



Texas Public Policy Foundation

LEGISLATOR'S GUIDE TO THE ISSUES 2021-2022

Regulatory Takings

The Issue

In 1995, the Texas Legislature passed the Private Real Property Rights Preservation Act ([PRPRPA](#)), providing compensation to property owners for loss of value due to new regulations on land use. Authors sought a method of protection and a deterrent against local government regulations that would damage the value of someone's property. Unfortunately, the act exempts municipalities. Since cities, due to rezoning activities, are the largest condemnors, this exemption significantly hampers its effectiveness.

Additionally, even when a condemnor is not a municipality, the condemnor does not have to compensate a private real property owner for the taking, unless a court decides that the land has been devalued by at least 25% of its original fair market value. This tells property owners to expect losses of almost a quarter of the value of their property due to regulatory impacts. For the past several legislative sessions, bills have been filed attempting to address some of these issues. However, none of the proposals ultimately passed. The problems with the system remain.

The Facts

- [Article I, Section 17](#) of the Texas Constitution states: "No person's property shall be taken, damaged, or destroyed for or applied to public use without adequate compensation being made, unless by the consent of such person."
- The PRPRPA does not apply this constitutional protection to actions by municipalities—like zoning—that result in a reduction of property value, that is, a taking. [Section 2007.003\(b\)](#) exempts the actions of municipalities from the provisions of the act.
- The PRPRPA, in [Section 2007.002](#) of the Government Code, excludes from the compensation requirement any government action that reduces the market value of private property up to 25%.
- Texas case law also makes it very difficult for property owners to receive compensation for regulatory takings. The Texas Supreme Court has stated that property owners do not acquire a constitutionally protected vested right in property uses.

- In a well-known example, Dallas opted to rezone around Ross Avenue to increase the number of luxury condominiums and improve the aesthetic beauty of its eastern gateway to downtown. The practical effect was to prevent many of the property owners already working on Ross from continuing to operate their businesses. One operator was allowed to continue operating his auto body shop, but at a cost of close to \$100,000 in legal fees and property modifications. Another was sued by the city when he resisted and is being threatened with hundreds of thousands of dollars in fines.

Recommendations

- The Texas Private Real Property Rights Preservation Act should be amended to apply to municipalities.
- The numerical threshold of what qualifies as a taking under the act—a 25% reduction of the market value of the affected private real property—is an arbitrary number that should be reduced or eliminated.
- Condemnors should have the ability to issue waivers as an alternative to financial compensation. Those waivers should specifically mention which property rights are being reinstated per the waiver. Doing so will allow the waiver to "run with the land" for future owners, as well as prevent municipalities from spending more.

Resources

[Private Property Interrupted](#) by Kathleen Hunker, Texas Public Policy Foundation (July 2014).

["The Story of Texas Begins with Respecting Private Property"](#) by Kathleen Hunker, *Austin American-Statesman* (July 29, 2014).

[Regulatory Takings: The Next Step in Protecting Property Rights in Texas](#) by Ryan Brannan, Jay Wiley, and Bill Peacock, Texas Public Policy Foundation (July 2010).

[Private Real Property Rights Preservation Act Guidelines](#), Attorney General of Texas. Article I, Section 17, Texas Constitution.

[City of University Park v. Benners](#), 485 S.W.2d 773 (Tex. 1972).