

SUBJECT: Original price repurchase of property acquired through eminent domain

COMMITTEE: Land and Resource Management — favorable, without amendment

VOTE: 6 ayes — Mowery, Orr, Zerwas, Callegari, R. Cook, Geren

0 nays

3 absent — Y. Davis, Pickett, Ritter

WITNESSES: For — Bill Peacock, Texas Public Policy Foundation. (*Registered, but did not testify*: Regan Beck, Texas Farm Bureau; Dr. Kitty-Sue Quinn, Texas Land and Mineral Owners Association)

Against — Mark J. Breeding, North Harris County Regional Water Authority; Ted Gorski, City of Fort Worth; Donald Lee, Texas Conference of Urban Counties

On — Scott Forbes, Port of Houston Authority and Texas Ports Association

BACKGROUND: The Fifth Amendment to the U.S. Constitution prohibits the taking of private property for public use without just compensation, commonly referred to as the “takings clause.” Texas Constitution, Art. 1, sec. 17 prohibits a person’s property from being taken, damaged, or destroyed without consent for public use without adequate compensation.

Property Code, ch. 21, subch. E provides an opportunity for property owners to repurchase land taken through eminent domain for a public use that was canceled before the 10th anniversary of the date of acquisition. The possessing governmental entity is required to offer to sell the property to the previous owner or the owner’s heirs for the fair market value of the property at the time the public use was canceled. The repurchase provision does not apply to right of way held by municipalities, counties, or the Texas Department of Transportation.

Texas Constitution, Art. 3, sec. 52 prohibits the Legislature from authorizing any county, city, town or other political subdivision to lend its credit or to grant public money or thing of value to aid any individual,

association, or corporation or to become a stockholder in such corporation, association, or company. With certain exceptions — including sec. 52-b, which authorizes a loan or grant of public money for economic development purposes — the provision has been broadly interpreted to put strict limits on the state's ability to divert public funding to individuals.

DIGEST:

HJR 30 would amend the Texas Constitution to add Art. 3, sec. 52j to authorize governmental entities to sell land taken as part of eminent domain proceedings back to the former owner, the owner's heirs, or other successors, at the price the entity paid at the time of acquisition if:

- the public use for which the property was acquired had been canceled;
- no actual progress was made toward the public use during a prescribed period of time; or
- the property was unnecessary for the public use.

The proposal would be presented to the voters at an election on Tuesday, November 6, 2007. The ballot proposal would read: "The constitutional amendment to allow governmental entities to sell property acquired through eminent domain back to the previous owners at the price the entities paid to acquire the property."

SUPPORTERS  
SAY:

HJR 30 would protect landowners subject to condemnation by allowing them, under certain conditions, to repurchase property not put to a suitable public use by the condemning authority. The proposed amendment is necessary because, in the event the property had appreciated in the several years that elapsed between the condemnation and repurchase, the resale of such property to the original owner could be considered a transfer of value to that individual. Art. 3, sec. 52 of the Constitution could be interpreted to prohibit such a transfer, except as otherwise provided. HJR 30 would add to the list of exceptions the repurchase of land taken through eminent domain that did not exhibit any progress toward a public use or was unnecessary for such a use.

HJR 30 would authorize the Legislature to enact legislation, such as HB 2006 by Woolley, to provide for the repurchase of condemned property at the price the entity paid at the time of acquisition. Permitting the repurchase price to be set at the original sale value, and not the current fair market value as currently provided in the Property Code, would enable subject property owners to reclaim equity for appreciating property to

which they were entitled. Property owners subject to takings that wrongfully result in cancelled, absent, or unnecessary public uses only would be eligible for restitution. The proposed amendment would not confer any special advantage upon an individual because it only would permit the redress of a taking that was not justly executed. There also is a distinct possibility that a property could depreciate over time following a condemnation. In that case, the property owner could lose value in the land by repurchasing. HJR 30 under no conditions would guarantee the transfer of positive value to an individual.

The proposed amendment would authorize legislation that created a strong disincentive against condemning authorities — including schools, municipal and county governments, state agencies, pipelines, and utilities — exercising eminent domain authority speculatively. Condemning authorities would be strongly discouraged from acquiring land through eminent domain for which there were no immediate plans. Takings completed on a speculative basis can deprive current owners of the future value of their property. By allowing the Legislature to enact legislation curtailing speculative condemnations, HJR 30 would establish an important safeguard against the excessive and reckless use of eminent domain.

The Legislature should allow voters to decide if they want the additional protection that would be afforded by amending the state's fundamental guiding document to restrict the uses of eminent domain. A constitutional amendment would strengthen and clarify Texans' rights in a way that the statutes cannot because the protections could not easily be changed by a future Legislature. HJR 30 firmly would establish the value of eminent domain as the acquisition of property for public uses only and would be an affirmation of property owners' rights against takings for illegitimate uses.

**OPPONENTS  
SAY:**

HJR 30 would allow “double-recovery” for property owners who had undergone eminent domain proceedings and were eligible to repurchase their property. The proposed amendment would confer a windfall upon property owners who were justly compensated for the original taking. An owner who was eligible to repurchase at the price originally paid would be allowed to accrue all the equity from appreciation without having to pay property taxes, maintenance expenses, and other costs normally incurred as part of property ownership. The constitutional change would allow any appreciation that accrued in the property while it was in the custody of a

government organization to be transferred to an individual in the form of equity.

The U.S. Constitution's "takings clause" requires property owners to be justly compensated for any property transferred through eminent domain. Once this compensation is granted, the owner relinquishes any right to equity and other investments associated with the property. Allowing an individual to repurchase at the original price effectively could result in putting the state in a position of being used as an instrument of financial gain for that individual. There is a good reason for the long-standing and rarely amended constitutional prohibition on transferring things of public value to individuals. Allowing individuals to profit from condemning authorities that engage in takings does not have sufficient public value or merit to justify its addition to the Constitution.

NOTES:

Three bills related to the use of eminent domain authority have been set on today's calendar. HB 3057 by Callegari would require a municipality to determine that each property in an area possessed characteristics of blight prior to clearing improvements in the area by means of condemnation. HB 2006 by Woolley would modify the processes governing eminent domain proceedings, obligations placed upon condemning entities, the rights of previous owners to repurchase taken property, and standards of evidence that could be considered by a court in the course of making decisions regarding damages. HB 1495 by Callegari would require condemning authorities to provide a bill of rights statement written by the attorney general for the person listed as the most recent owner prior to negotiations for the acquisition of that person's property.