



House of Representatives

General Assembly

File No. 487

February Session, 2004

Substitute House Bill No. 5565

House of Representatives, April 6, 2004

The Committee on Judiciary reported through REP. LAWLOR of the 99th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING THE POWER OF MUNICIPALITIES TO ACQUIRE CERTAIN REAL PROPERTY BY EMINENT DOMAIN.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 8-128 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective from passage*):

3 Within a reasonable time after its approval of the redevelopment
4 plan as [hereinbefore] provided in section 8-127, the redevelopment
5 agency may proceed with the acquisition or rental of real property by
6 purchase, lease, exchange or gift. The redevelopment agency may
7 acquire real property by eminent domain with the approval of the
8 legislative body of the municipality and in accordance with the
9 provisions of sections 8-129 to 8-133, inclusive, and this section,
10 provided only vacant, abandoned or unimproved real property may be
11 acquired by eminent domain if the resulting project will be privately
12 owned or controlled. The legislative body, in its approval of a project
13 under section 8-127, shall specify the time within which real property

14 is to be acquired. The time for acquisition may be extended by the
15 legislative body in accordance with section 48-6 [.] upon request of the
16 redevelopment agency, provided the owner of the real property
17 consents to such request. Real property may be acquired previous to
18 the adoption or approval of the project area redevelopment plan,
19 provided the real property acquired shall be located within an area
20 designated on the general plan as an appropriate redevelopment area
21 or within an area whose boundaries are defined by the planning
22 commission as an appropriate area for a redevelopment project, and
23 provided such acquisition shall be authorized by the legislative body.
24 The redevelopment agency may clear, repair, operate or insure such
25 property while it is in its possession or make site improvements
26 essential to preparation for its use in accordance with the
27 redevelopment plan.

28 Sec. 2. Subsection (a) of section 8-193 of the general statutes is
29 repealed and the following is substituted in lieu thereof (*Effective from*
30 *passage*):

31 (a) After approval of the development plan as provided in this
32 chapter, the development agency may proceed by purchase, lease,
33 exchange or gift with the acquisition or rental of real property within
34 the project area and real property and interests therein for rights-of-
35 way and other easements to and from the project area. The
36 development agency may, with the approval of the legislative body,
37 and in the name of the municipality, acquire by eminent domain real
38 property located within the project area and real property and interests
39 therein for rights-of-way and other easements to and from the project
40 area, in the same manner that a redevelopment agency may acquire
41 real property under sections 8-128 to 8-133, inclusive, as if said sections
42 specifically applied to development agencies, provided only vacant,
43 abandoned or unimproved real property may be acquired by eminent
44 domain if the resulting project will be privately owned or controlled.
45 The development agency may, with the approval of the legislative
46 body, and [.] of the commissioner if any grants were made by the state
47 under section 8-190 or 8-195 for such development project, and in the

48 name of such municipality, transfer by sale or lease at fair market
49 value or fair rental value, as the case may be, the whole or any part of
50 the real property in the project area to any person, in accordance with
51 the project plan and such disposition plans as may have been
52 determined by the commissioner.

This act shall take effect as follows:	
Section 1	<i>from passage</i>
Sec. 2	<i>from passage</i>

JUD *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: None

Municipal Impact: None

OLR Bill Analysis

sHB 5565

AN ACT CONCERNING THE POWER OF MUNICIPALITIES TO ACQUIRE CERTAIN REAL PROPERTY BY EMINENT DOMAIN**SUMMARY:**

This bill prohibits a development or redevelopment agency from acquiring real property by eminent domain for a project that will be privately owned or controlled unless the property is vacant, abandoned, or unimproved. It appears this restriction applies to the proposed use of the land at the time of the taking.

By law, the use of eminent domain by a variety of municipal and state agencies and authorities must follow the redevelopment agency procedures. It appears that the bill's restrictions would apply to these statutes when a project results in private ownership or control. These provisions include urban sites remedial action, neighborhood revitalization zones, and community development plans.

EFFECTIVE DATE: Upon passage

BACKGROUND***Eminent Domain***

In general, there are three procedures for eminent domain in Connecticut: (1) the procedures for taking property under redevelopment plans, which are also referenced by numerous other statutes for takings in other circumstances; (2) procedures for takings by the Department of Transportation for uses related to roads; and (3) specific procedures for certain purposes, such as the Adriaen's Landing project.

Related Case— Kelo v. New London

In *Kelo v. New London*, the Connecticut Supreme Court considered the condemnation of privately owned land by a private, nonprofit economic development corporation authorized to act under a

development plan. The development corporation would own the land and lease it to private developers requiring them to comply with the plan (268 Conn. 1 (2004)).

The court considered whether this use of eminent domain was a public use and whether it violated the federal and state constitutions. The court ruled that:

1. the redevelopment statute allows a city to acquire and improve unified land and water areas, and this does not limit the city to acquiring vacant land;
2. economic development can be a valid public use;
3. evidence supported the conclusion that the takings were primarily intended to benefit the public interest and not private entities;
4. the economic development plan had sufficient statutory and contractual constraints;
5. the city's delegation of eminent domain power to a nonprofit private economic development corporation was constitutional;
6. taking houses for office buildings was not impermissibly speculative;
7. taking the houses but not a private social club did not violate the equal protection clause of the constitutions; and
8. the trial court gave insufficient deference to the legislative determination of necessity for taking houses on the parcel designated for park or marina support.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 38 Nay 4