

Protecting Private Property Ownership from Eminent Domain Abuse

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Issues:

- SB 7
 - Conferring a Private Benefit—the provision in SB 7 that eminent domain is prohibited when the taking “confers a private benefit on a particular private party through the use of the property” (Sec. 2206.001(b)(1), Government Code) offers no protection to property owners. Even the *Kelo* court prohibited such takings. The problem is that the courts have found that *Kelo*-style takings do not confer a private benefit on a particular private party.
 - Economic Development—the term “economic development” (Sec. 2206.001(b)(3)) is broader and less well understood than a term like “commercial purposes.”
 - Presumption by Governmental Entities—the removal of the presumption (Sec. 2206.001(e)) on a determination by a governmental or private entity exercising eminent domain is a good start, but it probably does not cover all determinations of public use or public necessity.
 - Blight Exception—Still allows the transfer of land through eminent domain from one private land owner to another, even in cases where a specific property is not blighted.
- Government entities are allowed to exercise eminent domain outside their boundaries.
- Government entities are still allowed to use a property for just about any purpose once the condemnation process is completed.
 - Current law (Sec. 21.011 ff, Property Code) allows the original owner to repurchase the property only if the public use is cancelled within ten years, and then only at the market price at the time the use is cancelled.
- The use of a blight designation to justify condemnation of private property extends beyond the Texas Urban Renewal Law. It can also be used under the Tax Increment Financing Act (Texas Tax Code, Chap. 311).

Recommendations:

- Allow all determinations of public use and public necessity by condemnors to be freely reviewable by the courts.
- Require governments/entities to use the property only for the stated purpose for which it was condemned.
 - If the property is not used for its original purpose in a timely manner, it should be offered back to the original owner at the original price paid.
- Prohibit eminent domain from being used to acquire any property that will be subsequently

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transferred to a private party, unless:

- the property in question is itself blighted.
 - the property owner receives market-based compensation, i.e., compensation based on the new use of the property.
- Define Public Use
- “Public use means that the state or a political subdivision of the state must own, or the citizens of the state as a whole must have the legal right to use, any taken, damaged or destroyed property, and does not mean public purpose or benefit;” or
 - “Public use means that the state, a political subdivision of the state or the citizens of the

state as a whole must employ any taken, damaged or destroyed property, and does not mean public purpose or benefit.”

- Consider replacing the term “economic development” with “commercial purposes” and revisiting the need for all of the exemptions in the current law.
- Review the advisability of 1) the large number of entities that currently have the power of eminent domain and 2) government entities being able to exercise eminent domain outside of their geographic boundaries.

