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FISCAL IMPACT REPORT

	ORIGINAL DATE 2/05/07		
SPONSOR Swisstack	LAST UPDATED	HB 370	
SHORT TITLE Disposal of Property Condemned Pursuant to Redevelopment Law		SB	
		ANALYST Propst	

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 393 and SJR3

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
 NM Municipal League (NMML)
 Department of Transportation (DOT)

SUMMARY

Synopsis of Bill

House Bill 370 amends §3-60A-12 & 42A-1-24, providing that, if property acquired through eminent domain by a municipality pursuant to the Metropolitan Redevelopment Law has not been substantially improved, it may not be disposed of within five years after condemnation without being offered first to the former owner at the same price paid to the owner, or by paying an additional 100% of the value of the original price paid for the property. Defines "value" under the Eminent Domain Code to mean the fair market value or the price that would be agreed to by a willing and informed seller and buyer, taking into consideration: the present use of the property and the value for that use; the value for the highest and best reasonably available use of the property consistent with a metropolitan redevelopment plan; and, the machinery, equipment and fixtures forming part of the property to be condemned.

SIGNIFICANT ISSUES

The Metropolitan Redevelopment Code authorizes a municipality to acquire, by eminent domain or other means, property within a slum or blighted area for the purposes of redeveloping that property for economic development. The Code allows a city to sell property acquired pursuant to the Code to private persons and require the purchaser to make improvements on the property in accordance with a metropolitan redevelopment plan.

According to the Attorney General, HB 370 is intended to prevent the sale of property condemned by a city through the use of the power of eminent domain under the Code within five years of condemnation if the property has not been “substantially improved” unless it is first offered for sale back to the original owner at the condemnation price, or by paying twice the original price to the original owner for the right to sell the property to someone else. This could affect the right of a subsequent purchaser of the property from the city to sell that property. It creates “third party beneficiary” status in the original owner, who will then have an interest in any subsequent sale of the property.

The AG further notes that, the requirement of payment to the original owner of 100% of the original purchase price for the right to sell the property to another party, or offering it for purchase by the original owner at the price paid after condemnation without regard to present value, could result in a windfall to the original property owner. If the seller is the municipality, this windfall could violate the anti-donation clause of the New Mexico Constitution. If the seller is a private party, the bill could have the effect of preventing the sale of private property (condemned by a city and sold to a private developer) for five years from its original transfer by condemnation. At least it will affect the seller’s ability to obtain title insurance on the property without a release from the original owner.

Further, the amendments to the Eminent Domain Code appear to require that the price paid through condemnation proceedings reflect possible “highest and best reasonably available use” as opposed to actual value at the time of condemnation. The bill disregards the fact that municipalities acquiring property through condemnation, and developers purchasing that property, will incur costs, expenses, and uncertainties during the redevelopment process. The bill appears intended to reimburse the original owner for possible speculative future value of property, as opposed to actual value at the time of condemnation.

The AG requested clarification of “substantially improved” to mitigate against possible litigation between the present owner and previous owner-condemnee.

The New Mexico Municipal League identified several issues with the bill. NMML noted that HB 370 provides that “if property acquired through eminent domain by a municipality pursuant to the Metropolitan Redevelopment Law has not been substantially improved, it may not be disposed of within five years after condemnation.”

NMML requested clarification of what is meant by “disposal”? Does it mean disposal in accordance with the redevelopment plan, or disposal outside of the plan?

Section A of the Law provides that a municipality may sell, lease or otherwise transfer real property or any interest in real property acquired by it in a redevelopment area. Subsection B and C provide procedures for the “disposal” of real property to private persons. NMML

requested clarification on whether the new Subsection E applies to all “disposal” of property, including those contemplated by subsection A, or only to that disposal of property occurring outside the redevelopment plan? If the former was intended, it would require a five year holding period or the payment of a premium for any transfer/disposal of property in furtherance of the redevelopment plan. If the latter were intended, the holding period and payment of premiums would apply only to transfers/disposals that occur outside the redevelopment plan (relating to property that as acquired but not included in the plan.

NMML notes that the phrase “has been substantially improved” needs to be clearly defined as two interpretations of this phrase can yield different results.

First, the phrase could be interpreted to mean substantially improved at the time of the condemnation. This interpretation would require that if a municipality condemned unimproved property in accordance with a redevelopment plan, it could not dispose of the property without satisfying the restrictions contained in the section. This would establish the framework that condemnations of raw/unimproved would have to be held for five years or a premium paid, whereas improved property could be transferred/disposed of right away.

Alternatively, the phrase could be interpreted to mean substantially improved in accordance with the plan. Under this interpretation, land that is acquired through eminent domain to be included in a redevelopment project that is not substantially improved in accordance with the plan must be held for five years or a premium paid before the property could be transferred/disposed of outside the plan.

The third issue NMML raised concerns the premium to be paid to the land owner. The bill requires that the land to be disposed of be either held for five years or that the owner is offered the property at the same price paid to the condemnee by the condemnor or by paying the condemnee an additional 100 percent of the original price paid. As the bill is worded, this could mean that the property can be disposed of by simply offering the property back at the original condemnation price, or by paying the 100% premium. Seemingly, if the property is offered back at the original condemnation price, the obligation is fulfilled even if the re-sale is rejected. Or, the municipality could pay the condemnee an additional 100% of what the condemnee originally paid for the property.

Finally, the bill adds a new definition of “value” under the Eminent Domain Code. It states that one of the factors to be considered in establishing value is the highest and best use consistent with the redevelopment plan. This is not limited to condemnations under the redevelopment law, but to all condemnations; this measure of damages should be strictly limited to eminent domain under the redevelopment law.

The Department of Transportation, while noting that the redevelopment law proposed changes do not affect the acquisitions of the NMDOT since the agency is not involved in implementing redevelopment plans, it shares the concern about the definition of “value” at Section 42A-1-24 as it may affect the appraisals involved in the NMDOT’s acquisitions, or at the very least, cause ambiguity or confusion.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to HB 393 and SJR 3

ALTERNATIVES

The AG notes that the Code allows a municipality to enforce development requirements after sale to a private developer through the use of covenants, restrictions, etc. if that is the intended harm this bill is meant to address.

WEP/csd