office; and

(ii) at least ten business days before the public meeting.

Section 3. Section 78-34-4.5 is amended to read:

78-34-4.5. Negotiation and disclosure required before voting to approve an eminent domain action.

Each person who seeks to acquire property by eminent domain or who intends to use eminent domain to acquire property if the property cannot be acquired in a voluntary transaction shall:

(1) before [initiating] taking a final vote to approve the filing of an eminent domain action, make a reasonable effort to negotiate with the property owner for the purchase of the property; and

(2) as early in the negotiation process under Subsection (1) as practicable but no later than 14 days before a final vote is taken to approve the filing of an eminent domain action, unless the court for good cause allows a shorter period before filing:

(a) advise the property owner of the owner's rights to mediation and arbitration under Section 78-34-21 , including the name and current telephone number of the property rights ombudsman, established in Section 63-34-13 ; and

(b) provide the property owner a written statement explaining that oral representations or promises made during the negotiation process are not binding upon the person seeking to acquire the property by eminent domain.

Bibliography of Key State Cases

No cases found.

Vermont

Constitutional Takings Language

Vt. CONST. ch. I, art. II: That private property ought to be subservient to public uses when necessity requires it, nevertheless, whenever any person's property is taken for the use of the public, the owner ought to receive an equivalent in money.

Statutory Definition of Public Use

No provision found.

Statutory Definition of Blight

Vt. Stat. Ann. Tit. 24, §3201(3) (2004). "Blighted area" shall mean an area which by reason of the presence of a substantial number of slum, deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, insanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs or arrests the sound growth of a municipality, retards the provision of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition and use; provided, that if such blighted area consists of open land the conditions contained in the proviso in section 3207(d) of this title shall apply; and provided further, that any disaster area referred to in section 3207(g) of this title shall constitute a "blighted area".

New Eminent Domain Legislation SB 246, Signed 4/14/06

AN ACT RELATING TO EMINENT DOMAIN.

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 12 V.S.A. § 1040 is added to read:

§ 1040. EMINENT DOMAIN; RESTRICTIONS ON USE; CONFERRING OF PRIVATE BENEFIT; ECONOMIC DEVELOPMENT

(a) Notwithstanding any other provision of law, no governmental or private entity may take private property through the use of eminent domain if the taking is primarily for purposes of economic development, unless the property is taken pursuant to chapter 85 of Title 24 (urban renewal).

(b) This section shall not affect the authority of an entity authorized by law to use eminent domain for the following purposes:

- (1) transportation projects, including highways, airports, and railroads;
- (2) public utilities, including entities engaged in the generation, transmission, or distribution of electric, gas, sewer and sewage treatment, or communication services;
- (3) public property, buildings, hospitals, and parks; or
- (4) water, wastewater, stormwater, flood control, drainage, or waste disposal projects.

Sec. 2. 24 V.S.A. § 3201(3) is amended to read:

(3) "Blighted area" shall mean an area which by reason of the presence of a substantial number of slum, deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, insanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs or arrests the sound growth of a municipality, retards the provision of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition and use. If such blighted area consists of open land the conditions contained in the proviso in subsection 3207(d) of this title shall apply. Any disaster area referred to in section 3207(g) of this title shall constitute a "blighted area." No area shall be determined to be a blighted area solely or primarily because its condition and value for tax purposes are less than the condition and value projected as the result of the implementation of any state, municipal, or private redevelopment plan.

Sec. 3. 24 V.S.A. § 3211(f) is amended to read:

(f) In considering the issue of necessity, the superior and assistant judges shall, to the extent constitutionally permitted, give effect to the legislative determinations made in this chapter and to the determinations made by the voters and appropriate municipal authorities under this chapter. The court shall not give weight to a projected increase in economic value of the subject property solely or primarily because its condition and value for tax purposes are less than the condition and value projected as the result of the implementation of any state, municipal, or private redevelopment plan.

Bibliography of Key State Cases

No cases found.

Virginia

Constitutional Takings Language

Va. CONST. art. I, § 11: That no person shall be deprived of his life, liberty, or property without due process of law; that the General Assembly shall not pass any law impairing the obligation of contracts, nor any law whereby private property shall be taken or damaged for public uses, without just compensation, the term "public uses" to be defined by the General Assembly; and that the right to be free from any governmental discrimination upon the basis of religious conviction, race, color, sex, or national origin shall not be abridged, except that the mere separation of the sexes shall not be considered discrimination. That in controversies respecting property, and in suits between man and man, trial by jury is preferable to any other, and ought to be held sacred. The General Assembly may limit the number of jurors for civil cases in courts of record to not less than five.

Statutory Definition of Public Use

No provision found

Statutory Definition of Blight

Va. Code Ann. §36-49 (Michie 2005). [B]lighted or deteriorated areas are hereby defined as areas (including slum areas) with buildings or improvements which, by reason of dilapidation, obsolescence, overcrowding, faulty arrangement of design, lack of ventilation, light and sanitary facilities, excessive land coverage, deleterious land use or obsolete layout, or any combination of these or other factors, are detrimental to the safety, health, morals or welfare of the community

New Eminent Domain Legislation* **HB 699, Signed 4/6/06*

NOTE: Statutory language too voluminous to be included. In summary, the bill: (1) defines "blighted area" as any area that endangers the public health, safety, or welfare, or any area that is detrimental to the public health, safety, or welfare because commercial, industrial, or residential structures or improvements are dilapidated, or deteriorated or because such structures or improvements violate minimum health and safety standards, including areas previously designated as blighted areas; (2) defines "blighted property" as any individual commercial, industrial, or residential structure or improvement that endangers the public's health, safety, or welfare because the structure or improvement upon the property is dilapidated, deteriorated, or violates minimum health and safety standards, or any structure or improvement previously designated as blighted; (3) defines "slum" as any area where dwellings predominate that, by reason of dilapidation, overcrowding, lack of ventilation, light or sanitary facilities, or any combination of these factors, is detrimental to safety, health, or morals; (4) provides that an redevelopment authority has the right to acquire by the exercise of the power of eminent domain any real property pursuant to a duly adopted redevelopment or conservation plan, or otherwise only in accordance with this chapter, after the adoption by it of a resolution declaring that the acquisition of the real property described therein is necessary for such "public" purposes; (5) provides that no redevelopment or conservation plan is effective until notice has been sent to the property owner or owners of record and the redevelopment plan has been approved by the local governing body; (6) prohibits a locality from creating conservation or redevelopment areas, except through a redevelopment and housing authority and only in accordance with these provisions; and (7) provides that it is a public purpose to provide public facilities including, but not limited to, roads, water, sewers, parks, and real estate devoted to open-space use within redevelopment and conservation areas to encourage the private development in such areas in order to eliminate blighted conditions.

Bibliography of Key State Cases

City of Va. Beach v. Christopoulos Family

54 Va. Cir. 95 (Va. Cir. Ct. 2000)

Ottofaro v. City of Hampton

574 S.E.2d 235 (Va. 2003)

Bragg v. Weaver

251 U.S. 57 (1919)

Washington

Constitutional Takings Language

Wash. CONST. art. I, § 16: 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 purposes. No private property shall be taken or damaged for public or private use without just compensation having been first made, or paid into court for the owner, and no right-of-way shall be appropriated to the use of any corporation other than municipal until full compensation therefor be first made in money, or ascertained and paid into court for the owner, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury, unless a jury be waived, as in other civil cases in courts of record, in the manner prescribed by law. Whenever an attempt is made to take private property for a use alleged to be public, the 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: Provided, That the taking of private property by the state for land reclamation and settlement purposes is hereby declared to be for public use.

Statutory Definition of Public Use

No provision found.

Statutory Definition of Blight

Wash. Rev. Code §35.81.015 (2004). (2) "Blighted area" means an area which, by reason of the substantial physical dilapidation, deterioration, defective construction, material, and arrangement and/or age or obsolescence of buildings or improvements, whether residential or nonresidential, inadequate provision for ventilation, light, proper sanitary facilities, or open spaces as determined by competent appraisers on the basis of an examination of the building standards of the municipality; inappropriate uses of land or buildings; existence of overcrowding of buildings or structures; defective or inadequate street layout; faulty lot layout in relation to size, adequacy, accessibility or usefulness; excessive land coverage; insanitary or unsafe conditions; deterioration of site; existence of hazardous soils, substances, or materials; diversity of ownership; tax or special assessment delinquency exceeding the fair value of the land; defective or unusual conditions of title; improper subdivision or obsolete platting; existence of persistent and high levels of unemployment or poverty within the area; or the existence of conditions that endanger life or property by fire or other causes, or any combination of such factors, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency or crime; substantially impairs or arrests the sound growth of the municipality or its environs, or retards the provision of housing accommodations; constitutes an economic or social liability; and/or is detrimental, or constitutes a menace, to the public health, safety, welfare, or morals in its present condition and use.

New Eminent Domain Legislation

No final legislation as of 5/5/06.

Bibliography of Key State Cases

Manufactured Housing Communities of Washington v. State of Washington
13 P.3d 183 (Wash. 2000)

City of Lynwood v. Video Only, Inc.
77 P.3d 378 (Wash.Ct.App. 2003)

In re Petition of Seattle
638 P.2d 549 (Wash., 1981)

In the Matter of the Petition of the City of Lynnwood
77 P.3d 378 (Wash.App.Div. 2003)

In re Petition of City of Seattle (Westlake II)
707 P.2d 1348 (1985)

Steilacoom v. Thompson
419 P.2d 989 (Wash. 1966)

Dickgeiser v. State of Washington
76 P.3d 288 (Wash.Ct.App. 2003)

West Virginia

Constitutional Takings Language

W. Va. CONST. art. III, § 9: Private property shall not be taken or damaged for public use, without just compensation; nor shall the same be taken by any company, incorporated for the purposes of internal improvement, until just compensation shall have been paid, or secured to be paid, to the owner; and when private property shall be taken, or damaged for public use, or for the use of such corporation, the compensation to the owner shall be ascertained in such manner as may be prescribed by general law: Provided, That when required by either of the parties, such compensation shall be ascertained by an impartial jury of twelve freeholders.

Statutory Definition of Public Use

W. Va. Code § 54-1-2. Public uses for which private property may be taken or damaged.

The public uses for which private property may be taken or damaged are as follows:

- (a) For the construction, maintenance and operation of railroad and traction lines (including extension, lateral and branch lines, spurs, switches and sidetracks), canals, public landings, wharves, bridges, public roads, streets, alleys, parks and other works of internal improvement, for the public use;
- (b) For the construction and maintenance of telegraph, telephone, electric light, heat and power plants, systems, lines, transmission lines, conduits, stations (including branch, spur and service lines), when for public use;
- (c) For constructing, maintaining and operating pipelines, plants, systems and storage facilities for manufacturing gas and for transporting petroleum oil, natural gas, manufactured gas, and all mixtures and combinations thereof, by means of pipes, pressure stations or otherwise, (including the construction and operation of telephone and telegraph lines for the service of such systems and plants), and for underground storage areas and facilities, and the operation and maintenance thereof, for the injection, storage and removal of natural gas in subterranean oil and/or gas bearing stratum, which, as shown by previous exploration of the stratum sought to be condemned and within the limits of the reservoir proposed to be utilized for such purposes, has ceased to produce or has been proved to be nonproductive of oil and/or gas in substantial quantities, when for public use, the extent of the area to be acquired for such purpose to be determined by the court on the basis of reasonable need therefor. Nothing in this subsection shall be construed to interfere with the power of the state and its political subdivisions to enact and enforce ordinances and regulations deemed necessary to protect the lives and property of citizens from the effects of explosions of oil or gas;
- (d) For constructing, maintaining and operating, water plants and systems, including lines for transporting water by any corporate body politic, or private corporation, for supplying water to the inhabitants of any city, town, village or community, for public use, including lands for pump stations, reservoirs, cisterns, storage dams, and other means of storing, purifying and transporting water, and the right to take and damage lands which may be flooded by the impounded waters, and to appropriate any spring, stream and the surrounding property necessary to protect, preserve and maintain the purity of any such spring, stream, reservoir, cistern and water impounded by means of any storage dam;
- (e) For the purpose of constructing, maintaining and operating sewer systems, lines and sewage disposal plants, to collect, transport and dispose of sewage. When in the interest of the public welfare and the preservation of the public health, the construction of a sewer line to serve a single building or institution shall be deemed a public use, and, for such purpose, the right of eminent domain, if within a municipal corporation, may be exercised in the name of a municipal corporation, and if not within a municipal corporation, in the name of the county court of the county in which the property is located;
- (f) For the reasonable use by an incorporated company engaged in a public enterprise of which the state or any county or municipality is the sole or a part owner;
- (g) For courthouses and municipal buildings, parks, public playgrounds, the location of public monuments, and all other public buildings;
- (h) For cemeteries, and the extension and enlargement of existing cemeteries: Provided, That no lands shall be taken for cemetery purposes which lie within four hundred feet of a dwelling house, unless to extend the boundaries of an existing cemetery, and then only in such manner that the limits of the existing cemetery shall not be extended nearer than four hundred feet of any dwelling house distant four hundred feet or more from such cemetery, or nearer than it was to any dwelling house which is within four hundred feet thereof;
- (i) For public schools, public libraries and public hospitals;
- (j) For the construction and operation of booms (including approaches, landings and ways necessary for such objects), when for a public use;
- (k) By the state of West Virginia for any and every other public use, object and purpose not herein specifically mentioned. By the United States of America for each and every legitimate public use, need and purpose of the government of the United States, within the purview, and subject to the provisions of chapter one of this code;
- (l) For constructing, maintaining and operating pipelines, plants, systems and storage facilities, for the transportation by common carrier as a public utility of coal and its derivatives and all mixtures and combinations thereof with any substance by means of pipes, pressure stations or otherwise (including the construction and operation of telephone and telegraph lines for the service of such systems and plants), for public use: Provided, That the common carrier engages in some intrastate activity in this state, if there is any reasonable demand therefor: Provided, however, That in addition to all other requisites by federal or state constitutions, statute or common law required for the taking of private property for public use, a further prerequisite and condition precedent to the exercise of such taking of or damage to private property for public use as in this subsection hereinabove provided, is that the public service commission of this state, in an appropriate hearing and proceeding on due notice to all interested persons, firms or corporations, in accordance with the procedure now or hereafter established by statute and the regulations thereunder, shall have found that such pipeline transportation of coal and its derivatives and all mixtures and combinations thereof is required for the public convenience and necessity, and that the public service commission of this state shall not extend a certificate of convenience and necessity or make such finding of public convenience and necessity unless, in addition to the other facts required to support such findings, it shall have been established by the applicant therefor that the patents and other similar rights under which the applicant proposes to construct, maintain or operate such pipeline, plants, systems and storage facilities shall be and shall remain equally available, insofar as said subsequent applicant may determine such availability, upon fair and reasonable terms, to other bona fide applicants seeking a certificate of convenience and necessity and finding of fact for any other pipeline in West Virginia; for the purpose of making the findings hereinbefore set forth the public service commission shall have and exercise jurisdiction, and that the aforesaid findings in this proviso above set forth shall be subject to judicial review as in other public service commission proceedings.

It is the intention of the Legislature in amending this section by the addition of subdivision (1) as set forth above to extend the right of eminent domain to coal pipelines for public use; to provide for regulation of such coal pipelines by the public service commission of this state or the interstate commerce commission of the United States of America, or both; to assure that such rights shall be extended only to public utilities or common carriers as distinguished from private carriers or contract carriers; to make patents covering the same equally available to others on fair and reasonable terms; and to prevent monopolistic use of coal pipelines by any users thereof which would result in any appreciable economic detriment to others similarly situated by reasons of any such monopoly.

Statutory Definition of Blight

W. Va. Code § 16-8-3 (k) (2005). "Blighted area" shall mean an area (other than a slum area) which by reason of the predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, insanitary or unsafe conditions, deterioration of site improvement, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, improper subdivision or obsolete platting, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs or arrests the sound growth of the community, retards the provision of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition and use.

New Eminent Domain Legislation HB 4048, Signed 4/5/06

AN ACT to amend and reenact §16-18-3, §16-18-6 and §16-18-8 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §16- 18-6a; and to amend and reenact §54-1-2 of said code; and to further amend said code by adding thereto an new section designated §54-1-2a, all relating to limiting the use of eminent domain; creating definitions for certain terms; prohibiting use of eminent domain for economic development and providing for limited exceptions; establishing a procedure for municipal urban renewal authorities to use eminent domain for properties only in blighted areas; requiring notice of public hearing and rights of property owners related to proposed condemnation of property; requiring municipal urban renewal authority to consider other alternatives to condemnation; requiring municipal urban renewal authority to show property is blighted or necessary for the redevelopment plan; requiring municipal urban renewal authority meet additional requirements before proceeding with condemnation of nonblighted property; creating right for property owner to appeal the condemnation; requiring municipal authority to prove all statutory criteria have been met; protecting property owners right to relocation assistance; prohibiting use of eminent domain for economic development that would result in private economic gain; and requiring a good faith offer prior to condemnation.

Be it enacted by the Legislature of West Virginia:

That §16-18-3, §16-18-6 and §16-18-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §16-18- 6a, and that §54-1-2 be amended and reenacted; and that said code be amended by adding thereto a new section, designated §54-1-2a, all to read as follows:

CHAPTER 16. PUBLIC HEALTH

ARTICLE 18. SLUM CLEARANCE.

§16-18-3. Definitions.

The following terms, wherever used or referred to in this article, shall have the following meanings, unless a different meaning is clearly indicated by the context:

(a) "Area of operation" means in the case of a municipality, the area within such municipality and the area within five miles of the territorial boundaries thereof, except that the area of operation of a municipality under this article shall not include any area which lies within the territorial boundaries of another municipality unless a resolution shall have been adopted by the governing body of such other municipality declaring a need therefor; and in the case of a county, the area within the county, except that the area of operation in such case shall not include any area which lies within the territorial boundaries of a municipality unless a resolution shall have been adopted by the governing body of such municipality declaring a need therefor; and in the case of a regional authority, shall mean the area within the communities for which such regional authority is created: Provided, That a regional authority shall not undertake a redevelopment project within the territorial boundaries of any municipality unless a resolution shall have been adopted by the governing body of such municipality declaring that there is a need for the regional authority to undertake such development project within such municipality. No authority shall operate in any area of operation in which another authority already established is undertaking or carrying out a redevelopment project without the consent, by resolution, of such other authority.

(b) "Authority", "slum clearance and redevelopment authority" or "urban renewal authority" means a public body, corporate and politic, created by or pursuant to section four of this article or any other public body exercising the powers, rights and duties of such an authority as hereinafter provided.

(c) "Blighted area" means an area, other than a slum area, which by reason of the predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, insanitary or unsafe conditions, deterioration of site improvement, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, improper subdivision or obsolete platting, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs or arrests the sound growth of the community, retards the provision of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition and use.

(d) "Blighted property" means a tract or parcel of land that, by reason of abandonment, dilapidation, deterioration, age or obsolescence, inadequate provisions for ventilation, light, air or sanitation, high density of population and overcrowding, deterioration of site or other improvements, or the existence of conditions that endanger life or property by fire or other causes, or any combination of such factors, is detrimental to the public health, safety or welfare.

(e) "Bonds" means any bonds, including refunding bonds, notes, interim certificates, debentures, or other obligations issued by an authority pursuant to this article.

- (f) "Community" means any municipality or county in the state.
- (g) "Clerk" means the clerk or other official of the municipality or county who is the custodian of the official records of such municipality or county.
- (h) "Federal government" is the United States of America or any agency or instrumentality, corporate or otherwise, of the United States of America.
- (i) "Governing body" means the council or other legislative body charged with governing the municipality or the county court or other legislative body charged with governing the county.
- (j) "Mayor" means the officer having the duties customarily imposed upon the executive head of a municipality.
- (k) "Municipality" means any incorporated city, town or village in the state.
- (l) "Obligee" means any bondholder, agents or trustees for any bondholders, or lessor demising to the authority property used in connection with a redevelopment project, or any assignee or assignees of such lessor's interest or any part thereof, and the federal government when it is a party to any contract with the authority.
- (m) "Person" means any individual, firm, partnership, corporation, company, association, joint stock association, or body politic; and shall include any trustee, receiver, assignee, or other similar representative thereof.
- (n) "Public body" means the state or any municipality, county, township, board, commission, authority, district, or any other subdivision or public body of the state.
- (o) "Real property" includes all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest and right, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage or otherwise and the indebtedness secured by such liens.
- (p) "Redeveloper" means any person, partnership, or public or private corporation or agency which shall enter or propose to enter into a redevelopment contract.
- (q) "Redevelopment contract" means a contract entered into between an authority and a redeveloper for the redevelopment of an area in conformity with a redevelopment plan .
- (r) "Redevelopment plan" means a plan for the acquisition, clearance, reconstruction, rehabilitation, or future use of a redevelopment project area.
- (s) "Redevelopment project" means any work or undertaking:
- (1) To acquire pursuant to the limitations contained in subdivision (11), section two, article one, chapter fifty-four slum areas or blighted areas or portions thereof, including lands, structures, or improvements the acquisition of which is necessary or incidental to the proper clearance, development or redevelopment of such slum or blighted areas or to the prevention of the spread or recurrence of slum conditions or conditions of blight;
 - (2) To clear any such areas by demolition or removal of existing buildings, structures, streets, utilities or other improvements thereon and to install, construct, or reconstruct streets, utilities, and site improvements essential to the preparation of sites for uses in accordance with a redevelopment plan;
 - (3) To sell, lease or otherwise make available land in such areas for residential, recreational, commercial, industrial or other use or for public use or to retain such land for public use, in accordance with a redevelopment plan; and
 - (4) Preparation of a redevelopment plan, the planning, survey and other work incident to a redevelopment project and the preparation of all plans and arrangements for carrying out a redevelopment project.
- (t) "Slum area" means an area in which there is a predominance of buildings or improvements or which is predominantly residential in character, and which, by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency and crime, and is detrimental to the public health, safety, morals or welfare. (u) "Unblighted property" means a property that is not a blighted property.

§16-18-6. Preparation and approval of redevelopment plans.

- (a) An authority shall not acquire real property for a redevelopment project unless the governing body of the community in which the redevelopment project area is located has approved the redevelopment plans, as prescribed in subsection (i) below.
- (b) An authority shall not prepare a redevelopment plan for a redevelopment project area unless the governing body of the community in which such area is located has, by resolution, declared such area to be a slum or blighted area in need of redevelopment.
- (c) An authority shall not recommend a redevelopment plan to the governing body of the community in which the redevelopment project area is located until a general plan for the development of the community has been prepared.
- (d) The authority may itself prepare or cause to be prepared a redevelopment plan or any person or agency, public or private, may submit such a plan to an authority. A redevelopment plan shall be sufficiently complete to indicate its relationship to definite local objectives as to appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities and other public improvements and the proposed land uses and building requirements in the redevelopment project area, and shall include without being limited to:
- (1) The boundaries of the redevelopment project area, with a map showing the existing uses and conditions of the real property therein;
 - (2) A land use plan showing proposed uses of the area;
 - (3) Information showing the standards of population densities, land coverage and building intensities in the area after redevelopment;
 - (4) A statement of the proposed changes, if any, in zoning ordinances or maps, street layouts, street levels or grades, building codes and ordinances;
 - (5) A site plan of the area; and
 - (6) A statement as to the kind and number of additional public facilities or utilities which will be required to support the new land uses in the area after redevelopment.
- (e) Prior to recommending a redevelopment plan to the governing body for approval, an authority shall submit such plan to the planning commission of the community in which the redevelopment project area is located for review and recommendations as to its conformity with the general plan for the development of the community as a whole. The planning commission shall submit its written recommendations with respect to the proposed redevelopment plan to the authority within thirty days after receipt of the plan for review. Upon receipt of the recommendations of the planning commission or, if no recommendations are received within said thirty days, then without such recommendations, an authority may recommend the redevelopment plan to the governing body of the community for approval.
- (f) Prior to recommending a redevelopment plan to the governing body for approval, an authority shall consider whether the proposed land

uses and building requirements in the redevelopment project area are designed with the general purpose of accomplishing, in conformance with the general plan, a coordinated, adjusted and harmonious development of the community and its environs which will, in accordance with present and future needs, promote health, safety, morals, order, convenience, prosperity and the general welfare, as well as efficiency and economy in the process of development; including, among other things, adequate provision for traffic, vehicular parking, the promotion of safety from fire, panic and other dangers, adequate provision for light and air, the promotion of the healthful and convenient distribution of population, the provision of adequate transportation, water, sewerage and other public utilities, schools, parks, recreational and community facilities and other public requirements, the promotion of sound design and arrangement, the wise and efficient expenditure of public funds, the prevention of the recurrence of insanitary or unsafe dwelling accommodations, slums, or conditions of blight, and the provision of adequate, safe and sanitary dwelling accommodations.

(g) The recommendation of a redevelopment plan by an authority to the governing body shall be accompanied by the recommendations, if any, of the planning commission concerning the redevelopment plan; a statement of the proposed method and estimated cost of the acquisition and preparation for redevelopment of the redevelopment project area and the estimated proceeds or revenues from its disposal to redevelopers; a statement of the proposed method of financing the redevelopment project; and a statement of a feasible method proposed for the relocation of families to be displaced from the redevelopment project area.

(h) The governing body of the community shall hold a public hearing on any redevelopment plan or substantial modification thereof recommended by the authority, after public notice thereof by publication as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the community. Public notice shall also include notice by certified letter, return receipt requested to each property owner of record of all affected properties of the proposed project. The notice shall include:

(1) Notice of the public hearing time, date and location;

(2) The right to have an inspection by the municipal authority to determine if the property is blighted or unblighted;

(3) The inspection procedures; and

(4) The rights the property owner has pursuant to section six-a of this article relating to unblighted properties in blighted or slum areas.

The last publication shall be at least ten days prior to the date set for the hearing. The notice shall describe the time, date, place and purpose of the hearing and shall also generally identify the area to be redeveloped under the plan. All interested parties shall be afforded at such public hearing a reasonable opportunity to express their views respecting the proposed redevelopment plan. The municipal authority shall consider reasonable alternatives for the redevelopment project that will minimize the use of eminent domain against any properties that are not blighted.

(i) Following such hearing, the governing body may approve a redevelopment plan if it finds that said plan is feasible and in conformity with the general plan for the development of the community as a whole: Provided, That if the redevelopment project area is a blighted area, the governing body must also find that a shortage of housing of sound standards and designs, adequate for family life, exists in the community; the need for housing accommodations has been or will be increased as a result of the clearance of slums in other areas under redevelopment; the conditions of blight in the redevelopment project area and the shortage of decent, safe and sanitary housing cause or contribute to an increase in and spread of disease and crime and constitute a menace to the public health, safety, morals or welfare; and that the development of the blighted area for predominantly residential uses is an integral part of and essential to the program of the community for the elimination of slum areas. A redevelopment plan which has not been approved by the governing body when recommended by the authority may again be recommended to it with any modifications deemed advisable.

(j) A redevelopment plan may be modified at any time by the authority: Provided, That if modified after the lease or sale of real property in the redevelopment project area, the modification must be consented to by the redeveloper or redevelopers of such real property or his successor, or their successors in interest affected by the proposed modification. Where the proposed modification will substantially change the redevelopment plan as previously approved by the governing body the modification must similarly be approved by the governing body.

§16-18-6a. Municipal non-blighted property in slum or blight areas.

(a) The municipal authority shall have the burden to show that a property is blighted. If the property owner does not allow the authority to conduct an inspection of the property to determine whether it is appropriate to deem the property blighted or unblighted, then it is a rebuttable presumption that the property is blighted.

(b) When any area has been declared to be slum and blighted, pursuant to the provisions of this article, if a private property within that area is found to not be a blighted property, then to condemn the property pursuant to article two, chapter fifty four of the code, the municipal authority must demonstrate, in addition to all other lawful condemnation requirements, that the project or program requiring the clearance of the slum and blighted area:

(1) Cannot proceed without the condemnation of the private property at issue;

(2) That the private property shown not to be blighted cannot be integrated into the proposed project or program once the slum and blighted area surrounding such property is taken and cleared;

(3) That the condemnation of the unblighted property is necessary for the clearance of an area deemed to be slum or blighted;

(4) That other alternatives to the condemnation of the unblighted property are not reasonably practical;

(5) That every reasonable effort has been taken to ensure that the unblighted property and its owners have been given a reasonable opportunity to be included in the redevelopment project or plan without the use of eminent domain;

(6) That no alternative site within the slum and blighted area is available for purchase by negotiation that might substitute as a site for the unblighted property;

(7) That the redevelopment project or plan could not be restructured to avoid the taking of the unblighted property;

(8) That the redevelopment project or plan could not be carried out without the use of eminent domain; and

(9) That there is specific use for the unblighted property to be taken and a plan to redevelop and convert the unblighted property from its current use to the stated specific use basically exists.

(c) In any case when the municipal authority has decided to pursue condemnation, the property owner shall have the right to seek review in the circuit court within the county wherein the property lies. Prior to authorizing condemnation as provided pursuant to article two, chapter fifty-four of the code, the court must find that the property is blighted, or if unblighted, that the authority has met the requirements of subsection (b) of this section.

(d) All of the rights and remedies contained in article three, chapter fifty-four of this code concerning relocation assistance are available to the private property owner whose unblighted property is being condemned, and if the property to be condemned contains a business owned by the property owner, the property owner is entitled to the amount, if any, which when added to the acquisition cost of the property acquired by the condemning authority, equals the reasonable cost of obtaining a comparable building or property having substantially the same characteristics of the property sought to be taken.

§16-18-8. Eminent domain.

(a) An authority shall have the right to acquire by the exercise of the power of eminent domain, pursuant to the limitations contained in subdivision (11), section two, article one, chapter fifty-four, any real property which it may deem necessary for a redevelopment project or for its purposes under this article after the adoption by it of a resolution declaring that the acquisition of the real property described therein is necessary for such purposes. An authority may exercise the power of eminent domain in the manner provided for condemnation proceedings, in chapter fifty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, or it may exercise the power of eminent domain in the manner now or which may be hereafter provided by any other statutory provisions for the exercise of the power of eminent domain. Property already devoted to a public use may be acquired in like manner: Provided, That no real property belonging to the municipality, the county or the state may be acquired without its consent.

(b) When an authority has found and determined by resolution that certain real property described therein is necessary for a redevelopment project or for its purposes under this article, the resolution shall be conclusive evidence that the acquisition of such real property is necessary for the purposes described therein.

CHAPTER 54. EMINENT DOMAIN

ARTICLE 1. RIGHT OF EMINENT DOMAIN.

§54-1-2. Public uses for which private property may be taken or damaged.

(a) The public uses for which private property may be taken or damaged are as follows:

(1) For the construction, maintenance and operation of railroad and traction lines (including extension, lateral and branch lines, spurs, switches and sidetracks), canals, public landings, wharves, bridges, public roads, streets, alleys, parks and other works of internal improvement, for the public use;

(2) For the construction and maintenance of telegraph, telephone, electric light, heat and power plants, systems, lines, transmission lines, conduits, stations (including branch, spur and service lines), when for public use;

(3) For constructing, maintaining and operating pipelines, plants, systems and storage facilities for manufacturing gas and for transporting petroleum oil, natural gas, manufactured gas, and all mixtures and combinations thereof, by means of pipes, pressure stations or otherwise, (including the construction and operation of telephone and telegraph lines for the service of such systems and plants), and for underground storage areas and facilities, and the operation and maintenance thereof, for the injection, storage and removal of natural gas in subterranean oil and/or gas bearing stratum, which, as shown by previous exploration of the stratum sought to be condemned and within the limits of the reservoir proposed to be utilized for such purposes, has ceased to produce or has been proved to be nonproductive of oil and/or gas in substantial quantities, when for public use, the extent of the area to be acquired for such purpose to be determined by the court on the basis of reasonable need therefor. Nothing in this subsection shall be construed to interfere with the power of the state and its political subdivisions to enact and enforce ordinances and regulations deemed necessary to protect the lives and property of citizens from the effects of explosions of oil or gas;

(4) For constructing, maintaining and operating, water plants and systems, including lines for transporting water by any corporate body politic, or private corporation, for supplying water to the inhabitants of any city, town, village or community, for public use, including lands for pump stations, reservoirs, cisterns, storage dams, and other means of storing, purifying and transporting water, and the right to take and damage lands which may be flooded by the impounded waters, and to appropriate any spring, stream and the surrounding property necessary to protect, preserve and maintain the purity of any such spring, stream, reservoir, cistern and water impounded by means of any storage dam;

(5) For the purpose of constructing, maintaining and operating sewer systems, lines and sewage disposal plants, to collect, transport and dispose of sewage. When in the interest of the public welfare and the preservation of the public health, the construction of a sewer line to serve a single building or institution shall be deemed a public use, and, for such purpose, the right of eminent domain, if within a municipal corporation, may be exercised in the name of a municipal corporation, and if not within a municipal corporation, in the name of the county commission of the county in which the property is located;

(6) For the reasonable use by an incorporated company engaged in a public enterprise of which the state or any county or municipality is the sole or a part owner;

(7) For courthouses and municipal buildings, parks, public playgrounds, the location of public monuments, and all other public buildings;

(8) For cemeteries, and the extension and enlargement of existing cemeteries: Provided, That no lands shall be taken for cemetery purposes which lie within four hundred feet of a dwelling house, unless to extend the boundaries of an existing cemetery, and then only in such manner that the limits of the existing cemetery shall not be extended nearer than four hundred feet of any dwelling house distant four hundred feet or more from such cemetery, or nearer than it was to any dwelling house which is within four hundred feet thereof;

(9) For public schools, public libraries and public hospitals;

(10) For the construction and operation of booms (including approaches, landings and ways necessary for such objects), when for a public use;

(11) By the State of West Virginia for any and every other public use, object and purpose not herein specifically mentioned, but in no event may "public use", for the purposes of this subdivision, be construed to mean the exercise of eminent domain primarily for private economic development.

For purposes of this subdivision, no private property may be taken by the State of West Virginia or its political subdivisions without the owner's consent when the primary purpose of the taking is economic development that will ultimately result in ownership or control of the property transferring to another private entity, other than one having the power of eminent domain, whether by purchase agreement, long-term lease agreement or any other mechanism whereby ownership or control is effectively transferred: Provided, That a municipal urban renewal authority may exercise a right of eminent domain as to property only within an area designated a slum area or blighted area under the provisions of article eighteen, chapter sixteen of this code.

By the United States of America for each and every legitimate public use, need and purpose of the government of the United States, within the purview, and subject to the provisions of chapter one of this code.

(12) For constructing, maintaining and operating pipelines, plants, systems and storage facilities, for the transportation by common carrier as a public utility of coal and its derivatives and all mixtures and combinations thereof with any substance by means of pipes, pressure

stations or otherwise (including the construction and operation of telephone and telegraph lines for the service of such systems and plants), for public use: Provided, That the common carrier engages in some intrastate activity in this state, if there is any reasonable demand therefor: Provided, however, That in addition to all other prerequisites by federal or state constitutions, statute or common law required for the taking of private property for public use, a further prerequisite and condition precedent to the exercise of such taking of or damage to private property for public use as in this subsection hereinabove provided, is that the Public Service Commission of this state, in an appropriate hearing and proceeding on due notice to all interested persons, firms or corporations, in accordance with the procedure now or hereafter established by statute and the regulations thereunder, shall have found that such pipeline transportation of coal and its derivatives and all mixtures and combinations thereof is required for the public convenience and necessity, and that the Public Service Commission of this state shall not extend a certificate of convenience and necessity or make such finding of public convenience and necessity unless, in addition to the other facts required to support such findings, it shall have been established by the applicant therefor that the patents and other similar rights under which the applicant proposes to construct, maintain or operate such pipeline, plants, systems and storage facilities shall be and shall remain equally available, insofar as said subsequent applicant may determine such availability, upon fair and reasonable terms, to other bona fide applicants seeking a certificate of convenience and necessity and finding of fact for any other pipeline in West Virginia; for the purpose of making the findings hereinbefore set forth the Public Service Commission shall have and exercise jurisdiction, and that the aforesaid findings in this proviso above set forth shall be subject to judicial review as in other Public Service Commission proceedings.

It is the intention of the Legislature in amending this section by the addition of subdivision (12) to extend the right of eminent domain to coal pipelines for public use; to provide for regulation of such coal pipelines by the Public Service Commission of this state or the Interstate Commerce Commission of the United States of America, or both; to assure that such rights shall be extended only to public utilities or common carriers as distinguished from private carriers or contract carriers; to make patents covering the same equally available to others on fair and reasonable terms; and to prevent monopolistic use of coal pipelines by any users thereof which would result in any appreciable economic detriment to others similarly situated by reasons of any such monopoly.

§54-1-2a. Notice; good faith purchase.

Prior to initiation of any condemnation proceeding pursuant to slum and blight, the applicant must make a reasonable attempt to notify all parties subject to a petition for condemnation provided in section two of this article, and attempt to enter into negotiations for purchase of the property with the owners. The applicant shall make an offer in good faith for the purchase of the property subject to the condemnation prior to initiation of the condemnation proceeding.

Bibliography of Key State Cases

No cases found.

Wisconsin

Constitutional Takings Language

Wis. CONST. art. I, § 13: The property of no person shall be taken for public use without just compensation therefor.

Statutory Definition of Public Use

No provision found.

Statutory Definition of Blight

Wis. Stat. Ann. § 66.1331(3)(a). Blighted area means any area, including a slum area, in which a majority of the structures are residential or in which there is a predominance of buildings or improvements, whether residential or nonresidential, and which, by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, or the existence of conditions which endanger life or property by fire and other causes, or any combination of these factors, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency and crime, and is detrimental to the public health, safety, morals or welfare.

New Eminent Domain Legislation AB 657, Signed 3/30/06

AN ACT to create 32.03 (6) of the statutes; relating to: prohibiting the condemnation of property under certain circumstances.

Analysis by the Legislative Reference Bureau

This bill prohibits the condemnation of property that is not blighted if the condemnor intends to convey or lease the acquired property to a private entity. The bill defines "blighted property" and provides that property that includes one or more dwelling units is not blighted unless the property has been abandoned or the property has been converted from a single dwelling unit to multiple dwelling units and the crime rate in, on, or adjacent to the property is higher than in the rest of the municipality. The bill also requires a condemnor, before commencing the condemnation of property that the condemnor intends to convey or lease to a private entity, to make a written finding that the property is blighted.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 32.03 (6) of the statutes is created to read:

32.03 (6) (a) In this subsection, "blighted property" means any property that, by reason of abandonment, dilapidation, deterioration, age or obsolescence, inadequate provisions for ventilation, light, air, or sanitation, high density of population and overcrowding, faulty lot layout in relation to size, adequacy, accessibility, or usefulness, unsanitary or unsafe conditions, deterioration of site or other improvements, or the existence of conditions that endanger life or property by fire or other causes, or any combination of such factors, is detrimental to the public health, safety, or welfare. Property that includes one or more dwelling units is not blighted property unless, in addition, at least one of the following applies:

1. The property has been abandoned.
2. The property has been converted from a single dwelling unit to multiple dwelling units, and the crime rate in, on, or adjacent to the property is higher than in the remainder of the municipality in which the property is located.

(b) Property that is not blighted property may not be acquired by condemnation if the condemnor intends to convey or lease the acquired property to a private entity.

(c) Before commencing the condemnation of property that the condemnor intends to convey or lease to a private entity, the condemnor shall make a written finding that the property is blighted property.

SECTION 2. Initial applicability.

(1) This act first applies to jurisdictional offers to purchase made on the effective date of this subsection.

Bibliography of Key State Cases

Town of Beloit v. County of Rock

657 N.W.2d 344 (Wis. 2003)

David Jeffrey Co. v. Milwaukee

267 Wis. 559 (Wis. 1954)

Wyoming

Constitutional Takings Language

Wyo. CONST. art. I, § 32: Private property shall not be taken for private use unless by consent of the owner, except for private ways of necessity, and for reservoirs, drains, flumes or ditches on or across the lands of others for agricultural, mining, milling, domestic or sanitary purposes, nor in any case without due compensation.

Wyo. CONST. art. I, § 33. Private property shall not be taken or damaged for public or private use without just compensation.

Statutory Definition of Public Use

No provision found.

Statutory Definition of Blight

Wyo. Stat. Ann. §15-9-103 (Michie 2005). (iii) "Blighted area" means an area which by reason of the presence of a substantial number of slums, deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, unsanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessments, delinquency exceeding the fair value of the land, defective or unusual conditions of title, or the existence of conditions which endanger life or property by fire and other causes, or any combination of those factors, substantially impairs or arrests the sound growth of a municipality, retards the provision of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals or welfare in its present condition and use. However, if the blighted area consists of open land, the conditions contained in W.S. 15-9-110(b) apply and any disaster area referred to in W.S. 15-9-112 constitutes a "blighted area";

New Eminent Domain Legislation

No final legislation as of 5/5/06.

Bibliography of Key State Cases

No cases found.

Resolution No. 6

Date: September 9, 2005

City: Reno, Nevada

NAHB Resolution

Title: Preserving Private Property Rights
Original Sponsor: Senior Officers

WHEREAS, recent U.S. Supreme Court decisions in *Kelo v. City of New London* and *San Remo Hotel v. San Francisco* will have a significant impact on private property rights;

WHEREAS, the National Association of Home Builders continues to advocate that it is essential to protect the private property rights afforded by the U.S. Constitution;

WHEREAS, the Fifth Amendment to the U.S. Constitution allows federal, state, and local governments to take private property for public use if just compensation is paid;

WHEREAS, it is generally accepted that “public use” includes property which provides physical access to members of the general public and is owned or controlled by federal, state or local government, including but not limited to government buildings, schools, libraries, parks, and roads;

WHEREAS, it is generally accepted that “public use” also includes infrastructure necessities shared by the public at large, such as public utilities, water and sewer treatment plants, and airports;

WHEREAS, court rulings have determined that elimination of a present harm to protect public health, safety and welfare is a “public use,” as in the case of the redevelopment of slums, blighted areas, contaminated sites, nuisance and other similarly situated properties, as defined by federal and state law;

WHEREAS, NAHB recognizes that many local communities benefit from these interpretations of “public use,” and that NAHB supports the power of governmental entities to use eminent domain as a legitimate planning tool for projects that primarily serve a public purpose;

WHEREAS, the U.S. Supreme Court’s decision in *Kelo* opens the door for state and local governments to take land from one private property owner and transfer it to another private property owner if the government merely pronounces that doing so will benefit the community economically by increased tax revenue or more job opportunities;

WHEREAS, such a broad interpretation of “public use” imposes almost no checks or balances on eminent domain actions by state and local governments;

WHEREAS, following *Kelo*, a state or local government now may be free to take undeveloped land or existing non-blighted, affordable single- and multi-family housing units and transfer ownership to another private property owner claiming higher revenue potential;

WHEREAS, communities adopting no-growth policies may use the *Kelo* interpretation of “public use” to transfer land in order to limit growth;

WHEREAS, the *Kelo* court specifically leaves it to legislative bodies to determine what constitutes a public use; and, therefore, Congress and several state and local legislatures have introduced legislation to limit the power of eminent domain within their jurisdictions;

WHEREAS, the U.S. Supreme Court decision in *San Remo Hotel v. San Francisco* upheld a lower court ruling that essentially prevents property owners from having a Fifth Amendment takings case heard in Federal Court;

WHEREAS, access to federal courts in constitutional cases ensures a check and balance against government actions; and

WHEREAS, *San Remo* dramatically weakens the ability of property owners to challenge the constitutionality of a taking and *Kelo* sanctions the use of eminent domain outside of traditional uses or blighted properties,

NOW, THEREFORE, BE IT RESOLVED that the National Association of Home Builders (NAHB) supports legislation to prevent federal, state and local governments from abusing the power of eminent domain provided by the Fifth Amendment to the U.S. Constitution,

BE IT FURTHER RESOLVED that NAHB supports the use of eminent domain, with just compensation, when a governmental entity will maintain ownership or control over the property (1) if the development or redevelopment of the property will be used by members of the general public, or (2) if the project addresses infrastructure necessities, like public utilities or roads,

BE IT FURTHER RESOLVED that NAHB supports the use of eminent domain, with just compensation, when a private party will maintain ownership or control over the property when the development or redevelopment plan meets the requirements of state slum, blight, contaminated site, nuisance, or however designated, and

BE IT FURTHER RESOLVED that NAHB will seek and support federal legislation that allows property owners expeditious access to federal district court review of property takings cases,

BE IT FURTHER RESOLVED that NAHB should seek and support federal legislation and regulation that will justly compensate land owners in an expeditious and fair manner for the value of their property, which is taken or deemed unusable temporarily or permanently by federal, state, county, regional, or local government.

Board of Directors Action:

Executive Board Action:

[Adopted At the Summer Executive Board Meeting July 30, 2005]

Approved

Approved



NAHB

NATIONAL ASSOCIATION
OF HOME BUILDERS

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