FACT SHEET
WYOMING LEGISLATIVE SERVICE OFFICE

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RECENT STATE LEGISLATIVE REACTIONS TO THE U.S. SUPREME COURT DECISION IN KELO V. NEW LONDON

On June 23, 2005 the U.S. Supreme Court affirmed a decision of the Connecticut Supreme Court in Kelo v. New London which permitted the exercise of eminent domain for purposes of economic development.[1] The Supreme Court decision recognized the role of state legislatures in establishing the framework under which the exercise of eminent domain as a public policy tool is appropriate. The opinion concluded by stating,

> We emphasize that nothing in our opinion precludes any State from placing further restrictions on its exercise of the takings power. Indeed, many States already impose "public use" requirements that are stricter than the federal baseline. Some of these requirements have been established as a matter of state constitutional law, while others are expressed in state eminent domain statutes that carefully limit the grounds upon which takings may be exercised. As the submissions of the parties and their *amici* make clear, the necessity and wisdom of using eminent domain to promote economic development are certainly matters of legitimate public debate.

By way of example, in a footnote to the case, the Court cited a California law (Cal. Health & Safety Code Ann. §§33030—33037) and indicated in that state, "a city may only take land for economic development purposes in blighted areas."

OTHER STATE ACTIONS - OVERVIEW

In the Wednesday, August 3rd edition of the Wall Street Journal, it was reported that "In the six weeks since the Supreme Court's ruling in the Kelo v. New London case, bills have been introduced in Congress and in more than half of the state legislatures that would restrict, to varying degrees, the use of eminent domain for private development.." As of this writing, LSO Research staff, based upon direction by the National Conference of State Legislatures (NCSL) is only able to identify 11 states with active, introduced legislation in states that were, or are, technically in session and able to act on proposed legislation. Additionally, there are two states that have indicated drafts will be forthcoming during their sessions, but none have been released to date. Furthermore, a leading national interest group promoting state legislative action on this issue has an active website that lists 34 states under the title "current state legislation on eminent domain." However, the information from some states is limited to statements of intent to sponsor legislation on this topic or references to legislation considered prior to the Kelo decision, not introduced legislation in response to the decision.

OTHER STATE ACTIONS – SPECIFICS

As of the first week of August, NCSL reports that 11 states had officially introduced legislation since the Kelo v. New London decision was released. Of the 11 states just two states (Alabama and Delaware) have adopted

[1] See memo authored by Joe Rodriguez, LSO Staff Attorney, dated August 17, 2005 for a more thorough legal analysis of the decision and its relation to Wyoming law.

legislation as of this writing; however, it should be noted that given daily developments both in terms of introduction of related legislation and action taken, it is not possible for either NCSL or LSO to conduct an evaluation that is not somewhat delayed. In addition, three western states (Colorado, Nevada, and Utah) enacted legislation restricting the use of eminent domain for economic development purposes *prior* to the Kelo decision. Table 1 summarizes the official legislative proposals (and enactments) in states that have been in active legislative sessions after the release of the Kelo decision. Legislation adopted after the Kelo decision is included as attachments.

Table 1. State Legislation Identified by NCSL Addressing Similar Issues Raised by the Kelo Decision.

State	Reference/Status	Summary
Post Kelo Decision		
Alabama	SB 68 – Enacted (Attachment A)	Prohibits the use of eminent domain for retail, commercial, residential or apartment development; for purposes of generating tax revenue; or for the transfer of private property to another private party.
	SB 81, 89, & 92	Prohibits the use of eminent domain for retail, commercial, residential or apartment development.
	HB 102, SB 91	*Proposed constitutional amendment that would prohibit the use of eminent domain for an economic development purpose and stipulate that its application may only be used for a public use.*
California	ACA 22, SCA 15, AB 590	ACA 22 and SCA 15 stipulate that private property may only be taken for a stated public use. AB 590 stipulates that "public use" does not include taking non-blighted property for another private use.
Delaware	SB 217 – Enacted (Attachment B)	Restricts the use of eminent domain by the state or a political subdivision to a recognized public use.
Illinois	HB 4091	Stipulates that the use of eminent domain may only be for a "qualified public use," meaning for public ownership and control. Prohibits eminent domain for private ownership or control, including economic development, unless approved by the state legislature.
Michigan	HB 5060	Prohibits the use of eminent domain to transfer private property to another private entity for the primary benefit of the private entity.
Minnesota	HF 123	Prohibits the use of eminent domain for economic development purposes.
New Jersey	SB 2739	Prohibits the use of eminent domain to condemn legally occupied residential property that meets applicable housing codes as part of a redevelopment project.
New York	AB 8865	Requires a local government to vote to approve the proposed use of eminent domain to condemn private property for another private use.
	SB 5936	Stipulates that eminent domain can be used for economic development purposes only if the area is blighted.
	SB 5938	Stipulates that eminent domain can only be used for specified public projects. Requires approval of the county legislature or city council if an industrial development agency decides to use eminent domain.
Oregon	HB 3505	Authorizes a public body to use eminent domain only if the primary purpose is to allow the public to own or use the property; such property may not be transferred to another private entity.
Pennsylvania	HB 1835, 1836	Prohibits the use of eminent domain to turn private property into a nonpublic interest, or for the purpose of increasing the local government's tax base.
Texas	HB 12, 16, & SB 7 (2nd Special Session)	Prohibits the use of eminent domain for economic development purposes or to confer a private benefit on a private party, with certain exceptions.
	HJ 11, SJR 5 (2nd Special Session)	*Proposed constitutional amendment to prohibit the use of eminent domain for economic development purposes or to confer a private benefit on a private party, with certain exceptions.*
	HJR 19, SJR 10, SB 62 (1st Special Session)	Prohibits the use of eminent domain for economic development purposes in most instances.

State	Reference/Status	Summary
Pre Kelo Decision		
Colorado	2004 HB 1203	Restricts the use of eminent domain by a redevelopment agency to transfer private property from one private use to another private use. Provides for additional requirements for a property to be determined to be "blighted" as a condition for use of eminent domain, or that its inclusion in a condemnation proceeding is essential for redevelopment of a larger parcel of properties.
Nevada	AB 143 & SB 326	Increases criteria for determination that an area is "blighted" as a condition for a redevelopment agency to use eminent domain for economic development purposes. Requires a redevelopment agency to negotiate with landowners before using eminent domain. Increases public notice requirements concerning use of eminent domain.
Utah	SB 184	Removes the power of eminent domain from a redevelopment agency in most circumstances. Increases requirements for determination that an area is blighted before using redevelopment authority. Increases authority of legislative body of a local government over redevelopment agency actions. Prohibits use of tax increment financing for certain projects.

Source: NCSL prepared data and summaries as of August 5, 2005. LSO has not verified the summaries of pending legislation.
Notes: Constitutional amendments shown in italics. Adopted legislation attached. Copies of other state proposals are available to legislators upon request.

The adopted legislation both before and after the Kelo decision varies widely as illustrated by various state actions. Specifically, the legislation adopted in Alabama provides for a broad prohibition against condemning "property for 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." In contrast, the Delaware legislature adopted legislation allowing for the exercise of eminent domain "only for the purposes of a recognized public use as described at least 6 months in advance of the institution of condemnation proceedings…" Finally, in Nevada, legislation bolsters public notice requirements, requires agencies (state government or political subdivisions) to negotiate with landowners in good faith, and enhances the requirements for determining an area is "blighted" prior to exercising eminent domain, and limits the size of parcels agencies may exercise eminent domain to acquire for purposes of open space under many conditions.

Sources for Additional Information

Larry Morandi, NCSL (303) 364-7700.
Online updates available at [http://www.ncsl.org/programs/natres/EMINDOMAIN.htm]