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## FISCAL IMPACT REPORT

ORIGINAL DATE 1/24/2007

SPONSOR Anderson LAST UPDATED \_\_\_\_\_ HJR 1

SHORT TITLE Limit Private Property Takings, CA SB \_\_\_\_\_

ANALYST Schuss

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

Conflicts with/Relates to: SJR 3 and House Bill 159

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General's Office (AGO)  
Administrative Office of the Courts (AOC)

### SUMMARY

#### Synopsis of Bill

House Joint Resolution 1, if approved by the voters, would amend Article II Section 20 of the New Mexico Constitution to define the term "public use" as used in that section authorizing the "taking" of private property for that purpose. The term is defined by the Resolution as "*the possession, occupation or enjoyment of property, as authorized by law, by the public at large, public agencies, public utilities, pipeline common carriers and those seeking to put water to beneficial use. In addition, "public use" means the addressing of a threat to the personal health or safety of members of the public from structures or activities on or in property.*"

The Resolution would also prohibit the taking of private property for private use (unless the owner consents) or to allow the transfer from one private owner to another on the grounds that the public will benefit from a more profitable use of the property.

## FISCAL IMPLICATIONS

The Administrative Office of the Courts (AOC) notes that there will be a minimal administrative cost for statewide update, distribution, and documentation of constitutional changes. Any additional fiscal impact on the judiciary would be proportional to passage of this amendment and resultant proceedings. Such proceedings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

## SIGNIFICANT ISSUES

According to the Attorney General's Office this Joint Resolution is presumably in response to the United States Supreme Court decision in *Kelo v. City of New London*, 545 U.S. 469 (2005). On July 23, 2005 the Supreme Court, by a 5-4 decision, allowed the City of New London, Connecticut to exercise its power of eminent domain to condemn privately owned real estate so it could be used as part of a comprehensive redevelopment plan. The decision was based upon the city's desire to address its economic downturn by allowing the New London Development Corporation, a private entity under the control of the city government, to revitalize the "Fort Trumbull" neighborhood after Pfizer Pharmaceuticals began to build a large research facility on the outskirts of that neighborhood. The corporation offered to purchase the properties involved, but the owners of 15 out of 115 lots refused to sell. The City exercised its power of eminent domain and condemned the holdout lots. The Supreme Court upheld the City's action.

The dissent, authored by Justice O'Connor, and subsequent criticism of the case, suggested that the use of this power in a reverse Robin Hood fashion—take from the poor, give to the rich—would become the norm, not the exception. She stated: "*Any property may now be taken for the benefit of another private party, but the fallout from this decision will not be random. The beneficiaries are likely to be those citizens with disproportionate influence and power in the political process, including large corporations and development firms.*"

Several states are considering banning "takings" as authorized by *Kelo*. However, New Mexico specifically allows a city to exercise its power of eminent domain to address "slum clearance and development". NMSA 3-46-1 to 3-46-45 1978 comp.

The AOC list the following significant issues:

In the final paragraph of the majority's opinion in *Kelo v. City of New London*, Justice Stevens wrote:

In affirming the city's authority to take petitioners' properties, we do not minimize the hardship that condemnations may entail, notwithstanding the payment of just compensation. ***We emphasize that nothing in our opinion precludes any State from placing further restrictions on its exercise of the takings power.*** [Emphasis added.] Indeed, many States already impose "public use" requirements that are stricter than the federal baseline. Some of these requirements have been established as a matter of state constitutional law, while others are expressed in state eminent domain statutes that carefully limit the grounds upon which takings may be exercised. As the submissions of the parties and their amici make clear, the necessity and wisdom of using eminent domain to promote economic development are certainly matters of legitimate public debate.

**Note:** The U. S. Supreme Court declined on Tuesday, January 16, 2007, to revisit or limit

### **House Joint Resolution 1 – Page 3**

its 2005 ruling in Kelo upholding governmental power to exercise eminent domain for economic development.

HJR 1 and SJR 3 are worded differently, but appear to differ in HJR 1's inclusion of the "addressing of a threat to the personal health or safety of members of the public from structures or activities on or in property" as a "public use" that would allow for the taking of private property upon payment of just compensation.

### **CONFLICT, RELATIONSHIP**

Conflicts with/Relates to: SJR 3 and HB 159

**BS/sb**