



Close the Loopholes on Eminent Domain

Testimony to the House Committee on Transportation in support of HB 565

by Kathleen Hunker, Policy Analyst

Chairman and Members of the Committee:

Eminent domain flirts with the line separating an effective government from one of absolute rule. On the one hand, it facilitates the construction of massive infrastructure projects, ensuring that the state can support its growing population. On the other, eminent domain allows the state and its designated agents to sidestep the rights, investments, and designs that an owner may have had for his or her property. This can produce a severe moral hazard, where condemnation becomes viewed as a cheaper, more convenient alternative to the competitive market.

The danger presented by eminent domain is magnified when that power is entrusted to private, for-profit organizations, which lack both the ostensible purpose of acting in the general welfare as well as the level of accountability that is typically incumbent in a public office. Private companies tend to operate outside of the government's immediate jurisdiction and at best face only marginal repercussions when they push the boundaries of acceptable condemnation practices. Considering the immediate financial stake private companies have in securing inexpensive real estate, the absence of any meaningful scrutiny could embolden them to utilize eminent domain as a means of furthering their own bottom line.

That said, the benefits the public receives from delegating eminent domain to private corporations may, on occasion, outweigh the risks involved, particularly if they are providing a service government cannot or should not perform. However, that is not the case when it comes to toll road companies, considering that the Texas Legislature already made a conscious decision to strip them of their eminent domain authority back in 1991. The Texas Turnpike Corporation only retains that power because it was incorporated one day prior to change in the law and therefore qualified for a grandfather exception.

House Bill 565 simply closes this inadvertent loophole and applies the existing ban to all toll road companies regardless of when they were incorporated. It notes that there is no principled difference that distinguishes the Texas Turnpike Corporation from the types of companies targeted by the 1991 statute so as to warrant special treatment. It also notes that if left unaddressed, the omission creates an uneven grade in the amount of protection offered to Texas property owners—one that is based on the land's proximity to the Texas Turnpike Corporation's place of business.

As a consequence, HB 565 is best described as an attempt to promote uniformity in the law as well as help ensure that future projects enabled by eminent domain will be subject to stricter oversight. TPPF strongly supports the bill's passage. ★

