



Texas acted fairly quickly, though incompletely, to curtail eminent domain abuse in the aftermath of the Supreme Court's *Kelo* decision. During a special session on another issue, the Texas Legislature passed Senate Bill 7 (2005), which has both positive and negative aspects.

On the positive side, the new law says the government or a private entity may not take property if doing so confers a private benefit, is pretextual, or is for economic development (unless economic development is secondary to the main objective of eliminating real "blight"). Additionally, courts are not to give any deference to a condemning authority's decision that a condemnation will be for a public use. These are important reforms that should go a long way to preventing future abuses in Texas.

On the down side, however, the bill created specific exceptions to those prohibitions so that they do not apply to utilities, port authorities, and other specific agencies and projects, including the new Cowboys stadium. And, as seen in other states, there is a specific exemption for blight removal. By failing to close the "blight" loophole, Texas is allowing local

governments to continue taking properties for private benefit—it is just requiring them to use different terminology.

The Texas Legislature was not in session in 2006, but in 2007, it passed a bill that redefined public use. Under House Bill 2006, condemnation only qualifies as a public use when it "allows a state, a political subdivision of the state, or the general public of the state to possess, occupy, and enjoy the property." The bill would have closed the blight loophole and effectively closed the chapter on eminent domain abuse in Texas—but the governor vetoed it.

House Bill 1495 did become law, requiring the state attorney general to summarize current eminent domain law into a "Landowner's Bill of Rights." This document will be available to the general public, and must be provided to any property owner facing condemnation. The new law educates the public on the law of notice, procedure, and compensation rights of a condemned party, but does not protect property owners from continuing eminent domain abuse.

The Texas Legislature does not return to session until 2009.

Senate Bill 7

Sponsored by: State Senator Kyle Janek
Status: Signed into law on September 1, 2005.

House Bill 1495

Sponsored by: State Representative Bill Callegari
Status: Signed into law on June 15, 2007.