

Implications of the U.S. Supreme Court's *Kelo* Decision for the Use of Eminent Domain in Kentucky

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Summary

Eminent domain refers to the right of government to take privately owned property without the owner's consent. It is an inherent, sovereign right that is limited by federal and state constitutions and statutes. The Fifth Amendment to the U.S. Constitution provides, ". . . nor shall private property be taken for public use, without just compensation." This has been interpreted to place two limitations on a government's ability to seize private property: 1) the property must be taken for public use; and 2) when property is taken, the owner must be paid fair compensation. Kentucky's constitution contains similar limitations.

It is accepted that the government must compensate property owners when taking their property, but the question of which uses and purposes justify a government taking has been subject to dispute. It is settled that the public use requirement prohibits the government from taking property from one private party for the sole purpose of transferring it to another private party. The government may, however, seize and transfer property to another private party if it will be put to a public use. How a jurisdiction defines public use determines the extent to which private property is protected from government seizure.

Under federal law, the test of a public use has relaxed over the years from a requirement of true public access to a requirement that the property be used for a purpose that benefits the public generally. In the 2005 case *Kelo v. New London*, the U.S. Supreme Court held that the taking of private property for commercial development to revitalize an economically distressed town is an appropriate public purpose under the U.S. Constitution, even if the property taken is not blighted or substandard in any way.

The *Kelo* decision did not directly impact Kentucky law. Although states cannot afford citizens less protection of their rights than required by the federal constitution, they are free to provide greater protection, and Kentucky does so. In the case *City of Owensboro v. McCormick*, the Kentucky Supreme Court held that Kentucky's constitution prohibits the use of eminent domain solely for economic development. The court held that condemning one person's land to allow another to build a factory or shopping center would not serve a public use. There is no similar statutory limitation on the use of eminent domain. If the Kentucky Supreme Court should interpret the constitution differently, protection of property rights could diminish.

Although Kentucky law prohibits the use of eminent domain for economic development, it allows its use for redevelopment to eliminate blight and slum areas. Urban renewal and redevelopment statutes allow localities to use eminent domain to redevelop substandard areas. Courts have upheld these statutes as serving an appropriate public use; however, as shown by some Kentucky cases, the blight statutes can be used by localities to take property for economic development. If that occurs, even when landowners are ultimately vindicated in court, their neighborhood may have already been destroyed.

The constitution establishes the outer contours of eminent domain but state statutes provide the detail of how a government actually uses it to obtain property. Only the legislature may delegate the power to take property through eminent domain and there are numerous specific statutory grants of authority to various local and state agencies. Statutes establish who may use eminent domain, for what particular purposes, and the procedures they must follow.

To condemn property in Kentucky, the process and requirements of the Eminent Domain Act must be followed. Pursuant to the Act, the condemnor attempts to purchase the property voluntarily. If that is unsuccessful, court proceedings are begun to condemn the property. The court process determines whether the condemnor has the authority to use eminent domain and sets the amount of compensation the landowner will receive. If development of the property is not begun within eight years, the landowner may repurchase the property for the amount received.

Since the *Kelo* decision, bills have been introduced in many states to further restrict the use of eminent domain. Program Review and Investigations Committee staff identified 77 pieces of legislation including 18 proposed constitutional amendments introduced in 22 states. Three states have enacted relevant legislation.

Most bills introduced and all three bills enacted in the wake of *Kelo* have proposed substantive changes to state eminent domain laws. Of those bills, most restrict the use of eminent domain to a public use; list specific purposes for which it may not be used, such as economic development; or both. In some states, bills were introduced that proposed procedural changes to provide a check on the use of eminent domain, such as requiring local or state government approval, public input, or specific findings by the condemning authority before condemnation can begin. In a handful of states, legislation was introduced to place a moratorium on the use of eminent domain for economic development, to ask the U.S. Congress to act, or to create a study committee or task force.

Four bills have been prefiled for the 2006 Session in Kentucky. Two of those are identical and would restrict the use of eminent domain to purposes that entail public ownership and control or that are specifically approved by a majority vote of local residents. The third bill is a concurrent resolution urging Congress to pass a constitutional amendment to protect private property from government takings intended to promote private economic development. The fourth bill lists some permissible public uses and prohibits the use of eminent domain for economic development.

Kentucky law already includes some of the safeguards for property rights proposed in other states. For example, some of Kentucky's redevelopment statutes require localities to make specific findings before condemning property, however, not all do and some relevant terms are not defined. Some statutes require local government approval and public hearings but some do not. Regardless, such protections alone would likely be insufficient to prevent the use of eminent domain for economic development in every case.

Implications of the U.S. Supreme Court's *Kelo* Decision for the Use of Eminent Domain in Kentucky

An Introduction to Eminent Domain and This Report

Eminent domain refers to the right of the government to take private property for public use.

Eminent domain refers to the right of the government to take privately owned property without the owner's consent. Although the exact origin of the power of eminent domain is unknown, it has long been viewed as an inherent and sovereign right of government (Harrington). Kentucky statutes codify that principle. KRS 381.010 states that the Commonwealth had original ownership of all lands within its boundaries and KRS 381.020 "retains the right of eminent domain in and to all real estate" for the Commonwealth.

Federal and state constitutions and laws act to limit the government's exercise of its inherent power of eminent domain. The Fifth Amendment to the U.S. Constitution provides, ". . . nor shall private property be taken for public use, without just compensation." This has been interpreted to place two limitations on a government's ability to seize private property: 1) the property must be taken for public use; and 2) when property is taken, the owner must be paid fair compensation.

The United States and Kentucky Constitutions prohibit the government from taking private property except for a public use with payment of just compensation to the property owner.

Kentucky's constitution contains similar limitations. Section 13 states, ". . . 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." Section 242 provides that, "Municipal and other corporations, and individuals invested with the privilege of taking private property for public use, shall make just compensation"

It is accepted that the government must compensate property owners when taking their property, but the question of which uses and purposes justify a government taking has been subject to dispute. It has long been acknowledged that the government may take property for uses that are clearly for use by the public, such as public roads and public parks, but the definition of public use has gradually expanded to include other uses that do not provide true public access but that may benefit the public generally.

In the 2005 case *Kelo v. City of New London*, the U.S. Supreme Court upheld a Connecticut law that allowed a town to take private property for economic development.

In the 2005 case *Kelo v. City of New London*, the U.S. Supreme Court upheld a Connecticut law that allowed a town to take private property as part of an economic redevelopment plan. The property was a residential neighborhood that would be razed to serve as the site of a new hotel and conference center, as well as office and

retail space. The court held that taking private property for development intended to create jobs and increase tax revenue in an economically distressed town is an appropriate public use under the U.S. Constitution. *Kelo* is the only decision of its kind in which the court has upheld the use of eminent domain to take property that was not in a slum or blighted area for use in redevelopment.

Many states have similar laws but the Constitution does not require states to allow such an expansive use of eminent domain. As the court noted in the *Kelo* opinion, states are free to place additional restrictions on the use of eminent domain, and Kentucky has done so. Although Kentucky statutes would allow the use of eminent domain for economic development, Kentucky case law clearly prohibits it.

Description of This Study

How This Study Was Conducted

On September 8, 2005, the committee authorized this study to describe Kentucky's law governing eminent domain, the *Kelo* decision, any implications of that decision for Kentucky, and the actions taken by other states in response to *Kelo*.

In conducting this study, staff attended meetings of the Interim Joint Committee on Judiciary, interviewed officials with the Transportation Cabinet, and the cities of Newport and Bowling Green, as well as representatives of the Kentucky League of Cities and Kentucky Farm Bureau. Staff reviewed news articles and conducted legal research on the federal and state laws governing eminent domain. Staff also researched and compiled bills and newly enacted laws addressing eminent domain in other states.

Organization of the Report

The next section of the report explains the evolution and definition of public use in the federal law and in Kentucky law. It then discusses the treatment of redevelopment as a public use in Kentucky.

The following section discusses Kentucky's statutes that allow the use of eminent domain to eliminate slum or blight areas and the potential for misuse of those statutes. The report then explains the process of determining just compensation and using eminent domain to condemn property in accordance with statutory requirements.

Finally, the report discusses legislation introduced in the wake of *Kelo v. New London*. Bills that have been introduced or adopted in Kentucky and other states are categorized, explained, and compared to Kentucky's current law.

Appendix A lists all of the eminent domain legislation introduced in each state since *Kelo* and provides a brief description. Appendix B contains the definitions of public purpose included in states' bills, and Appendix C sets forth the definitions of blight contained in those bills.

Major Conclusions

The report has four major conclusions:

1. The *Kelo* decision did not impact Kentucky's law. Kentucky property owners retained the same protections and rights after the *Kelo* decision as they had before it.

2. Kentucky case law prohibits the use of eminent domain to take property solely for economic development. That protection could diminish if the Kentucky Supreme Court interprets the constitution's public use provision more broadly.

3. Kentucky law allows the use of eminent domain for redevelopment of property that lies in a slum or blighted area. A few local governments have misapplied the blight statutes to condemn property that is not substandard for commercial development.

4. Since *Kelo*, legislators in Kentucky and other states have introduced bills intended to limit the use of eminent domain. Kentucky's law already has some of the proposed limitations.

1. The U.S. Supreme Court's decision in *Kelo* did not impact Kentucky's law. It did not broaden the definition of public use under Kentucky's constitution. Kentucky property owners retained the same protections and rights after the *Kelo* decision as they had before it.

2. Kentucky law currently prohibits the government action that occurred in *Kelo*. Eminent domain may not be used to take property solely for economic development. This protection of property rights is embodied in case law established by the Kentucky Supreme Court's interpretation of the Kentucky Constitution. If the court should interpret the constitution's public use provision more broadly, that protection could diminish.

3. Kentucky law allows the use of eminent domain for redevelopment if the property lies within a slum or blighted area as defined by statute. As a result, some local governments have misapplied the blight statutes to condemn property that is not substandard and then redevelop it, sometimes for commercial purposes. Despite case law that clearly interprets these statutes to prohibit such a use, the potential for abuse remains.

4. In the wake of *Kelo*, legislators in Kentucky and other states have introduced bills intended to limit the use of eminent domain. Some, but not all, of the approaches taken by other states include protections and limitations already present in Kentucky's law.

Public Use

How public use is defined in a jurisdiction determines the extent to which private property rights are protected from government seizure.

Both the federal and state constitutions prohibit the government from taking property unless it is for a public use. How public use is defined in a jurisdiction determines the extent to which private property rights are protected from government seizure.

Federal Law

It has long been settled that the government is forbidden from taking property from one private party for the sole purpose of transferring it to another private party. The government may, however, seize and transfer property to another private party if it will be put to a public use.

Under federal law, the definition of public use has gradually expanded from requiring true use by the public to a purpose that benefits the public generally.

What constitutes an acceptable public use has gradually expanded from a requirement of true use by the public to use for a purpose that benefits the public generally. As early as 1906, the U.S. Supreme Court recognized that actual use by the public was a narrow and inadequate test (*Strickley v. Highland Boy Gold Mining Co.*). The court has since “embraced the broader and more natural interpretation of public use as ‘public purpose’” (*Kelo* 2662). Once limited to such uses as public roads and parks, public use expanded to include the use of property by corporations, such as railroad and utility companies, to serve a public purpose. It was expanded further in other cases and in *Kelo*, which held it encompasses use by private owners for economic development.

The U.S. Supreme Court relied on previous decisions to support its holding in *Kelo*. In each case, the court deferred to the state at the expense of individual property rights.

In the *Kelo* decision, the court upheld New London’s plan to use eminent domain to seize privately owned property for private development intended to revitalize the economically distressed town. The court relied heavily on two of its prior cases to support its holding. These cases illustrate how the court has broadened the definition of public use and applied it to uphold state actions. In each case, the court deferred to state and local governments’ actions at the expense of individual property rights.

In the 1954 case *Berman v. Parker*, the U.S. Supreme Court upheld a Congressional plan to acquire a blighted neighborhood in Washington D.C. and convey it to private developers for redevelopment. A store owner sued the city when it condemned his store, arguing his store was not blighted and that redeveloping a neighborhood was not a valid public purpose under the U.S. Constitution. The court held that redeveloping blighted property is an appropriate public purpose. It also deferred to the legislature’s decision to take the entire neighborhood and redevelop it as a

whole despite the fact that not every property in it was substandard.

In 1984, in *Hawaii Housing Authority v. Midkiff*, the court upheld a Hawaii law allowing the use of eminent domain to take property from some private owners and transfer it to others. At the time, Hawaii's housing market was dominated by a very small number of owners and the court held that alleviating that imbalance was an appropriate public purpose. The court refused to substitute its judgment for that of the Hawaii legislature. The fact that the property was taken and immediately transferred to other private individuals did not diminish the public character of the taking. The court held that it is the purpose of the taking and not its mechanics that determines whether it is a valid public use under the constitution.

New London's economic development plan was projected to create jobs, increase tax revenues, and revitalize the city through the creation of a waterfront development with shopping, restaurants, office space, and a hotel.

In *Kelo*, the city of New London had approved a development plan projected to create more than 1,000 jobs, increase tax revenues, and revitalize the city. The plan called for the development of 90 acres of land to serve a variety of purposes: a waterfront conference hotel; a state park; and an urban village with shopping, restaurants, and office space. The city intended to transfer some portion of the property to a private developer in a long-term lease.

The property taken in *Kelo* was not in poor condition and only a portion of the property was intended to be opened for use by the public.

New London successfully negotiated for the purchase of most of the property needed but nine individuals refused to sell. Some of the owners had lived on their properties for many years; some held the properties for investment. The property at issue in *Kelo* was not in poor condition and was not intended to be transferred to public ownership. Only a portion of it was intended to be open to the general public.

Connecticut's laws specifically authorized the use of eminent domain to promote economic development.

The court noted that Connecticut's statutes specifically authorized the use of eminent domain to promote economic development and held that New London's economic development plan satisfied the constitution's public use requirement because it served a public purpose. The promotion of economic development is a "traditional and long accepted function of government" and the plan "unquestionably serve[d] a public purpose" (*Kelo* 2665). The court noted there was no way to distinguish economic development from other public purposes it has recognized and cited its "longstanding policy of deference to legislative judgments in this field" (*Kelo* 2663).

The Kelo decision does not preclude any state from placing additional restrictions on its exercise of eminent domain.

The court emphasized in its opinion that the *Kelo* decision does not preclude any state from placing additional restrictions on its exercise of eminent domain. States cannot provide less protection of individual rights than required by the federal constitution, but they are free to provide additional rights to their citizens.

Kentucky's Law on Eminent Domain

Kentucky's Supreme Court has interpreted the state's constitution to prohibit the use of eminent domain for economic development. That was unaffected by the Kelo decision.

Prior to the *Kelo* decision, Kentucky's eminent domain law was more protective of individual property rights than Connecticut's law and it remains so. *Kelo* did not affect the protections inherent in Kentucky's law. The Kentucky Constitution contains its own provisions protecting private property. Kentucky's Supreme Court has interpreted Sections 13 and 242 of the state constitution to prohibit the use of eminent domain to take property solely for economic development.

Defining Public Use

The Kentucky Constitution sets the outer limitation of acceptable public uses. Within that, the General Assembly holds the power to determine who may use eminent domain and for what purposes.

Like the U.S. Constitution, the Kentucky Constitution prohibits the use of eminent domain to take property unless it is for a public use. This constitutional provision, as interpreted by Kentucky's courts, sets the outer limitation on acceptable public uses. Within the constraints of the constitution, the General Assembly holds the power to determine who may use eminent domain and for what public purposes. Various Kentucky statutes authorize local governments and corporations to use eminent domain and, within constitutional limits, define the public uses or purposes for which it may be used.

The Evolution of Public Use

Kentucky courts have long foreseen the potential for abuse of eminent domain if public use is defined too broadly.

Case Law. Kentucky's courts have long foreseen the potential for abuse of eminent domain if public use is defined too broadly. In 1907, Kentucky's highest court stated,

If public use was construed to mean that the public would be benefited in the sense that . . . the use . . . might contribute to the comfort or convenience of the public, . . . there would be absolutely no limit on the right to take private property. It would not be difficult for any person to show that a factory or hotel . . . would result in benefit to the public and under this rule the property of the citizen would never be safe from invasion (*Chesapeake Stone Co. v. Moreland* 765).

Kentucky's courts have since maintained a similar attitude toward eminent domain cases and, as a result, property owners in Kentucky have greater protection than those in many other states.

Kentucky law once employed a traditional test that required true use by the public. Kentucky's definition of public use has expanded to include some uses that benefit the public.

In the *Chesapeake Stone* case, the court employed the traditional test of public use. The court allowed the use of eminent domain by a private property owner to condemn a pathway across another's property to transport stone from a quarry to a railroad track. The court held this was a public use because the pathway was to be open for use by the public generally. The court stated that to qualify as a public use of property under the constitution, the public must have some right to use and enjoy it.

Eleven years later in *Carter v. Griffith*, the court relaxed the standard somewhat and expanded the definition of public use. The court allowed a private property owner to use eminent domain to condemn land for a drainage ditch across another's property. Despite the fact that the condemned land would not actually be used by the public, the court held that draining swamp land for agricultural purposes was a public use because it contributed to the natural resources of the state and benefited the public as a whole. The court held this satisfied the public use requirement. In later cases, the court applied similar reasoning to allow redevelopment of blighted areas but has refused to expand public use any further.

Many statutes have been enacted allowing the use of eminent domain. Some are for traditional public uses but others allow private redevelopment of property.

Statutory Law. As the courts expanded the definition of public use, the General Assembly gradually enacted more statutes allowing the use of eminent domain. Some statutes defined public purposes that were clearly within the confines of traditional public uses. For example, statutes declare that transportation and delivery of natural gas is a public use, as are building highways, creating riverports, laying sewer lines, and erecting government buildings. Other statutes grant the power to condemn property for other purposes such as constructing telephone lines and schools, and signify that these also qualify as public uses. These types of uses have been recognized as appropriate purposes for the use of eminent domain under the constitution.

Other Kentucky statutes were enacted that defined public uses that fell outside the category of traditional public uses; for example, taking land for private redevelopment of substandard property and for private economic redevelopment.

Redevelopment as a Public Use

Taking property for redevelopment necessarily involves taking property from one private owner and transferring it to another. The Kentucky Constitution allows such takings under certain circumstances.

Kentucky statutes allow localities to use eminent domain to take substandard property for redevelopment.

Kentucky courts have agreed that redeveloping slum and blight areas benefits the general public and is, therefore, a public use.

Kentucky statutes allow any property to be taken for industry, manufacturing, and commercial establishments, regardless of the condition, use, or ownership of the property.

The use of eminent domain for any type of redevelopment necessarily involves taking property from one private owner and transferring it to another private owner for private use. Because of that, it would not satisfy the traditional test of actual use by the public. However, as the definition of public use has expanded, it has been interpreted to allow taking privately owned property for redevelopment under certain conditions.

Substandard Areas. KRS Chapter 99 contains the urban renewal and redevelopment statutes that give localities the authority to use eminent domain for redevelopment of substandard areas. Statutes declare that clearing unsanitary areas, eliminating slum and blight conditions, and preparing such areas for sale or lease for redevelopment constitute a “public use and purpose” for which private property may be acquired (KRS 99.020; KRS 99.330; KRS 99.700). The legislature found that eliminating such conditions will benefit not only the local inhabitants but also the citizens of the Commonwealth generally (KRS 99.700). Kentucky’s courts have agreed. Because these statutes allow localities to take only property that is substandard or that is part of a substandard area, Kentucky courts have upheld them as serving an appropriate public use under the constitution.

In 1937, the court upheld the use of eminent domain to clear slums and replace them with modern, sanitary, low-cost houses (*Spahn v. Stewart*). The court acknowledged that the refurbished houses would be of particular benefit to the persons who would occupy the houses but noted it would also benefit the general public by eliminating a slum and its attendant health and social problems.

The court described slums as a breeding ground for disease and crime and relied on evidence that there was a greater proportion of such problems in the area of the city to be condemned. A survey of the city had shown that the area at issue had a greater proportion of tuberculosis cases, major crimes, abandoned property, and juvenile delinquencies as compared to the city as a whole. Twenty years later, the court reiterated that the elimination of slums and blight is a legitimate public purpose under Kentucky’s laws and constitution (*Miller v. City of Louisville*). That remains the law today.

Economic Development. The Kentucky Local Industrial Development Authority Act, enacted in 1970, grants localities broad authority to take private property for economic redevelopment, even in the absence of substandard conditions.

Because of that, a portion of it has been declared unconstitutional by the Kentucky Supreme Court.

The plain language of the Act would allow local governments to acquire and develop *any* land for industrial and commercial purposes. The Act states that the acquisition of any lands for industry, manufacturing, and commercial establishments is for a public purpose (KRS 154.50-346; KRS 154.50-310). Under this law, a city could condemn any property, regardless of its current ownership, use, or condition, and convey it to a private owner for industrial or commercial development.

In a 1979 case, the Kentucky Supreme Court struck down as unconstitutional that portion of the statute that allowed localities to take any property for economic development.

In the 1979 case *City of Owensboro v. McCormick*, Kentucky's Supreme Court struck down that portion of the Act that would allow the unfettered taking of property and established a limit of permissible public purposes under Kentucky's constitution. The court noted that Kentucky's constitution has been consistently interpreted to forbid the taking of private property for private uses. The court refused to further broaden the definition of "public use" to encompass a "public purpose" and noted that there are no Kentucky cases equating the two phrases.

The court interpreted the Kentucky Constitution to prohibit the taking of property for redevelopment unless the property lies in a slum or blight area. This remains the controlling case on the limits of the public use requirement.

The court opined that government power to force one citizen to surrender productive property for the use of another simply because an alternative use is preferable to government authorities is "repugnant to our constitutional protections" (*McCormick* 5). The court reaffirmed its prior decisions on blight and reiterated that the elimination of blight through developing land in accordance with a proper plan is an appropriate public use. However, if the property does not lie in a blighted area, Sections 13 and 242 of the Constitution of Kentucky prohibit the use of eminent domain to condemn the property. The court stated, "No 'public use' is involved where the land of A is condemned merely to enable B to build a factory or C to construct a shopping center" (*McCormick* 8). The *McCormick* case has not been overruled and remains Kentucky's controlling case on the limits of the Kentucky Constitution's public use requirement.

How Kentucky's Law Differs From Connecticut's Law

Kentucky's and Connecticut's statutory law have much in common, but the Kentucky Constitution provides greater protection of private property rights.

Kentucky's statutory law has much in common with the Connecticut law applied in *Kelo*, but the Kentucky Constitution provides greater protection of private property rights. Like Kentucky's Local Industrial Development Authority Act, Connecticut's law declares that acquiring land for industrial and business purposes is a public use and allows localities to use

eminent domain to take property for economic development, regardless of its condition, use, or ownership.

Connecticut and Kentucky statutes allow the use of eminent domain for economic development; however, the Kentucky Constitution has been interpreted to prohibit it. If the Kentucky Supreme Court should interpret the constitution differently in the future, protection of property rights may be diminished.

The divergence in the law comes with the interpretation of the states' respective constitutions, each of which includes a public use requirement. Connecticut's Supreme Court has held that economic development projects that create jobs, increase tax and other revenues, and contribute to urban revitalization are valid public uses that justify the use of eminent domain under its constitution (*Kelo v. City of New London* (Conn. 2004)). In *McCormick*, Kentucky's Supreme Court held that economic development is not a public use; therefore, the Kentucky Constitution prohibits the use of eminent domain to further it.

Although some states are considering limiting the use of eminent domain by defining or listing acceptable and unacceptable public uses, Kentucky does not have a clear statutory limitation on the use of eminent domain. The standard announced in the *McCormick* case is not codified in Kentucky's statutes. Accordingly, if the Kentucky Supreme Court should interpret the constitution differently, protection of property rights may be diminished.

Kentucky's Statutes Regarding Blight and Slum Areas

Kentucky law prohibits using eminent domain solely for economic development, but it allows redevelopment to eliminate blight and slum areas.

McCormick made clear that Kentucky law prohibits using eminent domain solely for economic development, but it allows redevelopment to eliminate blight and slum areas. The blight statutes serve a valid public purpose, but the potential exists for local governments to use them to circumvent the constitutional prohibition and take property for economic development.

KRS Chapter 99 contains several statutory schemes that allow substandard property to be taken. The statutes do not always clearly set out the types of property that can be taken; the purposes for which property can be taken; and the criteria, if any, that must be proven before the property may be taken. Some provisions require only rudimentary findings of substandard conditions to support government plans to take property. One provision does establish more specific findings that must be made before a local government may proceed with eminent domain, but even that statute has been subject to misuse.

Definitions

Statutes define “slum area” and “blight area” and allow the creation of community development agencies to take action to eliminate the areas.

KRS 99.330 through 99.510 establish the procedures and requirements for local governments to use eminent domain to take slums or blighted property for redevelopment. Statutes define “slum area” and “blighted area” and allow a city or county council to create a community development agency to take action to eliminate slum or blighted areas. The agency must meet certain prerequisites before it may proceed to acquire property under a development plan. Since *Kelo*, several other states have introduced bills with similar requirements to curb the use of eminent domain.

A “slum area” is one in which, due to various factors, at least one-quarter of the buildings or a predominance of improvements in the area are unsafe or unfit to occupy; injuriously affect the entire area; facilitate ill health, disease, or crime; or constitute a menace to public health, safety, and welfare.

A “slum area” is one in which at least one-quarter of the buildings or a predominance of improvements

- ! are unsafe or unfit to occupy;
- ! are conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime;
- ! injuriously affect the entire area; or
- ! constitute a menace to public health, safety and welfare (KRS 99.340).

The definition further provides that these conditions exist because of

- ! dilapidation;
- ! deterioration;
- ! age or obsolescence;
- ! inadequate provision for ventilation, light, sanitation, or open spaces;
- ! high density of population and overcrowding; or
- ! any combination of these factors (KRS 99.340).

A “blighted area” is an area that cannot be developed into predominantly housing uses because of various factors, such as inadequate street layout, faulty lot layout, unsanitary or unsafe conditions, diversity of ownership, tax delinquency, or obsolete platting.

A “blighted area” is an area that cannot be developed “into predominantly housing uses” because 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 thereof (KRS 99.340).

In order to adopt a development plan and proceed to obtain property, a local development agency must hold a public hearing, provide proper notice of the meeting to the public, and provide an opportunity for all persons to be heard (KRS 99.370). After the hearing, the local council must make a finding that the area at issue is either

Before adopting a development plan, an agency must hold a public hearing with proper notice and an opportunity to be heard. The agency must find either that the property is a slum; or that it is blighted and there is a shortage of sound housing, an increased need for housing, and a resulting increase in disease and crime.

- ! a slum;
- or, it is**
- ! a blighted area; **and**
- ! a shortage of sound housing exists in the community;
- ! the need for housing accommodations has been or will be increased due to demolition of slums; and
- ! the blight conditions and the shortage of decent housing contribute to an increase in and spread of disease and crime and constitute a menace to the public health, safety, and welfare (KRS 99.370).

Blight Statutes Can Be Misapplied

Court cases show that local governments may have misused the blight statutes by taking property for redevelopment that is not in a blighted or slum area.

Despite these rather stringent statutory requirements, there have been court cases indicating that some local governments have used the blight statutes inappropriately by taking property for redevelopment that is not in a blighted or slum area. In many instances, the blight statutes provide the only means by which localities can take property that may be in decline or that local officials determine could be put to a better use.

This study was not intended to review all uses of eminent domain by local governments to relieve blight, so it is unknown how frequently the statutes are used or the proportion of the time they are used inappropriately. The following examples, therefore, are likely not typical but do demonstrate that 1) the blight statutes can be misapplied; and 2) even when residents who contest eminent domain are ultimately vindicated in court, their neighborhood may have already been destroyed.

Louisville. One such case is *Prestonia Area Neighborhood Association v. Abramson*. In that 1990 case, the Kentucky Supreme Court rebuffed Louisville's attempt to take the property from three neighborhoods to develop commercial zones close to its airport. Louisville's Board of Aldermen had adopted ordinances declaring the neighborhoods blighted. The only supporting finding cited in the ordinances was that the areas were affected by airport and traffic noise that made them unfit for residential use. The court noted that noise is not one of the conditions listed in the statutory

definition of blight and that, regardless, there was not sufficient evidence in the record to support the finding.

Louisville declared three of its neighborhoods blighted in order to develop commercial zones near its airport. The only supporting finding was that the areas were unfit for residential use due to airport and traffic noise. The court declared the city's action unconstitutional as an arbitrary act of power.

The court also pointed out that the statutory definition of blight requires evidence that the conditions of the area prevented its development for residential use. The property at issue was already made up of residential neighborhoods, but the city sought to condemn them to redevelop the area for commercial purposes. The court acknowledged that a limited number of residences may show evidence of blight but held that there was insufficient evidence of the predominance of such conditions.

In the absence of sufficient evidence of blight, the court declared that the ordinances were an unconstitutional exercise of arbitrary power. The court held that, “unless the findings required are supported by substantial evidence, Kentucky law does not permit the taking of private property for the purpose of transfer to another private enterprise,” and it issued an injunction to prevent the demolition of the property (*Prestonia* 711).

Although the landowners won in court, they lost their neighborhood anyway. Most residents had already sold their homes to the city by the time the court ruled.

Although the landowners won in court, they lost their neighborhood anyway. By the time the court ruled, nearly 80 percent of the landowners had already sold their homes to the city and moved away (Rutherford. “Controversial”). The city continued with the project, maintaining it had authority to obtain the remaining property under statutes granting eminent domain power to airport authorities. The landowners then sued the city in federal court, asking that the project be stopped, the prior acquisitions be declared void, and that further demolition be prohibited. The parties eventually settled the lawsuit for \$6.2 million (Rutherford. “Louisville”). In exchange for the money, the property owners agreed to allow the project to continue.

Highland Heights. Despite the court’s clear message in *Prestonia*, the town of Highland Heights declared one of its neighborhoods to be a blighted area based on insufficient supporting evidence. In *Henn v. City of Highland Heights*, a federal court rejected the city’s contention that a residential area was blighted and subject to a redevelopment plan.

The city of Highland Heights declared one of its neighborhoods blighted as part of a plan to develop a hotel and conference center and office and retail space.

The city’s comprehensive plan for the area envisioned a hotel and conference center and office and retail space. The area was 14 acres made up of 105 small lots and only 13 homes. The city stated it did not plan to exercise eminent domain over the property and sell it to a developer, however, it formally declared the

neighborhood a redevelopment area, which gave the city the power to proceed to clear and prepare it for redevelopment at any time.

To show it was a blighted area, the city presented evidence such as

- ! insufficient pavement width and length;
- ! a lack of curbs, ditches, gutters, and storm sewers;
- ! faulty lot layout;
- ! indeterminate ownership;
- ! tax delinquencies;
- ! illegal dumping;
- ! storm water drainage problems; and
- ! deteriorated property.

In response, neighborhood residents stated the conditions were no worse than in any other neighborhood in Highland Heights. The city council found the area was blighted and declared it a redevelopment area.

The court found there was a normal real estate market of moderately priced homes and no evidence that conditions of blight were contributing to an increase in disease or crime. The court held the finding of blight was unconstitutional.

The court held the finding of blight was an unconstitutional and arbitrary exercise of power because there was no substantial evidence to support the finding. The court noted that the factors required by the blight statute were not proven. The court found there was a normal real estate market of moderately priced homes and no shortage of housing. There was no increased need for housing due to planned demolition of slums, and there was no evidence that conditions of blight and a shortage of decent housing were contributing to an increase in disease or crime. The court noted that the blight statute was an “inappropriate vehicle” for the city to accomplish its goals for the area and declined to allow its designation as a redevelopment area that would place a “cloud of prospective eminent domain” over the heads of the property owners (*Henn* 914).

The city of Newport declared its Cote Brilliant neighborhood to be blighted to use the area for development of a retail, office, and residential area. The city relied on evidence of broken sewer lines, cracked walls, land slippage, and crime.

Newport. There is evidence that use of the blight statutes remains an issue. The city of Newport is involved in an ongoing dispute with property owners over land the city wants to use for commercial development. The Newport neighborhood of Cote Brilliante lies next to Interstate 471 on a hillside that provides a view of the Ohio River and Cincinnati skyline. The neighborhood was found to be blighted and was declared a redevelopment area in 2002. Newport planned to use eminent domain to obtain the 55-acre neighborhood and use it for development of a retail, office, and residential area. The project required razing 96 houses, two churches, and one business (Perry).

Most owners sold their property to the city but a few refused to sell and challenged the city in court. They argued that the city's finding

of blight was not supported by substantial evidence. The city had presented evidence of broken sewer lines that allowed sewage to run into a creek, e. coli bacteria in the creek, cracked walls, flooding, land slippage, damage to structures and foundations, and 154 phone calls to police over 18 months as evidence of crime. The owners disputed this evidence and pointed to the planned reduction in available housing units from 96 to 52 under the redevelopment plan, even though the blight statute is concerned with increasing housing in an area. They also questioned whether phone calls to police were sufficient evidence of crime under the statute.

Courts have upheld Newport's finding of blight, but the case may be appealed further.

Both the Circuit Court and the Court of Appeals have upheld the city's finding of blight and declaration of Cote Brilliante as a redevelopment area, but the matter remains unresolved. In September 2005, the Court of Appeals held that the owners had failed to show that there was insufficient evidence to support the city's decision (*Webb v. City of Newport*). The property owners have filed a petition for rehearing with the Court of Appeals and a request for discretionary review with the Kentucky Supreme Court. Those remain pending. Only three property owners persist in the fight and only one of those is living in Cote Brilliante. The neighborhood has been razed except for the three properties involved in the lawsuit (Blau).

City officials stated that most residents of the neighborhood wanted to sell their property to the city and were satisfied with the payment they received (Eigelbach). According to one official, they surveyed the property owners in writing and approximately 87 percent said they wanted the city to redevelop the area and use eminent domain to do so if necessary. An official stated the city provided more notice and held more hearings than required by the statutes and ultimately determined the area met the statutory definition of blight (Schulkens).

The official also acknowledged the importance of the project to the city's budget. He pointed out that Newport is a landlocked urban area with no undeveloped real estate and that the redevelopment statutes provide a necessary means for the city to increase its income (Schulkens). Only 10.6 percent of the budget comes from property taxes but 44 percent comes from payroll taxes (Eigelbach). It is expected the intended project for the site will create hundreds of jobs and increase income from payroll taxes and occupational licenses (Schulkens).

In 2005, the city of Bowling Green passed an ordinance prohibiting the city from using eminent domain or the threat of it to take private property except for traditional public uses.

Bowling Green. Former city officials declared Bowling Green's entire downtown area to be blighted and subject to a redevelopment plan. They intended to use eminent domain to obtain property to build downtown offices for a private mental health provider (Strow). Current officials refused to proceed with the plan and passed an ordinance in July 2005 that prohibits the city or its agents from using eminent domain, or the threat of it, to take private property except for enumerated, traditional public uses (Bowling Green, Ky. Ord. 2-1.10).

One Bowling Green official stated that declaring an area to be subject to a redevelopment plan discourages property owners from maintaining or improving their property and creates uncertainty. There is no limit on the length of time an area can remain under a redevelopment plan.

Although Bowling Green did not proceed under the redevelopment plan, a city official stated that declaring that an area is subject to a redevelopment plan can itself be damaging (Strow). It carries with it the threat of eminent domain and can discourage property owners from maintaining or improving their property because they may not ultimately enjoy the benefits or value of any improvements. There is currently no limit on the length of time an area can remain under a redevelopment plan, so it creates uncertainty for individual property rights and can exert pressure to sell property to the city.

Other Redevelopment Statutes

Other statutes in Chapter 99 may allow localities even greater discretion and reduce the possibility of meaningful judicial review.

Other statutes in Chapter 99 appear to allow localities even greater discretion and reduce the possibility of meaningful judicial review. Although there are no known instances of localities misusing these particular statutes, the potential to do so is there.

KRS 99.010 through 99.310 provide another means by which first- and second-class cities may use eminent domain to obtain property for development. It allows cities to create development areas of property that is “substandard or insanitary.” Conditions that can create substandard or insanity conditions are listed but neither term is defined. A planning commission is required to make a conclusory finding that an area is substandard or insanitary before adopting a development plan, but no specific supporting findings are required.

KRS 99.520 through 99.590 allow communities to undertake urban renewal projects to prevent the spread or development of slums, or blighted or deteriorated areas. It relies on the same definitions of “slum” and “blight” used elsewhere in the chapter but then specifically eliminates any requirement for the local council to make specific findings to support a conclusion the property is substandard. With no findings required, it would be difficult for a reviewing court to evaluate the locality's actions.

Public Use Versus Public Purpose

Both the U.S. and Kentucky Constitutions use the term public use. The U.S. Supreme Court has interpreted it to mean public purpose.

The language of both the Kentucky and U.S. Constitutions prohibits the use of eminent domain except for a public use. Both Kentucky and federal courts originally interpreted public use to require true use by the general public. The U.S. Supreme Court has since broadened its definition and “embraced the broader and more natural interpretation of public use as ‘public purpose’” (*Kelo* 2662). The court’s decision in *Kelo* turned on the question of whether the city’s development plan served a public purpose, not whether the property would be open for use by the general public (*Kelo* 2663).

Kentucky’s Supreme Court has specifically declined to broaden the term “public use” to encompass all public purposes. Kentucky’s Constitution includes both phrases and uses them in different contexts. The court has held they therefore have different meanings. Sections 13 and 242 limit the use of eminent domain to take property only for a public use while Section 171 limits the state’s power to levy and collect taxes to support only public purposes.

In 1979, Kentucky’s Supreme Court said there was nothing in the constitution or in cases declaring that public purpose is equivalent to public use. To equate the two would allow property to be condemned for any purpose for which public funds might be expended.

In *Owensboro v. McCormick*, the court rejected an argument that the definition of public use should be equated with public purpose. The city of Owensboro urged the court to adopt the definition of a public purpose, which is necessary to allow cities to issue revenue bonds and expend public funds, as being equivalent to a public use necessary to justify taking an individual’s property. The court declined. The court stated there was nothing in the constitution or in any Kentucky case declaring that public purpose was equivalent to public use. To equate the two would allow property to be condemned for any purpose for which public funds might be expended, which the court described as “an alarming concept” (*McCormick* 7). The court noted that “the popular political response to abuse of the taxing and spending power is generally swifter and more effective than is true where the citizen’s private property is effectively and finally taken from him” (7).

Kentucky’s eminent domain statutes use the terms public use and public purpose interchangeably.

Kentucky’s statutes have not made the same distinction. Throughout the eminent domain provisions, the terms public purpose and public use are used interchangeably. Various statutes declare allowable uses of eminent domain to be a public purpose, a public use, or both. Kentucky’s Eminent Domain Act defines eminent domain as the right to take property for a public purpose, rather than for a public use. Although statutes and case law can define the same term differently, courts may be better able to

discern legislative intent and apply laws as expected when terms are applied consistently.

The Process of Using Eminent Domain

Statutes establish who may use eminent domain, for what purposes, and the procedures they must follow.

The constitution establishes the outer contours of eminent domain, but the statutes provide the detail of how a government actually obtains the property. Statutes establish who may use eminent domain, for what particular purposes, and the procedures they must follow.

Who May Use Eminent Domain?

Only the legislature may delegate the power of eminent domain. It has been delegated to cities, counties, and numerous agencies and corporations.

Only the legislature may delegate the power to take property through eminent domain (Vance 2). The General Assembly has delegated eminent domain to cities, counties, agencies, and corporations through numerous specific statutory grants of authority. The many bodies that have been granted condemnation authority in Kentucky include

- ! the Department of Fish and Wildlife Resources;
- ! the Kentucky River Authority;
- ! the Transportation Cabinet;
- ! the Department of Corrections;
- ! riverport authorities;
- ! fiscal courts;
- ! consolidated local governments;
- ! water district commissions;
- ! metropolitan sewer districts;
- ! housing authorities;
- ! water companies and districts;
- ! boards of public utilities;
- ! transit authorities;
- ! cities or counties;
- ! boards of education;
- ! bridge commissions;
- ! local air boards;
- ! health boards;
- ! sewage treatment companies;
- ! oil or gas corporations or partnerships;
- ! telephone companies;
- ! burial associations; and
- ! public universities.

Local government agencies must obtain approval of the elected local government before condemning property. The Transportation Cabinet, local boards of education, and some utility companies have authority to use eminent domain directly and independently.

A local government agency that wants to condemn property must request the governing body of the local government to institute condemnation proceedings on its behalf.¹ This requirement may have been intended to serve as a check on the use of eminent domain by requiring the approval of local elected officials before a case is filed.

The Transportation Cabinet and local boards of education may proceed directly to condemn property, but other state agencies must proceed through the Finance and Administration Cabinet. Some entities, such as utility, oil, and gas companies, have statutory authority to use eminent domain directly and independently to procure the land they need for wells, pipelines, and transmission lines.

Just Compensation Required

Just compensation is generally defined as the fair market value of the property at the time the property is taken.

Both the federal and state constitutions require that a landowner be paid just compensation for any property that is taken under eminent domain. Under Kentucky law, just compensation is generally the fair market value of the property at the time of the taking. KRS 416.660 requires that a landowner be paid the difference between the fair market value of the property just before the taking and the value of the remaining property just after the taking. If an entire tract is taken, just compensation is the fair market value of the entire property. Courts have defined fair market value as the price a property would bring in a transaction between a voluntary buyer and seller. The fair market value of a business property does not include the value of the business or profits lost due to relocation (Vance 4).

The Condemnation Process

When a local or state agency seeks to obtain property for public use, attempts are made to purchase the property voluntarily. If that is unsuccessful, court proceedings are begun to condemn the property. The court process determines whether the condemner has the authority to use eminent domain and sets the amount of compensation the landowner will receive.

¹ Kentucky law generally refers to the process of taking property under eminent domain as condemnation and the agency or other entity seeking to condemn the property as the condemner.

To obtain the property, the condemnor first tries to negotiate with the owner to purchase the property. If that is unsuccessful, the condemnor files a lawsuit in the local Circuit Court.

The court appoints three commissioners to view the property and make an award to compensate the landowner.

A summons is served on the landowner, who then has 20 days to challenge the condemnor's right to take the property. If no challenge is made, the court enters a judgment setting the amount of compensation and giving the condemnor the right to take possession of the property after payment of the award.

Either party may file exceptions to the judgment seeking to adjust the amount of the award. If exceptions are filed, a jury trial is conducted to set the amount of compensation the landowner will receive.

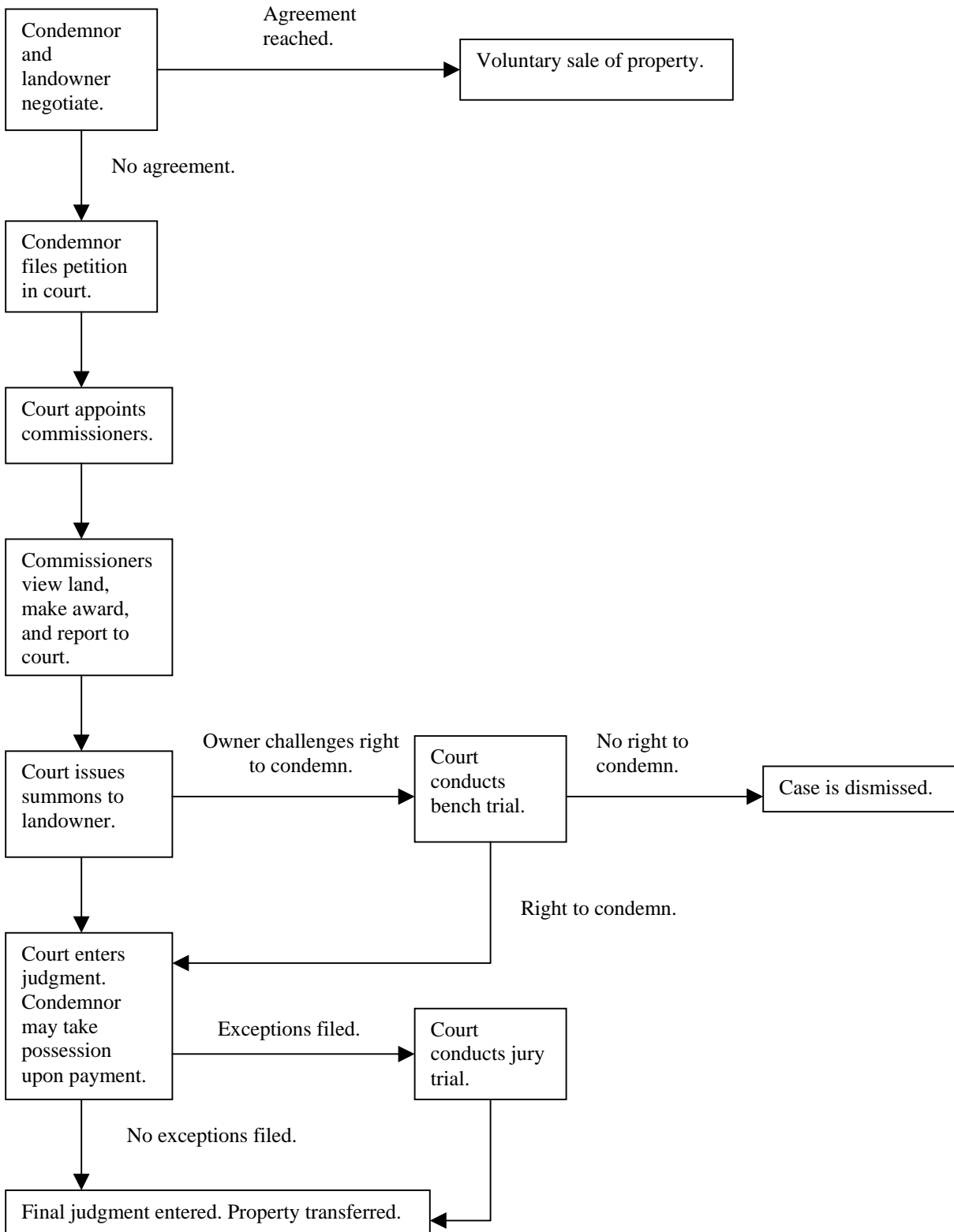
To condemn property in Kentucky, the process and requirements of the Eminent Domain Act must be followed (KRS 416.540-416.670). Figure 1.A illustrates the condemnation process. Statutes require the condemnor to make good faith attempts to come to an agreement with the landowner to purchase the property, so before making an offer, the condemnor usually obtains some valuation or appraisal of the property. If negotiations are unsuccessful, the condemnor will begin a condemnation lawsuit by filing a petition in Circuit Court. The petition is not served on the landowner.

After the petition is filed, the court appoints three commissioners who must be landowners and "impartial housekeepers of the county" (KRS 416.580). Commissioners then view the property and make an award to compensate the landowner. The award should be equal to the fair market value of the property. Within 15 days after appointment, the commissioners must file their written report describing the property and stating the amount of the award.

After the commissioners' report is filed with the court, a summons is issued and served on the landowner. The landowner must file an answer within 20 days if he or she wishes to challenge the condemnor's right to take the property. If an answer is filed, the court conducts a trial to determine whether or not the condemnor has the right to condemn the property. If the court finds the condemnor does not have that right, the case is dismissed. If the court finds the condemnor does have that right, the court enters a preliminary judgment giving the condemnor the use of the property and setting the amount of compensation to be paid the landowner. Upon payment of the amount of the award, the condemnor may take possession of the property.

Within 30 days after entry of the judgment, either party may file exceptions to the order seeking to adjust the amount of compensation awarded to the landowner. If no exceptions are filed, the judgment becomes final. If exceptions are filed, the court conducts a jury trial and the jury determines the amount the landowner will receive. A final judgment is entered and title to the property is transferred. Both the preliminary and final judgments may be appealed. By statute, the costs of the lawsuit are paid by the condemnor, but that only includes court costs. It does not include attorney's fees or appraiser's fees, which would necessarily be incurred by any landowner who disputed the matter in court.

Figure 1.A
The Condemnation Process



Below is a description of a recent eminent domain case that illustrates the sometimes lengthy condemnation process.

Lexington's Lyric Theatre

The Lyric Theatre in downtown Lexington opened in 1948 and served as the primary entertainment venue for Lexington's African Americans during segregation. It closed in 1963 and was purchased in 1984 for \$20,000 by the chairman of God's Center, a nonprofit religious organization that intended to use it to provide educational services. Because of the historical significance of the theatre, the Lexington-Fayette Urban County Government (LFUCG) developed a plan to preserve the building and restore it for use as an African American cultural center as part of an overall redevelopment plan for the downtown area (*God's Center Foundation, Inc. v. Lexington Fayette Urban County Government*).

LFUCG obtained two appraisals of the property and offered to purchase it for the higher appraisal amount of \$59,000. No agreement was reached. The LFUCG Council voted to authorize legal action and a condemnation lawsuit was filed in April 1997. The court appointed three commissioners who valued the property at \$113,400. God's Center filed an answer to the lawsuit challenging LFUCG's right to condemn the property. The court entered a summary preliminary judgment in favor of LFUCG. God's Center appealed that judgment to the Kentucky Court of Appeals, which remanded the case to the Circuit Court to hold a trial on the issue. The court heard evidence in the case and again entered a judgment in favor of LFUCG. God's Center again appealed. The Court of Appeals affirmed the judgment of the Circuit Court regarding LFUCG's right to condemn and the case continued. Exceptions were filed and a jury trial was held on the issue of compensation. The city's appraiser testified the property was worth \$165,000; God's Center argued it was worth \$486,000. After a two-day trial in September 2005, the jury set the value at \$240,000 (Ortiz).

If development of the condemned property is not begun within eight years, the landowner may repurchase the property at the same price paid to the landowner. The condemnor must notify the landowner of the option to repurchase the property if development has not begun within eight years. If the landowner refuses, the condemnor must sell the property at a public auction.

Eminent Domain Legislation in Kentucky After the *Kelo* Ruling

In Kentucky, four bills have been prefiled. One bill urges Congress to protect private property from government takings for private economic development. Two identical bills restrict the use of eminent domain to a qualified public use. Property to be acquired for private ownership or control must be approved by local voters. The fourth bill restricts eminent domain to public uses and prohibits the transfer of private property to private ownership for economic development that benefits the public indirectly.

In Kentucky, four bills related to eminent domain have been prefiled for the 2006 Session: House Bill Requests 134, 253, and 195, and Senate Bill Request 311. BR 134 is a concurrent resolution urging the U.S. Congress to pass a constitutional amendment to protect private property from government takings intended to promote private economic development.

BR 253 and BR 311 are identical and create two new sections in the 1976 Eminent Domain Act of Kentucky. The first section restricts the use of eminent domain to a “qualified public use,” which is defined as any acquisition through eminent domain that leads to “public ownership and control by the public entity” and is “for a public purpose.” The section further stipulates that taking property for private ownership or control, which includes economic development, does not constitute a qualified public use “unless acquisition of property for private ownership or control is: 1) for a public purpose; and 2) specifically and expressly approved” by a majority vote of local voters voting in a referendum. Finally, the section replaces the term “public use” with “public purpose” in the various eminent domain statutes.

The second section describes the procedures for presenting the issue to the voters. The condemning authority is required to advertise the referendum to be held on taking the property and identify the private party expected to benefit from the taking. The authority must also “submit a description of the property to be acquired, along with the public purpose behind said acquisition, to the voters within its jurisdiction for their approval or rejection” at a regular election.

BR 195 creates a new section of the 1976 Eminent Domain Act of Kentucky that restricts eminent domain use to public uses. It prohibits the transfer of private property to private ownership for economic development purposes that benefit the public indirectly, such as through generating employment and tax income. The bill enumerates some acceptable uses, including ownership by the Commonwealth, use by common carriers, or use to eliminate blight. The bill does not list all possible eminent domain uses or attempt to redefine blight. In addition, the bill replaces the term “public purpose” with “public use” in the Eminent Domain Act. Finally, the bill requires that commissioners appointed to value property in condemnation cases be real estate appraisers or realtors and specifies the mechanism for their selection.

Eminent Domain Legislation in the States After the *Kelo* Ruling

Seventy-seven bills restricting the use of eminent domain have been introduced in 22 states following the *Kelo* decision.

Program Review and Investigations Committee staff identified 77 pieces of legislation introduced in 22 states, including Kentucky, to further restrict the use of eminent domain after the *Kelo* decision. Eighteen of those were constitutional amendments introduced in 10 states. Relevant legislation has been enacted in 3 of the 22 states: Alabama, Delaware, and Texas.

Staff grouped state bills based on whether the legislation included substantive, procedural, or other types of changes to eminent domain law.

To better understand the large number of recent bills related to eminent domain, staff classified each bill into three general categories: substantive, procedural, or other. Legislation proposing substantive changes is composed of bills that 1) restrict eminent domain to public use, 2) specify prohibited uses of eminent domain, or 3) allow only blighted property to be taken for economic development. Legislation proposing procedural changes is made up of bills that require 1) local or state government approval before eminent domain may be used, 2) a condemning authority to provide a specific supporting finding, 3) or public input. The third general category of legislation consists of bills that 1) place a moratorium on the use of eminent domain for economic development or private purposes, 2) create a special legislative committee or task force to study the issue, 3) or urge the U.S. Congress to protect private property (Morandi).

Table 1.1 indicates the number and types of bills by state that include substantive changes to eminent domain law. Table 1.2 provides the same information for legislation making procedural or other changes. Any given bill may contain provisions that place the legislation in multiple categories. For example, a bill that restricts the use of eminent domain to a public purpose can also specify prohibited uses and changes in procedures. Bills proposing that the state constitution be amended are also counted as bills introduced. For these reasons, the bills summarized in the cells of the table do not sum to the total number of bills and may not equal the number of bills per state.

Before considering the types of legislation introduced in the 22 states, it should be noted that no legislation related to eminent domain has been introduced in the remaining 28 states. In part, this reflects the fact noted earlier that the Supreme Court's *Kelo* decision does not necessarily affect a particular state's laws related to the use of eminent domain for economic development.

Table 1.1
Legislation Introduced or Enacted Since *Kelo* With
Substantive Restrictions on Use of Eminent Domain
(by State and Type)

| State | Bills | Restricted to Public Use or Purpose | Specified Purposes Prohibited | Restricted to Blighted Properties |
|---|-------|-------------------------------------|-------------------------------|-----------------------------------|
| I=Introduced, E=Enacted, C=Constitutional Amendment, (#)=Number of Bills | | | | |
| Alabama | 9 | I(2), C(2) | I(8), E(1), C(2) | |
| California | 6 | I(3), C(2) | I(2), C(1) | I(1) |
| Connecticut | 1 | | I(1) | |
| Delaware | 3 | I(2), E(1) | | |
| Florida | 1 | I(1), C(1) | I(1), C(1) | |
| Georgia | 1 | I(1) | I(1) | |
| Illinois | 1 | I(1) | I(1) | |
| Kentucky | 3 | I(2) | I(2) | |
| Massachusetts | 4 | I(2), C(1) | I(3), C(1) | I(1) |
| Michigan | 2 | I(2), C(1) | I(2), C(2) | |
| Minnesota | 2 | | I(2) | |
| New Jersey | 3 | I(2), C(2) | I(2), C(1) | |
| New York | 9 | I(1), C(1) | I(1) | I(1) |
| Ohio | 5 | | I(2) | |
| Oregon | 1 | I(1) | I(1) | |
| Pennsylvania | 2 | | I(2) | |
| Rhode Island | 2 | | | |
| Tennessee | 9 | I(7) | I(9) | |
| Texas | 10 | | I(10), E(1), C(2) | I(1) |
| Virginia | 1 | I(1), C(1) | I(1),C(1) | |
| West Virginia | 1 | I(1) | I(1) | |
| Wisconsin | 1 | | I(1) | I(1) |
| Total States | 22 | | | |
| Total Bills | 77 | | | |
| Total Bills by Type | | 29 | 53 | 5 |
| By Type, States With: | | | | |
| Bills Introduced | | 15 | 20 | 5 |
| [Constitutional Amendments] | | 7 | 8 | 0 |
| Bills Enacted | | 1 | 2 | 0 |

Note: Within each state, identical bills are counted as one bill. The “Bills” column indicates the total number of bills per state and includes bills that would introduce procedural or other changes to eminent domain statutes. Each bill may be classified as more than one type.

Source: Morandi, Institute of Justice, state legislatures’ Web sites, and communication with state legislative staff.

Table 1.2
Legislation Introduced or Enacted Since *Kelo* With
Procedural or Other Changes Related to Eminent Domain
(by State and Type)

| State | Procedural Change | | | Other | | |
|---|---|---------------------------|-----------------------|------------|---|----------------------|
| | Approval of Local or State Govt. Required | Specific Finding Required | Public Input Required | Moratorium | Special Legislative Committee or Task Force | Urge Congress To Act |
| I=Introduced, E=Enacted, C=Constitutional Amendment, (#)=Number of Bills | | | | | | |
| Alabama | | | | | | I(1) |
| California | | I(2), C(2) | | I(2) | | |
| Connecticut | | | | | | |
| Delaware | | I(1) | I(1), E(1) | | I(1) | |
| Florida | | | | | | |
| Georgia | | | | | | |
| Illinois | | | | | | |
| Kentucky | | I(1) | I(1) | | | I(1) |
| Massachusetts | | | | | | |
| Michigan | | | | | | |
| Minnesota | | | | | | |
| New Jersey | | | | | | |
| New York | I(5) | I(1), C(1) | I(5) | | I(1) | |
| Ohio | I(1), C(1) | | | I(2) | | |
| Oregon | | | | | | |
| Pennsylvania | | | | | | |
| Rhode Island | | | | | | I(2) |
| Tennessee | | I(3) | | | I(1) | |
| Texas | | | | | | |
| Virginia | | | | | | |
| West Virginia | | | | | | |
| Wisconsin | | I(1) | | | | |
| Total Bills by Type | 6 | 9 | 7 | 4 | 3 | 4 |
| By Type, States With: | | | | | | |
| Bills Introduced | 2 | 6 | 3 | 2 | 3 | 3 |
| [Constitutional Amendments] | 1 | 2 | 0 | 0 | 0 | 0 |
| Bills Enacted | 0 | 0 | 1 | 0 | 0 | 0 |

Note: Within each state, identical bills are counted as one bill. The total number of bills per state is indicated in the "Bills" column in Table 1.1.

Source: Morandi, Institute of Justice, state legislatures' Web sites, and communication with state legislative staff.

Substantive Changes

Substantive changes include restricting eminent domain to public uses or purposes; prohibiting the use of eminent domain for specific purposes; and restricting the use of eminent domain for economic development purposes to blighted properties.

Bills proposing substantive changes to state eminent domain laws take at least one of three approaches. First, some bills restrict the use of eminent domain to only public uses as defined in statutes or the bill. Second, some bills list specific purposes for which eminent domain may not be used, such as economic development. Third, some allow the use of eminent domain for economic development but only if the property to be taken is blighted. Most bills that limit the use of eminent domain to public uses also list specific purposes for which eminent domain may not be used.

Restricted to Public Use or Purpose. Bills containing this provision would restrict eminent domain to a “public use” or a “public purpose.” The legislation is typically intended to be more restrictive than the constitutional definition of public use set forth in *Kelo* by clarifying what does or does not qualify as a valid public use and by imposing additional limitations. More than one-third of the eminent domain bills introduced after *Kelo* involve public use or purpose. Twenty-nine bills with such a provision have been introduced in 15 states. One bill, Delaware Senate Bill 217, was enacted into law.

Proposed legislation seldom explicitly identifies all eminent domain uses that are deemed “public.” Most bills enumerate eminent domain applications that do not convey public benefit and are thus prohibited.

Most of the bills define public purpose in some manner. For example, New Jersey Assembly Concurrent Resolution 255 restricts the use of eminent domain to “essential public purposes” and provides an exhaustive list of uses that are included. The New Jersey bill, however, is an exception. Few bills spell out all permissible uses for eminent domain, which seems consistent with existing law. States tend to have different statutes that authorize specific entities to use eminent domain for specific purposes, rather than a single statute that defines all of the acceptable public uses for which eminent domain may be exercised (McCarthy).

Most of the bills that restrict eminent domain to public uses or purposes itemize uses that do not satisfy the requirements and are thus prohibited. For example, California Senate Constitutional Amendment 12 stipulates that private property may be taken only for a public use and that public use does not include taking owner-occupied residential property for a private use.

The bills that do not define public purpose typically specify the entity responsible for interpreting what constitutes such use or the conditions that need to be satisfied for condemnation proceedings to begin.

Several bills use the terms public purpose or public use but do not define them. Instead, the legislation refers to a “recognized public use,” “stated public use,” or “traditional public purpose.” Such bills typically specify the entity responsible for interpreting what constitutes public use or the conditions that need to be satisfied for

condemnation proceedings to begin. For example, New York Senate Bill 5961 defers to the courts to interpret whether a contemplated use of eminent domain constitutes a legitimate public use. California Assembly Constitutional Amendment 22 requires “an independent judicial determination on the evidence that the condemnor has proven that no reasonable alternative exists” before eminent domain proceedings can be initiated.

Alleviating blight conditions usually qualifies as a legitimate public purpose in bills that reference it.

Alleviating blight conditions, when mentioned in the language of a bill, is said to constitute a legitimate public use that merits the use of condemnation powers. The only exception is New Jersey Assembly Constitutional Amendment 255, which specifically prohibits the use of eminent domain as a tool for the abatement of blight conditions.

The most common approach among legislative proposals is prohibiting the use of eminent domain for specific purposes. Such bills were enacted in Alabama and Texas.

Specified Purposes Prohibited. This legislation lists specific purposes for which eminent domain may not be used; for example, economic development, enhancing tax revenue, or transferring seized property to a private entity. Legislators in 20 states have introduced 53 bills of this type. This is two-thirds of the bills introduced since *Kelo*, making it the most common approach by far to limiting eminent domain. Two bills have been enacted into law: Alabama Senate Bill 68 and Texas Senate Bill 7.

A number of bills in this category contain an exception for blighted properties. Blight is defined either in the text of the bill or elsewhere in the statutes.

A number of bills in this category include exceptions allowing for the use of eminent domain to alleviate physical or economic blight, including the Alabama and Texas bills that were enacted into law. In each instance, blight is defined in the bill or elsewhere in the statutes. Only Tennessee Senate Bill 2420 includes a definition of blight that is more narrow than in the existing statutes. That bill defines blighted areas as those “detrimental to the safety, health, morals, or welfare of the community” and further stipulates “welfare of the community does not include the need for increased tax revenues.”

Legislation of this type also frequently contains provisions requiring that the owner of the condemned property be justly compensated. In addition, some bills stipulate that if the property is not used by a specified date or for the purposes for which it was intended, it should be offered for sale to the former owner. Many of the bills also affirm condemnation powers of common carriers and public utilities.

Some bills restrict the use of eminent domain for economic development purposes to blighted properties or areas.

Restricted to Blighted Properties. This category of proposed legislation limits the use of eminent domain for economic development purposes to blighted properties only, or to areas where the majority of properties are blighted and the remaining properties are necessary to complete a redevelopment plan. Since the *Kelo* decision, one such bill per state has been introduced in five states.

Blight is defined in most instances, either in the text of the bill or elsewhere in the statutes.

Two bills specifically define blight in the text. New York Senate Bill 5936 defines a “blighted area” as an area that is dominated with deteriorated and unsafe buildings or contains “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.” The measure also provides a definition of “public project.” Wisconsin Assembly Bill 657 defines “blighted property” as unsanitary or unsafe and “detrimental to public health, safety, or welfare.” The bill also provides that property containing one or more dwelling units is not blighted unless it has been abandoned or converted from a single dwelling unit to multiple dwelling units and the crime rate is higher than in the rest of the municipality.

Massachusetts House Docket 4634 and California Assembly Constitutional Amendment 15 do not define blight in the text of the bills but refer to its definition elsewhere in the statutes.

Some bills require a written finding that a property is blighted before it can be condemned.

Two bills establish criteria that must be satisfied before private property can be condemned for redevelopment purposes. California Assembly Constitutional Amendment 15 and Wisconsin Assembly Bill 657 require the condemnor to make a written finding that the property intended for condemnation is blighted in order to take the property using eminent domain.

Procedural Changes

Procedural changes consist of requiring state or local government approval of a proposed use of eminent domain; placing the burden of proof on the condemnor or asking for a specific finding; and making public input part of eminent domain proceedings.

Nine bills in seven states contain provisions to change the procedures used to implement eminent domain. Such bills require local or state governments to approve every proposed use of eminent domain for economic revitalization purposes; ask the condemning authority to provide a specific finding or proof before the taking can commence; and/or require mandatory public input as part of condemnation proceedings.

Some bills grant a local legislative body the power to approve or disapprove any proposed use of eminent domain for economic development purposes.

Approval of Local or State Government Required. Some bills grant a local legislative body the power to approve or disapprove any proposed corporate use of eminent domain for economic development purposes. This type of legislation has been introduced only in New York.

Three of the bills, New York Assembly Bills 9053 and 9050 and Senate Bill 5946, direct a condemning agency to prepare a comprehensive economic development plan for the affected area, which is to be submitted to the local government for approval. The plan must include information such as the expected benefits of the project, the types of business that will use the condemned property, and alternatives to the plan. The bills also require an assessment of fiscal impact on the locality. These bills define an “economic development project” as “any project for which acquisition of real property may be required for a public use, benefit, or purpose where such public use, benefit, or purpose is primarily for economic development and where the condemnee’s real property is a home or dwelling.”

A bill introduced in Ohio requires a local government to obtain state approval in order to condemn private property. Senate Joint Resolution 6 is unique among the bills introduced after *Kelo* in that it removes from municipalities the constitutional authority to use eminent domain unless the power is specifically granted to them by the state legislature on a case-by-case basis.

Specific Finding Required. This type of legislation, introduced in five states, requires the condemning authority to make specific findings before it can use eminent domain to acquire real property. Eight bills containing the provision have been introduced in the five states; none has been enacted into law.

Delaware Senate Bill 221, for example, requires the condemnor to supply a “specific and detailed statement of the public use for which a property is to be taken.” Tennessee Senate Bills 2413, 2420, and 2421 would place the burden of proof as to whether a particular proposed use of the power of eminent domain is legitimate on the entity attempting to exercise such power.

Delaware has enacted legislation that adds the requirement of a public hearing to the eminent domain process.

Public Input Required. This legislation type would amend the eminent domain procedure law to add a public hearing requirement and thus provide for public input. Such bills have been introduced in three states. New York Assembly Bills 9043 and 9050 and Senate Bill 5946 require public input in the form of at least one public hearing prior to the submission of the final comprehensive

development plan to the local government for approval. Kentucky Bill Request 311 is unique in that it empowers local residents to decide by majority vote whether a property can be condemned.

Other Changes

Other changes include placing a moratorium on the use of eminent domain for economic development or private purposes; establishing a committee or task force to study the issue; and expressing disapproval of the *Kelo* decision, which can include appealing to Congress to act to reverse its effect.

In a handful of states, legislators have proposed alternatives to immediate substantive or procedural changes. Some have called for eminent domain moratoriums for specified purposes until a particular date or have asked for detailed reports on the topic. Others have proposed bills expressing disapproval of the *Kelo* decision, which can include appealing to Congress to act to reverse its effect.

In two states, legislation has been introduced to place a moratorium until a specified date on the use of eminent domain for economic development or private purposes. California's Assembly Bill 1162 and Senate Bill 1026 are examples, which place a moratorium until 2008 on the use of eminent domain to acquire owner-occupied residential property for a private use.

In two other states, legislators have introduced bills that call for a special legislative committee or task force to study eminent domain issues and report to the legislature with findings and recommendations. New York Assembly Bill 960, for example, creates a temporary state commission to evaluate the constitutionality of economic development condemnation proceedings affecting private property rights, as well as the fairness of the eminent domain procedure laws.

Finally, in three states, legislators have introduced resolutions or bills expressing disapproval of the *Kelo* decision and/or calling on the U.S. Congress to protect private property rights. Rhode Island House Resolution 6636, for example, urges "the United States Congress to take immediate action to amend the Constitution in order to more fully protect and guarantee private property rights and to nullify the *Kelo* decision...."

Enacted Legislation

Since the *Kelo* decision, three states have enacted laws restricting the use of eminent domain. The Alabama law lists unauthorized eminent domain uses. The Delaware law restricts use of the state's eminent domain powers to recognized public uses and provides for public input in formulating the definition of public use for a condemnation proceeding. The Texas law removes eminent domain authority if the taking confers a private benefit on a private party or if it is intended for economic development purposes.

Of the 77 bills introduced, three have been enacted: in Alabama, Delaware, and Texas. The Alabama law is the most specific in terms of listing unauthorized eminent domain uses. It bars a municipality or county from using eminent domain to acquire property for retail, office, commercial, residential, or industrial development; to generate tax revenue; or to transfer private property to another private party. A provision in the statute exempts blighted properties covered under redevelopment or urban renewal plans.

The Delaware law restricts use of the state's eminent domain powers to recognized public uses as described at least six months in advance of the taking. The description must be included in a certified planning document, at a public hearing, or in a report published by the condemning agency. The law also provides for public input during the process of formulating the definition of public use in the context of a particular condemnation proceeding.

The Texas law removes eminent domain authority from a governmental or private entity if the taking confers, or is a pretext to confer, a private benefit on a private party, or if it is intended for economic development purposes. The law exempts a taking that is part of a municipality's urban renewal activities "to eliminate existing affirmative harm on society from slum or blighted areas."

Federal Legislation

In June 2005, the U.S. House of Representatives passed a resolution opposing the *Kelo* decision.

On June 30, 2005, the U.S. House of Representatives voted 365 to 33 to pass House Resolution 340 opposing the Supreme Court's decision in *Kelo*. The House specifically stated that it agrees with the dissenting opinion in the case "in its upholding of the historical interpretation of the takings clause and its deference to the rights of individuals and their property." The House further stipulated that eminent domain power should be used "for those purposes that serve the public good in accordance with the Fifth Amendment," that the owners of the condemned property should be justly compensated, and that eminent domain should not be used to "advantage one private party over another."

Proposals in both the House and Senate would prevent the federal government from using eminent domain for private development, as well as state and local governments from using federal money on such projects.

In addition, proposals in both the House and the Senate would prevent the federal government from using eminent domain for private development, as well as state and local governments from using federal money on such projects. On November 3, 2005, the House passed one such bill with a bipartisan 376-38 vote (House

Resolution 4128). Under the legislation, states and localities would forfeit their eligibility for various federal economic development assistance programs if they use eminent domain for economic development purposes. The final judgment as to the merits of an application of eminent domain powers is deferred to the courts.

How Kentucky's Current Law Compares to Other States' Legislation

Some states have introduced bills that require localities to make specific findings before condemning property. Some of Kentucky's redevelopment statutes also require supporting findings but requirements vary.

Kentucky law already includes some, but not all, of the safeguards for property rights that have been proposed in other states. Some bills require local agencies to make specific findings, obtain public input, or obtain the local government's approval before condemning property. Some of Kentucky's redevelopment statutes have similar requirements; however, they do not clearly apply in every case.

Kentucky law requires findings to be made in specified cases. The procedures outlined for condemnation of substandard or insanitary areas by first- or second-class cities require a finding that an area is substandard or insanitary, along with a finding that execution of the development plan will not cause undue hardship to families in the area. "Substandard" and "insanitary" are not clearly defined, however. The statutes governing redevelopment of slum and blighted areas provide more specific definitions and require particular findings before an area can be declared blighted. Urban renewal statutes rely on the same definitions of blight and slum but then eliminates any requirement that the local council make specific findings to support a conclusion an area is substandard.

Kentucky's redevelopment statutes include provisions requiring public notice and approval of the local council in some cases. It is unclear whether these provisions always apply.

Kentucky's redevelopment statutes include provisions requiring public notice and approval of the local council in some cases, but not uniformly. Generally, property cannot be acquired for redevelopment unless a development plan has been adopted after a public hearing. Redevelopment corporations must obtain approval of the city council before condemnation proceedings begin; however, the statutes governing urban renewal agencies are less clear. Urban renewal statutes appear to give such agencies independent authority to condemn property, whereas Kentucky's Eminent Domain Act requires local agencies to obtain the approval of the local elected body before using eminent domain.

Even when such safeguards are in place, however, they may not always prevent localities from using eminent domain for economic development. In Kentucky's *Prestonia* and *Henn* cases, as well as

in Connecticut's *Kelo* case, public hearings were held and the local elected body approved the action that was taken.

There is no single Kentucky statute that lists valid or prohibited public uses. Rather, there are various statutes that define a valid public use within the context of particular grants of eminent domain power.

Many of the bills introduced in other states seek to clarify what is or is not a valid public use by referring to traditional public uses, listing acceptable public uses, or listing prohibited ones. There is no single Kentucky statute that seeks to broadly define all valid public uses or list prohibited uses. Rather, Kentucky has various statutes that grant eminent domain authority and define public purposes or uses that warrant the condemnation of private property.

The only broad limitation on eminent domain use in Kentucky is the Kentucky Constitution's prohibition of its use for economic development. If that prohibition is not codified and the court's interpretation changes, property rights could receive less protection.

In the absence of a statute defining prohibited uses, the only general limitation on eminent domain in Kentucky is the prohibition of its use for economic development. The only source of that prohibition is the state Supreme Court's interpretation of the Kentucky Constitution. If the court's interpretation should change and no statute is enacted that codifies a similar limitation, the current protection of individual property rights could lessen.

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Appendix A

State Eminent Domain Legislation Introduced or Enacted After *Kelo*

| State | Chamber | Bill Number | Enacted into Law? | Description |
|---------|---------|-----------------------|-------------------|---|
| Alabama | Senate | 68 | Yes | Prohibits the use of eminent domain for office, retail, commercial, residential, or industrial development or use; for purposes of generating tax revenue; or for the transfer of private property to another private party. Contains blight exception. |
| | House | 14 | No | Prohibits the use of eminent domain for office, retail, commercial, residential, or industrial development or use; for purposes of generating tax revenue; or for the transfer of private property to another private party. Contains blight exception. |
| | Senate | 81 | No | Prohibits the use of eminent domain for retail, commercial, residential, or apartment development. |
| | Senate | 89 | No | Prohibits the use of eminent domain for office, retail, commercial, or residential development. |
| | Senate | 92 | No | Prohibits the use of eminent domain for retail, office, commercial, or residential development. |
| | House | 102 | No | Constitutional amendment prohibiting the use of eminent domain for increasing tax revenue or other economic benefits such as job creation. Stipulates that the terms public use and public benefit do not include private economic activity that generates tax revenue or creates jobs. |
| | Senate | 91 (same as HB117) | No | Constitutional amendment prohibiting the use of eminent domain for the purpose of commercial enterprise, industrial development, revenue enhancement, perceived public good, or any other purpose not deemed public. |
| | House | HR 49 | No | Expresses disapproval of the <i>Kelo</i> decision. |
| | Senate | 76 | No | Prohibits the use of eminent domain for the purpose of commercial retail development. |

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| State | Chamber | Bill Number | Enacted into Law? | Description |
|--------------|----------------|--------------------|--------------------------|---|
| California | Assembly | 1162 | No | Places a moratorium on the use of eminent domain to acquire owner-occupied residential property for a private use until Jan. 1, 2008. Requires a report regarding the exercise of the power of eminent domain by Jan. 1, 2007. |
| | Senate | 1026 | No | Places a moratorium on the use of eminent domain to acquire owner-occupied residential property for a private use until Jan. 1, 2008. Requires a report regarding the exercise of the power of eminent domain by Jan. 1, 2007. Emergency statute. |
| | Senate | SCA 12 | No | Constitutional amendment stipulating that public use does not include taking owner-occupied residential property for a private use. |
| | Assembly | ACA 22 | No | Constitutional amendment stipulating that private property may only be taken for a stated public use. Requires proof of no reasonable alternative and independent judicial determination. |
| | Senate | SCA 15 | No | Constitutional amendment stipulating that private property may only be taken for a stated public use. |
| | Assembly | 590 | No | Stipulates that public use does not include taking nonblighted property for economic development. |
| | Assembly | ACA 15 | No | Constitutional amendment prohibiting a redevelopment agency from acquiring property through eminent domain unless it first makes a written finding that the property contains conditions of both physical and economic blight. |
| Connecticut | House | 5062 | No | Prohibits the use of eminent domain for the acquisition of small owner-occupied residential dwellings for use in a municipal development project that will be privately owned or controlled. |
| Delaware | Senate | 217 | Yes | Restricts the use of eminent domain to a recognized public use. Public use definition is to be described in a certified planning document at least six months prior to the commencement of condemnation proceedings. |
| | House | HR 44 | No | Creates a task force to examine recommendations to restrict the application of <i>Kelo</i> in Delaware to bona fide public usage. Findings are due Jan. 10, 2006. |

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| State | Chamber | Bill Number | Enacted into Law? | Description |
|---------------|----------------|--|--------------------------|--|
| Delaware | Senate | 221 | No | Prohibits the condemnation of private property where no specific public use is to be made to the property. Requires proof of immediate and direct benefit to the public. |
| Florida | House | HJR 31 (same as SJR 20) | No | Constitutional amendment stipulating that public purpose does not include taking private property for economic development purposes. |
| Georgia | Senate | 86 | No | Prohibits the use of eminent domain for improving tax revenue solely, the transfer of private property to another private party, or economic development. |
| Illinois | House | 4091 | No | Limits eminent domain use to a qualified public use, which excludes private ownership or control, and economic development, unless expressly authorized by law. |
| Kentucky | House | BR 134 | No | Concurrent resolution urging the Congress of the United States to pass a constitutional amendment to protect private property from government takings for the promotion of private economic development. |
| | Senate | BR 311 (same as House BR 253) | No | Restricts the use of eminent domain to a qualified public use, which excludes private ownership and control and economic development, unless approved by voters. |
| | House | BR 195 | No | Restricts the use of eminent domain to public uses, which exclude economic development. Requires that certified real estate appraisers perform property valuations. |
| Massachusetts | House | N/A | No | Limits eminent domain uses to public use, which excludes economic development. Contains blight exception. |
| | House | HD 4634 | No | Prohibits the taking of private property for private economic development unless the property is in a blighted area. |
| | House | HD 4662 | No | Prohibits eminent domain takings for the purpose of economic development. Contains blight exception. |
| | House | HD 4663 | No | Constitutional amendment prohibiting eminent domain takings for the purpose of economic development. Contains blight exception. |

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| State | Chamber | Bill Number | Enacted into Law? | Description |
|--------------|----------------|---|--------------------------|--|
| Michigan | House | 5060 (same as HB 5078 and SB 693) | No | Stipulates that a taking of private property does not constitute public benefit if the property is transferred to a private entity for the primary benefit of the private entity. |
| | House | HJR N (same as HJR P) | No | Constitutional amendment that prohibits the use of eminent domain for transferring private property to another private entity. |
| Minnesota | House | 117 (same as HF 132) | No | Prohibits the use of eminent domain to acquire real property if the property acquired is intended to be sold, leased, transferred, or otherwise conveyed to a person or nongovernmental entity without the power of eminent domain. |
| | House | 123 | No | Prohibits the use of eminent domain for acquiring real property for private economic development purposes. |
| New Jersey | Senate | 2739 (same as A4392) | No | Prohibits the use of eminent domain to condemn legally occupied residential property that meets applicable housing codes. Contains blight exception. |
| | Assembly | ACR255 (same as SCR139) | No | Constitutional amendment limiting the use of eminent domain to acquisition of land for essential public purposes. |
| | Assembly | ACR256 | No | Constitutional amendment to limit use of eminent domain to traditional public purposes; repeals constitutional provision allowing condemnation and long-term tax exemptions for redevelopment projects. |
| New York | Assembly | 8865 | No | Requires a local government to vote to approve the proposed use of eminent domain to condemn private property for another private use. Contains public hearing requirement. |
| | Assembly | 9051 (same as S 5949) | No | Requires a local government to vote to approve the proposed use of eminent domain to condemn private property for another private use in cities with a population of one million or more. Requires at least one public hearing as part of proceedings. |

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| State | Chamber | Bill Number | Enacted into Law? | Description |
|--------------|----------------|-----------------------------|--------------------------|---|
| New York | Assembly | 9043 | No | Requires a local government to vote to approve an economic development plan, as well as to vote to approve the proposed use of eminent domain to condemn private property for another private use. Requires a public hearing to be held and includes additional public notice requirements. |
| | Senate | 5946 | No | Requires a local government to vote to approve an economic development plan, as well as to vote to approve the proposed use of eminent domain to condemn private property for another private use. |
| | Assembly | 9050 | No | Requires a local government to vote to approve an economic development plan, as well as to vote to approve the proposed use of eminent domain to condemn private property for another private use. Requires a public hearing to be held and includes additional public notice requirements. Requires a statement of fiscal impact to locality. Requires the amount of compensation paid to a property owner to be at least 125 percent of highest approved appraisal. |
| | Senate | 5936 | No | Stipulates that eminent domain can be used for economic development purposes only if the area is blighted. |
| | Senate | 5938 (same as A 9079) | No | 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. |
| | Assembly | 9060 (same as S 6216) | No | Creates a temporary state commission to consider the scope and effectiveness of eminent domain laws and balance society's needs with the people's constitutional liberty and property rights. |
| | Senate | 5961 | No | Constitutional amendment providing that private property may be taken only when necessary for the possession, occupation, or enjoyment of land by the public at large or by public agencies. Prohibits the use of eminent domain for private commercial enterprise, economic development, or any other private use. |

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| State | Chamber | Bill Number | Enacted into Law? | Description |
|--------------|---------|-------------|-------------------|---|
| Ohio | House | 331 | No | Places a moratorium on the use of eminent domain to condemn nonblighted property for economic development purposes when the property would be transferred to another private use. Creates a legislative task force to study eminent domain issues. |
| | House | HJR 10 | No | Prohibits the use of eminent domain for economic development when the primary purpose is to transfer private property to another private use. |
| | Senate | 167 | No | Places a moratorium until Dec. 31, 2006, on the use of eminent domain for economic development purposes that would ultimately result in the property being transferred to another private party in an area that is not blighted. Creates a task force to study eminent domain issues. |
| | Senate | SJR 6 | No | Constitutional amendment that removes from municipalities the authority to use eminent domain unless the power is specifically granted to them by the state legislature. |
| | Senate | 180 | No | Prohibits the use of eminent domain when the primary purpose for the taking of real property is economic development. |
| Oregon | House | 3505 | No | Limits the application of eminent domain to public purposes. Stipulates that the conveyance of condemned property to a private party is not public purpose. Contains blight and other exceptions. |
| Pennsylvania | House | 1835 | No | Prohibits the use of eminent domain to turn over private property to a nonpublic interest or for the purpose of increasing the local government's tax base. |
| | House | 1836 | No | Prohibits the use of eminent domain to turn over private property to a nonpublic interest, or for the purpose of increasing the local government's tax base. |
| Rhode Island | House | 6636 | No | Urges the United States Congress to take immediate action to amend the Constitution in order to more fully protect and guarantee private property rights and to nullify the <i>Kelo</i> decision. |

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| State | Chamber | Bill Number | Enacted into Law? | Description |
|--------------|----------------|--------------------------|--------------------------|--|
| Tennessee | House | 2426 (same as SB2418) | No | Stipulates that public purpose does not include taking private property for improving tax revenue or for economic development. |
| | Senate | 2413 | No | Stipulates that public purpose does not include taking private nonblighted property for improving tax revenue or for economic development. |
| | Senate | 2419 | No | Prohibits the use of eminent domain for acquiring property for commercial use, defined as private residential development; private development of property under lease; or for retail or industrial purposes. |
| | Senate | 2420 | No | Prohibits the condemnation of private property for economic development or redevelopment and places the burden of proof on the taking entity to show it is for some other purpose. |
| Texas | House | 16 | No | Prohibits the use of eminent domain to confer a private benefit on a private party or for economic development purposes, with certain exceptions including blight. |
| | House | HJR 11 | No | Constitutional amendment prohibiting the use of eminent domain to confer a private benefit on a private party or for economic development purposes, with certain exceptions. |
| | Senate | SJR 5 | No | Prohibits the use of eminent domain to confer a private benefit on a private party or for economic development purposes. |
| | House | HJR 19 | No | Constitutional amendment prohibiting the use of eminent domain to confer a private benefit on a private party or for economic development purposes, with certain exceptions. |
| | Senate | SJR 10 | No | Constitutional amendment to be placed on ballot on Nov. 8, 2005, prohibiting the use of eminent domain to confer a private benefit on a private party or for economic development purposes, with certain exceptions. |
| | Senate | 62 | No | Constitutional amendment prohibiting the use of eminent domain to confer a private benefit on a private party or for economic development purposes, with certain exceptions including blight. |

(continued on next page)

| State | Chamber | Bill Number | Enacted into Law? | Description |
|---------------|----------------|--------------------|--------------------------|--|
| Texas | House | 15 | No | Prohibits eminent domain takings of private property for the purpose of economic development. Contains blight exception. |
| | Senate | 26 | No | Prohibits the use of eminent domain to confer a private benefit on a private party or for economic development purposes. Contains blight exception. |
| Virginia | House | 1806 | No | Prohibits the use of eminent domain to confer a private benefit on a private party unless the benefit is incidental compared to that accrued by the public. |
| West Virginia | Senate | SCR 402 | No | Expresses the legislature's intent to protect private property rights by enacting legislation or proposing a constitutional amendment during the 2006 Regular Session to prohibit the use of eminent domain for the purpose of private economic development. |
| Wisconsin | Assembly | 657 | No | Prohibits the use of eminent domain to confer a private benefit on a private party. Contains blight exception and requires the condemnor to supply a written finding that the property is blighted. |

Source: Morandi, Institute of Justice, state legislatures' Web sites, and communication with state legislative staff.

Appendix B

Definitions of Public Purpose in Bills Introduced or Enacted after *Kelo*

Proposed deletions are enclosed in brackets. Except when the entire section of a bill is new, proposed additions are indicated by underline.

Alabama

Senate Bill 68 (Enacted)

Title 11, Chapter 47, Section 170 (new). “(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....”

Title 11, Chapter 80, Section 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.”

House Bill 102

Constitution of Alabama of 1901, Section 23 (new). “Notwithstanding the preceding provisions, no property shall be seized using eminent domain powers and given, sold, or leased to other private individuals, corporations, or other entities for the purposes of increasing tax revenues or other economic benefits such as job creation. The terms ‘public use’ and ‘public benefit’ shall not be interpreted to include private economic activity that generates tax revenue or creates jobs.”

House Bill 117

Constitution of Alabama of 1901, Section 23. “Private property shall not be taken for private use, or for the use of corporations, other than municipal, or for the use of limited liability corporations, limited liability partnerships, partnerships, public-private partnerships, associations, or any business enterprise, or variation thereof, without the consent of the owner; provided, however, the legislature may by law secure the persons or corporations the right of way over the lands of other persons or corporations, and by persons and corporations of the rights herein reserved.... Neither the state nor any county, city, or town, or any political subdivision thereof, shall use eminent domain to condemn or confiscate property or property rights for the purpose of a commercial enterprise, industrial development, revenue enhancement, perceived public good, or any purpose other than actual use by the public.”

California**Senate Constitutional Amendment 12**

Article I, Section 19 of the Constitution. “(b) Public use does not include the taking of owner-occupied residential property for private use.”

Assembly Bill 590

Section 1240.010 of the Code of Civil Procedure. (b) “In the exercise of eminent domain, ‘public use’ does not include the taking or damaging of property for private use, including, but not limited to, condemnation of [nonblighted] property for [private business] economic development.”

Delaware**Senate Bill 217 (Enacted)**

Title 29, Section 9505 (new). “(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.”

Senate Bill 221

Title 10, Section 6109 (new). “(a) The Court shall dismiss any complaint that lacks a specific and detailed statement of the public use for which a piece of property is to be taken or that contains a stated public use is insufficient to warrant a taking. In determining whether a stated public use is sufficient to warrant a taking, it is not sufficient that a general public purpose is served by the taking. There must be a showing that a specific public use will be made with the taken property and that the members of the general public, including those from whom the property is being taken, will realize an immediate and direct benefit from such taking. For the purposes of this chapter, a ‘public use’ may include the construction or maintenance of public buildings, roads, schools, hospitals, railroads, reservoirs and/or utilities, but may not include revenue generation,

economic development, or the re-development of currently occupied residences and may not result in the displacement of the residents of the property.”

Florida

Senate Joint Resolution 20 (same as SJR 20)

Article X, Section 6 of the Constitution. “(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. Private economic development shall not be deemed to constitute a public purpose for which private property may be taken by eminent domain.”

Georgia

Senate Bill 86

Title 22, Chapter 1, Section 9 (new). “(a) Pursuant to Article I, Section III, Paragraph I of the Constitution, the General Assembly is authorized to determine what constitutes a public purpose with respect to the power of eminent domain. A public purpose shall be as defined by general law as provided by this Code, but in no event shall a public purpose be construed to include the exercise of eminent domain solely or primarily for the purpose of improving tax revenue or the tax base or the purpose of economic development. This shall include condemning property for the purpose of transferring, leasing, or allowing the use of such property to a private developer, corporation, or other entity solely or primarily to attempt to expand tax revenue, increase the taxable value of the property, or promote economic development.”

Illinois

House Bill 4091

Title 5, Chapter 70, Section 10 (new). “(a) Neither the State, a unit of local government, nor a school district may take or damage property by the exercise of the power of eminent domain unless it is for a ‘qualified public use,’ as defined under this Section. (b) It is a ‘qualified public use’ to exercise the power of eminent domain for the acquisition of property (i) for public ownership and control by the State, a unit of local government, a school district, or any combination of those entities and (ii) for a public purpose. It is not a ‘qualified public use,’ however, to exercise the power of eminent domain to acquire property for private ownership or control, including for economic development, unless acquisition of property for private ownership or control is (i) for a public purpose and (ii) specifically and expressly authorized by law enacted by the General Assembly on, before, or after the effective date of this amendatory Act of the 94th General Assembly.”

Kentucky

House Bill Request 253 (Senate BR 311)

Section 1. KRS 416.540 to 416.670 (new). “(2) A public entity shall not take or damage property by the use of eminent domain unless it is for a ‘qualified public use,’ as defined in this section.

- (3) (a) It is a ‘qualified public use’ to exercise the power of eminent domain for the acquisition of property:
1. For public ownership and control by the public entity; and
 2. For a public purpose.
- (b) It is not a ‘qualified public use’ to exercise the power of eminent domain to acquire property for private ownership or control, including for economic development, unless acquisition of property for private ownership or control is:
1. For a public purpose; and
 2. Specifically and expressly approved in accordance with Section 2 of this Act.”

House Bill Request 195

Section 1. KRS 416.540 TO 416.670 (new). “(2) Public use shall include, but not be limited to, the following:

- (a) Ownership of the property by the Commonwealth or a political subdivision of the Commonwealth;
 - (b) The possession, occupation, or enjoyment of the property as a matter of right by the Commonwealth or a political subdivision of the Commonwealth;
 - (c) The use of the property for the creation or functioning of public utilities or common carriers; and
 - (d) The acquisition and transfer of property to public or private parties for the purpose of eliminating blighted areas, slum areas, or unsafe or unsanitary areas in accordance with statutory requirements and procedures.
- (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 solely 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.”

Massachusetts

House Resolution

“Resolved. That the Massachusetts House of Representatives finds and declares its sense that:

- (1) The taking of private property by right of eminent domain for the sole purpose of economic development, where one private individual benefits at the expense of another, is contrary to the well-established public policy of this commonwealth,

except to the extent such takings are necessary to prevent the development of or to eliminate dilapidated or blighted open areas as approved by the law; and,
(2) Notwithstanding the majority opinion in *Susette Kelo, et. al. v. city of New London, Connecticut, et. al.*, 04-108 (2005), the taking of private property by right of eminent domain should occur only when necessary to further a public use and in exchange for reasonable compensation as required by Article X of Part the First of the Massachusetts Constitution....”

House Docket 4663

Article X of Part the First of the Constitution (new). “Except in cases where the elimination or prevention of the development or spread of a substandard, decadent or blighted open area is provided by law, the taking of land or interests therein by eminent domain for the sole purpose of economic development is hereby declared not to be a public use of the commonwealth under the first paragraph of Article X of Part the First of the Constitution.”

Michigan

Senate Bill 693 (same as HB 5060 and HB 5078)

Chapter 213.23, Section 3 (new). “(2) A taking of private property under subsection (1) is not considered to be for the use or benefit of the public if the property is transferred to a private entity for the primary benefit of the private entity.”

House Joint Resolution N (same as HJR P)

Article X, Section 2 of the Constitution (new). “A taking of private property is not considered to be for public use if the property is transferred to a private entity or entities for the primary benefit of the private entity or entities.”

New Jersey

Assembly Concurrent Resolution 255

Article VII, Section III Paragraph 1 of the Constitution. “[The clearance, replanning, development or redevelopment of blighted areas shall be a public purpose and public use, for which private may be taken or acquired. Municipal, public or private] Public corporations may be authorized by law to [undertake such clearance, replanning, development or redevelopment; and improvements made for these purposes and uses, or for any of them,] exercise the power of eminent domain for essential public purposes. Essential public purposes shall include and be limited to utility and transportation corridors, educational facilities, airports, correctional facilities, solid waste handling facilities, landfills, sewage treatment facilities, storm water management facilities, in-patient health facilities, and recreational facilities.

Improvements taken by a private corporation in connection with the clearance, replanning, development or redevelopment of blighted areas shall be a public purpose and public use in order to develop or redevelop blighted areas, for which eminent domain may not be exercised, but which may be exempted from taxation, in whole or in part, for a limited period of time during which the profits of and dividends payable by any private corporation enjoying such tax exemption shall be limited by law....”

Assembly Concurrent Resolution 256

Article I, Paragraph 20 of the Constitution (new). “No governmental entity shall take private property for use by the people without the payment of just compensation therefor. ‘Use by the people’ shall be confined to traditional public purposes. The power of eminent domain shall not extend to any economic development activity or to any undertaking in which property so obtained is transferred to a private person or entity unless it is for a traditional public purpose.”

New York**Senate Bill 5961**

Section 7, Article 1 of the Constitution (new). “(a) With just compensation paid, private property may be taken only when necessary for the possession, occupation, or enjoyment of land by the public at large, or by public agencies.

(b) Except for privately owned common carriers and public utilities, private property shall not be taken for any other private use, except with the consent of the owner. Property shall not be taken from one and transferred to another, on the grounds that the public will benefit from a more profitable private use.

(c) 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 any legislative assertion that the use is public.”

Oregon**House Bill 3505**

Chapter 35, Section 2 (new). “(1) Except as provided in subsection (2) of this section, a public body as defined in ORS 174.109 may condemn property only if the primary purpose for taking the property is to allow the property to be owned, maintained, occupied and used by the public for public purposes. For the purposes of this subsection, conveyance of condemned property or of an interest in condemned property to a private party is not a public purpose.

(2) Subsection (1) of this section does not apply to condemnation of:

- (a) Property located within a blighted area or slum area in which buildings and improvements are located that are detrimental to the safety, health and welfare of the community by reason of dilapidation, overcrowding, lack of ventilation, light and sanitary facilities, deleterious land use or any combination of these factors;
- (b) Property within an urban renewal area, as defined in ORS 457.010, that was purchased after the formation of an urban renewal plan, as defined in ORS 457.010, for the area;
- (c) Any fixtures to be removed from the property that are a part of a condemnation authorized pursuant to ORS 366.320 or 366.340;
- (d) Property condemned pursuant to ORS 366.333; and
- (e) Property condemned pursuant to ORS 366.335.”

Tennessee

Senate Bill 2413

Title 29, Chapter 17, Section 1303 (new). “(a) It shall not be a ‘public use’ within the meaning of Article I, § 21 of the Constitution of Tennessee for a government, or other entity so authorized, to exercise the power of eminent domain to take the private property of an individual solely or primarily for the purpose of improving the tax revenue or the tax base of the condemning authority or for the sole or primary purpose of economic development.

(b) The provisions of subsection (a) of this section shall also preclude a governmental or other entity from condemning property through eminent domain for the purpose of selling, leasing, otherwise transferring or allowing the use of such property to a private developer, corporation or other private entity solely or primarily to attempt to increase tax revenue, expand the tax base, increase the taxable value of the property or to promote economic development.”

Senate Bill 2418

Title 29, Chapter 17, Section 1302 (new). “With respect to the exercise of eminent domain, a public purpose shall not include the use of eminent domain solely or principally for the purpose of improving tax revenue or the tax base, or for the purpose of economic development. The public purpose requirements of eminent domain shall not include the condemnation of properties of Tennessee residents and businesses for the purpose of transferring or leasing of such properties to a private developer, corporation, or other non-governmental entity solely or principally for the expansion of tax revenue, increase in the taxable value of such property, or the promotion of economic development.”

Senate Bill 2420

Title 29, Chapter 17, Section 1303 (new). “‘Public use’ also includes ‘public necessity’ and means public necessity of the extreme sort warranted by facts of independent public significance. It does not include private ownership or lease for private economic development or redevelopment.”

Title 29, Chapter 17, Section 1304 (new). “No governmental or other entity otherwise authorized to do so shall have the authority to condemn and take the private property of a person or other nongovernmental entity by use of the power of eminent domain if such taking is for the purpose of private economic development, private redevelopment, or solely for the purpose of improving tax revenue or the tax base including condemnation for the purpose of transferring, leasing, or allowing the use of such property to a private developer, corporation, or other entity to attempt to expand tax revenue, increase the taxable value of the property, or promote economic development. Private economic development or private redevelopment shall not be deemed to constitute a public use or purpose for which private property may be taken by eminent domain.”

Senate Bill 2421 (same as SB 2429)

Title 29, Chapter 17, Section 1302 (new). “No governmental or other entity authorized to do so shall have the authority to condemn and take the private property of a person or other nongovernmental entity by use of the power of eminent domain if such taking is for the sole or primary purpose of economic development or redevelopment.

Title 29, Chapter 17, Section 1305 (new). When determining whether any taking of private property by the use of eminent domain is a violation of this part or Article 1, § 21 of the Constitution of Tennessee, the taking of property for the sole or primary purpose of development or redevelopment shall not be considered a ‘public use’ of such property.”

Senate Bill 2422

Title 29, Chapter 17, Section 1302 (new). “(a) With respect to the exercise of eminent domain, a public purpose shall not include the use of eminent domain solely or principally for the purpose of improving tax revenue or the tax base, or for the purpose of economic development. The public purpose requirements of eminent domain shall not include the condemnation of properties of Tennessee residents and businesses for the purpose of transferring or leasing of such properties to a private developer, corporation, or other non-governmental entity solely or principally for the expansion of tax revenue, increase in the taxable value of such property, or the promotion of economic development.

(b) Public purposes for eminent domain shall include but not be limited to:

- (1) Public buildings and grounds for the use of the state of Tennessee;
- (2) Public buildings and grounds for the use of any county or city;
- (3) Wharves, docks, piers and bridges;
- (4) Reservoirs, dams, canals, aqueducts and pipes;
- (5) Roads, railroads, and tunnels;
- (6) Telegraph, telephone, electric light and electric power lines, and sites for electric light and power plants;
- (7) Sewerage facilities;
- (8) Cemeteries and public parks; and
- (9) Any other purpose which benefits the public welfare.”

Senate Bill 2424 (same as HB 2428)

Title 29, Chapter 17, Section 1301 (new). “As used in this part, unless the context otherwise requires: (1) ‘Economic development’ means any endeavor to promote or stimulate the economy of a community through expansion of employment opportunities, encouragement of the establishment and growth of commerce and industry, or expansion of the property or sales tax base; and (2) ‘Eminent domain’ means the power of the state, a political subdivision of the state or an entity to which such power has been delegated, to condemn and take, in whole or in part, private property for public use; provided, that payment of just compensation is made for such property.

Title 29, Chapter 17, Section 1302. (a) The state, any political subdivision of the state, or any other entity to which the power of eminent domain has been granted shall not

condemn and take private property, if the taking is solely or principally for the purpose of economic development.”

House Bill 2426

Title 29, Chapter 17, Section 1302 (new). “With respect to the exercise of eminent domain, a public purpose shall not include the use of eminent domain solely or principally for the purpose of improving tax revenue or the tax base, or for the purpose of economic development. The public purpose requirements of eminent domain shall not include the condemnation of properties of Tennessee residents and businesses for the purpose of transferring or leasing of such properties to a private developer, corporation, or other non-governmental entity solely or principally for the expansion of tax revenue, increase in the taxable value of such property, or the promotion of economic development.”

Virginia

House Bill 1806

Title 15.2, Chapter 19, Section 1900. “Definition of public uses. The term ‘public uses’ mentioned in Article I, Section 11 of the Constitution of Virginia is hereby defined to embrace all uses [which] that are necessary for public purposes. Further, and notwithstanding any applicable charter provision or other provision of law, public use shall not include any condemnation of property by a locality that (i) is made with the intent of making the property available for ownership or use by a private entity unless any benefits that will accrue to the private entity as a result of its ownership or use of the property are merely incidental when compared to the benefits that will accrue to the public or (ii) is otherwise predominantly for a private purpose.”

West Virginia

Senate Concurrent Resolution 402

“Whereas, No private property should be taken by the State of West Virginia or its political subdivisions through the process of eminent domain unless there is a legitimate public interest and no feasible alternative exists...”

Appendix C

Definitions of Blight in Bills Introduced or Enacted After *Kelo*

New York

Senate Bill 5936

Eminent Domain Procedure Law, Section 103 (new). “(H) ‘Blighted area’ means an area in which one or both 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.”

Wisconsin

Assembly Bill 657

Title 1, Section 32.03(6) (new). “(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.”

