



Eminent Domain Legislation Passed by Other States

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Common Themes of Eminent Domain

Reform Across the States

- Prohibiting the exercise of eminent domain for properties to be transferred to a private entity—with exceptions, often for blight
 - Wisconsin, South Dakota, Kentucky, Indiana, Idaho, Alabama
- Requiring that property not used for its original intended purpose or another public use be offered for sale back to the original owner at the original price
 - South Dakota, Indiana, Alabama, West Virginia
- Defining public use or listing the uses that are considered public use
 - Utah, Kentucky, Indiana, West Virginia
- Removing the presumption that a taking is a public use because a government entity says it is
 - Idaho

West Virginia: HB 4048

- Effective date: April 5, 2006
- Key provisions
 - Lists the public uses for which a property may be taken or damaged
 - Lists the purposes for which eminent domain may not be exercised:
 - Private retail, office, commercial, industrial or residential development, or for enhancement of tax revenue; or
 - To purchase property for a purpose that results in a transfer in fee of the property to a person, nongovernmental entity, corporation or other business entity to fulfill the purpose of the use of eminent domain
 - Requires that a property acquired by eminent domain, which is not used for the purpose or purposes for which it was condemned or for some other public use within ten years, must be offered for sale to the original owners at the price originally paid for the property

Wisconsin: AB 657

- Effective date: April 1, 2006
- Key provisions

- Prohibits the use of eminent domain to condemn property if the condemnor intends to convey or lease the acquired property to a private entity, unless the property is blighted
- Defines blight and requires that the condemnor make a written finding that a property is blighted

Kentucky: HB 508

- Effective date: March 28, 2006
- Key provisions
 - Allows eminent domain to be exercised only for a public use
 - Defines public use as
 - ownership of the property by the commonwealth, political subdivision, or other governmental entity
 - possession, occupation, or enjoyment of the property as a matter of right by the commonwealth, political subdivision, or other governmental entity
 - the acquisition and transfer of the property for the purpose of eliminating blighted areas, slum areas, or substandard and unsanitary areas
 - the use of the property for the creation of operation of public utilities or common carriers
 - other uses expressly authorized by statute
 - prohibits eminent domain from being exercised in order to transfer the property to a private owner for the purpose of economic development that benefits the general public only indirectly, such as increasing the tax base, tax revenues, employment or general economic health (allows the sale or lease of an incidental area)

Indiana: HB 1010

- Effective date: March 24, 2006
- Key provisions
 - Defines public use as
 - possession, occupation and enjoyment of a parcel of real property by the general public or a public agency for the provision of fundamental services, including highways, bridges, ports, airports, parks, intermodal facilities and certified technology parks)

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- leasing of the above facilities by a public agency which retains ownership by written lease with a right of forfeiture
- use of a parcel of real property to create or operate a public utility, an energy utility or a pipeline company
- Prohibits the transfer of property acquired by eminent domain to a private person unless the property is blighted and the acquisition is expected to accomplish more than only increasing the property tax base
- Provides that if a condemnor fails to: (1) take possession of property the condemnor acquired through the use of eminent domain; and (2) adapt the property for the purpose for which it was acquired; not later than six years after the payment of the award or judgment for damages occurs, the condemnor forfeits all rights in the property as if the procedure to take the property had not begun.
- Requires condemnor to acquire property within two to six years of initial offer
- Allows property owner to recover litigation costs up to \$25,000 if the property owner is awarded greater compensation at trial than was offered in the condemnor's last settlement offer

Idaho: HB 555

- Effective date: March 21, 2006
- Key provisions
 - Prohibits eminent domain to be used to acquire private property
 - for any alleged public use which is merely a pretext for the transfer of the property of any interest in the property to a private party, or
 - for the purpose of promoting or effectuating economic development. This prohibition does not apply to property used by port districts, irrigation districts and drainage districts. Nor does it apply to property within the area of operation of a housing authority, urban renewal area or deteriorated/deteriorating area that is determined by clear and convincing evidence to be a public nuisance.
 - Provides that the rationale for condemnation by a governmental entity is freely reviewable in the course of judicial proceedings involving the exercise of eminent domain

Utah: SB 117

- Effective date: March 21, 2006
- Key provisions
 - Prohibits the use of eminent domain for trails, paths, or other ways for walking, hiking, bicycling, equestrian use, or other recreational uses, except for bicycle paths and sidewalks adjacent to paved roads
 - Requires the taking of property by a political subdivision to be approved by the governing body of the political subdivision
 - Requires written notice to property owners of each public meeting to approve the taking and allows property owners the right to be heard regarding the proposed taking

South Dakota: HB 1080

- Effective date: February 17, 2006
- Key provisions
 - Prohibits a county, municipality, or housing and redevelopment commission from acquiring private property by use of eminent domain:
 - for transfer to any private person, nongovernmental entity, or other public-private business entity or
 - primarily for enhancement of tax revenue
 - Prohibits a county, municipality, or housing and redevelopment commission from transferring to a private entity, NGO or public-private business entity, within seven years of acquisition, any fee interest in a property acquired by eminent domain without first offering the property back to the party from whom it was taken at the lesser of current fair market value or the original transfer value

Ohio: SB 167

- Effective date: November 6, 2005
- Key provisions
 - Established a moratorium on takings outside a blighted area when the primary purpose for the taking is economic development that will ultimately result in ownership of that property being vested in another private person
 - Withholds state money to local governments that take property in violation of the moratorium
 - The moratorium is in effect until Dec. 31, 2006

Alabama: SB 68

- Effective date: August 3, 2005
- Key provisions
 - Prohibits the use of eminent domain for:
 - the purposes of private retail, office, commercial, industrial, or residential development
 - primarily the enhancement of tax revenue
 - the transfer of property to a person, nongovernmental entity, public-private partnership, corporation, or other business entity
 - The prohibition does not apply to a municipality or other public entity that exercises eminent domain based on a finding of blight in an area covered by any redevelopment plan or urban renewal plan
 - Requires that a property acquired through eminent domain, which is not used for its intended purpose or another public use, must be offered for sale to the original owner(s) at the price at which it was taken, less any income or transaction taxes which the owner paid on the original transaction

Delaware: SB 217

- Effective Date: July 21, 2005
- Key provisions
 - Requires that a finding of public use be made at least six months before a property is acquired through eminent domain