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### Limits on property seizures debated

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State lawmakers feeling the heat for overburdening the working class are taking a stand for the average Joe — and his property.

They, along with federal lawmakers, are considering proposals to protect homes and businesses from being seized by governments merely for economic development, a practice that Texas law has allowed for decades.

"They have been criticized for deals on retirement, school finance and property taxes that don't help the great majority of people," said Bruce Buchanan, a political science professor at the University of Texas.

"Here's a chance to do something that is a little bit more in the stream of helping the little guy."

Last month, the U.S. Supreme Court thrust eminent domain into the national spotlight when it clarified in a 5-4 vote that local governments may take private homes and businesses for economic development.

Texas Gov. Rick Perry quickly made the issue a priority for state lawmakers already gathered in a special session.

"One of the most basic rights in Texas is the right to own property, and government shouldn't be able to take that away to pad its tax coffers," he said.

The state Senate has approved a bill to limit governments' ability to take private property to spur economic development. The House approved putting a proposed constitutional amendment on the issue before voters.

Each version must be approved by the other chamber before the special session ends Wednesday. Both proposals allow Arlington to move forward with condemnation plans to build a Dallas Cowboys stadium, which voters agreed to help fund.

In Washington, federal lawmakers are considering a bill that would cut off federal funds for cities that use eminent domain for economic development projects.

U.S. Rep. Kay Granger, R-Fort Worth, said legislators need to move carefully to allow flexibility when cities need it and enable economic development in blighted areas.

"I want to make sure it is helpful and not harmful," Granger said. "I don't want a situation where we pass a law that makes it less clear."

#### Local projects

At stake could be projects around the state, such as Freeport's plan to seize the land of two seafood companies along the Old Brazos River to make way for a multimillion-dollar private marina.

Some fear that the proposed legislation could hurt or derail Fort Worth's \$435 million plan to create a 33-acre lake and river bypass channel north of downtown.

At issue is whether the project is for flood control or economic development.

Tarrant Regional Water District officials say the project is needed to prevent catastrophic flooding. But property owners fear that the main focus is redeveloping the area, creating multilevel apartment complexes and riverfront office towers.

Corsicana attorney Glenn **Sodd**, who is advising some of the 80 property owners who will have to move if the project goes ahead, said the district's use of eminent domain may hinge on Texas courts' deciding what the project's purpose is.

"Hundreds of millions of dollars are not being spent just to make the levees stronger," said **Sodd**, who noted that the Corps of Engineers set aside a \$10 million flood-control plan in favor of the Trinity River Vision. "Ninety-nine percent of that project is all about economic development."

Proposed federal legislation could also hurt the project, which is slated to receive \$110 million in federal funds for flood control.

Another key local project, the Southwest Parkway toll road, may avoid being affected by the current legislation, said Michael Weaver, project manager for Austin-based Prime Strategies, which handles the project for the city.

That's because Supreme Court rulings and legislative proposals focus on taking private property for a separate private purpose, he said.

"That's certainly not what the city of Fort Worth will be doing with the Southwest Parkway," Weaver said. "This will be taking property for a public purpose."

Likewise, a key Texas road project — the Trans-Texas Corridor — may not be affected, said Mike Cox, a spokesman for the Texas Department of Transportation.

Private companies will develop the corridor — as toll roads, rail lines or utility corridors — in exchange for collecting fees or tolls for many years. But the land is owned by the state and considered public property.

The first piece of the corridor — which could be under construction by 2007 and finished by 2015 — will connect North Texas to San Antonio through a toll road.

As for the new Cowboys stadium, proposed legislation protects the project, allowing officials to use eminent domain as planned to acquire land.

But residents have hired lawyers to defend their rights.

Dallas attorney Bob Cohen, who represents owners of 53 properties in the estimated 200-acre area, said he hopes that the Legislature can stop eminent domain.

"I will be sending money to the Legislature to stop this," he said. "It's wrong."

**Sodd** represents several apartment owners and residents living in the path of the stadium. He said taking property for the project violates the Texas Constitution because the stadium doesn't benefit the public.

"It would be different if they were building a highway, school or fire station," he said. "The

land is being taken essentially to be given to a football team."

**Sodd** said that if his clients felt they were being fairly compensated, they would be more likely to agree to the city's terms. But it's cheaper for the city to condemn the land and take it than it is to make fair deals, he said.

"Basically, these people are being run out of town," he said.

A longtime practice

Local governments have long been able to claim private property for government use.

The Fifth Amendment to the Constitution allows the practice — primarily for public use, such as roads, schools and bridges — as long as property owners receive fair market value for losing their property without their consent.

Texas cities have been able to acquire private property for economic development since lawmakers approved the Development Corporation Act of 1979.

"Generally, cities have the authority to use eminent domain for any public purpose," Fort Worth City Attorney David Yett said. "Cities also have been able to use the power for economic development.

"It's a power you have to use judiciously and only as a last resort," he said. "If you need property for any public purpose, you try to acquire it. You're only allowed to use [eminent domain] if good-faith negotiations don't lead to resolution."

And if state or federal lawmakers change cities' authority to use eminent domain, it would dilute elected officials' ability to make important decisions for their communities, Yett said.

Fort Worth Chamber of Commerce officials worry that proposed legislation could cripple needed community projects even though eminent domain is being used prudently.

"If used correctly, eminent domain has provided some great movement for communities in the economic development arena," said David Berzina, executive vice president of economic development. "We hate to see that potential limited."

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Kay Granger

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