



Senate

General Assembly

File No. 260

February Session, 2006

Substitute Senate Bill No. 34

Senate, March 31, 2006

The Committee on Planning and Development reported through SEN. COLEMAN of the 2nd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT REVISING THE PROCESS FOR THE TAKING OF REAL PROPERTY BY MUNICIPALITIES FOR REDEVELOPMENT AND ECONOMIC DEVELOPMENT.

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

1 Section 1. Section 8-125 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2006*):

3 As used in this chapter:

4 [(a)] (1) "Redevelopment" means improvement by the rehabilitation
5 or demolition of structures, by the construction of new structures,
6 improvements or facilities, by the location or relocation of streets,
7 parks and utilities, by replanning or by two or more of these methods;

8 [(b)] (2) "Redevelopment area" means an area within the state which
9 is deteriorated, deteriorating, substandard or detrimental to the safety,
10 health, morals or welfare of the community. An area may consist
11 partly or wholly of vacant or unimproved land or of land with

12 structures and improvements thereon, and may include structures not
13 in themselves substandard or insanitary which are found to be
14 essential to complete an adequate unit of development, if the
15 redevelopment area is deteriorated, deteriorating, substandard or
16 detrimental. An area may include properties not contiguous to each
17 other. An area may include all or part of the territorial limits of any fire
18 district, sewer district, fire and sewer district, lighting district, village,
19 beach or improvement association or any other district or association,
20 wholly within a town and having the power to make appropriations or
21 to levy taxes, whether or not such entity is chartered by the General
22 Assembly;

23 [(c)] (3) A "redevelopment plan" [shall include: (1)] means a plan
24 that includes: (A) A description of the redevelopment area and the
25 condition, type and use of the structures therein; [(2)] (B) the location
26 and extent of the land uses proposed for and within the area, such as
27 housing, recreation, business, industry, schools, civic activities, open
28 spaces or other categories of public and private uses; [(3)] (C) a
29 determination that the proposed land use for each property in the
30 redevelopment area is a public use or for economic development; (D)
31 the location and extent of streets and other public utilities, facilities
32 and works within the area; [(4)] (E) schedules showing the number of
33 families displaced by the proposed improvement, the method of
34 temporary relocation of such families and the availability of sufficient
35 suitable living accommodations at prices and rentals within the
36 financial reach of such families and located within a reasonable
37 distance of the area from which they are displaced; [(5)] (F) present
38 and proposed zoning regulations in the redevelopment area; [(6)] and
39 (G) any other detail including financial aspects of redevelopment
40 which, in the judgment of the redevelopment agency authorized
41 herein, is necessary to give it adequate information. The plan shall also
42 include a preliminary statement describing the process for acquisition
43 of each parcel of real property;

44 [(d)] (4) "Planning agency" means the existing city or town plan
45 commission or, if such agency does not exist or is not created, the

46 legislative body or agency designated by it;

47 [(e)] (5) "Redeveloper" means any individual, group of individuals
48 or corporation or any municipality or other public agency including
49 any housing authority established pursuant to chapter 128;

50 [(f)] (6) "Real property" means land, subterranean or subsurface
51 rights, structures, any and all easements, air rights and franchises and
52 every estate, right or interest therein;

53 (7) "Public use" means (A) possession, occupation and enjoyment of
54 land by the general public or by a public agency, department or
55 institution for a public purpose or to provide public services; (B) the
56 use of land for the creation or operation of public utilities; or (C) the
57 acquisition of real property to correct a specific harm from the use of
58 such land on the date of acquisition, including (i) the removal of a
59 public nuisance or structures that cannot be repaired or are unfit for
60 human habitation or use, and (ii) the acquisition of abandoned
61 property; and

62 (8) "Economic development" means any land use that increases tax
63 revenues, the tax base, employment or general economic health and
64 that does not result in (A) the transfer of land to public ownership, (B)
65 the transfer of land to a railroad, (C) the transfer of property to a
66 private entity when eminent domain will remove a threat to public
67 health or safety such as public nuisances or structures that are beyond
68 repair or unfit for human habitation or use, (D) the acquisition of
69 abandoned property, or (E) the lease of property to private entities that
70 occupy an incidental area within a public project. "Economic
71 development" includes, but is not limited to, an industrial purpose or a
72 business purpose, as defined in section 8-187, as amended by this act.

73 Sec. 2. Section 8-128 of the general statutes is repealed and the
74 following is substituted in lieu thereof (*Effective October 1, 2006*):

75 Within a reasonable time after its approval of the redevelopment
76 plan as hereinbefore provided, the redevelopment agency may

77 proceed with the acquisition or rental of real property by purchase,
78 lease, exchange or gift. The redevelopment agency may acquire any
79 real property by eminent domain only with the approval of the
80 legislative body of the municipality and in accordance with the
81 provisions of sections 8-129 to 8-133, inclusive, as amended by this act,
82 and this section. In the case of the acquisition of real property by
83 eminent domain for economic development, as provided in the
84 redevelopment plan, approval of two-thirds of the members of the
85 legislative body shall be required. The municipality shall cause notice
86 of any approval under this section to be published not more than ten
87 days after such approval in a newspaper having a substantial
88 circulation in the municipality. The legislative body in its approval of a
89 project under section 8-127 shall specify the time within which real
90 property is to be acquired. The time for acquisition may be extended
91 by the legislative body in accordance with section 48-6, upon request
92 of the redevelopment agency, provided the owner of the real property
93 consents to such request. Real property may be acquired previous to
94 the adoption or approval of the project area redevelopment plan,
95 provided the property acquired shall be located within an area
96 designated on the general plan as an appropriate redevelopment area
97 or within an area whose boundaries are defined by the planning
98 commission as an appropriate area for a redevelopment project, and
99 provided such acquisition shall be authorized by the legislative body.
100 The redevelopment agency may clear, repair, operate or insure such
101 property while it is in its possession or make site improvements
102 essential to preparation for its use in accordance with the
103 redevelopment plan.

104 Sec. 3. Section 8-129 of the general statutes is repealed and the
105 following is substituted in lieu thereof (*Effective October 1, 2006*):

106 (a) The redevelopment agency shall determine the compensation to
107 be paid to the persons entitled thereto for [such] real property [and] to
108 be taken pursuant to section 8-128, as amended by this act. Such
109 amount shall be equal to the fair market value of the real property,
110 except that for any real property taken for economic development, as

111 defined in section 8-128, as amended by this act, the owner shall be
112 compensated in an amount not less than one hundred fifty per cent of
113 the fair market value of the real property. The fair market value of the
114 property taken shall not include any increase or decrease in the value
115 of the property attributable to (1) the project for which the property is
116 to be acquired, (2) any eminent domain proceeding in which the
117 property is to be acquired, or (3) any preliminary actions of the
118 redevelopment agency relating to the acquisition of the property. If
119 such property is a commercial or business use, such compensation
120 shall include a value for loss of good will pursuant to subsection (e) of
121 this section. The redevelopment agency shall file a statement of
122 compensation, containing a description of the property to be taken and
123 the names of all persons having a record interest therein and setting
124 forth the amount of such compensation, and a deposit as provided in
125 section 8-130, with the clerk of the superior court for the judicial
126 district in which the property affected is located. Upon filing such
127 statement of compensation and deposit, the redevelopment agency
128 shall forthwith cause to be recorded, in the office of the town clerk of
129 each town in which the property is located, a copy of such statement of
130 compensation, such recording to have the same effect and to be treated
131 the same as the recording of a lis pendens, and shall forthwith give
132 notice, as provided in this section, to each person appearing of record
133 as an owner of property affected thereby and to each person appearing
134 of record as a holder of any mortgage, lien, assessment or other
135 encumbrance on such property or interest therein [(a)] (A) in the case
136 of any such person found to be residing within this state, by causing a
137 copy of such notice, with a copy of such statement of compensation, to
138 be served upon each such person by a state marshal, constable or
139 indifferent person, in the manner set forth in section 52-57 for the
140 service of civil process, and [(b)] (B) in the case of any such person who
141 is a nonresident of this state at the time of the filing of such statement
142 of compensation and deposit or of any such person whose
143 whereabouts or existence is unknown, by mailing to each such person
144 a copy of such notice and of such statement of compensation, by
145 registered or certified mail, directed to [his] such person's last-known

146 address, and by publishing such notice and such statement of
147 compensation at least twice in a newspaper published in the judicial
148 district and having daily or weekly circulation in the town in which
149 such property is located. Any such published notice shall state that it is
150 notice to the widow or widower, heirs, representatives and creditors of
151 the person holding such record interest, if such person is dead. If, after
152 a reasonably diligent search, no last-known address can be found for
153 any interested party, an affidavit stating such fact, and reciting the
154 steps taken to locate such address, shall be filed with the clerk of the
155 superior court and accepted in lieu of mailing to the last-known
156 address.

157 (b) Not less than twelve days or more than ninety days after such
158 notice and such statement of compensation have been so served or so
159 mailed and first published, the redevelopment agency shall file with
160 the clerk of the superior court a return of notice setting forth the notice
161 given and, upon receipt of such return of notice, such clerk shall,
162 without any delay or continuance of any kind, issue a certificate of
163 taking setting forth the fact of such taking, a description of all the
164 property so taken and the names of the owners and of all other persons
165 having a record interest therein. The redevelopment agency shall cause
166 such certificate of taking to be recorded in the office of the town clerk
167 of each town in which such property is located. Upon the recording of
168 such certificate, title to such property in fee simple shall vest in the
169 municipality, and the right to just compensation shall vest in the
170 persons entitled thereto. At any time after such certificate of taking has
171 been so recorded, the redevelopment agency may repair, operate or
172 insure such property and enter upon such property, and take any
173 action that is proposed with regard to such property by the project
174 area redevelopment plan.

175 (c) The notice [referred to above] required in subsection (b) of this
176 section shall state that (1) not less than twelve days or more than
177 ninety days after service or mailing and first publication thereof, the
178 redevelopment agency shall file, with the clerk of the superior court for
179 the judicial district in which such property is located, a return setting

180 forth the notice given, (2) upon receipt of such return, such clerk shall
181 issue a certificate for recording in the office of the town clerk of each
182 town in which such property is located, (3) upon the recording of such
183 certificate, title to such property shall vest in the municipality, the right
184 to just compensation shall vest in the persons entitled thereto and the
185 redevelopment agency may repair, operate or insure such property
186 and enter upon such property and take any action that may be
187 proposed with regard thereto by the project area redevelopment plan,
188 and (4) such notice shall bind the widow or widower, heirs,
189 representatives and creditors of each person named therein who then
190 or thereafter may be dead.

191 (d) When any redevelopment agency acting on behalf of any
192 municipality has acquired or rented real property by purchase, lease,
193 exchange or gift in accordance with the provisions of this section, or in
194 exercising its right of eminent domain has filed a statement of
195 compensation and deposit with the clerk of the superior court and has
196 caused a certificate of taking to be recorded in the office of the town
197 clerk of each town in which such property is located as provided in
198 this section, any judge of such court may, upon application and proof
199 of such acquisition or rental or such filing and deposit and such
200 recording, order such clerk to issue an execution commanding a state
201 marshal to put such municipality and the redevelopment agency, as its
202 agent, into peaceable possession of the property so acquired, rented or
203 condemned. The provisions of this section shall not be limited in any
204 way by the provisions of chapter 832.

205 (e) (1) As used in this subsection, "good will" means the benefits that
206 accrue to a business from its location, reputation for dependability,
207 skill or quality and any other circumstances resulting in probable
208 retention of old or acquisition of new patronage.

209 (2) The owner of a business conducted on the property to be
210 acquired, or on the remainder if such property is part of a larger parcel
211 shall be compensated for loss of good will if such owner proves: (A)
212 The loss is caused by the taking of the property or injury to the

213 remainder; (B) the loss cannot reasonably be prevented by a relocation
214 of the business or by taking steps and adopting procedures that a
215 reasonably prudent person would take and adopt in preserving good
216 will; and (C) compensation for the loss will not be duplicated in the
217 compensation otherwise awarded to the owner.

218 Sec. 4. Section 8-187 of the general statutes is repealed and the
219 following is substituted in lieu thereof (*Effective October 1, 2006*):

220 As used in this chapter, (1) "municipality" means a town, city,
221 consolidated town and city or consolidated town and borough; (2)
222 "legislative body" means (A) the board of selectmen in a town that
223 does not have a charter, special act or home rule ordinance relating to
224 its government or (B) the council, board of aldermen, representative
225 town meeting, board of selectmen or other elected legislative body
226 described in a charter, special act or home rule ordinance relating to
227 government in a city, consolidated town and city, consolidated town
228 and borough or a town having a charter, special act, consolidation
229 ordinance or home rule ordinance relating to its government; (3)
230 "development agency" means the agency designated by a municipality
231 under section 8-188 through which the municipality may exercise the
232 powers granted under this chapter; (4) "development project" means a
233 project conducted by a municipality for the assembly, improvement
234 and disposition of land or buildings or both to be used principally for
235 industrial or business purposes and includes vacated commercial
236 plants; (5) "vacated commercial plants" means buildings formerly used
237 principally for business or industrial purposes of which more than fifty
238 per cent of the usable floor space is, or which it is anticipated, within
239 eighteen months, shall be, unused or substantially underutilized; (6)
240 "project area" means the area within which the development project is
241 located; (7) "commissioner" means the Commissioner of Economic and
242 Community Development; (8) "planning commission" means the
243 planning and zoning commission designated pursuant to section 8-4a
244 or the planning commission created pursuant to section 8-19; (9) "real
245 property" means land, subterranean or subsurface rights, structures,
246 any and all easements, air rights and franchises and every estate, right

247 or interest therein; [and] (10) "business purpose" includes, but is not
248 limited to, any commercial, financial or retail enterprise and includes
249 any enterprise which promotes tourism and any property that
250 produces income; (11) "public use" means (A) possession, occupation
251 and enjoyment of land by the general public or by a public agency,
252 department or institution, for a public purpose or to provide public
253 services; (B) the use of land for the creation or operation of public
254 utilities; or (C) the acquisition of real property to correct a specific
255 harm from the use of such land on the date of acquisition, including (i)
256 the removal of a public nuisance or structures that cannot be repaired
257 or are unfit for human habitation or use, and (ii) the acquisition of
258 abandoned property; and (12) "economic development" means any
259 land use that increases tax revenues, the tax base, employment or
260 general economic health and that does not result in (A) the transfer of
261 land to public ownership, (B) the transfer of land to a railroad, (C) the
262 transfer of property to a private entity when eminent domain will
263 remove a threat to public health or safety such as public nuisances or
264 structures that are beyond repair or unfit for human habitation or use,
265 (D) the acquisition of abandoned property, or (E) the lease of property
266 to private entities that occupy an incidental area within a public project
267 and includes an industrial purpose or a business purpose.

268 Sec. 5. Section 8-189 of the general statutes is repealed and the
269 following is substituted in lieu thereof (*Effective October 1, 2006*):

270 The development agency may initiate a development project by
271 preparing a project plan therefor in accordance with regulations of the
272 commissioner. The project plan shall include: [(a)] (1) A legal
273 description of the land within the project area; [(b)] (2) a description of
274 the present condition and uses of such land or building; [(c)] (3) a
275 description of the types and locations of land uses or building uses
276 proposed for the project area; [(d)] (4) a description of the types and
277 locations of present and proposed streets, sidewalks and sanitary,
278 utility and other facilities and the types and locations of other
279 proposed site improvements; [(e)] (5) statements of the present and
280 proposed zoning classification and subdivision status of the project

281 area and the areas adjacent to the project area; [(f)] (6) a plan for
282 relocating project-area occupants; [(g)] (7) a financing plan; [(h)] (8) an
283 administrative plan; [(i)] (9) a marketability and proposed land-use
284 study or building use study if required by the commissioner; [(j)] (10)
285 appraisal reports and title searches; [(k)] (11) a statement of the
286 number of jobs which the development agency anticipates would be
287 created by the project and the number and types of existing housing
288 units in the municipality in which the project would be located, and in
289 contiguous municipalities, which would be available to employees
290 filling such jobs; and [(l)] (12) findings that the land and buildings
291 within the project area will be used principally for industrial or
292 business purposes; that the proposed land use for each property is a
293 public use or for economic development; that the plan is in accordance
294 with the plan of development for the municipality adopted by its
295 planning commission and the plan of development of the regional
296 planning agency, if any, for the region within which the municipality
297 is located; that the plan is not inimical to any state-wide planning
298 program objectives of the state or state agencies as coordinated by the
299 Secretary of the Office of Policy and Management; that the project will
300 contribute to the economic welfare of the municipality and the state;
301 and that to carry out and administer the project, public action under
302 this chapter is required. The plan shall also include a preliminary
303 statement describing the process for acquisition of each parcel of
304 property. Any plan which has been prepared by a redevelopment
305 agency under chapter 130 may be submitted by the development
306 agency to the legislative body and to the commissioner in lieu of a plan
307 initiated and prepared in accordance with this section, provided all
308 other requirements of this chapter for obtaining the approval of the
309 commissioner of the project plan are satisfied.

310 Sec. 6. Section 8-193 of the general statutes is repealed and the
311 following is substituted in lieu thereof (*Effective October 1, 2006*):

312 (a) After approval of the development plan as provided in this
313 chapter, the development agency may proceed by purchase, lease,
314 exchange or gift with the acquisition or rental of real property within

315 the project area and real property and interests therein for rights-of-
316 way and other easements to and from the project area. The
317 development agency may, with the approval of the legislative body,
318 and in the name of the municipality, acquire by eminent domain real
319 property located within the project area and real property and interests
320 therein for rights-of-way and other easements to and from the project
321 area, in the same manner that a redevelopment agency [may] shall
322 acquire real property under sections 8-128 to 8-133, inclusive, as
323 amended by this act, as if said sections specifically applied to
324 development agencies. In the case of acquisition of real property by
325 eminent domain for economic development, as provided in the
326 development plan, approval of two-thirds of the legislative body shall
327 be required. The municipality shall cause notice of any approval under
328 this section to be published not more than ten days after such approval
329 in a newspaper having a substantial circulation in the municipality.
330 Any real property or interest therein taken on or after the effective date
331 of this section for the purpose of economic development, as defined in
332 section 8-189, as amended by this act, the owner shall be compensated
333 in an amount not less than one hundred fifty per cent of the fair market
334 value of such real property or interest. The fair market value of the
335 property taken shall not include any increase or decrease in the value
336 of the property attributable to (1) the project for which the property is
337 to be acquired, (2) any eminent domain proceeding in which the
338 property is to be acquired, or (3) any preliminary actions of the
339 redevelopment agency relating to the acquisition of the property. If
340 such property is a commercial or business use, such compensation
341 shall include a value for loss of good will pursuant to subsection (c) of
342 this section. The development agency may, with the approval of the
343 legislative body and, of the commissioner if any grants were made by
344 the state under section 8-190 or 8-195 for such development project,
345 and in the name of such municipality, transfer by sale or lease at fair
346 market value or fair rental value, as the case may be, the whole or any
347 part of the real property in the project area to any person, in
348 accordance with the project plan and such disposition plans as may
349 have been determined by the commissioner.

350 (b) A development agency shall have all the powers necessary or
351 convenient to undertake and carry out development plans and
352 development projects, including the power to clear, demolish, repair,
353 rehabilitate, operate, or insure real property while it is in its
354 possession, to make site improvements essential to the preparation of
355 land for its use in accordance with the development plan, to install,
356 construct or reconstruct streets, utilities and other improvements
357 necessary for carrying out the objectives of the development project,
358 and, in distressed municipalities, as defined in section 32-9p, to lend
359 funds to businesses and industries in a manner approved by the
360 commissioner.

361 (c) (1) As used in this subsection, "good will" means the benefits that
362 accrue to a business from its location, reputation for dependability,
363 skill or quality and any other circumstances, resulting in probable
364 retention of old or acquisition of new patronage.

365 (2) The owner of a business conducted on the property to be
366 acquired, or on the remainder if such property is part of a larger parcel
367 shall be compensated for loss of good will if such owner proves the
368 following: (A) The loss is caused by the taking of the property or injury
369 to the remainder; (B) the loss cannot reasonably be prevented by a
370 relocation of the business or by taking steps and adopting procedures
371 that a reasonably prudent person would take and adopt in preserving
372 good will; and (C) compensation for the loss will not be duplicated in
373 the compensation otherwise awarded to the owner.

374 Sec. 7. (NEW) (*Effective October 1, 2006*) (a) Any person aggrieved by
375 the decision of the legislative body of a municipality to acquire real
376 property by eminent domain under section 8-128 of the general
377 statutes, as amended by this act, may appeal such decision to the
378 superior court for the judicial district in which the municipality is
379 located. The appeal shall be commenced by service of process not more
380 than fifteen days after notice of the approval published under section
381 8-128 of the general statutes, amended by this act. A municipality shall
382 not file a statement of compensation by such property under section 8-

383 129 of the general statutes, as amended by this act, until any appeal
384 under this section is finally adjudicated.

385 (b) Upon an appeal taken under subsection (a) of this section, the
386 burden shall be on the municipality to prove, based upon the evidence
387 in the record concerning the acquisition before the redevelopment
388 agency, that the decision from which such appeal is taken and the
389 reasons cited for such decision are supported by sufficient evidence in
390 the record. The municipality shall also have the burden to prove, based
391 upon the evidence in the record, that (1) the acquisition is for a public
392 use, as defined in section 8-125 of the general statutes, as amended by
393 this act, or will increase tax revenues, the tax base, employment or
394 general economic health; (2) the acquisition is necessary to protect
395 substantial public interests in health, safety or other matters which the
396 municipality may legally consider; (3) public interests clearly outweigh
397 the interests of the individual property owner; and (4) such public
398 interests cannot be protected by reasonable changes to the
399 redevelopment area. If the municipality does not satisfy its burden of
400 proof under this subsection, the court shall wholly or partly revise,
401 modify, remand or reverse the decision from which the appeal was
402 taken in a manner consistent with the evidence in the record before it.

403 Sec. 8. (NEW) (*Effective October 1, 2006*) (a) Any person aggrieved by
404 the decision of the legislative body of a municipality to acquire real
405 property by eminent domain under section 8-193 of the general
406 statutes, as amended by this act, may appeal such decision to the
407 superior court for the judicial district in which the municipality is
408 located. The appeal shall be commenced by service of process not more
409 than fifteen days after the notice of the approval is published under
410 section 8-193 of the general statutes, as amended by this act. A
411 municipality shall not file a statement of compensation for such
412 property under section 8-129 of the general statutes, as amended by
413 this act, until any appeal under this section is finally adjudicated.

414 (b) Upon an appeal taken under subsection (a) of this section, the
415 burden shall be on the municipality to prove, based upon the evidence

416 in the record compiled before the development agency, that the
 417 decision from which such appeal is taken and the reasons cited for
 418 such decision are supported by sufficient evidence in the record. The
 419 municipality shall also have the burden to prove, based upon the
 420 evidence in the record, that (1) the acquisition will increase tax
 421 revenues, the tax base, employment or general economic health; (2) the
 422 decision is necessary to accomplish a development project; (3) public
 423 interests clearly outweigh the interests of the individual property
 424 owner; and (4) such public interests cannot be protected by reasonable
 425 changes to the project area. If the municipality does not satisfy its
 426 burden of proof under this subsection, the court shall wholly or partly
 427 revise, modify, remand or reverse the decision from which the appeal
 428 was taken in a manner consistent with the evidence in the record
 429 before it.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2006	8-125
Sec. 2	October 1, 2006	8-128
Sec. 3	October 1, 2006	8-129
Sec. 4	October 1, 2006	8-187
Sec. 5	October 1, 2006	8-189
Sec. 6	October 1, 2006	8-193
Sec. 7	October 1, 2006	New section
Sec. 8	October 1, 2006	New section

Statement of Legislative Commissioners:

In section 5, the phrase "determining how property is to be acquired" was changed to "describing the process for acquisition of each parcel of property" for consistency with section 1.

PD *Joint Favorable Subst.-LCO*

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:

Agency Affected	Fund-Effect	FY 07 \$	FY 08 \$
Department of Economic & Community Development, Various Agencies	Various - Cost	Potential Significant	Potential Significant
Judicial Dept.	GF - None	None	None

Note: GF=General Fund

Municipal Impact:

Municipalities	Effect	FY 07 \$	FY 08 \$
Various Municipalities	STATE MANDATE - Cost	Potential Significant	Potential Significant

Explanation

The bill adds procedural steps for a municipality in the taking of real property, including adding requirements to a development plan, additional notification requirements, and places the burden of proof for the taking on the municipality. These changes would increase the workload of municipalities that choose to undertake this process. The fiscal impact would vary depending upon the project and the municipality. The bill also changes the compensation that must be provided (at least 150% of fair market value) when a municipality takes a property for economic development and it requires municipalities to compensate business owners for the loss of good will. It is anticipated that these changes would significantly increase the costs to municipalities to take real property by eminent domain. Depending upon the location and type of property the potential cost increase could be significant, in the millions of dollars. In addition, there could be an increase in state costs for any state financed projects. These costs could be significant.

The bill allows any person aggrieved by a decision of the legislative body of a municipality to acquire real property by eminent domain under Sections 8-128 or 8-193 of the Connecticut General Statutes to appeal such decision to the superior court. This statutory change is not expected to increase substantially the number of persons granted standing in any eminent domain proceeding and consequently any workload increase associated with the handling of these cases by the Judicial Department could be accommodated within budgeted resources. To the extent that this change increases the complexity or length of litigation involving acquisitions by eminent domain, a potential municipal cost exists to cover legal expenses.

The Out Years

The fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**sSB 34*****AN ACT REVISING THE PROCESS FOR THE TAKING OF REAL PROPERTY BY MUNICIPALITIES FOR REDEVELOPMENT AND ECONOMIC DEVELOPMENT.*****SUMMARY:**

The law allows government agencies to take property by eminent domain for public use, which, according to the Connecticut and U.S. Supreme Courts, includes redeveloping property for private, business uses (i.e., economic development). It specifically allows municipalities to take land under three statutory programs commonly referred to by their chapter number (i.e., chapters 130, 132, and 588l). Each program allows municipalities to acquire property for different purposes, such as eliminating blight or attracting new businesses.

The bill establishes a right to appeal a taking under chapters 130 and 132. In doing so, it requires the municipality to prove that it needs to take the property in order to complete the project and that resulting benefits outweigh the owner's interests. The bill requires the development plans prepared under these chapters to indicate if each affected property will be used for a public use or economic development and requires local legislative bodies to approve takings for the latter by a two-thirds vote.

The bill bases just compensation on a property's fair market value but increases the level of compensation when a municipality takes property for economic development. It also requires municipalities to compensate business owners for the loss of good will. These changes apply to takings under several other statutory development programs that require municipalities to use Chapter 130's procedures when taking property by eminent domain.

EFFECTIVE DATE: October 1, 2006

PUBLIC USE VERSUS ECONOMIC DEVELOPMENT

Most of the bill's changes are based on a distinction the bill makes between taking property for public use and economic development. The bill makes this distinction in chapters 130 and 132, which allow municipalities to acquire property identified in a development plan that meets statutory criteria. The bill requires the plan to describe the process the municipality will use to acquire property and indicate if each property will be used for a public use or economic development.

A proposed use is a public use if:

1. the general public will possess, occupy, or enjoy the land;
2. a government agency will possess, occupy, or enjoy the land or use it to deliver a public service;
3. the land will be used to create or operate a public utility; or
4. the taking will correct a specific harm resulting from the way the land was used on the date it is taken.

A proposed use is for economic development if the property will be used for a purpose that increases jobs, the tax base, tax revenues, or the general economic health. But a use could serve this purpose and not constitute economic development if the property:

1. is abandoned;
2. will be transferred to a private entity that will remove the public health and safety threats, including public nuisances or structures beyond repair or unfit for people to inhabit or use;
3. will be transferred to public ownership or a railroad; or
4. will be leased to a private entity that will occupy an incidental area within a public project (e.g., a coffee shop in a railroad station).

RIGHT TO APPEAL

The bill establishes a right to appeal a taking under chapters 130 and 132. It grants this right to anyone who is aggrieved when a municipality's legislative body approves a taking under these chapters. The person may appeal to the Superior Court for the judicial district in which the property is located. He must bring the appeal by service of process within 15 days after the municipality published its notice of the taking. Current law establishes a right to appeal only the amount of compensation the municipality offers for taking a property.

A person appealing a taking under the bill stops the taking process, which by law begins when the municipality files a statement with the Superior Court indicating the amount being offered for the property (i.e., the statement of compensation). The bill prohibits the municipality from filing that statement until the court decides the appeal.

In establishing the right to appeal a taking, the bill places the burden of proof on the municipality, requiring it to prove that there is enough evidence in the record to support the decision to take the property. The kind of evidence the municipality needs to meet the burden of proof depends on the chapter under which it is using to take property. Since Chapter 130 authorizes takings under a program to eliminate blight, the evidence must show that:

1. taking is for a public use or will increase tax revenues, the tax base, jobs, or the municipality's general economic health;
2. the taking is needed to protect substantial interests in health, safety, or other matters the municipality may legally consider;
3. the public's interest in the taking clearly outweigh those of the owner; and
4. the municipality cannot protect the public interest by making reasonable changes to the project area.

Since Chapter 132 authorizes takings under a program to improve the municipality's economy, the evidence must show that:

1. the taking will increase tax revenues, the tax base, employment, or general economic health;
2. the municipality must take the property in order to accomplish the project;
3. the public's interest in the taking clearly outweigh those of the owner; and
4. the municipality cannot protect the public interest by making reasonable changes to the project area.

If the municipality cannot meet this test, the court must wholly or partly revise, modify, remand, or reverse the taking in a way that is consistent with the evidence in the record.

LEGISLATIVE BODY APPROVAL

A municipality can acquire property under a chapter 130 or 132 plan only with its legislative body's approval. The bill allows them to acquire property for economic development only if the legislative body approves the acquisition by a two-thirds vote. If the legislative body does so, the municipality must publish a newspaper notice to that effect within 10 days of the decision.

COMPENSATION

The bill specifies a standard for determining just compensation. Current law does not specify how a municipality must determine compensation, but the courts have based the amount on a property's fair market value.

The bill bases compensation on fair market value, but the level of compensation depends on how the property will be used. The compensation must equal the property's fair market value if the property will be used for a public purpose. But it must equal at least 150% of that value if the property will be used for economic

development. In determining fair market value, the municipality must ignore any changes in value attributed to the project, any eminent domain proceedings related to property, and any preliminary steps the municipality took regarding its acquisition.

The bill adds another factor the municipality must consider when determining just compensation for business and commercial properties. The municipality must compensate these owners for the benefits they receive because of the business' location; reputation for dependability, skill, or quality; and other factors that could cause them to lose or gain customers (i.e., loss of good will). It must compensate the owner for this loss if it takes all or some of his property.

But the burden is on the owner to show how the taking will cause him to lose good will. He can do this by showing that:

1. the loss results from the taking or injury done to that part of the property the municipality does not take;
2. the loss cannot reasonably be prevented by relocating the business to another site or adopting procedures a prudent person would adopt to prevent the loss; and
3. compensation based on fair market value only will not cover the loss of good will.

The bill's standards for determining just compensation and loss of good will also apply to takings under other chapters that require municipalities to follow Chapter 130's taking procedures. These chapters allow municipalities or their agents to acquire property for the following purposes:

1. rehabilitate blighted areas (Chapter 130, Part 2, Urban Renewal),
2. prevent blight from spreading (Chapter 130, Part 4, Community Development),
3. restore abandoned tax-delinquent property for owner

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- occupancy (Chapter 130, Part 7, Urban Homesteading),
4. attract and retain businesses (Chapter 132, Municipal Development Projects),
 5. develop low- and moderate-income housing (Chapter 133, Housing Site Development),
 6. rehabilitate abandoned industrial and commercial buildings (Chapter 137, Rehabilitation of Abandoned Industrial and Commercial Buildings), and
 7. develop property for business uses (Chapter 588I, Manufacturing Assistance Act).

BACKGROUND

Related Bills

Among other things, sHB 5038 limits the extent to which towns can take property under redevelopment plans, specifies that compensation may include other factors besides fair market value, and gives property owners more time to appeal an agency's statement of compensation. It also creates a property rights ombudsman office. The Planning and Development Committee favorably reported the bill to the floor on March 17.

The Judiciary Committee favorably reported two bills concerning eminent domain. HB 5810 eliminates the power to take property for municipal and economic development projects (Chapter 132 and 588I). It creates a property rights ombudsman office and specifies the types of property that can be considered deteriorated in locally designated neighborhood revitalization zones.

SB 665 bans municipalities from taking property for municipal development projects solely to increase property tax revenues and increases relocation benefits. It makes it an unfair trade practice for someone negotiating a property's acquisition to claim he has eminent domain powers when he does not and bases just compensation on

125% of fair market value. Lastly, it requires municipalities to offer property they took by eminent domain to the original owner if they subsequently decide to sell the property.

Related Case

In *Kelo v. City of New London*, the U.S. Supreme Court ruled that New London could take privately owned properties for private development under its revitalization plan (125 S. Ct. 2655 (2005)). Since the plan served a public purpose, it satisfied the U.S. Constitution's public use requirement, which bans government from taking land for public use without just compensation. Relying on prior decisions, the Court interpreted public use as being the equivalent of "public purpose."

The decision upheld the Connecticut Supreme Court's 2004 *Kelo* decision (268 Conn. 1), which found that New London's actions did not violate the Connecticut or the United States constitutional bans against taking property for public use without just compensation.

COMMITTEE ACTION

Planning and Development Committee

Joint Favorable

Yea 16 Nay 0 (03/17/2006)