

Memorandum Regarding Eminent Domain

NYSBA Memorandum #11

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By: Senator DeFrancisco
By: M. of A. Paulin
Senate Committee: Judiciary
Assembly Committee: Judiciary
Effective Date: Immediately

AN ACT to amend the eminent domain procedure law, in relation to the use of eminent domain

LAW AND SECTIONS REFERRED TO: Amends Sections 104 & 702 of the Eminent Domain Procedure Law (EDPL) and adds a new EDPL Section 204-a.

The United States Supreme Court's decision in *Kelo v City of New London*, 125 S.Ct. 2655 (2005), which held that economic development is a valid public use for purposes of eminent domain, generated extensive discussion and debate regarding the law of eminent domain. Hearings were conducted by both houses of the New York State Legislature, and numerous bills were introduced. The Association's Task Force on Eminent Domain has issued a report* analyzing the law of eminent domain and the initiatives that have been proposed following the *Kelo* decision. The Task Force was comprised of experts in municipal law, private practitioners, and law school professors. That report, which has been approved by the House of Delegates (our Association's policymaking and governing body), concluded that the *Kelo* decision does not represent a revolutionary departure from existing law but, rather, represents the mainstream view with respect to both Federal and New York law regarding eminent domain. However, the reform of New York's laws on eminent domain would be appropriate, and the report sets forth issues that should be considered and addressed in before any "reform legislation" is signed into law.

Post-*Kelo* discussion continues, as reflected in the sponsor's memorandum in support of the current legislation.

The Association submits that an important first step to addressing any eminent domain reform continue to be the establishment of a Temporary State Commission on Eminent Domain. The *Kelo* decision and the publicity it engendered have focused attention on the complex legal, economic and constitutional issues surrounding eminent domain. Resolution of issues on topics such as defining public use, the appropriate level of judicial scrutiny, just compensation, and others, would best be accomplished through study by a variety of stakeholders to assure that all viewpoints are represented. A Temporary State Commission would help to meet that goal. Therefore, it is that position of the New York State Bar Association that no legislation restricting the purposes for with eminent domain may be exercised should be enacted pending the completion of such a study.

Accordingly, based on the foregoing, the Association recommends establishment of a Temporary Commission on this topic before any legislation is enacted.

* To view the report, go to the following page on the NYSBA web site:
<http://www.nysba.org/EminentDomainReport>