

In the wake of the Supreme Court's *Kelo vs. New London* decision, state and local governments are taking action to restrict the use of eminent domain for economic development purposes. To assist elected officials in these efforts, Reason Foundation has made available a variety of tools that can serve as a starting point toward eminent domain reform. Based upon the Institute for Justice's model eminent domain legislation, these documents offer sample legislation and resolutions to curb eminent domain abuse, while also allowing public-private partnerships to thrive.

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### **Possible Language for State Statutes Limiting Eminent Domain Abuse**

One simple way to remove the threat of eminent domain for economic development is simply to delete the statutory authorization for such uses of eminent domain. For example, in 2004, Utah simply removed the authorization for eminent domain from its act giving powers to redevelopment authorities. Authorizations for eminent domain for private business generally appear in statutes dealing with economic or industrial development, redevelopment, and municipal powers.

Alternatively, a few possible approaches to a statute that would prevent the use of eminent domain for private development appear below.

Three other types of provisions that also discourage the abuse of eminent domain are (1) allowing a former owner to regain ownership of condemned property if the government fails to use it within a given period of time; (2) time limits on blight or redevelopment designations; (3) attorneys fees for condemnees challenging the validity of takings.

#### **Requiring Eminent Domain for Public Use and Defining Public Use**

Notwithstanding any other provision of law, neither this State nor any political subdivision thereof nor any other condemning entity shall use eminent domain unless it is necessary for a public use.

Public use: The term "public use" shall only mean the possession, occupation, and enjoyment of the land by the general public, or by public agencies; or the use of land for the creation or functioning of public utilities or common carriers such as a railroad, utility, or tollroad; the acquisition of property to cure a concrete harmful effect of the current use of the land, including the removal of public nuisances, structures that are beyond repair or that are unfit for human habitation or use, and the acquisition of abandoned property. The public benefits of economic development, including an increase in tax base, tax revenues, employment, general economic health, shall not constitute a public use.

### **Prohibiting Eminent Domain for Private Business**

Notwithstanding any other provision of law, neither this State nor any political subdivision thereof or any other condemning entity shall use eminent domain to take private property without the consent of the owner to be used for private commercial enterprise, except that property may be transferred or leased (1) to private entities that are common carriers such as a railroad, utility, or tollroad; (2) to private entities that occupy an incidental area within a public project, such as a retail establishment on the ground floor of a public building; (3) the use of eminent domain eliminates a threat to public health or safety, such as the removal of public nuisances, removal of structures that are beyond repair or that are unfit for human habitation or use, or acquisition of abandoned property. Whenever property is condemned and will be used by a private party, the condemnor must establish by clear and convincing evidence that the condemnation of the property is necessary.

### **Prohibiting Eminent Domain for Economic Development and Defining Economic Development**

Notwithstanding any other provision of law, neither this State nor any political subdivisions thereof nor any other condemnor shall use eminent domain to take private property without the consent of the owner to be used for economic development. Whenever property is condemned and will be used by a private party, the condemnor must establish by clear and convincing evidence that the condemnation of the property is necessary.

Economic Development: The term "economic development" means any activity to increase tax revenue, tax base, employment, or general economic health, when that activity does not result in (1) the transfer of land to public ownership; (2) the transfer of land to a private entity that is a common carrier, such as a railroad, utility, or tollroad; or (3) the transfer of property to a private entity when eminent domain will remove a threat to public health or safety, such as the removal of public nuisances, removal of structures that are beyond repair or that are unfit for human habitation or use, or acquisition of abandoned property; (4) the lease of property to private entities that occupy an incidental area within a public project.