Texas Conservative Coalition Research Institute

Policy Primer: Eminent Domain Protections in Texas

Executive Summary

Texas Central Partners' (TCP) proposed Bullet Train, connecting Houston to Dallas, provides an occasion to examine the law of eminent domain in Texas, the protections those laws provide to landowners, and how a project like the Bullet Train will affect property owners within that context and legal framework.

There are two main objections to the Bullet Train. First, Texans want assurances that the Bullet Train is not—and will not become—a project subsidized by Texas taxpayers. TCP's position is that, while "the project will explore all forms of capital available," including "federal loan programs like RRIF and TIFIA," it emphasizes that the Bullet Train "is a private venture with private investors putting their capital at risk—state or local officials in Texas, of all places, have no desire, incentive or legal standing to bail out a private company." Taking TCP at its word, taxpayers in Texas will not be asked to subsidize this private venture.

The second main objection to the Bullet Train—*and the topic of this paper*—is the use of eminent domain. Private property is a right Texans do not take lightly. However, it is important to remember that railroads have long exercised the power of eminent domain in order to benefit the public. The public directly benefitted from use of railroads and the accompanying economic, geographical, and cultural growth those railroads helped facilitate during the 19th and 20th centuries. Thus, objections to the mere potential of eminent domain use for purposes of building a publicly accessible railroad are misguided.

Furthermore, the Texas Legislature is deeply committed to an ongoing effort to reform eminent domain laws. This effort began more than ten years ago and continues heading into the 85th Legislative Session. This paper will explore the history of eminent domain in Texas as it pertains to railroads. It recounts developments on the national stage which prompted eminent domain reforms across the nation, and details more than ten years of eminent domain protections enacted by the Texas Legislature.

The paper ultimately concludes that while eminent domain should never be abused (such as in the *Kelo* case), its use for the purposes of the Bullet Train would be legitimate, and strong protections, as well as transparent processes, are in place for property owners.

Introduction

High-speed rail is a controversial topic. Typically funded by taxpayers through government subsidy, past high-speed rail projects in the United States have demonstrated little more than a propensity for cost overruns, construction delays, and unreliable ridership numbers. California, for example, approved a bond package in 2008 to finance a federally-subsidized train project between the Bay Area and Los Angeles.[i] Originally projected to cost $33 billion and travel 220 miles per hour, it is now a "slow-speed" project estimated to cost more than $80 billion.[ii] Federal estimates for the project's completion were recently adjusted from the original target of 2018 to a new target of 2022.[iii] According to Randal O'Toole, a transportation expert at the Cato Institute, "[t]here never has been a privately funded high-speed rail line in the U.S. because it doesn't make any economic, transportation, environmental, or even safety sense[.]"[iv]

The Cato critique notwithstanding, Texas Central Partners LLC (TCP), a private company based in Texas, believes it can build an economically-viable, high-speed rail line. The market will determine if TCP is correct. According to a study conducted by NYU's Wagner School of Public Service, close to 50,000 Texans travel between Houston and the Dallas/Fort Worth area more than once per week.[v] Offering those commuters an alternative means of travel, TCP believes, is economically viable, which is why it is currently developing a "high-speed passenger rail system" (Bullet Train) with a "travel time of less than 90 minutes" between those locations.[vi] "Unlike other high-speed rail projects," TCP's website states, "we are backed by private investors, not public funds."[vii] It is for that reason that Robert Poole, the Director of Transportation Policy at the Reason Foundation—which opposes most rail projects and issued a 2013 study critical of such projects—supports TCP's Bullet Train. Unlike railway projects of the past, Poole explains that "this project actually provides a welcome opportunity for the private sector to deliver a fast, affordable transportation option with little or no risk to taxpayers."[viii]

TCP's Bullet Train project faces obstacles, particularly in the form of private landowners and the local governments serving them. Eminent domain is a justified concern, as Texans highly value their property. During the 84th Legislative Session, Senator Lois Kolkhorst (Coauthors Birdwell | Creighton | Hall | Huffman | Schwertner) filed Senate Bill 1601, which would have distinguished "high-speed rail" from "railroads" in state code, and prohibited "high-speed rail" from exercising the power of eminent domain.[ix] Under current law there is no distinction, meaning that all forms of railroad, including the Bullet Train, likely have eminent domain authority.[x] Another proposal, House Bill 1889 (Metcalf | Ashby | Wray) would have required TCP and similar organizations to obtain approval from county and municipal governments before constructing electric railways through those jurisdictions.[xi] Neither bill became law.

Eminent Domain Defined

The federal government and state governments may exercise the power of eminent domain to take private property for public uses.[xii] The Fifth Amendment to the U.S. Constitution provides a protection

against that power, stating that private property shall not be "taken for public use without just compensation." This protection requires answers to the following constitutional questions:

1. When is private property "taken?"
2. What counts as "public use?"
3. What is "just compensation?"[xiii]

A taking occurs when the government confiscates or physically occupies property, but it also counts as a taking when government regulates or authorizes actions upon property that deny all economically viable use of the property in a way that interferes with reasonable expectations for its use.[xiv] This is common in "zoning ordinances, conditions on development of property, limits on conveyance, rent and rate controls, and imposition of government liability."[xv]

Under the U.S. Constitution, "just compensation" for the taking of property is paid to the owner.[xvi] The amount paid is typically the amount of the loss in terms of market value to the owner at the time of the taking.[xvii] Similarly, the Texas Constitution requires "adequate compensation" for a taking. Both are calculated under a "market value" standard, though the Texas Property Code has several protections in place not present at the federal level.[xviii] For instance, evidence presented for assessing damages to a property owner at a condemnation in Texas hearing "shall" include:

(1) the value of the property being condemned;
(2) the injury to the property owner;
(3) the benefit to the property owner's remaining property; and
(4) the use of the property for the purpose of the condemnation.[xix]

What is a "Public Use?"

Most contentious of the eminent domain protections is the requirement that property be taken only for "public use." This requirement is in the Texas Constitution as well as the U.S. Constitution.[xx] Historically, "public use" was defined narrowly. Indeed, early decisions viewed eminent domain as a "despotic power"[xxi] and expressed the belief that taking private property from one private party to another "is against all reason and justice."[xxii] George Mason University law professor Ilya Somin explains in his book, *The Grasping Hand*, that by the late nineteenth century "a substantial majority [of state supreme courts] endorsed the narrow view of public use," as did the U.S. Supreme Court and legal treatises on the subject.[xxiii]

Within this narrow reading of "public use" is a broad array of historically acceptable uses of eminent domain, including water supply[xxiv], construction of public buildings[xxv], establishing parks and open spaces[xxvi], defense readiness[xxvii], and transportation facilitation. Indeed, "[t]he building of railroads has always been regarded as a public purpose, the promotion of which justifies the taking of private property."[xxviii]

The development of railroads prompted one of the first substantial eminent domain issues in Texas. As one scholar explains, "[t]he development of railroads brought with it improved transportation as well as increased economic growth, and the State readily recognized the need for greater rights afforded to the railroad companies. Thus, from the middle of the nineteenth century and on, Texas was ready and willing to give the railroad companies the land they needed for their expansion."[xxix] The Texas Supreme Court stated the following regarding the power of eminent domain vis-à-vis railroad companies in 1863:

> We suppose it is now an admitted proposition that under the usual grants of power contained in charters of railway companies, such companies have the right to condemn or take in the manner provided by their charters or other laws of the State, such land as may be necessary for their road-ways; and that such appropriation of private property is an application of it to public use, as contemplated by section 14 article 1 of the constitution of this State.[xxx]

Thus, even more than 150 years ago, "[i]t [could not] be questioned that a railroad for general travel, or the transportation of produce for the country at large, is a 'public use,' for the construction of which the private property may be taken[.]"[xxxi] Moreover, objections to the fact that the railroad in that decision was a private corporation did not sway the Court, which explained that "[o]ne of the chief occasions for the exercise of this right of eminent domain by the state is, [to create] the necessary facilities for intercommunication for purposes of travel and commerce."[xxxii] The purpose of eminent domain, the Court explained, is the "public benefit derived from the contemplated improvement, whether such improvement is to be effected directly by agents of the government or through the medium of corporate bodies, or of individual enterprise."[xxxiii]

"Public Use" Decision Sparks Eminent Domain Reform

The Supreme Court's definition of acceptable public use broadened over time, culminating in the controversial decision of *Kelo v. City of New London*.[xxxiv] There, the Court held that "public use" is satisfied so long as the government acts out of a reasonable belief that the taking will benefit the public.[xxxv] Using that standard, the Court in a 5-4 decision ruled that the City of New London's taking of land in order to sell it to a private company—*Pfizer* pharmaceutical company—would benefit the general public through that private company's economic development efforts.[xxxvi] The plaintiff Susette Kelo's house was relocated so that Pfizer could build its new facility, but Pfizer ultimately chose another city, leaving an empty lot where families in homes once resided.[xxxvii]

Although the Supreme Court ruled against property owners in *Kelo*, the decision sparked a national movement among state governments to improve eminent domain laws and protections. As Scott Bullock, the attorney from the Institute for Justice who represented Ms. Kelo, explains:

> Although the Supreme Court failed to protect property owners from eminent domain abuse, a historic national backlash against eminent domain for private gain in the wake of *Kelo* sparked reforms and court decisions in 47 states that better protect private

> property rights. Susette Kelo and her neighbors may have lost their homes, but their fight made a huge impact on the law and the nation to better protect property owners nationwide.[xxxviii]

While public perception and reaction to the *Kelo* decision were all justified, it is worth remembering that *Kelo* was a clear taking of private property for the exclusive benefit of Pfizer, a private company. "Public benefit," while accepted by the Court as a public use, was merely a pretext. Unlike the taking in *Kelo*, there are contexts in which a private company is permitted by government to take private land for *actual* public uses. These include common carriers, such as pipeline owners.[xxxix] They also historically include railroads. Like roads, highways, and airports, even if privately owned, railroads are open to the public as a means of transportation and, thus, do not raise the same objections as the property transfer in *Kelo*.

Eminent Domain Reforms in Texas

Texas was the second state in the nation to pass legislation restricting eminent domain use post-*Kelo*.[xl] During the Second Special Session of the 79th Legislative Session (2005), the Texas Legislature passed Senate Bill 7 (Janek), which amended the Government Code to create "Chapter 2206: Limitations on the Use of Eminent Domain."[xli] Primarily, SB 7 established that private property may not be taken by government or a private entity through the use of eminent domain if the taking:

1) confers a private benefit on a particular private party through the use of the property;
2) is for a public use that is merely a pretext to confer a private benefit on a particular private party; or
3) is for economic development purposes, unless the economic development is a secondary purpose resulting from municipal community development or municipal urban renewal activities to eliminate an existing affirmative harm on society from slum or blighted areas[.][xlii]

This response to *Kelo* directly addressed the taking of private property for the benefit of another private party. It did, however, have shortcomings. For instance, the bill had several exemptions and did "not affect the authority of an entity authorized by law to take private property through the use of eminent domain for: transportation projects, including, but not limited to, railroads, airports, or public roads or highways[.]"[xliii] Thus, SB 7's protections may not apply to property owners affected by the potential use of eminent domain by TCP for the Bullet Train.

SB7 also created a committee directed to study the power and use of eminent domain in Texas in order to recommend additional reforms to future Legislatures.[xliv] The Committee discharged its duties and submitted its findings and recommendations in a Report to the 80th Legislature (Dec. 2006).[xlv] One of its findings was a criticism of SB 7's allowance of eminent domain to address "blighted areas."[xlvi] For a variety of reasons, the power to "blight" (i.e. declare an area blighted in order to use eminent domain) would allow government to take property that does not actually have blight.[xlvii]

A number of eminent domain reforms were filed in the 80th Legislative Session. House Bill 2006 (Woolley | Corte, Frank | Callegari | Cook, Robby | Orr), passed by both the House (125 to 25) and the Senate (unanimous), would have addressed the "blight" loophole and defined "public use" more narrowly, but it was vetoed by Governor Perry, ostensibly because it would have made it more difficult and expensive to acquire land for the Trans-Texas Corridor.[xlviii]

The most notable eminent domain legislation in the 80th Session was the creation of the "Landowner's Bill of Rights," which required the Attorney General to prepare a bill of rights document for landowners whose real property may be acquired by a governmental or private entity.[xlix] The Landowner's Bill of Rights under House Bill 1495 (Callegari | Flynn | Murphy | Crabb) notifies each property owner of the right to:

1) notice of the proposed acquisition of the owner's property;
2) a bona fide good faith effort to negotiate by the entity proposing to acquire the property;
3) an assessment of damages to the owner that will result from the taking of the property;
4) a hearing under Chapter 21, Property Code, including a hearing on the assessment of damages; and
5) an appeal of a judgment in a condemnation proceeding, including an appeal of an assessment of damages.[l]

The Bill of Rights must also include a description of the condemnation proceeding, the condemning entity's obligations to the property owner, the property owners options, including the property owner's right to object to and appeal an amount of damages awarded.[li] Before an entity with eminent domain authority begins negotiating with a property owner to acquire real property, the entity must send a copy of the Landowner's Bill of Rights to the owner.[lii]

The Landowner's Bill of Rights was a beneficial reform for property owners in that it distills a complicated process down to a basic document. However, it created no new additional protections for property owners.

In January 2009, as the 81st Legislative Session began, The Texas Chapter of the Institute for Justice published a report on the continuing eminent domain abuses taking place in Texas.[liii] In an open letter to the Legislature, Matt Miller, the Report's author, made the following plea:

> The time for true eminent domain reform in Texas is now. Our local officials have shown themselves to be unable to resist eminent domain as a way to grease the gears of massive re-imaginings of some of our largest cities.
> . . .
> Rather than government deciding where roads, schools, parks and police stations should be located, local officials have gotten into the business of choosing winners and losers in the development game. The winners are usually wealthy and politically connected, and the losers are usually average citizens who were minding their own business.
> . . .

> Meaningful reform would close the blight loophole that is being exploited. It would make public use a question for judges and not the elected officials in the legislative or executive branches of government—the very individuals who seek to abuse eminent domain. And it would fundamentally recognize that redevelopment is not in and of itself a public use under the Constitution.[liv]

The 81st Texas Legislature passed several eminent domain reforms. House Bill 2685 (Callegari | Leibowitz | Gonzalez Toureilles | Miller, Sid) made a small modification to the Landowner's Bill of Rights, requiring entities with eminent domain authority to provide a copy to landowners "before or at the same time as the entity first represents in any manner to the landowner that the entity possesses eminent domain authority."[lv] Most importantly, however, was House Joint Resolution 14 (Corte, Frank | Hilderbran | Anderson | Paxton | Hughes).

HJR 14 proposed to amend the Texas Constitution with a definition of "public use" which, as introduced, would have ended eminent domain for private gain.[lvi] Instead, an amendment to the Resolution allowed the state to give any entity, including private entities, the power of eminent domain, removing what might have been the most stringent eminent domain requirement in the country, which originally passed by the House 144-0.[lvii] In contrast to the weakening of protections against private takings in HJR 14, the Resolution addressed the "blight" loophole by requiring that each parcel of property being condemned actually be blighted, rather than designation of an entire area for taking.[lviii] Texas voters approved the Constitutional amendment proposed in HJR 14 with 80 percent of voters in favor of the resolution.[lix]

In an article entitled "Texas' Amendment 11: Another Post-Kelo Eminent Domain Reform that Falls Short," Ilya Somin explains that the amendment was little more than 'one of a long series of eminent domain reforms that fall short of actually forbidding the kinds of abuses they supposedly target."[lx] He concedes, though, that it was "a small improvement over Texas' previous almost completely toothless post-Kelo reform law," mostly because of the aforementioned property-by-property blight designation requirement.[lxi] Still, Somin explains, Texas's definition of "blight" remained so broad that the improvement would be minor at best.[lxii] Thus, though Texas continued to move in the right direction, the post-*Kelo* reforms remained incremental.

Significant eminent domain reform passed in the 82nd Legislative Session with Senate Bill 18 (Estes | Duncan). SB 18 placed greater emphasis on the requirement that land only be taken for "public use" instead of the lower "public purpose" standard.[lxiii] More importantly, SB 18 required entities interested in acquiring property through eminent domain to first make a bona fide offer to acquire the property from the owner voluntarily.[lxiv] The offer must be in writing.[lxv] If the owner declines the offer, a final offer must also be made in writing and based on a written appraisal from a certified appraiser of the value of the property being acquired and the damages, if any, to any of the property owner's remaining property.[lxvi] The bill also required condemnation petitions to specifically state the public use for which the land is being taken.[lxvii] Perhaps most importantly, SB 18 created a right for landowners to repurchase their land at the price paid by the condemning entity if the project makes no actual progress within ten

years, or if the land becomes unnecessary for the project.[lxviii] Lastly, SB 18 required all entities claiming eminent domain authority in Texas to file paperwork with the Comptroller's office.[lxix]

In 2015, the 84th Legislature passed Senate Bill 1812 (Kolkhorst), which requires annual updates to the eminent domain database in the Comptroller's office. As of September 2, 2016, the number of entities listed in the database is 5,033.[lxx] TCP is listed in the Comptroller's eminent domain database.[lxxi] Importantly, SB 1812 created new reporting requirements and the database will include whether or not each entity exercised its eminent domain authority in the previous year so that Texans may be more informed about the extent of eminent domain use.[lxxii]

The Current State of Eminent Domain for Texas

On the whole, the post-*Kelo* eminent domain reform movement has been successful, strengthening the rights and bargaining positions of property holders through legislation passed between 2005 and 2015. Furthermore, it appears that the Legislature is not content with current progress of eminent domain reform. Lt. Governor Patrick charged the Senate Committee on State Affairs with the following charge during the interim between the 84th and 85th Legislative Sessions:

> Gather and review data on the compensation provided to private property owners for property purchased or taken by entities with eminent domain authority. Examine the variance, if any, between the offers and the fair market values of properties taken through eminent domain. Make recommendations to ensure property owners are fairly compensated.[lxxiii]

The Committee held a hearing on March 29, 2016, at which the topic of adequate compensation was heavily discussed. Senator Jane Nelson explained at the hearing that, to her, fair market value is "two parties getting together to work out an agreement. But under eminent domain, property owners are forced to negotiate."[lxxiv] The unequal bargaining position appears to be the next target of reformers in the Legislature, as a recent commentary explains:

> Despite reforms made in previous years, representatives of farmers, ranchers and other property rights advocates suggested that those with the power of eminent domain still have the upper hand. They said some parties make lowball early offers to landowners, who are often discouraged from appealing because of high legal fees that process may incur.[lxxv]

Judon Fambrough of the Texas A&M Real Estate Center explained that going to court for an appeal less than $500,000 is rarely worth the time and expense for landowners.[lxxvi] One proposal being considered is to adopt a kind of "loser pay" fee shift for litigants in condemnation proceedings, not unlike loser pay tort reform legislation of 2011.[lxxvii] In theory, this would make it more financially feasible to reject an offer that an owner feels is not adequate. Senate Bill 474 by Senator Kolkhorst (coauthors Birdwell | Burton | Creighton | Estes | Hall | Huffines | Schwertner | Taylor, Van) would have adopted this fee-

shifting proposal.[lxxviii] SB 474 passed the Senate, but failed to pass out of the House Committee on Land and Resource management.[lxxix]

Conclusion

TCP states with respect to construction of the Bullet Train that it "respect[s] and value[s] the property rights of Texas landowners" and "emphasize[s] the importance of identifying and using land adjacent to or within existing rights of way in order to minimize any negative impacts to landowner property."[lxxx] It plans to abide and follow the Landowner's Bill of Rights.[lxxxi] Furthermore, regarding private property, TCP pledges that it "is doing everything possible to avoid negative impacts to landowners."[lxxxii] Avoiding eminent domain takings should clearly be part of that avoidance.

For over 150 years, Texas has recognized that railroads like TCP constitute a public use and are vested with the power of eminent domain. Objections to the use of eminent domain for purposes of building a publicly accessible railroad, while understandable, are not grounded in concern for the type of abuse seen in *Kelo*-style takings. Nevertheless, should TCP ultimately exercise that authority, landowners have significantly stronger protections in place today than they did ten years ago, and the Bullet Train represents an opportunity to assess the current state of eminent domain protections, as this policy brief attempts to do.

ENDNOTES

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[ii] *Ibid.*
[iii] *Ibid.*
[iv] John Fund, "High-Speed Rail Is a Fast Train to Fiscal Ruin, in California and Elsewhere," *National Review* (May 22, 2016). Available at http://www.nationalreview.com/article/435703/high-speed-rail-california-boondoggle.
[v] Mitchell L. Moss & Carson Qing, "The Emergence of the 'Super-Commuter,'" *New York University Wagner School of Public Service* (Feb. 2012). Available at *http://wagner.nyu.edu/files/rudincenter/supercommuter_report.pdf*.
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[viii] "Robert Poole, "Privately Financed High-Speed Rail Line Could be Good for Texas," Star-Telegram (Jun. 9, 2015). Available at http://www.star-telegram.com/opinion/opn-columns-blogs/other-voices/article23614000.html.
[ix] Senate Bill 1601 (84R, Kolkhorst) (5/11/2015 S Not Again Placed on Intent Calendar).
[x] *See* Tex. Transportation Code § 112.002(5).
[xi] House Bill 1889 (84R, Metcalf | Ashby | Wray) (04/23/2015 H Left pending in committee).
[xii] *See* Erwin Chemerinsky, *Constitutional Law Principles and Policies*, 565 (Sixth Ed.).
[xiii] *Id.*
[xiv] *Id.* at 667.
[xv] *Id.*
[xvi] *Id.* at 681.
[xvii] *Id.*
[xviii] Tex. Property Code § 21.042.
[xix] Tex. Property Code § 21.041.
[xx] Tex. Const. Art. 1, § 17.
[xxi] *Vanhorne's Lessee v. Dorrance*, 2 U.S. 304, 307 (1795).
[xxii] *Calder v. Bull*, 3 U.S. 386, 388 (1798).
[xxiii] Ilya Somin, *The Grasping Hand: Kelo v. New London & The Limits of Eminent Domain* (2015).
[xxiv] *e.g., United States v. Great Falls Manufacturing Company*, 112 U.S. 645 (1884)
[xxv] *Kohl v. United States*, 91 U.S. 367, 371 (1875).
[xxvi] *United States v. Gettysburg Electric Ry.*, 160 U.S. 668, 679 (1896).
[xxvii] *e.g. Sharp v. United States*, 191 U.S. 341 (1903)
[xxviii] *Texas Cent. Ry. Co. v. Bowman*, 97 Tex. 417, 79 S.W. 295 (1904).
[xxix] Amanda Buffington Niles, "Eminent Domain And Pipelines in Texas: It's as easy as 1, 2, 3—Common Carriers Gas Utilities, and Gas Corporations," 16 Tex. Wesleyan L. Rev. 271, 275 (Winter 2010).
[xxx] *Buffalo Bayou, Brazos & Colo. R.R. v. Ferris*, 26 Tex. 588, 592 (1863).
[xxxi] *Id.* at 598.
[xxxii] *Id.*
[xxxiii] *Id.* at 598-99.
[xxxiv] *Kelo v. City of New London*, 545 U.S. 469 (2005).
[xxxv] *See* Chemerinsky at 680.
[xxxvi] *See Kelo v. City of New London*, 545 U.S. 469 (2005).
[xxxvii] *See* Richard Epstein, "Kelo v. City of New London Ten Years Later," *National Review* (Jun. 23, 2015). Available at http://www.nationalreview.com/article/420144/kelo-v-city-new-london-ten-years-later-richard-epstein.

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[xl] "Interim Committee to Study the Power of Eminent Domain: Report to the 80th Legislature" (Dec. 2006). Available at http://www.senate.state.tx.us/75r/Senate/commit/c845/c845.InterimReport79.pdf.
[xli] Senate Bill 7 (79 S2, Janek). Text available at http://www.capitol.state.tx.us/tlodocs/792/billtext/html/SB00007F.htm.
[xlii] *Id;* Tex. Gov. Code § 2206(b).
[xliii] *Id*; Tex. Gov. Code § 2206.001(c).
[xliv] *Id.*
[xlv] "Interim Committee to Study the Power of Eminent Domain: Report to the 80th Legislature" (Dec. 2006). Available at http://www.senate.state.tx.us/75r/Senate/commit/c845/c845.InterimReport79.pdf.
[xlvi] *Id.* (The report cited the Government Code's definition of blighted area as "[a]n area that is not a slum area, but that, because of deteriorating buildings, structures, or other improvements; defective or inadequate streets, street layout, or accessibility; unsanitary conditions; or other hazardous conditions, adversely affects the public health, safety, morals, or welfare of the municipality and its residents, substantially retards the provision or a sound and healthful housing environment, or results in an economic or social liability to the municipality."
[xlvii] *Id.*
[xlviii] Governor Perry's veto statement reads as follows: "House Bill No. 2006 contains two provisions that would vastly expand the cost to Texas taxpayers of public projects to the point where they grossly outweigh the bill's benefits." House Research Organization, "Vetoes of Legislation – 80th Legislature," *Texas House of Representatives* (Jul. 9, 2007). Available at http://www.hro.house.state.tx.us/pdf/focus/veto80-6.pdf.
[xlix] House Bill 1495 (80R, Callegari | Flynn | Murphy | Crabb).
[l] *Id.*
[li] *Id.*
[lii] *Id.*
[liii] Matt Miller, "They Want to Erase us Out: The Faces of Eminent Domain Abuse in Texas," *Institute for Justice Texas Chapter* (Jan. 2009). Available at http://ij.org/wp-content/uploads/2015/03/tx-report-1.pdf.
[liv] *Ibid.*
[lv] House Bill 2685 (81R, Callegari | Leibowitz | Gonzalez Toureilles | Miller, Sid).
[lvi] The introduced version of HJR 14, which would have amended the Texas Constitution as follows: "(b) The State or a political subdivision of the State that takes, damages, or destroys property **must prove by clear and convincing evidence that the contemplated use of the property is public and necessary** at the time an attempt is made to take, damage, or destroy the property. **Whether the contemplated use is in fact public and necessary shall be a judicial question**." House Joint Resolution 14 (81R) (emphasis added). Available at http://www.capitol.state.tx.us/tlodocs/81R/billtext/html/HJ00014I.htm.
[lvii] House Joint Resolution 14 (81R). Final text available at http://www.capitol.state.tx.us/tlodocs/81R/billtext/html/HJ00014F.htm.
[lviii] *Ibid.*
[lix] Sarah Miley, "Texas Voters Approve Amendment Limiting Eminent Domain," *Jurist* (Nov. 4, 2009). Available at http://www.jurist.org/paperchase/2009/11/texas-voters-approve-amendment-limiting.php.
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[lxii] *Ibid.*
[lxiii] Senate Bill 18 (82R, Estes | Duncan).
[lxiv] *Ibid.*
[lxv] *Ibid.*
[lxvi] *Ibid.*
[lxvii] *Ibid.*
[lxviii] *Ibid.*
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[lxx] http://comptroller.texas.gov/webfile/eminent-domain/
[lxxi] See entries http://coedd.cpa.texas.gov/view/20160728094011120; http://coedd.cpa.texas.gov/view/20160720165421347.
[lxxii] Senate Bill 1812 (84R).
[lxxiii] "84th Senate Interim Charges, Part 1" *Office of Lieutenant Governor of Texas Dan Patrick* (Oct. 8, 2016). Available at https://www.ltgov.state.tx.us/2015/10/08/lt-governor-patrick-announces-first-set-of-interim-charges//

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[lxxv] *Ibid.*
[lxxvi] *Ibid.*
[lxxvii] *See* Kathleen Hunker, "The Landowners Strike Back: How the Reimbursement of Attorney Fees Reinforces Eminent Domain Reform," *Texas Public Policy Foundation* (Mar. 2015). Available at http://www.texaspolicy.com/library/doclib/The-landowners-strike-back.pdf.
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[lxxix] *See* Senate Bill 474 History. Available at http://www.capitol.state.tx.us/BillLookup/history.aspx?LegSess=84R&Bill=SB474.
[lxxx] *See* "Learn the Facts," *TexasCentral.com*. Available at http://www.texascentral.com/facts/.
[lxxxi] *Ibid.*
[lxxxii] *Ibid.*