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SENATE BILL 5576

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State of Washington                      60th Legislature                      2007 Regular Session

By Senators Roach, Benton and Keiser

Read first time 01/24/2007. Referred to Committee on Judiciary.

1            AN ACT Relating to prohibiting the condemnation of unblighted  
2 private property for private use; amending RCW 35.81.005, 35.81.080,  
3 and 35.81.090; creating a new section; and declaring an emergency.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5            NEW SECTION.    **Sec. 1.** The legislature finds that the United States  
6 supreme court ruled in *Kelo v. City of New London* that a city could use  
7 its power of eminent domain to condemn and transfer the unblighted  
8 property of one private owner to another private owner for the purpose  
9 of increasing tax revenues.

10           The legislature also finds that while Washington's constitution  
11 specifically forbids such transfers and states that "Private property  
12 shall not be taken for private use," unblighted private properties in  
13 Washington are subject to condemnation and transfer to other private  
14 uses under community renewal statutes that allow "public use"  
15 condemnation of unblighted properties located within blighted areas, as  
16 determined by local government designations which can be based on a  
17 combination of vague statutory factors including a lack of open spaces,  
18 excessive land coverage, inappropriate uses of land or buildings,

1 diversity of ownership, high levels of unemployment or poverty, or  
2 inadequate street or lot layout.

3 The legislature therefore declares its intent that the following  
4 statement of former Washington state supreme court justice Hugh  
5 Rosellini be adopted as formal state policy: "One man's land should  
6 not be seized by the government and sold to another man so that the  
7 purchaser may build a better house, or enhance the beauty or aesthetic  
8 value according to the ideas of an artist or planner whose tastes have  
9 the sanction of the government."

10 The legislature further declares its intent to adequately respect  
11 and safeguard the lives, liberties, and property rights of Washington  
12 citizens by clearly prohibiting Washington governments from condemning  
13 and transferring unblighted private property to another private use.

14 **Sec. 2.** RCW 35.81.005 and 2002 c 218 s 2 are each amended to read  
15 as follows:

16 It is hereby found and declared that blighted areas which  
17 constitute a serious and growing menace, injurious to the public  
18 health, safety, morals and welfare of the residents of the state exist  
19 in municipalities of the state; that the existence of such areas  
20 contributes substantially and increasingly to the spread of disease and  
21 crime and depreciation of property values, constitutes an economic and  
22 social liability, substantially impairs or arrests the sound growth of  
23 municipalities, retards the provision of housing accommodations,  
24 hinders job creation and economic growth, aggravates traffic problems  
25 and substantially impairs or arrests the elimination of traffic hazards  
26 and the improvement of traffic facilities; and that the prevention and  
27 elimination of such areas is a matter of state policy and state concern  
28 in order that the state and its municipalities shall not continue to be  
29 endangered by areas which are focal centers of disease, promote  
30 juvenile delinquency, are conducive to fires, are difficult to police  
31 and to provide police protection for, and, while contributing little to  
32 the tax income of the state and its municipalities, consume an  
33 excessive proportion of its revenues because of the extra services  
34 required for police, fire, accident, hospitalization and other forms of  
35 public protection, services, and facilities.

36 It is further found and declared that certain of such areas, or  
37 portions thereof, may require acquisition, clearance, and disposition

1 subject to use restrictions, as provided in this chapter, since the  
2 prevailing condition of decay may make impracticable the reclamation of  
3 the area by rehabilitation; that other areas or portions thereof may,  
4 through the means provided in this chapter, be susceptible of  
5 rehabilitation in such a manner that the conditions and evils  
6 hereinbefore enumerated may be eliminated, remedied or prevented; and  
7 that to the extent feasible salvable blighted areas should be  
8 rehabilitated through voluntary action and the regulatory process.

9 It is further found and declared that there is an urgent need to  
10 enhance the ability of municipalities to act effectively and  
11 expeditiously to revive blighted areas and to prevent further blight  
12 due to shocks to the economy of the state and their actual and  
13 threatened effects on unemployment, poverty, and the availability of  
14 private capital for businesses and projects in the area.

15 It is further found and declared that the powers conferred by this  
16 chapter are for public uses and purposes for which public money may be  
17 expended and the power of eminent domain exercised; and that the  
18 necessity in the public interest for the provisions herein enacted is  
19 hereby declared as a matter of legislative determination.

20 It is further found and declared, however, that the condemnation of  
21 an unblighted private property located within an area designated by the  
22 local governing body as a blighted area shall not be declared a public  
23 use for purposes of blight removal, and that private property shall not  
24 be condemned and transferred to another private use unless the present  
25 condition and use of that private property displays unremedied blight  
26 conditions that endanger public health and safety, endanger life or  
27 property by fire or other causes, or otherwise contribute substantially  
28 to ill health, transmission of disease, infant mortality, juvenile  
29 delinquency, or crime.

30 **Sec. 3.** RCW 35.81.080 and 2002 c 218 s 8 are each amended to read  
31 as follows:

32 A municipality shall have the right to acquire by condemnation, in  
33 accordance with the procedure provided for condemnation by such  
34 municipality for other purposes, any interest in real property, which  
35 it may deem necessary for a community renewal project under this  
36 chapter after the adoption by the local governing body of a resolution  
37 declaring that the acquisition of the real property described therein

1 is necessary for such purpose. Condemnation for community renewal of  
2 blighted areas is declared to be a public use(~~(, and)~~). However, the  
3 condemnation of an unblighted private property located within an area  
4 designated by the local governing body as a blighted area shall not be  
5 declared a public use for purposes of blight removal, and private  
6 property shall not be condemned and transferred to another private use  
7 unless the present condition and use of that private property displays  
8 unremedied blight conditions that endanger public health and safety,  
9 endanger life or property by fire or other causes, or otherwise  
10 contribute substantially to ill health, transmission of disease, infant  
11 mortality, juvenile delinquency, or crime. Property already devoted to  
12 any other public use or acquired by the owner or a predecessor in  
13 interest by eminent domain may be condemned for the purposes of this  
14 chapter.

15 The award of compensation for blighted real property taken for such  
16 a project shall not be increased by reason of any increase in the value  
17 of the real property caused by the assembly, clearance, or  
18 reconstruction, or proposed assembly, clearance, or reconstruction in  
19 the project area. No allowance shall be made for the improvements  
20 begun on real property after notice to the owner of such property of  
21 the institution of proceedings to condemn such property. Evidence  
22 shall be admissible bearing upon the insanitary, unsafe, or substandard  
23 condition of the premises, or the unlawful use thereof.

24 **Sec. 4.** RCW 35.81.090 and 2002 c 218 s 9 are each amended to read  
25 as follows:

26 (1) A municipality, with approval of its legislative authority, may  
27 acquire real property, or any interest therein, for the purposes of a  
28 community renewal project (a) prior to the selection of one or more  
29 persons interested in undertaking to redevelop or rehabilitate the real  
30 property, or (b) after the selection of one or more persons interested  
31 in undertaking to redevelop or rehabilitate such real property. In  
32 either case the municipality may select a redeveloper through a  
33 competitive bidding process consistent with this section or through a  
34 process consistent with RCW 35.81.095.

35 (2) However, the condemnation of an unblighted private property  
36 located within an area designated by the local governing body as a  
37 blighted area shall not be declared a public use for purposes of blight

1 removal, and private property shall not be condemned and transferred to  
2 another private use unless the present condition and use of that  
3 private property displays unremedied blight conditions that endanger  
4 public health and safety, endanger life or property by fire or other  
5 causes, or otherwise contribute substantially to ill health,  
6 transmission of disease, infant mortality, juvenile delinquency, or  
7 crime.

8 (3) Subject to the limitations contained in subsection (2) of this  
9 section, a municipality, with approval of its legislative authority,  
10 may sell, lease, or otherwise transfer real property or any interest  
11 therein acquired by it for a community renewal project, in a community  
12 renewal area for residential, recreational, commercial, industrial, or  
13 other uses or for public use, and may enter into contracts with respect  
14 thereto, or may retain such a property or interest only for parks and  
15 recreation, education, public utilities, public transportation, public  
16 safety, health, highways, streets, and alleys, administrative  
17 buildings, or civic centers, in accordance with the community renewal  
18 project plan, subject to such covenants, conditions, and restrictions,  
19 including covenants running with the land, as it may deem to be  
20 necessary or desirable to assist in preventing the development or  
21 spread of blighted areas or otherwise to carry out the purposes of this  
22 chapter. However, such a sale, lease, other transfer, or retention,  
23 and any agreement relating thereto, may be made only after the approval  
24 of the community renewal plan by the local governing body. The  
25 purchasers or lessees and their successors and assigns shall be  
26 obligated to devote the real property only to the uses specified in the  
27 community renewal plan, and may be obligated to comply with any other  
28 requirements as the municipality may determine to be in the public  
29 interest, including the obligation to begin and complete, within a  
30 reasonable time, any improvements on the real property required by the  
31 community renewal plan or promised by the transferee. The real  
32 property or interest shall be sold, leased, or otherwise transferred  
33 for the consideration the municipality determines adequate. In  
34 determining the adequacy of consideration, a municipality may take into  
35 account the uses permitted under the community renewal plan; the  
36 restrictions upon, and the covenants, conditions, and obligations  
37 assumed by, the transferee; and the public benefits to be realized,

1 including furthering of the objectives of the plan for the prevention  
2 of the recurrence of blighted areas.

3 ~~((+3))~~ (4) The municipality in any instrument of conveyance to a  
4 private purchaser or lessee may provide that the purchaser or lessee  
5 shall be without power to sell, lease, or otherwise transfer the real  
6 property, or to permit changes in ownership or control of a purchaser  
7 or lessee that is not a natural person, in each case without the prior  
8 written consent of the municipality until the purchaser or lessee has  
9 completed the construction of all improvements that it has obligated  
10 itself to construct thereon. The municipality may also retain the  
11 right, upon any earlier transfer or change in ownership or control  
12 without consent; or any failure or change in ownership or control  
13 without consent; or any failure to complete the improvements within the  
14 time agreed to terminate the transferee's interest in the property; or  
15 to retain or collect on any deposit or instrument provided as security,  
16 or both. The enforcement of these restrictions and remedies is  
17 declared to be consistent with the public policy of this state. Real  
18 property acquired by a municipality that, in accordance with the  
19 provisions of the community renewal plan, is to be transferred, shall  
20 be transferred as rapidly as feasible, in the public interest,  
21 consistent with the carrying out of the provisions of the community  
22 renewal plan. The inclusion in any contract or conveyance to a  
23 purchaser or lessee of any covenants, restrictions, or conditions  
24 (including the incorporation by reference therein of the provisions of  
25 a community renewal plan or any part thereof) shall not prevent the  
26 recording of such a contract or conveyance in the land records of the  
27 auditor or the county in which the city or town is located, in a manner  
28 that affords actual or constructive notice thereof.

29 ~~((+4))~~ (5)(a)(i) A municipality may dispose of real property in a  
30 community renewal area, acquired by the municipality under this  
31 chapter, to any private persons only under those reasonable competitive  
32 bidding procedures as it shall prescribe, or by competitive bidding as  
33 provided in this subsection, through direct negotiation where  
34 authorized under (c) of this subsection, or by a process authorized in  
35 RCW 35.81.095.

36 (ii) A competitive bidding process may occur (A) prior to the  
37 purchase of the real property by the municipality, or (B) after the  
38 purchase of the real property by the municipality.

1 (b)(i) A municipality may, by public notice by publication once  
2 each week for three consecutive weeks in a newspaper having a general  
3 circulation in the community, prior to the execution of any contract or  
4 deed to sell, lease, or otherwise transfer real property and prior to  
5 the delivery of any instrument of conveyance with respect thereto under  
6 the provisions of this section, invite bids from, and make available  
7 all pertinent information to, private redevelopers or any persons  
8 interested in undertaking to redevelop or rehabilitate a community  
9 renewal area, or any part thereof. This notice shall identify the  
10 area, or portion thereof, and shall state that further information as  
11 is available may be obtained at the office as shall be designated in  
12 the notice.

13 (ii) The municipality shall consider all responsive redevelopment  
14 or rehabilitation bids and the financial and legal ability of the  
15 persons making the bids to carry them out. The municipality may accept  
16 the bids as it deems to be in the public interest and in furtherance of  
17 the purposes of this chapter. Thereafter, the municipality may  
18 execute, in accordance with the provisions of subsection (~~(+2)~~) (3) of  
19 this section, and deliver contracts, deeds, leases, and other  
20 instruments of transfer.

21 (c) If the legislative authority of the municipality determines  
22 that the sale of real property to a specific person is necessary to the  
23 success of a neighborhood revitalization or community renewal project  
24 for which the municipality is providing assistance to a nonprofit  
25 organization from federal community development block grant funds under  
26 42 U.S.C. Sec. 5305(a)(15), or successor provision, under a plan or  
27 grant application approved by the United States department of housing  
28 and urban development, or successor agency, then the municipality may  
29 sell or lease that property to that person through direct negotiation,  
30 for consideration determined by the municipality to be adequate  
31 consistent with subsection (~~(+2)~~) (3) of this section. This direct  
32 negotiation may occur, and the municipality may enter into an agreement  
33 for sale or lease, either before or after the acquisition of the  
34 property by the municipality. Unless the municipality has provided  
35 notice to the public of the intent to sell or lease the property by  
36 direct negotiation, as part of a citizen participation process adopted  
37 under federal regulations for the plan or grant application under which

1 the federal community development block grant funds have been awarded,  
2 the municipality shall publish notice of the sale at least fifteen days  
3 prior to the conveyance of the property.

4 ~~((+5))~~ (6) A municipality may operate and maintain real property  
5 acquired in a community renewal area for a period of three years  
6 pending the disposition of the property for redevelopment, without  
7 regard to the provisions of subsection ~~((+2))~~ (3) of this section, for  
8 such uses and purposes as may be deemed desirable even though not in  
9 conformity with the community renewal plan. However, the municipality  
10 may, after a public hearing, extend the time for a period not to exceed  
11 three years.

12 ~~((+6))~~ (7) Any covenants, restrictions, promises, undertakings,  
13 releases, or waivers in favor of a municipality contained in any deed  
14 or other instrument accepted by any transferee of property from the  
15 municipality or community renewal agency under this chapter, or  
16 contained in any document executed by any owner of property in a  
17 community renewal area, shall run with the land to the extent provided  
18 in the deed, instrument, or other document, so as to bind, and be  
19 enforceable by the municipality against, the person accepting or making  
20 the deed, instrument, or other document and that person's heirs,  
21 successors in interest, or assigns having actual or constructive notice  
22 thereof.

23 NEW SECTION. **Sec. 5.** This act is necessary for the immediate  
24 preservation of the public peace, health, or safety, or support of the  
25 state government and its existing public institutions, and takes effect  
26 immediately.

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