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Fast-tracked Texas bill would empower homeowners against eminent domain

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AUSTIN -- After years of conflict, the Texas Legislature could be heading toward a long-sought resolution on property rights with a carefully stitched compromise supported by Gov. Rick Perry, key lawmakers and major interest groups.

The eminent domain measure -- which strengthens protections for property owners -- is expected to be considered by the state Senate as early as Tuesday. Passage seems virtually certain since more than two-thirds of the chamber's 31 members have signed on as co-authors.

Perry put the legislation on a fast track by declaring it an emergency item that lawmakers are required to consider during the session's first 60 days. Sen. Craig Estes, R-Wichita Falls, is chief author of the Senate bill, SB18, and Rep. Charlie Geren, R-Fort Worth, is author of the House bill, HB279.

Proponents have fashioned a delicate coalition from a broad range of interest groups, some of whom were once on opposing sides. The Texas Farm Bureau is enthusiastically backing the measure. Other interest groups, such as pipelines and cities, harbor concerns about the bill but say they are at least begrudgingly on board, recognizing that it's probably the best deal they can get.

"Every word in there has been carefully crafted," said Estes, whose district includes Parker, Wise, and parts of Denton and Collin counties. "Nobody is 100 percent happy, which means it's a pretty good bill."

Accordingly, Estes said he will fight any amendment to ward off even the slightest change that could unravel the compromise.

"I don't care if your amendment turns lead into gold. It's not going to happen if I can help it," Estes said. "Any bill can be made better, but when you have all the major interest groups on board, let's don't let perfection get in the way of something that's good for Texas."

Tarrant co-sponsors

Estes' bipartisan roster of Senate co-authors includes all three senators who represent parts of Tarrant County -- Jane Nelson, R-Flower Mound; Chris Harris, R-Arlington; and Wendy Davis, D-Fort Worth. Harris said he has been working with Estes on the bill for four years "and I am ready for it to finally become law."

The timetable in the House won't be determined until after Speaker Joe Straus appoints committees -- possibly this week -- but Geren predicts that the measure "has a very good chance" at passage.

"This bill provides protection for Texas landowners, and there are a lot of people that will support that protection," Geren said.

The legislation is virtually identical to an earlier bill by Estes that passed the Senate 31-0 in 2009 but died in the House in the session's closing days. Perry's emergency declaration is designed to get it through the Legislature early enough to avoid a replay of 2009, supporters say.

Under eminent domain, government entities and certain legally authorized private entities such as pipeline companies, railroads and utilities are empowered to acquire property for public use after fairly compensating the owners. Some say Texas has hundreds, perhaps thousands, of condemning entities.

If the property owner and entity fail to agree on a price, the entity can file suit to condemn -- acquire -- the property. But the property owner first has the right to a hearing before a three-member commission that determines the amount of compensation. If property owners are dissatisfied with the award, they have a right to a trial before a judge or jury and can appeal.

Eminent domain has stoked disputes over property rights and government power since the founding of the Republic. In Texas, modern-day property-rights battles have been evident in disputes over pipelines in the Barnett Shale and in Perry's now-dead Trans-Texas Corridor project, which encroached on a half-million acres of farmland.

Perry came under fire from property-rights advocates in 2006 for vetoing an eminent domain bill that he said went too far in expanding property owner damages, creating what he said was "a financial windfall for condemnation lawyers" at taxpayers' expense.

Perry's two principal opponents in his race for re-election last year -- Republican Kay Bailey Hutchison and Democrat Bill White -- also accused Perry of trampling on property rights by pushing the Trans-Texas Corridor, which would have created a multibillion-dollar network of toll roads and highways.

On the fast track

But Perry has seemingly pushed past much of the criticism with strong property-rights messages during the past two sessions, including his pledge to fast-track legislation this year. The 450,000-member Texas Farm Bureau, which endorsed Hutchison over Perry in the Republican primary -- partly because of bitterness over the Trans-Texas Corridor -- now praises Perry for his commitment to the Estes-Geren legislation.

The legislation is the state's latest response to the U.S. Supreme Court's decision in *Kelo v. City of New London* in 2005, which permitted the use of eminent domain for economic development. A 2007 law and a state constitutional amendment passed by Texas voters in 2009 restricted eminent domain acquisitions to only those involving public use. But property-rights advocates say those measures went only so far in protecting landowners.

"We would like to set the bar a little higher," Estes said. "In my opinion, the deck is stacked against the property owner."

The bill lays out procedures that supporters say levels a playing field that has been tilted toward acquiring entities. One key provision would enable landowners to buy back property if it isn't used for the intended public purpose in 10 years, although the Texas Public Policy Foundation says the provision contains loopholes that could still allow condemning entities to hold on to the property.

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