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180 IN OUR VIEW

Texas addresses eminent domain

THE POINT - Bill signed into law by Gov. Rick Perry is a good first step.

Texas lawmakers were roundly criticized for their failure during two special sessions to reach a consensus on a school finance plan for the state, but they should be cheered for something that they did accomplish last month.

Gov. Rick Perry signed into law last week Senate Bill 7, making Texas just the second state to throw some statutory roadblocks in the way of municipalities that might use eminent domain to further private economic development schemes.

You might recall the angry response that poured forth in June when the U.S. Supreme Court sided with the city of New London, Conn., in its effort to seize the homes of Susette Kelo and others so it could turn over the properties to a private developer. The court's 5-4 decision set off a firestorm of protest, including two grassroots efforts to seize homes owned by Justices David Souter and Stephen Breyer, both of whom sided with the property-takers in the case.

Cities and states were quick to respond to the public outcry, aware that the specter of middle-class homes being taken for bulldozing by large corporations struck a nerve with liberals, conservatives and libertarians alike.

The Fifth Amendment to the U.S. Constitution guarantees that private property won't "be taken for public use without just compensation." That "public use" phrase traditionally was interpreted to mean projects that have a general use for all citizens, such as roadways, rail lines and drainage easements.

But there has been considerable backsliding on that interpretation, as municipalities abuse their eminent domain powers to condemn properties to build stadiums for private sport teams, shopping malls, casino parking lots and other projects that might bring in more tax revenue. In its Kelo ruling, the Supreme Court redefined "public use" with the more lax standard of "public benefit."

SB 7 seeks to stop the eminent domain abuse in Texas.

"It's an excellent first step in moving us down the road toward protecting the property rights stripped by Kelo," said Bill Peacock, an economic freedom policy analyst with the Texas Public Policy Foundation. He testified before the Senate's State Affairs Committee about the need for increased protections against eminent domain.

Kelo exposed the loopholes that need to be filled, Peacock said, but that was more work than could be done during a short special session. He expects the issue





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to be taken up again during the 2007 regular session.

"We really should move to a constitutional solution rather than a statutory one," he said. There is considerable resistance among state lawmakers to a constitutional amendment on eminent domain, but that would provide the surest protection for Texas property owners.

Besides restricting the use of eminent domain for private parties or economic development purposes, SB 7 authorized a 10-member interim committee to study the use of eminent domain and prepare a report for the 2007 session.

What will be the effect of SB 7? It may scare off some elected officials who hadn't thought of using eminent domain as a tax revenue tool until the Kelo ruling.

Of course, some Texas municipalities already are using eminent domain for private developments. The city of Arlington, for example, is pursuing eminent domain cases against dozens of homeowners to make room for the planned \$650 million stadium for the Dallas Cowboys. SB 7 specifically exempts the stadium from its provisions.

Elsewhere, Peacock says it's unknown whether SB 7 will protect the Western Seafood Co. from the city of Freeport, which seeks to condemn the company's property along the Brazos River and turn it over to a neighbor that wants to build a marina. That case may well end up being decided in court, he said.

Considering those ambiguities, we hope that SB 7 represents merely a solid down payment on the Texas Legislature's ultimate delivery of stronger protections against eminent domain abuse.