



Senate

General Assembly

File No. 454

February Session, 2006

Senate Bill No. 665

Senate, April 10, 2006

The Committee on Judiciary reported through SEN. MCDONALD of the 27th Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

AN ACT CONCERNING EMINENT DOMAIN PROCEEDINGS.

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

1 Section 1. Section 8-193 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective from passage and*
3 *applicable to property acquired on or after said date*):

4 (a) After approval of the development plan as provided in this
5 chapter, the development agency may proceed by purchase, lease,
6 exchange or gift with the acquisition or rental of real property within
7 the project area and real property and interests therein for rights-of-
8 way and other easements to and from the project area.

9 (b) The development agency may, with the approval of the
10 legislative body, and in the name of the municipality, acquire by
11 eminent domain real property located within the project area and real
12 property and interests therein for rights-of-way and other easements to
13 and from the project area, in accordance with subsection (e) of this
14 section and in the same manner that a redevelopment agency may

15 acquire real property under sections 8-128 to 8-133, inclusive, as if said
16 sections specifically applied to development agencies, except that no
17 real property may be acquired by eminent domain pursuant to this
18 section for the sole purpose of increasing local tax revenue. The
19 legislative body shall not approve the use of eminent domain by the
20 development agency unless the legislative body has (1) considered the
21 benefits to the public and any private entity that will result from the
22 development project and determined that the public benefits outweigh
23 any private benefits, (2) determined that the current use of the
24 property cannot be feasibly integrated into the overall development
25 plan, and (3) determined that the acquisition of the real property by
26 eminent domain is reasonably necessary to successfully achieve the
27 objectives of the development plan.

28 (c) The development agency may, with the approval of the
29 legislative body and, of the commissioner if any grants were made by
30 the state under section 8-190 or 8-195 for such development project,
31 and in the name of such municipality, transfer by sale or lease at fair
32 market value or fair rental value, as the case may be, the whole or any
33 part of the real property in the project area to any person, in
34 accordance with the project plan and such disposition plans as may
35 have been determined by the commissioner.

36 [(b)] (d) A development agency shall have all the powers necessary
37 or convenient to undertake and carry out development plans and
38 development projects, including the power to clear, demolish, repair,
39 rehabilitate, operate, or insure real property while it is in its
40 possession, to make site improvements essential to the preparation of
41 land for its use in accordance with the development plan, to install,
42 construct or reconstruct streets, utilities and other improvements
43 necessary for carrying out the objectives of the development project,
44 and, in distressed municipalities, as defined in section 32-9p, to lend
45 funds to businesses and industries in a manner approved by the
46 commissioner.

47 (e) (1) On and after the effective date of this section, on the date a

48 certificate of taking is issued pursuant to section 8-129, as amended by
49 this act, for property acquired by eminent domain pursuant to this
50 section, the development agency shall record separate findings that
51 itemize the value of the real property and any structures or
52 improvements on the real property so acquired.

53 (2) If real property acquired on or after the effective date of this
54 section is not used for the purpose for which it was acquired or for
55 some other public use and is subsequently offered for sale, the
56 property shall be first offered for sale to the person from whom the
57 property was acquired, or the person's known or ascertainable heirs,
58 successors or assigns, if any, for a price not greater than the value
59 documented in the recorded findings, less the value of any structures
60 or improvements removed from the property by the development
61 agency or its designee after the real property was acquired.

62 Sec. 2. (NEW) (*Effective from passage*) (a) No person who negotiates
63 the acquisition or rental of real property may represent in such
64 negotiation that the person has the power to acquire the property by
65 eminent domain unless the person has such power.

66 (b) Any violation of subsection (a) of this section shall be deemed an
67 unfair or deceptive trade practice under subsection (a) of section 42-
68 110b of the general statutes.

69 Sec. 3. Section 8-129 of the general statutes is repealed and the
70 following is substituted in lieu thereof (*Effective from passage and*
71 *applicable to property acquired on or after said date*):

72 (a) The redevelopment agency shall determine the compensation to
73 be paid to the persons entitled thereto for [such] real property [and] to
74 be acquired by eminent domain pursuant to section 8-128. The
75 compensation shall be based on an appraisal by a state certified real
76 estate appraiser and the appraisal shall be conducted in accordance
77 with generally accepted standards of professional appraisal practice as
78 described in the Uniform Standards of Professional Appraisal Practice
79 issued by the Appraisal Standards Board of the Appraisal Foundation

80 pursuant to Title XI of FIRREA and any regulations adopted pursuant
81 to section 20-504. The redevelopment agency shall file a statement of
82 compensation, containing a description of the property to be taken and
83 the names of all persons having a record interest therein and setting
84 forth the amount of such compensation, and a deposit as provided in
85 section 8-130, with the clerk of the superior court for the judicial
86 district in which the property affected is located. The amount of such
87 compensation for such property shall be not less than one hundred
88 twenty-five per cent of the fair market value of such property.

89 (b) Upon filing such statement of compensation and deposit, the
90 redevelopment agency shall forthwith cause to be recorded, in the
91 office of the town clerk of each town in which the property is located, a
92 copy of such statement of compensation, such recording to have the
93 same effect and to be treated the same as the recording of a lis
94 pendens, and shall forthwith give notice, as provided in this section, to
95 each person appearing of record as an owner of property affected
96 thereby and to each person appearing of record as a holder of any
97 mortgage, lien, assessment or other encumbrance on such property or
98 interest therein [(a)] (1) in the case of any such person found to be
99 residing within this state, by causing a copy of such notice, with a copy
100 of such statement of compensation, to be served upon each such
101 person by a state marshal, constable or indifferent person, in the
102 manner set forth in section 52-57, as amended, for the service of civil
103 process, and [(b)] (2) in the case of any such person who is a
104 nonresident of this state at the time of the filing of such statement of
105 compensation and deposit or of any such person whose whereabouts
106 or existence is unknown, by mailing to each such person a copy of such
107 notice and of such statement of compensation, by registered or
108 certified mail, directed to [his] such person's last-known address, and
109 by publishing such notice and such statement of compensation at least
110 twice in a newspaper published in the judicial district and having daily
111 or weekly circulation in the town in which such property is located.
112 Any such published notice shall state that it is notice to the widow or
113 widower, heirs, representatives and creditors of the person holding

114 such record interest, if such person is dead. If, after a reasonably
115 diligent search, no last-known address can be found for any interested
116 party, an affidavit stating such fact, and reciting the steps taken to
117 locate such address, shall be filed with the clerk of the superior court
118 and accepted in lieu of mailing to the last-known address.

119 (c) Not less than twelve days or more than ninety days after such
120 notice and such statement of compensation have been so served or so
121 mailed and first published, the redevelopment agency shall file with
122 the clerk of the superior court a return of notice setting forth the notice
123 given and, upon receipt of such return of notice, such clerk shall,
124 without any delay or continuance of any kind, issue a certificate of
125 taking setting forth the fact of such taking, a description of all the
126 property so taken and the names of the owners and of all other persons
127 having a record interest therein. The redevelopment agency shall cause
128 such certificate of taking to be recorded in the office of the town clerk
129 of each town in which such property is located. Upon the recording of
130 such certificate, title to such property in fee simple shall vest in the
131 municipality, and the right to just compensation shall vest in the
132 persons entitled thereto. At any time after such certificate of taking has
133 been so recorded, the redevelopment agency may repair, operate or
134 insure such property and enter upon such property, and take any
135 action that is proposed with regard to such property by the project
136 area redevelopment plan.

137 (d) The notice [referred to above] required in subsection (b) of this
138 section shall state that (1) not less than twelve days or more than
139 ninety days after service or mailing and first publication thereof, the
140 redevelopment agency shall file, with the clerk of the superior court for
141 the judicial district in which such property is located, a return setting
142 forth the notice given, (2) upon receipt of such return, such clerk shall
143 issue a certificate for recording in the office of the town clerk of each
144 town in which such property is located, (3) upon the recording of such
145 certificate, title to such property shall vest in the municipality, the right
146 to just compensation shall vest in the persons entitled thereto and the
147 redevelopment agency may repair, operate or insure such property

148 and enter upon such property and take any action that may be
149 proposed with regard thereto by the project area redevelopment plan,
150 and (4) such notice shall bind the widow or widower, heirs,
151 representatives and creditors of each person named [therein] in the
152 notice who then or thereafter may be dead.

153 (e) When any redevelopment agency acting on behalf of any
154 municipality has acquired or rented real property by purchase, lease,
155 exchange or gift in accordance with the provisions of this section, or in
156 exercising its right of eminent domain has filed a statement of
157 compensation and deposit with the clerk of the superior court and has
158 caused a certificate of taking to be recorded in the office of the town
159 clerk of each town in which such property is located as provided in
160 this section, any judge of such court may, upon application and proof
161 of such acquisition or rental or such filing and deposit and such
162 recording, order such clerk to issue an execution commanding a state
163 marshal to put such municipality and the redevelopment agency, as its
164 agent, into peaceable possession of the property so acquired, rented or
165 condemned. The provisions of this [section] subsection shall not be
166 limited in any way by the provisions of chapter 832.

167 Sec. 4. Section 8-132 of the general statutes is repealed and the
168 following is substituted in lieu thereof (*Effective from passage*):

169 (a) Any person claiming to be aggrieved by the statement of
170 compensation filed by the redevelopment agency may, at any time
171 within six months after the [same] statement of compensation has been
172 filed, apply to the superior court for the judicial district in which such
173 property is situated for a review of such statement of compensation so
174 far as [the same] it affects such applicant. The court, after causing
175 notice of the pendency of such application to be given to the
176 redevelopment agency, may, with the consent of the parties or their
177 attorneys, appoint a judge trial referee to make a review of the
178 statement of compensation. For purposes of such application, review
179 and appeal therefrom, and for purposes of sections 52-192a to 52-195,
180 inclusive, of the 2006 supplement to the general statutes, such

181 applicant shall be deemed a counterclaim plaintiff.

182 (b) If the court appoints a judge trial referee, the judge trial referee,
183 after giving at least ten days' notice to the parties interested of the time
184 and place of hearing, shall hear the applicant and the redevelopment
185 agency, shall view the property and take such testimony as the judge
186 trial referee deems material and shall thereupon revise such statement
187 of compensation in such manner as the judge trial referee deems
188 proper and forthwith report to the court. Such report shall contain a
189 detailed statement of findings by the judge trial referee, sufficient to
190 enable the court to determine the considerations upon which the judge
191 trial referee's conclusions are based. The report of the judge trial
192 referee shall take into account any evidence relevant to the fair market
193 value of the property, including evidence of environmental condition
194 and required environmental remediation. The judge trial referee shall
195 make a separate finding for remediation costs and the property owner
196 shall be entitled to a set-off of such costs in any pending or subsequent
197 action to recover remediation costs for the property. The court shall
198 review the report, and may reject it for any irregular or improper
199 conduct in the performance of the duties of the judge trial referee. If
200 the report is rejected, the court may appoint another judge trial referee
201 to make such review and report. If the report is accepted, its statement
202 of compensation shall be conclusive upon such owner and the
203 redevelopment agency.

204 (c) If the court does not appoint a judge trial referee, the court, after
205 giving at least ten days' notice to the parties interested of the time and
206 place of hearing, shall hear the applicant and the redevelopment
207 agency and take such testimony as it deems material, may view the
208 subject property, and shall make a finding regarding the statement of
209 compensation. The findings of the court shall take into account any
210 evidence relevant to the fair market value of the property, including
211 evidence of environmental condition and required environmental
212 remediation. The court shall make a separate finding for remediation
213 costs and the property owner shall be entitled to a set-off of such costs
214 in any pending or subsequent action to recover remediation costs for

215 the property. The findings of the court shall be conclusive upon such
216 owner and the redevelopment agency.

217 (d) If no appeal to the Appellate Court is filed within the time
218 allowed by law, or if an appeal is filed and the proceedings have
219 terminated in a final judgment finding the amount due the property
220 owner, the clerk shall send a certified copy of the statement of
221 compensation and of the judgment to the redevelopment agency,
222 which shall, upon receipt thereof, pay such property owner the
223 amount due as compensation. The pendency of any such application
224 for review shall not prevent or delay any action that is proposed with
225 regard to such property by the project area redevelopment plan.

226 Sec. 5. Section 8-268 of the 2006 supplement to the general statutes is
227 repealed and the following is substituted in lieu thereof (*Effective from*
228 *passage and applicable to property acquired on or after said date*):

229 (a) Whenever a program or project undertaken by a state agency or
230 under the supervision of a state agency will result in the displacement
231 of any person on or after July 6, 1971, the head of such state agency
232 shall make payment to any displaced person, upon proper application
233 as approved by such agency head, for (1) actual reasonable expenses in
234 moving [himself, his] such displaced person and such displaced
235 person's family [,] and business, farm operation or other personal
236 property, (2) actual direct losses of tangible personal property as a
237 result of moving or discontinuing a business or farm operation, but not
238 to exceed an amount equal to the reasonable expenses that would have
239 been required to relocate such property, as determined by the state
240 agency, and (3) actual reasonable expenses in searching for a
241 replacement business or farm. [, provided, whenever] Whenever any
242 tenant in any dwelling unit is displaced as the result of the
243 enforcement of any code to which this section is applicable by any
244 town, city or borough or agency thereof, the landlord of such dwelling
245 unit shall be liable for any payments made by such town, city or
246 borough pursuant to this section or by the state pursuant to subsection
247 (b) of section 8-280, and the town, city or borough or the state may

248 place a lien on any real property owned by such landlord to secure
249 repayment to the town, city or borough or the state of such payments,
250 which lien shall have the same priority as and shall be filed, enforced
251 and discharged in the same manner as a lien for municipal taxes under
252 chapter 205.

253 (b) Any displaced person eligible for payments under subsection (a)
254 of this section who is displaced from a dwelling and who elects to
255 accept the payments authorized by this subsection in lieu of the
256 payments authorized by subsection (a) of this section may receive a
257 moving expense allowance, determined according to a schedule
258 established by the state agency, not to exceed three hundred dollars
259 and a dislocation allowance of two hundred dollars.

260 (c) Any displaced person eligible for payments under subsection (a)
261 of this section who is displaced from his place of business or from his
262 farm operation and who elects to accept the payment authorized by
263 this subsection in lieu of the payment authorized by subsection (a) of
264 this section, may receive a fixed payment in an amount equal to the
265 average annual net earnings of the business or farm operation, except
266 that such payment shall not be less than two thousand five hundred
267 dollars nor more than [ten] twenty thousand dollars. In the case of a
268 business, no payment shall be made under this subsection unless the
269 state agency is satisfied that the business (1) cannot be relocated
270 without a substantial loss of its existing patronage, and (2) is not a part
271 of a commercial enterprise having at least one other establishment not
272 being acquired by the state, which is engaged in the same or similar
273 business. For purposes of this subsection, the term "average annual net
274 earnings" means one half of any net earnings of the business or farm
275 operation, before federal, state and local income taxes, during the two
276 taxable years immediately preceding the taxable year in which such
277 business or farm operation moves from the real property acquired for
278 such project, or during such other period as such agency determines to
279 be more equitable for establishing such earnings, and includes any
280 compensation paid by the business or farm operation to the owner,
281 [his] the owner's spouse or [his] the owner's dependents during such

282 period.

283 Sec. 6. Section 8-269 of the general statutes is repealed and the
284 following is substituted in lieu thereof (*Effective from passage and*
285 *applicable to property acquired on or after said date*):

286 (a) In addition to payments otherwise authorized by this chapter,
287 the state agency shall make an additional payment not in excess of
288 [fifteen thousand] twenty-two thousand five hundred dollars to any
289 displaced person who is displaced from a dwelling actually owned
290 and occupied by such displaced person for not less than one hundred
291 [and] eighty days prior to the initiation of negotiations for the
292 acquisition of the property. Such additional payment shall include the
293 following elements: (1) The amount, if any, which when added to the
294 acquisition cost of the dwelling acquired, equals the reasonable cost of
295 a comparable replacement dwelling which is a decent, safe and
296 sanitary dwelling adequate to accommodate such displaced person,
297 reasonably accessible to public services and places of employment and
298 available on the private market. All determinations required to carry
299 out this [subparagraph] subdivision shall be made by the applicable
300 regulations issued pursuant to section 8-273; (2) the amount, if any,
301 which will compensate such displaced person for any increased
302 interest cost which such person is required to pay for financing the
303 acquisition of any such comparable replacement dwelling. Such
304 amount shall be paid only if the dwelling acquired was encumbered by
305 a bona fide mortgage which was a valid lien on such dwelling for not
306 less than one hundred [and] eighty days prior to the initiation of
307 negotiations for the acquisition of such dwelling. Such amount shall be
308 equal to the excess in the aggregate interest and other debt service
309 costs of that amount of the principal of the mortgage on the
310 replacement dwelling which is equal to the unpaid balance of the
311 mortgage on the acquired dwelling, over the remainder term of the
312 mortgage on the acquired dwelling, reduced to discounted present
313 value. The discount rate shall be the prevailing interest rate on savings
314 deposits by commercial banks in the general area in which the
315 replacement dwelling is located; (3) reasonable expenses incurred by

316 such displaced person for evidence of title, recording fees and other
317 closing costs incident to the purchase of the replacement dwelling, but
318 not including prepaid expenses.

319 (b) The additional payment authorized by this section shall be made
320 only to such a displaced person who purchases and occupies a
321 replacement dwelling which is decent, safe and sanitary not later than
322 the end of the one year period beginning on the date on which [he]
323 such displaced person receives final payment of all costs of the
324 acquired dwelling, or on the date on which [he] such displaced person
325 moves from the acquired dwelling, whichever is the later date.

326 Sec. 7. Section 8-270 of the general statutes is repealed and the
327 following is substituted in lieu thereof (*Effective from passage and*
328 *applicable to property acquired on or after said date*):

329 In addition to amounts otherwise authorized by this chapter, a state
330 agency shall make a payment to or for any displaced person displaced
331 from any dwelling not eligible to receive a payment under section 8-
332 269, as amended by this act, which dwelling was actually and lawfully
333 occupied by such displaced person for not less than ninety days prior
334 to the initiation of negotiations for acquisition of such dwelling under
335 the program or project which results in such person being displaced.
336 Such payment shall be either (1) the amount necessary to enable such
337 displaced person to lease or rent for a period not to exceed four years,
338 a decent, safe, and sanitary dwelling of standards adequate to
339 accommodate such person in areas not generally less desirable in
340 regard to public utilities and public and commercial facilities, and
341 reasonably accessible to [his] such displaced person's place of
342 employment, but not to exceed [four thousand] five thousand two
343 hundred fifty dollars, or (2) the amount necessary to enable such
344 displaced person to make a downpayment, including reasonable
345 expenses incurred by such displaced person for evidence of title,
346 recording fees, and other closing costs incident to the purchase of a
347 decent, safe, and sanitary dwelling of standards adequate to
348 accommodate such person in areas not generally less desirable in

349 regard to public utilities and public and commercial facilities, but not
 350 to exceed [four thousand dollars, except that if such amount exceeds
 351 two thousand dollars, such person must equally match any such
 352 amount in excess of two thousand dollars in making the
 353 downpayment, and provided, whenever] five thousand two hundred
 354 fifty dollars. Whenever any tenant in any dwelling unit is displaced as
 355 the result of the enforcement of any code to which this section is
 356 applicable by any town, city or borough or agency thereof, the
 357 landlord of such dwelling unit shall be liable for any payments made
 358 by such town, city or borough pursuant to this section or by the state
 359 pursuant to subsection (b) of section 8-280, and the town, city or
 360 borough or the state may place a lien on any real property owned by
 361 such landlord to secure repayment to the town, city or borough or the
 362 state of such payments, which lien shall have the same priority as and
 363 shall be filed, enforced and discharged in the same manner as a lien for
 364 municipal taxes under chapter 205.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage and applicable to property acquired on or after said date</i>	8-193
Sec. 2	<i>from passage</i>	New section
Sec. 3	<i>from passage and applicable to property acquired on or after said date</i>	8-129
Sec. 4	<i>from passage</i>	8-132
Sec. 5	<i>from passage and applicable to property acquired on or after said date</i>	8-268
Sec. 6	<i>from passage and applicable to property acquired on or after said date</i>	8-269

Sec. 7	<i>from passage and applicable to property acquired on or after said date</i>	8-270
--------	---	-------

JUD *Joint Favorable*

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 \$
Judicial Dept.	GF - Potential Savings	Minimal	Minimal
Department of Consumer Protection, Attorney General	GF- Revenue Gain	Potential Minimal	Potential Minimal
Various	Various - Cost	Potential	Potential

Note: GF=General Fund

Municipal Impact:

Municipalities	Effect	FY 07 \$	FY 08 \$
Various Municipalities	Cost	Potential	Potential

Explanation

The bill requires certain considerations and determinations to be made by municipalities before approving the use of eminent domain which are anticipated to have a minimal fiscal impact on municipalities which choose to take property. Requiring that compensation for a taking is at least 125% of the property's fair market value could increase costs to municipalities which choose to take properties and increase costs to the state for state financed projects. The increase in cost could be significant. The bill also increases the maximum amounts that a displaced person can recover under the Uniform Relocation Assistance Act (Act). To the extent that this would increase potential payments made under the Act, there would be an increase in costs to the municipality taking a property and/or a potential minimal increase in costs to the state for a state financed project. The exact impact would vary depending upon the project and the municipality.

The bill requires consent of the parties before the court may appoint a judge trial referee (rather than a judge) to review a statement of

compensation. Any potential budgetary savings resulting from a reduction in the use of judge trial referees, who are compensated on a per diem basis, is anticipated to be negligible under this provision in the bill. The bill subjects statements of compensation to the offer of compromise provisions in current law, which could expedite these proceedings and thereby conserve court resources. The impact this provision would have on the parties themselves, including the state or municipalities, is indeterminate.

The bill makes it an unfair trade practice for a person who negotiates the acquisition or rental of real property to falsely represent that he or she has power to acquire the property by eminent domain. Under the Connecticut Unfair Trade Practices Act (CUTPA), the Department of Consumer Protection (DCP) and the Attorney General can impose CUTPA fines.

In the case of settlements, depending on the negotiation terms, funds are either deposited into the DCP's Consumer Protection Settlement Account or the unrestricted resources of the General Fund. Funds deposited into the Consumer Protection Settlement Account are used only to enhance activities that further consumer protection. In FY 05, \$92,298 in CUTPA fines were deposited into the DCP Consumer Protection Settlement Account. Additionally, in FY 05, \$356,751 in CUTPA fines were deposited into the General Fund as a result of settlements negotiated by the Office of the Attorney General (OAG). The state agencies could accommodate the workload associated with enforcement of the bill without requiring additional resources. To the extent that the bill increases the potential for future violations, the bill could result in a minimal revenue gain to the state.

The Out Years

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

OLR Bill Analysis**SB 665*****AN ACT CONCERNING EMINENT DOMAIN PROCEEDINGS.*****SUMMARY:**

This bill makes a number of changes regarding eminent domain.

For municipal development projects, it (1) prohibits use of eminent domain solely to increase local tax revenue, (2) requires certain findings by the municipal legislative body before using eminent domain, (3) requires specific findings on property value, and (4) requires property taken by eminent domain that is not used for its intended purpose or another public use that is later offered for sale to be first offered to the person it was acquired from.

The bill changes several eminent domain procedures regarding redevelopment projects, including adding provisions on appraisals and requiring compensation of at least 125% of fair market value for takings. It also provides that the applicant for court review of a statement of compensation is considered the counterclaim plaintiff and appears to subject these cases to the offer of compromise statutes. A number of other statutes authorizing the use of eminent domain reference the redevelopment procedures and are also affected by these changes.

The bill also makes it an unfair trade practice for a person negotiating to acquire rental or real property to represent in the negotiation that he has the power to acquire the property by eminent domain when he does not.

It also increases certain payments authorized for relocation assistance.

EFFECTIVE DATE: Upon passage and all provisions, except those on the unfair trade practice and counterclaim plaintiff, apply to property acquired on or after that date.

MUNICIPAL DEVELOPMENT PROJECTS

By law, a development agency can use eminent domain to acquire property within the project area with the municipal legislative body's approval. The bill prohibits acquiring property by eminent domain solely to increase local tax revenue. It also requires the municipal legislative body, before approving the use of eminent domain, to:

1. consider the benefits to the public and any private entity resulting from the development project and determine that the public benefits outweigh any private benefits,
2. determine that the current use of the property cannot be feasibly integrated into the overall development plan, and
3. determine that acquiring the property by eminent domain is reasonably necessary to successfully achieve the plan's objectives.

Findings on Property Value

The law requires a development agency taking land by eminent domain to file a statement of compensation with the court clerk, record it on the land records, and provide notice to owners. When the agency later files a return of notice with the court, the clerk issues a certificate of taking. Title to the property vests in the town when the agency records the certificate on the land records.

The bill requires the development agency to record separate findings itemizing the value of the real property and any structures and improvements on it on the date the certificate of taking is issued.

Offer for Sale

The bill requires property acquired by eminent domain that is not used for its intended purpose or another public use and is later offered

for sale, to be first offered to the person from whom it was acquired or that person's known or ascertainable heirs, successors, or assigns. The bill limits the price to no greater than the amount recorded in the findings, less the value of any structures or improvements removed from the property by the agency or its designee after acquiring the property. The bill applies this provision only to property acquired on or after the bill's effective date.

STATEMENT OF COMPENSATION AND COURT REVIEW

The bill changes several eminent domain procedures regarding redevelopment projects. Because other statutes authorize use of eminent domain according to the redevelopment procedures, these changes also apply to a number of other types of takings besides those for redevelopment projects (see BACKGROUND).

Amount of Compensation and Appraisals

The law requires the agency taking property by eminent domain to file a statement of compensation with the court. The bill requires compensation of at least 125% of the property's fair market value.

The bill requires a state certified real estate appraiser to conduct an appraisal as a basis for the compensation. The appraisal must be conducted according to generally accepted standards of professional appraisal practice as described in the Uniform Standards of Professional Appraisal Practice from the Appraisal Standards Board of the Appraisal Foundation and any regulations adopted by the consumer protection commissioner regarding appraisers. The foundation is a non-profit corporation referred to in the federal Financial Institutions, Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (P.L. 101-73).

Court Review

By law, a person can apply to the Superior Court for review of a statement of compensation. Current law allows the court to appoint a judge trial referee to review the statement. The bill requires the consent of the parties or their attorneys before the court may appoint a

judge trial referee. A judge trial referee is a judge over the retirement age of 70 who continues to serve and is designated to hear certain cases.

Counterclaim Plaintiff and Offer of Compromise

The bill makes the applicant the counterclaim plaintiff for purposes of the application, review, appeal, and offers of compromise. This appears to make eminent domain cases subject to the offer of compromise provisions, which allows the plaintiff or defendant to present the opposing party with an offer to settle the case and imposes financial penalties based on the amount recovered after a trial (the offer of compromise provisions that it refers to apply to actions accruing on or after October 1, 2005).

RELOCATION ASSISTANCE

The bill increases several amounts that displaced people can recover under the Uniform Relocation Assistance Act, which compensates people displaced due to government land acquisition programs, code enforcement activities, or housing rehabilitation programs. By law, the relevant agency must pay the displaced person for (1) reasonable actual expenses in moving his family, property, business, or farm operation; (2) actual losses of personal property from moving or closing the business; and (3) actual, reasonable costs in searching for a replacement business or farm. These payments are in addition to any amount paid to acquire the property.

A person displaced from his business or farm can alternatively claim an amount equal to his annual net income from the property, with a minimum of \$2,500 and a maximum of \$10,000. The bill increases the maximum to \$20,000. As under current law, this option is only open to businesses that cannot be relocated without losing a substantial part of their patronage and is not available to businesses that are part of a chain.

The law provides additional benefits for people displaced from their dwellings. In the case of people who have owned their homes at least

180 days before acquisition negotiations began, the acquiring agency must pay for the person to acquire a comparable home, compensate for higher interest rates, and pay closing costs. The bill increases the maximum payments for these expenses from \$15,000 to \$22,500.

Under current law, people displaced from dwellings they have owned or occupied for at least 90 days must be paid the rent for a comparable dwelling. The bill increases the maximum payments for this expense from \$4,000 to \$5,200. Alternatively, current law allows the displaced person to claim up to \$4,000 for a down payment on a home, but if the assistance is above \$2,000 the person must match the additional amount. The bill increases the maximum to \$5,250 and eliminates the matching requirement.

By law, a landlord must repay reasonable expenses paid by the state or municipality when tenants are displaced due to code enforcement violations.

BACKGROUND

Eminent Domain Statutes Using the Redevelopment Agency Procedures

A number of statutes authorizing the use of eminent domain require using eminent domain procedures for redevelopment agencies. Thus, the bill's changes to the redevelopment procedures affect these statutes as well. Below is a list of these statutes.

1. A transit district can acquire property by eminent domain for its purposes, subject to approval of the legislative body of the municipality where the property is located. It can also use eminent domain to acquire certain franchises (CGS § 7-273e).
2. If the Connecticut Housing Authority is designated as a municipality's redevelopment agency, it has the same powers as a redevelopment agency. This includes the use of eminent domain with approval of the municipality's legislative body (CGS § 8-121).

3. A redevelopment agency has the powers necessary or convenient to carry out urban renewal plans and projects, including powers conferred on redevelopment agencies for redevelopment projects including eminent domain (CGS § 8-143).
4. If a municipality's legislative body finds that acquiring non-contiguous single parcels designated in a community development plan is necessary to prevent the spread of slum or blight, the municipality or the community development agency acting in its name can acquire the property. The land can be acquired under the redevelopment statutes using eminent domain (CGS § 8-169e).
5. An urban homesteading agency can recommend to the municipality's legislative body that abandoned property be taken by eminent domain (CGS § 8-169r).
6. A development agency can, with approval of the legislative body and in the municipality's name, acquire property by eminent domain within the area of a municipal development plan (CGS § 8-193).
7. A redevelopment agency acting as a housing site development agency can condemn property for the purpose of a housing and community development project (CGS § 8-216b).
8. An urban rehabilitation agency can recommend to the municipality's legislative body that abandoned industrial and commercial property be taken by eminent domain (CGS § 8-293).
9. A local or regional school district can take land by eminent domain for a public school building or a necessary addition, outbuildings, or convenient accommodation of its schools, with approval of the town's legislative body (CGS § 10-241a).
10. A municipality and its harbor improvement agency undertaking a harbor improvement project has the powers and authority,

- including eminent domain, granted to a municipality and redevelopment agency for redevelopment or urban renewal projects. (CGS § 13b-56).
11. The public works commissioner can condemn property for the purpose of siting a regional low-level radioactive waste facility (CGS § 22a-163w).
 12. Under the economic development and manufacturing assistance act, an agency implementing a develop plan can, with approval of the municipality's legislative body and in the name of the municipality, condemn property that is necessary or appropriate for the plan's project (CGS § 32-224).
 13. Regarding a town house or town hall, a town can take land for (a) the site or an addition to the site that is necessary or convenient for the purpose, (b) necessary outbuildings and convenient accommodations for them, and (c) light and air for them (CGS § 48-3, CGS § 48-12 requires use of the redevelopment procedures).
 14. A municipal corporation can condemn land if it (a) has the right to purchase land for its municipal purposes, (b) voted to purchase land in accordance with its charter or the statutes, and (c) cannot agree on a price with the owner. A municipal corporation can also take property within a neighborhood revitalization zone (CGS § 48-6, CGS § 48-12 requires use of the redevelopment procedures).
 15. Under certain circumstances, a town selectman can condemn land for a building to protect town records against fire. Land of a religious or ecclesiastical society where a church building is erected cannot be taken without consent (CGS § 48-8, CGS § 48-12 requires use of the redevelopment procedures).
 16. The state can take land for (a) the site of or addition to a state institution or courthouse; (b) an addition to the site of an

institution of the state university system, vocational school, or technical college; or (c) the urban sites remediation action program. The state can also take water from a river, brook, spring, pond, or lake to supply water as the convenience and necessity of the institution require (CGS § 48-9, CGS § 48-12 requires use of the redevelopment procedures).

Connecticut Unfair Trade Practices Act (CUTPA)

The law prohibits businesses from engaging in unfair and deceptive acts or practices. CUTPA allows the consumer protection commissioner to issue regulations defining what constitutes an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than \$5,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. The act also allows individuals to sue. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorneys fees; and impose civil penalties of up to \$5,000 for willful violations and \$25,000 for violation of a restraining order.

Offers of Compromise

By law, in any contract case or a case seeking money damages, plaintiffs and defendants can use a statutory procedure called the “offer of compromise” to offer to settle the case for a specified amount.

Plaintiffs can file an offer with the court clerk up to 30 days before trial. But he cannot make the offer for at least 180 days after service of process on the defendant. A defendant has 30 days to file an acceptance of the offer with the court clerk. If the defendant accepts, the plaintiff, after receiving the amount specified in the offer, must file a withdrawal of the lawsuit which the clerk then records. If the defendant does not accept the offer and, after a trial, the plaintiff recovers an amount equal to or greater than the sum stated in his offer, the court adds 8% annual interest.

Defendants can also file an offer with the court clerk up to 30 days

before trial. The plaintiff has 60 days after being notified of the defendant's offer to accept it. If the plaintiff accepts it, he must, after receiving the amount specified in the offer, file a withdrawal of the lawsuit which the clerk then records. If the plaintiff does not accept the offer and later recovers less than the offer of judgment, he must pay the defendant's costs accruing after he received the offer, including reasonable attorney's fees up to \$350.

Related Bills

Among other things, sHB 5038 (File 303) 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.

SB 34 (File 260) makes several changes including (1) distinguishing takings for economic development from other takings, and imposing a higher procedural standard on the former; (2) allowing aggrieved parties to appeal a legislative body's approval of development or redevelopment plans to the courts; and (3) requiring the taking agency to show that public interests clearly outweigh the interests of the individual property owner and cannot be protected by reasonable changes to the affected area.

HB 5810, favorably reported by the Judiciary Committee, (1) eliminates the power to acquire property by eminent domain for municipal development projects and under the economic development and manufacturing assistance act, (2) creates an Office of Property Rights Ombudsman, and (3) adds a list of types of property that can be considered deteriorated property in the neighborhood revitalization zone act.

sSB 593, favorably reported by the Judiciary Committee, specifies that the offer of judgment law that was replaced by the offer of compromise law in 2005 applies to any cause of action accruing before October 1, 2005. The offer of compromise law applies to any cause of

action that accrues on or after October 1, 2005. In general, a cause of action accrues when the right to file a law suit on a claim is complete.

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 economic revitalization plan (125 S.Ct. 2655, June 23, 2005). The Court held that 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 either the Connecticut or the U.S. constitutional bans against taking property for public uses without just compensation.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 38 Nay 0 (03/24/2006)