



Legislation Text

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Res. No. 365

Resolution urging the New York State Legislature to more clearly and narrowly define "public use, benefit or purpose" in the State Eminent Domain Procedure Law.

By Council Members James, Chin, Gentile, Lander, Palma, Williams, Cabrera, Dromm and Halloran

Whereas, Eminent domain is the power of the federal or state government to take privately owned property for a public purpose, without the owner's consent; and

Whereas, This right of the government is limited by the Fifth Amendment to the United States Constitution which states "...nor shall private property be taken for public use, without just compensation;" and

Whereas, While "just compensation" has been generally accepted, the question of what constitutes "public purpose" has been the subject of numerous disputes; and

Whereas, A public use is widely recognized as anything that is sanctioned by a federal or state legislative body for such uses that include roads, parks, reservoirs, schools and hospitals yet, the acquisition of land for a public purpose that is sold to a private entity for profit has been debated in the courts; and

Whereas, The United States Supreme Court has continually permitted a broad definition of public use and has generally deferred to legislative decisions on the definition of the phrase; and

Whereas, In 2005, the United States Supreme Court ruled in the case of *Kelo v. New London* that the taking of non-blighted private property for commercial development in order to revitalize an economically depressed area is a valid public use under the Fifth Amendment; and

Whereas, The court also stated that states are allowed to impose stringent limits and further restrict the use of eminent domain for private redevelopment; and

Whereas, As a result of the *Kelo* decision, a number of states in different parts of the country have proposed or enacted legislation that specifically addresses eminent domain and more clearly define the term "public use," such as Ohio, Georgia, and New Hampshire; and

Whereas, According to Section 103 of the New York State Eminent Domain Procedure Law, the definition of a public project is "any program or project for which acquisition of property may be required for a public use, benefit or purpose;" and

Whereas, Numerous bills have been introduced in the New York State Legislature addressing various aspects of eminent domain reform but no changes have been enacted; and

Whereas, In November 2005, the New York State Bar Association created a Special Task Force on Eminent Domain with the mission to "review existing and proposed legislation regarding eminent domain in New York and make recommendations regarding appropriate legislative and regulatory considerations;" and

Whereas, The Task Force recommended that the state appoint a commission to research and define the proper scope of a "public project;" and

Whereas, Many advocates fear that the vagueness of the term "public project," if not more clearly defined, will be used to further the interests of private parties that are not in the public's best interests; and

Whereas, Because of this ambiguity, a comprehensive reform measure on the state level must be enacted in order to tighten the definition of public project and make it clearer, narrower and more objective; now, therefore, be it

Resolved, That the Council of the City of New York urges the New York State Legislature to more clearly and narrowly define "public use, benefit or purpose" in the State Eminent Domain Procedure Law.

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