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Lawmakers urge limits on eminent domain rule

Owners of seized land would get 3 times value

By **TOM HUMPHREY**, tomhumphrey3@aol.com
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NASHVILLE - Inspired by a recent U.S. Supreme Court decision, state legislators are lining up to crusade for new restrictions on governmental authority to take private property.

Some question the need for new restrictions in Tennessee, contending cities, counties and state government are already restrained in using eminent domain powers. But some legislators flatly disagree and others say new restrictions are needed as a precaution against future governmental greed.

State Rep. Frank Niceley, R-Strawberry Plains, appears to be one of the most active in the crowd of lawmakers moving to push a private property rights agenda in the next legislative session.

Working with other Knoxville-area lawmakers, Niceley said he is drafting a five-proposal package - including a resolution declaring the U.S. Supreme Court decision "nullified" in Tennessee and a bill that would require government to pay the owner of seized property three times the appraised value.

Sen. Mae Beavers, R-Mount Juliet, has proposed a state constitutional amendment - a notion that others, including Niceley, are also embracing.

Legislators credit the court decision, which authorized the taking of property in Connecticut to be developed by other private interests, for bringing the issue to the forefront.

"Property rights has always been one of my big issues, but you could never get people emotional about it," Niceley said. "But once they made that court decision - deciding that any local government can basically auction off your property to the highest bidder - there's a lot of emotion."

"It's Republicans, Democrats, Libertarians. Everybody's mad," said Niceley.

John Emison, president of Knoxville-based Citizens for Home Rule, urged Gov. Phil Bredesen in a letter to quickly "adopt a policy that will ensure no one in Tennessee will lose their property by eminent domain to big corporations."

Bredesen had not received the letter and thus has not responded, according to gubernatorial spokeswoman Lydia Lenker, but the governor is eyeing the issue.

"It's certainly understandable why this issue is getting a lot of attention," Lenker said. "We will carefully study the recent Supreme Court ruling to see what impact it will have on the state's laws and policies."

In Tennessee, the General Assembly basically has all authority over eminent domain with any powers exercised by state government and local governments dependent on legislation, said Sam Edwards, who has studied the issue extensively as executive director of the Greater Nashville Regional Council.

"Tennessee history has shown, in the years I've worked around the General Assembly, that they are very cautious in granting the right of eminent domain to any group" in statutes, said Edwards. "I don't know of any real abuses in our state."

But Niceley cites an example from years ago when the city of Knoxville, he says, "took the old Gateway bookstore and gave it to Jake Butcher," a banker who later wound up serving a prison sentence.

The Tennessee Municipal League, which represents city governments statewide in lobbying the Legislature, has not taken a position on any of the pending legislation, but it is certain to be a subject of high interest at coming board meetings, said Carol Graves, TML communications director.

"We feel like local governments use eminent domain in Tennessee as a last resort and it is not a power that is taken lightly," she said.

Graves pointed out a National League of Cities statement that somewhat downplays the significance of the U.S. Supreme Court decision, known as the Kelo case.

"The rumors of the death of property rights are greatly exaggerated; in fact, the Kelo decision may have the opposite effect," the statement says. "Cities are now under the spotlight when it comes to eminent domain. They better do it right, or they'll pay the price."

Tennessee's constitution has only a brief reference to the taking of property by governments, stating in its declaration of rights "that no man's particular services shall be demanded, or property taken, or applied to public use, without the consent of his representatives, or without just compensation being made therefore."

The thrust of most proposed state legislation is to simply declare what is, and is not, a valid "public purpose" where a city, county or state government can take property.

A bill prepared for Sen. Tommy Kilby, D-Wartburg, forbids condemnation of property "for the purpose of transferring or leasing of such properties to a private developer, corporation, or other nongovernmental entity solely or principally for the expansion of tax revenue, increase in taxable value of such property or the promotion of economic development."

"I appreciate our cities and counties acting wisely in eminent domain use in the past," said Kilby. "But this Supreme Court ruling could create a more aggressive attitude and I think our citizens need the fullest protection of the law."

Kilby said he thinks a state constitutional amendment is unnecessary and a statute passed by the Legislature "will provide adequate protection."

Other legislators, however, say a state constitutional amendment would assure long-term protection against improper taking of property. But since a constitutional amendment could be approved no sooner than 2010 under the complicated system for amendments, they want to proceed promptly with statutes now.

Niceley said he has worked with state Sen. Jamie Hagood, R-Knoxville, on a "first step" bill to define a "public purpose" that would have to be shown before eminent domain can be employed. No one questions the need for the procedure for things such as roads, sewer lines and an airport, he said.

But even in those cases, Niceley said, owners should get extra compensation when they are involuntarily moved off their property. He proposes a bill setting payment at three times the appraised value in all condemnation cases.

Such an enhanced payment, he said, would help make up for the "trauma" of being forced to relocate. Simply paying the appraised value, he said, also does not cover associated costs of moving, hiring a lawyer to contest the price and other factors.

Niceley said he also plans to introduce a resolution to nullify the U.S. Supreme Court ruling within Tennessee, comparing such a move to Thomas Jefferson and James Madison leading efforts in Virginia and Kentucky to nullify the Alien and Sedition Acts approved by Congress in 1798. One of the acts made it a crime to print "any false, scandalous and malicious writing" and led to the arrest of several newspaper editors.

Though acknowledging such a move "might be symbolic," he said it would "provide a history lesson for everybody" and that he believes states should have a right - and arguably do - to nullify federal actions within their own borders.

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