

GlobeSt.com UPDATE: House Passes Eminent Domain Reform

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By *Barbra Murray*

WASHINGTON, DC--Responding to the US Supreme Court's June 2005 ruling in *Kelo v. City of New London*--which confirmed local, state and federal governments' rights to seize private property for economic development purposes to benefit the common good--the US House of Representatives has passed legislation designed to prevent federal exploitation of the eminent domain instrument. The Private Property Protection Act of 2005 passed at a vote of 376 to 38. It essentially disallows the condemnation of private property to make way for private development projects or for developments designed for the sole purpose of increasing the tax base.

The legislation, HR 4128, puts the heaviest restraints on the federal government, completely restricting it from exercising eminent domain for economic development purposes. For the most part, however, eminent domain guidelines are determined by the state, and HR 4128 addresses these regulations in the bill text: "In general, no state or political subdivision of a state shall exercise its power of eminent domain, or allow the exercise of such power by any person or entity to which such power has been delegated, over property to be used for economic development or over property that is subsequently used for economic development, if that state or political subdivision receives federal economic development funds during any fiscal year in which it does so."

The bill stipulates that any such violation will result in a determination of the offending state or local entity's ineligibility for federal economic development funding for two fiscal years. The Senate introduced a companion bill, the Private Property Protection Act of 2005, or S.1704, in September; it has been referred to the Senate Committee on the Judiciary.

"The legislation strikes the perfect balance," says Institute for Justice senior attorney Dana Berliner, who represented the homeowners vying to retain ownership of their property in the *Kelo* Supreme Court case. "It serves to reassure every American that federal dollars--their own money--won't be used to kick them off their land, while allowing state and local governments to use federal dollars for actual public uses, like roads and military bases."

"The Supreme Court didn't say anything that was new; the *Berman* decision 40 years ago held that condemnation powers could be used to eliminate blight in the form of deteriorated housing," attorney Ted Zangari of law firm Sills Cummis Epstein & Gross PC in Newark, tells *GlobeSt.com*. In *Kelo*, the Supreme Court went just a step sideways to also permit eminent domain to eradicate another form of blight--a deteriorated tax base and employment base."

Zangari says there have been few abuses of eminent domain by agencies of government at all levels over the last four decades. "So is quite unfortunate--for unemployed workers, people in search of affordable housing, and kids in cash-poor school districts--that legislators have chosen the quick-sound bite politics of a complete prohibition on such power instead of advocating a series of measures to reduce or eliminate the occasional abuses," he says, acknowledging that a certain amount of tweaking of the land condemnation tool is in order. "Mend it don't end it," he says. "If you don't allow redevelopment of existing blighted properties, where are we going to put new housing, office buildings and manufacturing plants? With more and more greenfields being placed off limits to development, where is the economic development going to occur if not on existing properties-- which, unlike the greenfields, are owned by multiple property owners, one of whom may be a hold-out standing in the way of a project that would pay huge dividends for the greater community?"