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## Legislature, governor tinker with eminent domain

**By Timothy Sandefur - Special To The Bee**  
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The U.S. Supreme Court's notorious 2005 decision in *Kelo v. New London* allowed state and local governments to condemn private land and transfer it to developers to construct shopping centers or other private development. The ruling led to a nationwide outcry, and last week voters in nine states adopted new restrictions on eminent domain to prevent such abuses.

In September, Gov. Arnold Schwarzenegger signed five bills that he claimed would rein in abuses of eminent domain in California. Unfortunately, these laws accomplish little -- they simply tinker with procedural details while leaving the state's abusive redevelopment industry intact.

For example, SB 1206 is supposed to narrow the legal definition of "blight"-- an important step because current law defines that term so vaguely that virtually anything can qualify. Once politicians declare a neighborhood "blighted," they can use eminent domain to take any land there and give it to developers.

However, the new law does not fix the problem. Instead, it allows officials to declare property blighted whenever they think there are "abnormally low lease rates," "conditions that prevent or substantially hinder the viable use or capacity of buildings" or "nearby incompatible land uses that prevent the development of ... the project area." What qualifies as "viable," "abnormal" or "incompatible" is still left to politicians to decide.

The bill also requires cities to file various reports whenever they propose to redevelop neighborhoods, but in practice, this does virtually nothing to restrict their almost unlimited power to redistribute land.

SB 53 is even less effective. Under current law, once a neighborhood is declared "blighted," that designation applies indefinitely, allowing officials to seize the land at any time. But while the new law claims to put a time limit on blight designations, it actually gives government unlimited authority to renew them at any time. Nor does it put any actual limits on eminent domain. In fact, SB 53 declares that cities "may" refrain "from acquiring by eminent domain specified types of real property, including ... residential property." That's right -- politicians "may" decide not to take your home. But if they want to, this new law won't stop them.

SB 1210 requires government to pay a property owner's attorney's fees if a court later finds that the government failed to offer the owner a reasonable amount for the land. How come it doesn't define "reasonable" or change existing "quick take" rules that unfairly block property owners from challenging the government's right to seize their land in the first place? "Quick take" procedures allow government to take land immediately by depositing the amount it estimates the property to be worth into a bank account controlled by the court. Property owners are not allowed to touch the money unless they waive their right to challenge the taking. Given such rules, most property owners -- knowing how hard it is to beat city hall -- take the money and give up. The new legislation leaves this unfairness in place.

SB 1650 and SB 1809 are even less limiting on eminent domain. The first restricts government's power to change the use of land after it has been taken, and the second requires government to file a disclosure notice with a county recorder when it targets a neighborhood for redevelopment.

But neither creates any actual protection for people whose homes and businesses might be taken by bureaucrats who want to give that land to someone else.

According to a June report by the Castle Coalition, the nonprofit group that litigated the Kelo case before the U.S. Supreme Court, California officials have seized 50 properties for transfer to private developers and have threatened to condemn 296 more in the 16 months since Kelo was decided.

In that same period, more than half of the other states have enacted new restrictions on eminent domain. Yet California's lawmakers don't seem to think the issue is important enough to act. They spent 2006 shooting down any attempt at genuine reform, substituting instead these five insignificant changes that leave home and business owners vulnerable to unfair takings.

Meanwhile, Proposition 90 -- a clumsily written attempt to restrict eminent domain abuse -- was narrowly defeated at the ballot box last week. That initiative would have provided powerful protection against use of eminent domain for wholesale "redevelopment," and would also have required government to compensate property owners when it deprives them of their property rights through regulation as well as when it uses eminent domain to take their land outright.

This is a controversial idea, yet despite that fact, and despite the initiative's many technical flaws, about 3.3 million Californians said "yes" to it, indicating they are outraged over government's ravenous appetite for land. Window dressing like the five new eminent domain laws is unlikely to appease their desire for reform.

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