

## Economic Freedom: 80th Session In Review

by **Bill Peacock**

Director, Center for Economic Freedom

### EMINENT DOMAIN

- While the rest of the country was reeling, the Texas Municipal League embraced the U.S. Supreme Court's *Kelo* decision when it said that *Kelo* "simply confirms what cities have known all along: under the Fifth Amendment to the U.S. Constitution, economic development can be as much a 'public use' as a road, bridge, or water tower." This incredible statement witnesses to the substantial erosion of private property in the last 50 years.
- In House Bill 2006 (by Representative Beverly Woolley), passed this session by the Legislature, Texas has taken a determined stand against the U.S. Supreme Court's abandonment of the most fundamental of our rights. This is entirely necessary too, because without House Bill 2006, cities will continue to be able to take property for almost any reason simply by crafting their plans to skirt the limited protections put into law in 2005 by Senate Bill 7.
- El Paso is a perfect example of the need for eminent domain reform. Under its downtown redevelopment plan currently in place, it will be able to begin taking property via eminent domain in 2008, unless House Bill 2006 becomes law.
- House Bill 2006 defines public use as a "use of property that allows the state, a political subdivision of the state, or the general public of the state to possess, occupy, and enjoy the property." Because the courts have allowed takings for public "purposes" and "benefits," this definition is essential to re-establishing constitutional property rights protections.
- House Bill 2006 also bans takings that are not for a public use. Since takings for

other than a public use are already prohibited in the U.S. and Texas constitutions, it is unfortunate that the courts have made it necessary for the Legislature to speak clearly on this issue.

- In Texas, once a property has been condemned by a government entity, it can be used for just about any purpose if the government waits for 10 years. House Bill 2006 requires government entities to offer to sell back a property to the previous owner if the entity has not used the property for the public use for which it was taken.
- A Senate amendment to House Bill 2006 requires "special commissioners [to] consider any diminished access to the highway and to or from the remaining property to the extent that it affects the present market value of the real property...." Concerns have been raised that this amendment would substantially raise the cost of condemning property along public rights-of-way. However, in the fiscal note to Senate Bill 1711, the Texas Department of Transportation was not able to estimate the increased cost. Whatever the cost of paying these damages—which will be substantially less than has been alleged—it pales in comparison to the cost to property owners and society if House Bill 2006 fails to become law.

### ELECTRICITY DEREGULATION

- Despite reports to the contrary, the demise of Senate Bill 482 by Representative Troy Fraser—which would have regulated the Texas electric market—is good for the Texas economy and for Texas consumers. The Foundation's recent comprehensive study of the Texas electric market by Dr.

*continued on back*

Robert J. Michaels concluded that, “Texas is competitive electricity’s greatest success story in the United States, if not the world. Furthermore, competition has brought substantial benefits to Texas in only a few years, both in absolute terms and relative to other states. Innovations planned for 2009 will further improve investment choices and power pricing, and institutions put in place by the Texas Public Utility Commission can sustain competitive markets into the future.”

- Electricity prices in Texas have certainly increased since deregulation began. According to the U.S. Energy Information Agency, the average retail price in Texas, adjusted for inflation, is up about 23%. It is about 17% higher than the current national average. The highest rates are about 50% higher than the national average.
- However, Texas, which is heavily dependent on natural gas for electric generation, weathered a significant increase in natural gas prices. Today, natural gas prices are almost 200% higher than in 2001, and at times prices have spiked over 300%. When compared to other states that rely heavily on natural gas, average prices in Texas are in the middle of the pack—lower than in New England, the Mid-Atlantic coast, and California. Rates in Houston and Dallas are comparable to almost every other major city. Rather than being the cause of high prices, it seems that deregulation has allowed us to avoid some of the impact of higher natural gas prices.
- The Texas market was only fully deregulated as of January 1, 2007. With the “price to beat” and all other price controls out of the way, Texans will finally be able to experience the full benefit of deregulation. Innovation and efficiency will bring Texas consumers the best products at the best prices.
- The only change to electricity regulations this session came in the last-minute passage of House Bill 624 (by Representative Phil King), which gave the Texas Public Utility Commission the authority to reject mergers and acquisitions of electric utilities, despite the fact that the system has worked just fine without this approval for over 30 years.
- The lack of new regulations will give the electric market—only fully deregulated as of January 1—time to demonstrate the benefits of deregulation. If Texas can make it without a special session, the move to re-regulate may fade away, and Texas will continue to be

the best example of the success of deregulation in the country and even the world.

## TIF TAX

- The maze of telecommunications taxes is as hard on consumers’ pocketbooks as it is difficult for them to understand. Texans pay the third highest level of state and local telecom transaction taxes in the nation. These include state and local sales taxes, municipal franchise fees, and charges for the Texas Universal Service and Texas Telecommunications Infrastructure funds.
- The average Texan’s local telecom tax rate is 11.32% and the average state tax rate is 13.97%. Adding federal taxes to the mix means that the average Texan’s total telecom tax bill is just under 30%, almost one-third of the cost of telecommunications services. In comparison, the general transaction (or sales) tax rate in Texas is 8.25%.
- The TIF tax is a gross receipts tax intended to fund the installation of communications infrastructure at public institutions. With that goal achieved, the fee was scheduled to expire. However, the Texas Legislature extended it through 2011 at a cost to Texas consumers of about \$211 million per year.
- House Bill 735 by Representative Joe Straus will eliminate the TIF tax in 2008, saving Texas consumers over \$200 million per year. In addition, it will end the practice of using a tax—originally designed for infrastructure build-out—for general revenue purposes.

## TORT REFORM

- In the last few years, dredging companies began to experience an explosion of personal injury lawsuits. Today, almost 60% of all the personal injury lawsuits against dredgers nationwide are filed in just four South Texas counties—Cameron, Hidalgo, Starr, and Zapata. However, this didn’t occur because of a wave of new injuries in these areas, but because a few trial lawyers started to take advantage of a loophole in Texas venue law. Fortunately, the Texas Legislature closed this loophole in the 80th Session.
- Legislation that would have restructured the Texas court system died at the end of session, as special interests sought to keep alive the few “judicial hellholes” left in Texas. ✨