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Eminent domain looks less imminent

House passes bill that could prevent private industry from using land seizures.

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By Shaheen Pasha, CNN/Money staff writer

NEW YORK (CNN/Money) - Legislation to put the kibosh on land developers seizing private property for private use is moving closer to enactment.

The House voted 376-38 Thursday to approve the Private Property Rights Protection Act of 2005 --a bill cosponsored by 98 members of Congress that would prohibit states and local communities that receive federal economic development to invoke eminent domain as a means for private industry to build private businesses. A companion measure has been introduced in the Senate.

Eminent domain, under the House bill, would only allow federal funds for economic development such as building roads and hospital, acquiring abandoned property and revitalizing a blighted area.

The House bill would also allow private property owners the right to sue the appropriate government entity if they were stripped of their land through the use of eminent domain and later found that the land was given to a private developer.

Bill could hamper big business

David Snyder, an eminent domain attorney and partner at Fox Rothschild LLP said any legislation would have a profound effect on business.

"Private developers will have to be very focused on the way they deal with development in blighted areas," he said. "If they were planning on homes, that may not be problem but if you're looking to not only increase residential properties in a community," but promote commerce by opening shopping malls and supermarkets, they may have a tough time meeting the new standards under the bill.

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The controversial practice of eminent domain stoked a bipartisan fire in Congress after the Supreme Court ruled in June that local governments have the right to transfer property from homeowners to private developers to build properties such as residences or businesses that are ultimately deemed to be in the public's best interest by improving economic development.

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In the landmark Supreme Court case, *Kelo vs. City of New London*, the Supreme Court said the City of New London was within its rights to condemn and seize the property of nine citizens and provide that land to Pfizer for a \$300 million research facility, which was included in the city's new development plan.

That fanned widespread fear that retailers such as [Wal-Mart \(Research\)](#) or [Target \(Research\)](#) will convince local governments to expand the scope of public use to include commercial entities such as shopping malls or independent retail stores, making it easier for these businesses to expand into markets where there is little open space to build new stores.

Local governments have increasingly argued that the jobs creation and tax revenue generated by private industry projects are in the interest of local communities and therefore constitute public use.

Snyder said the legislation as it stands would make it impossible for another Kelo-type development in the future.

Critics see bill as overly broad

But opponents of the legislation say that the House bill is too broad in its definition of economic development and could halt important economic projects in cities and towns.

In a letter to the Senate, Hartford, Conn., Mayor Eddie Perez wrote that the definition of economic development in the bill "has been so broadly written it may ban the use of eminent domain in any project that creates jobs or improves the general economic health of our city."

He added that urban communities that are already fully built out need eminent domain for revitalization and federal funds are necessary to improve those cities.

Eminent domain supporters contend that local governments often have to partner with private entities for the ultimate benefit of the community.

And Marilyn Mohrman-Gillis, director of policy and federal relations at the National League of Cities, said eminent domain as a general practice has been sparingly used by elected officials and accompanied by due process and just compensation for the seized property.

She added that the practice has been around for over 20 years without any indication of widespread abuse.

"There is no one-size-fits-all type of definition for economic development" she said. "This is a states' rights issue and the states, not the federal government, should be allowed to develop a working definition that takes into consideration the projects that are going on."

Despite protests, a change is expected to pass Congress. The House bill received the

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support of Bush administration Thursday, which said in a statement that "private property rights are the bedrock of the nation's economy and enjoy constitutionally protected status."

The legislation would, in essence, negate the Supreme Court's ruling on Kelo.

"Local governments may have won the battle in Kelo but they clearly are losing the war," Snyder said. "The backlash has been extreme and it's clear that once the dust settled, the pendulum has swung back in favor of property owner groups."

-- Reuters contributed to this report.

Will eminent domain be used to rebuild hurricane-ravaged Gulf Coast? Click [here](#) for that story.

To find out more about the aftermath of the Kelo v. New London ruling, click [here](#). ■

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