

CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

MAY 02 2011

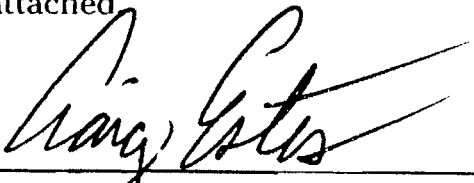
Date

Honorable David Dewhurst
President of the Senate


Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on SB 18 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.



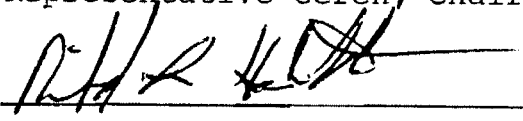
Senator Estes, Chair



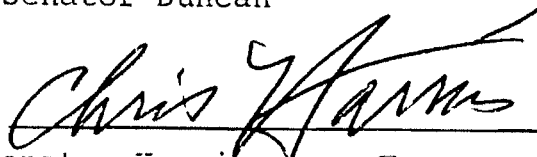
Representative Geren, Chair



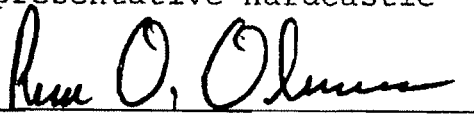
Senator Duncan



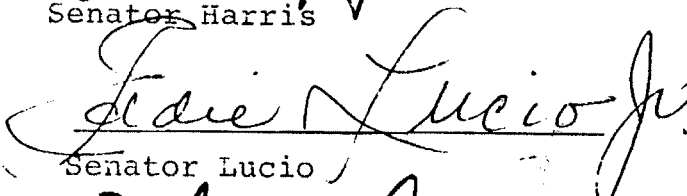
Representative Hardcastle



Senator Harris



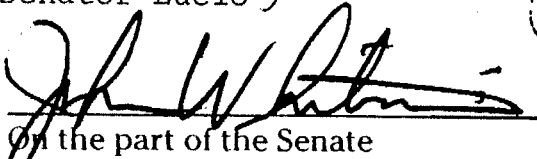
Representative Oliveira



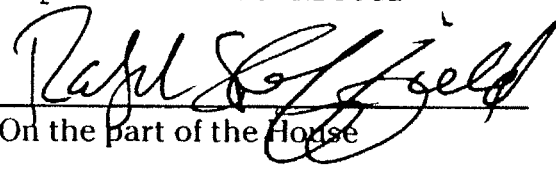
Senator Lucio



Representative Ritter



On the part of the Senate
Senator Whitmire



On the part of the House
Representative Sheffield

Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

CONFERENCE COMMITTEE REPORT

3rd Printing

S.B. No. 18

A BILL TO BE ENTITLED

AN ACT

relating to the use of eminent domain authority.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 11.155(a), Education Code, is amended to read as follows:

(a) An independent school district may, by the exercise of the right of eminent domain, acquire the fee simple title to real property [~~for the purpose of securing sites~~] on which to construct school buildings or for any other public use [~~purpose~~] necessary for the district.

SECTION 2. Chapter 2206, Government Code, is amended to read as follows:

CHAPTER 2206. [~~LIMITATIONS ON USE OF~~] EMINENT DOMAIN

SUBCHAPTER A. LIMITATIONS ON PURPOSE AND USE OF PROPERTY ACQUIRED THROUGH EMINENT DOMAIN

Sec. 2206.001. LIMITATION ON EMINENT DOMAIN FOR PRIVATE PARTIES OR ECONOMIC DEVELOPMENT PURPOSES. (a) This section applies to the use of eminent domain under the laws of this state, including a local or special law, by any governmental or private entity, including:

(1) a state agency, including an institution of higher education as defined by Section 61.003, Education Code;

(2) a political subdivision of this state; or

(3) a corporation created by a governmental entity to act on behalf of the entity.

1 (b) A governmental or private entity may not take private
2 property through the use of eminent domain if the taking:

3 (1) confers a private benefit on a particular private
4 party through the use of the property;

5 (2) is for a public use that is merely a pretext to
6 confer a private benefit on a particular private party; ~~[or]~~

7 (3) is for economic development purposes, unless the
8 economic development is a secondary purpose resulting from
9 municipal community development or municipal urban renewal
10 activities to eliminate an existing affirmative harm on society
11 from slum or blighted areas under:

12 (A) Chapter 373 or 374, Local Government Code,
13 other than an activity described by Section 373.002(b)(5), Local
14 Government Code; or

15 (B) Section 311.005(a)(1)(I), Tax Code; or

16 (4) is not for a public use.

17 (c) This section does not affect the authority of an entity
18 authorized by law to take private property through the use of
19 eminent domain for:

20 (1) transportation projects, including, but not
21 limited to, railroads, airports, or public roads or highways;

22 (2) entities authorized under Section 59, Article XVI,
23 Texas Constitution, including:

24 (A) port authorities;

25 (B) navigation districts; and

26 (C) any other conservation or reclamation
27 districts that act as ports;

1 (3) water supply, wastewater, flood control, and
2 drainage projects;

3 (4) public buildings, hospitals, and parks;

4 (5) the provision of utility services;

5 (6) a sports and community venue project approved by
6 voters at an election held on or before December 1, 2005, under
7 Chapter 334 or 335, Local Government Code;

8 (7) the operations of:

9 (A) a common carrier pipeline [~~subject to Chapter~~
10 ~~111, Natural Resources Code, and Section B(3)(b), Article 2.01,~~
11 ~~Texas Business Corporation Act~~]; or

12 (B) an energy transporter, as that term is
13 defined by Section 186.051, Utilities Code;

14 (8) a purpose authorized by Chapter 181, Utilities
15 Code;

16 (9) underground storage operations subject to Chapter
17 91, Natural Resources Code;

18 (10) a waste disposal project; or

19 (11) a library, museum, or related facility and any
20 infrastructure related to the facility.

21 (d) This section does not affect the authority of a
22 governmental entity to condemn a leasehold estate on property owned
23 by the governmental entity.

24 (e) The determination by the governmental or private entity
25 proposing to take the property that the taking does not involve an
26 act or circumstance prohibited by Subsection (b) does not create a
27 presumption with respect to whether the taking involves that act or

1 circumstance.

2 Sec. 2206.002. LIMITATIONS ON EASEMENTS. (a) This section
3 applies only to an easement acquired by an entity for the purpose of
4 a pipeline to be used for oil or gas exploration or production
5 activities.

6 (b) A property owner whose property is acquired through the
7 use of eminent domain under Chapter 21, Property Code, for the
8 purpose of creating an easement through that owner's property may
9 construct streets or roads, including gravel, asphalt, or concrete
10 streets or roads, at any locations above the easement that the
11 property owner chooses.

12 (c) The portion of a street or road constructed under this
13 section that is within the area covered by the easement:

14 (1) must cross the easement at or near 90 degrees; and

15 (2) may not:

16 (A) exceed 40 feet in width;

17 (B) cause a violation of any applicable pipeline
18 regulation; or

19 (C) interfere with the operation and maintenance
20 of any pipeline.

21 (d) At least 30 days before the date on which construction
22 of an asphalt or concrete street or road that will be located wholly
23 or partly in an area covered by an easement used for a pipeline is
24 scheduled to begin, the property owner must submit plans for the
25 proposed construction to the owner of the easement.

26 (e) Notwithstanding the provisions of this section, a
27 property owner and the owner of the easement may agree to terms

1 other than those stated in Subsection (c).

2 SUBCHAPTER B. PROCEDURES REQUIRED TO INITIATE
3 EMINENT DOMAIN PROCEEDINGS

4 Sec. 2206.051. SHORT TITLE. This subchapter may be cited as
5 the Truth in Condemnation Procedures Act.

6 Sec. 2206.052. APPLICABILITY. The procedures in this
7 subchapter apply only to the use of eminent domain under the laws of
8 this state by a governmental entity.

9 Sec. 2206.053. VOTE ON USE OF EMINENT DOMAIN. (a) Before a
10 governmental entity initiates a condemnation proceeding by filing a
11 petition under Section 21.012, Property Code, the governmental
12 entity must:

13 (1) authorize the initiation of the condemnation
14 proceeding at a public meeting by a record vote; and

15 (2) include in the notice for the public meeting as
16 required by Subchapter C, Chapter 551, in addition to other
17 information as required by that subchapter, the consideration of
18 the use of eminent domain to condemn property as an agenda item.

19 (b) A single ordinance, resolution, or order may be adopted
20 for all units of property to be condemned if:

21 (1) the motion required by Subsection (e) indicates
22 that the first record vote applies to all units of property to be
23 condemned; and

24 (2) the minutes of the governmental entity reflect
25 that the first vote applies to all of those units.

26 (c) If more than one member of the governing body objects to
27 adopting a single ordinance, resolution, or order by a record vote

1 for all units of property for which condemnation proceedings are to
2 be initiated, a separate record vote must be taken for each unit of
3 property.

4 (d) For the purposes of Subsections (a) and (c), if two or
5 more units of real property are owned by the same person, the
6 governmental entity may treat those units of property as one unit of
7 property.

8 (e) The motion to adopt an ordinance, resolution, or order
9 authorizing the initiation of condemnation proceedings under
10 Chapter 21, Property Code, must be made in a form substantially
11 similar to the following: "I move that the (name of governmental
12 entity) authorize the use of the power of eminent domain to acquire
13 (describe the property) for (describe the public use)." The
14 description of the property required by this subsection is
15 sufficient if the description of the location of and interest in the
16 property that the governmental entity seeks to acquire is
17 substantially similar to the description that is or could properly
18 be used in a petition to condemn the property under Section 21.012,
19 Property Code.

20 (f) If a project for a public use described by Section
21 2206.001(c)(3) will require a governmental entity to acquire
22 multiple tracts or units of property to construct facilities
23 connecting one location to another location, the governing body of
24 the governmental entity may adopt a single ordinance, resolution,
25 or order by a record vote that delegates the authority to initiate
26 condemnation proceedings to the chief administrative official of
27 the governmental entity.

1 (g) An ordinance, resolution, or order adopted under
2 Subsection (f) is not required to identify specific properties that
3 the governmental entity will acquire. The ordinance, resolution,
4 or order must identify the general area to be covered by the project
5 or the general route that will be used by the governmental entity
6 for the project in a way that provides property owners in and around
7 the area or along the route reasonable notice that the owners'
8 properties may be subject to condemnation proceedings during the
9 planning or construction of the project.

10 SUBCHAPTER C. EXPIRATION OF CERTAIN EMINENT DOMAIN AUTHORITY

11 Sec. 2206.101. REPORT OF EMINENT DOMAIN AUTHORITY;
12 EXPIRATION OF AUTHORITY. (a) This section does not apply to an
13 entity that was created or that acquired the power of eminent domain
14 on or after December 31, 2012.

15 (b) Not later than December 31, 2012, an entity, including a
16 private entity, authorized by the state by a general or special law
17 to exercise the power of eminent domain shall submit to the
18 comptroller a letter stating that the entity is authorized by the
19 state to exercise the power of eminent domain and identifying each
20 provision of law that grants the entity that authority. The entity
21 must send the letter by certified mail, return receipt requested.

22 (c) The authority of an entity to exercise the power of
23 eminent domain expires on September 1, 2013, unless the entity
24 submits a letter in accordance with Subsection (b).

25 (d) Not later than March 1, 2013, the comptroller shall
26 submit to the governor, the lieutenant governor, the speaker of the
27 house of representatives, the presiding officers of the appropriate

1 standing committees of the senate and the house of representatives,
2 and the Texas Legislative Council a report that contains:

3 (1) the name of each entity that submitted a letter in
4 accordance with this section; and

5 (2) a corresponding list of the provisions granting
6 eminent domain authority as identified by each entity that
7 submitted a letter.

8 (e) The Texas Legislative Council shall prepare for
9 consideration by the 84th Legislature, Regular Session, a
10 nonsubstantive revision of the statutes of this state as necessary
11 to reflect the state of the law after the expiration of an entity's
12 eminent domain authority effective under Subsection (c).

13 SECTION 3. Section 251.001(a), Local Government Code, is
14 amended to read as follows:

15 (a) When the governing body of a municipality considers it
16 necessary, the municipality may exercise the right of eminent
17 domain for a public use [~~purpose~~] to acquire public or private
18 property, whether located inside or outside the municipality, for
19 any of the following uses [~~purposes~~]:

20 (1) the providing, enlarging, or improving of a
21 municipally owned city hall; police station; jail or other law
22 enforcement detention facility; fire station; library; school or
23 other educational facility; academy; auditorium; hospital;
24 sanatorium; market house; slaughterhouse; warehouse; elevator;
25 railroad terminal; airport; ferry; ferry landing; pier; wharf;
26 dock or other shipping facility; loading or unloading facility;
27 alley, street, or other roadway; park, playground, or other

1 recreational facility; square; water works system, including
2 reservoirs, other water supply sources, watersheds, and water
3 storage, drainage, treatment, distribution, transmission, and
4 emptying facilities; sewage system including sewage collection,
5 drainage, treatment, disposal, and emptying facilities; electric
6 or gas power system; cemetery; and crematory;

7 (2) the determining of riparian rights relative to the
8 municipal water works;

9 (3) the straightening or improving of the channel of
10 any stream, branch, or drain;

11 (4) the straightening, widening, or extending of any
12 alley, street, or other roadway; and

13 (5) ~~for~~ any other municipal public use ~~[purpose]~~ the
14 governing body considers advisable.

15 SECTION 4. Section 261.001(a), Local Government Code, is
16 amended to read as follows:

17 (a) A county may exercise the right of eminent domain to
18 condemn and acquire land, an easement in land, or a right-of-way if
19 the acquisition is necessary for the construction of a jail,
20 courthouse, hospital, or library, or for another public use
21 ~~[purpose]~~ authorized by law.

22 SECTION 5. Section 263.201(c), Local Government Code, is
23 amended to read as follows:

24 (c) The declaration of taking must contain:

25 (1) a declaration that the land or interest in land
26 described in the original petition is taken for a public use
27 ~~[purpose]~~ and for ultimate conveyance to the United States;

1 (2) a description of the land sufficient for the
2 identification of the land;

3 (3) a statement of the estate or interest in the land
4 being taken;

5 (4) a statement of the public use to be made of the
6 land;

7 (5) a plan showing the land being taken; and

8 (6) a statement of the amount of damages awarded by the
9 special commissioners, or by the jury on appeal, for the taking of
10 the land.

11 SECTION 6. Section 273.002, Local Government Code, is
12 amended to read as follows:

13 Sec. 273.002. CONDEMNATION. Condemnation of property under
14 this chapter shall be in accordance with state law relating to
15 eminent domain, which may be Chapter 21, Property Code, or any other
16 state law governing and relating to the condemnation of land for
17 public use [~~purpose~~] by a municipality.

18 SECTION 7. Section 21.0111, Property Code, is amended to
19 read as follows:

20 Sec. 21.0111. DISCLOSURE OF CERTAIN INFORMATION REQUIRED;
21 INITIAL OFFER. (a) An [~~A governmental~~] entity with eminent domain
22 authority that wants to acquire real property for a public use
23 shall, by certified mail, return receipt requested, disclose to the
24 property owner at the time an offer to purchase or lease the
25 property is made any and all [~~existing~~] appraisal reports produced
26 or acquired by the [~~governmental~~] entity relating specifically to
27 the owner's property and prepared in the 10 years preceding the date

1 of the [~~used in determining the final valuation~~] offer.

2 (b) A property owner shall disclose to the [~~acquiring~~
3 ~~governmental~~] entity seeking to acquire the property any and all
4 current and existing appraisal reports produced or acquired by the
5 property owner relating specifically to the owner's property and
6 used in determining the owner's opinion of value. Such disclosure
7 shall take place not later than the earlier of:

8 (1) the 10th day after the date [~~within 10 days~~] of
9 receipt of an appraisal report; or

10 (2) the third business day before the date of a special
11 commissioner's hearing if an appraisal report is to be used at the
12 [~~reports but no later than 10 days prior to the special~~
13 ~~commissioner's~~] hearing.

14 (c) An entity seeking to acquire property that the entity is
15 authorized to obtain through the use of eminent domain may not
16 include a confidentiality provision in an offer or agreement to
17 acquire the property. The entity shall inform the owner of the
18 property that the owner has the right to:

19 (1) discuss any offer or agreement regarding the
20 entity's acquisition of the property with others; or

21 (2) keep the offer or agreement confidential, unless
22 the offer or agreement is subject to Chapter 552, Government Code.

23 (d) A subsequent bona fide purchaser for value from the
24 acquiring [~~governmental~~] entity may conclusively presume that the
25 requirement of this section has been met. This section does not
26 apply to acquisitions of real property for which an [~~a~~
27 ~~governmental~~] entity does not have eminent domain authority.

1 SECTION 8. Subchapter B, Chapter 21, Property Code, is
2 amended by adding Section 21.0113 to read as follows:

3 Sec. 21.0113. BONA FIDE OFFER REQUIRED. (a) An entity
4 with eminent domain authority that wants to acquire real property
5 for a public use must make a bona fide offer to acquire the property
6 from the property owner voluntarily.

7 (b) An entity with eminent domain authority has made a bona
8 fide offer if:

9 (1) an initial offer is made in writing to a property
10 owner;

11 (2) a final offer is made in writing to the property
12 owner;

13 (3) the final offer is made on or after the 30th day
14 after the date on which the entity makes a written initial offer to
15 the property owner;

16 (4) before making a final offer, the entity obtains a
17 written appraisal from a certified appraiser of the value of the
18 property being acquired and the damages, if any, to any of the
19 property owner's remaining property;

20 (5) the final offer is equal to or greater than the
21 amount of the written appraisal obtained by the entity;

22 (6) the following items are included with the final
23 offer or have been previously provided to the owner by the entity:

24 (A) a copy of the written appraisal;

25 (B) a copy of the deed, easement, or other
26 instrument conveying the property sought to be acquired; and

27 (C) the landowner's bill of rights statement

1 prescribed by Section 21.0112; and

2 (7) the entity provides the property owner with at
3 least 14 days to respond to the final offer and the property owner
4 does not agree to the terms of the final offer within that period.

5 SECTION 9. Section 21.012, Property Code, is amended to
6 read as follows:

7 Sec. 21.012. CONDEMNATION PETITION. (a) If an entity [~~the~~
8 ~~United States, this state, a political subdivision of this state, a~~
9 ~~corporation~~] with eminent domain authority[, ~~or an irrigation,~~
10 ~~water improvement, or water power control district created by law~~]
11 wants to acquire real property for public use but is unable to agree
12 with the owner of the property on the amount of damages, the
13 [~~condemning~~] entity may begin a condemnation proceeding by filing a
14 petition in the proper court.

15 (b) The petition must:

16 (1) describe the property to be condemned;

17 (2) state with specificity the public use [~~purpose~~]
18 for which the entity intends to acquire [~~use~~] the property;

19 (3) state the name of the owner of the property if the
20 owner is known;

21 (4) state that the entity and the property owner are
22 unable to agree on the damages; [~~and~~]

23 (5) if applicable, state that the entity provided the
24 property owner with the landowner's bill of rights statement in
25 accordance with Section 21.0112; and

26 (6) state that the entity made a bona fide offer to
27 acquire the property from the property owner voluntarily as

1 provided by Section 21.0113.

2 (c) An entity that files a petition under this section must
3 provide a copy of the petition to the property owner by certified
4 mail, return receipt requested.

5 SECTION 10. Subsection (a), Section 21.014, Property Code,
6 is amended to read as follows:

7 (a) The judge of a court in which a condemnation petition is
8 filed or to which an eminent domain case is assigned shall appoint
9 three disinterested real property owners [~~freeholders~~] who reside
10 in the county as special commissioners to assess the damages of the
11 owner of the property being condemned. The judge appointing the
12 special commissioners shall give preference to persons agreed on by
13 the parties. The judge shall provide each party a reasonable period
14 to strike one of the three commissioners appointed by the judge. If
15 a person fails to serve as a commissioner or is struck by a party to
16 the suit, the judge shall [~~may~~] appoint a replacement.

17 SECTION 11. Subsection (a), Section 21.015, Property Code,
18 is amended to read as follows:

19 (a) The special commissioners in an eminent domain
20 proceeding shall promptly schedule a hearing for the parties at the
21 earliest practical time but may not schedule a hearing to assess
22 damages before the 20th day after the date the special
23 commissioners were appointed. The special commissioners shall
24 schedule a hearing for the parties [~~and~~] at a place that is as near
25 as practical to the property being condemned or at the county seat
26 of the county in which the proceeding is being held.

27 SECTION 12. Subsection (b), Section 21.016, Property Code,

1 is amended to read as follows:

2 (b) Notice of the hearing must be served on a party not later
3 than the 20th [~~11th~~] day before the day set for the hearing. A
4 person competent to testify may serve the notice.

5 SECTION 13. Section 21.023, Property Code, is amended to
6 read as follows:

7 Sec. 21.023. DISCLOSURE OF INFORMATION REQUIRED AT TIME OF
8 ACQUISITION. An [A-governmental] entity with eminent domain
9 authority shall disclose in writing to the property owner, at the
10 time of acquisition of the property through eminent domain, that:

11 (1) the owner or the owner's heirs, successors, or
12 assigns may be [~~are~~] entitled to:

13 (A) repurchase the property under Subchapter E
14 [if the public use for which the property was acquired through
15 eminent domain is canceled before the 10th anniversary of the date
16 of acquisition]; or

17 (B) request from the entity certain information
18 relating to the use of the property and any actual progress made
19 toward that use; and

20 (2) the repurchase price is the price paid to the owner
21 by the entity at the time the entity acquired the property through
22 eminent domain [~~fair market value of the property at the time the~~
23 ~~public use was canceled].~~

24 SECTION 14. Subchapter B, Chapter 21, Property Code, is
25 amended by adding Section 21.025 to read as follows:

26 Sec. 21.025. PRODUCTION OF INFORMATION BY CERTAIN ENTITIES.

27 (a) Notwithstanding any other law, an entity that is not subject

1 to Chapter 552, Government Code, and is authorized by law to acquire
2 private property through the use of eminent domain is required to
3 produce information as provided by this section if the information
4 is:

5 (1) requested by a person who owns property that is the
6 subject of a proposed or existing eminent domain proceeding; and

7 (2) related to the taking of the person's private
8 property by the entity through the use of eminent domain.

9 (b) An entity described by Subsection (a) is required under
10 this section only to produce information relating to the
11 condemnation of the specific property owned by the requestor as
12 described in the request. A request under this section must contain
13 sufficient details to allow the entity to identify the specific
14 tract of land in relation to which the information is sought.

15 (c) The entity shall respond to a request in accordance with
16 the Texas Rules of Civil Procedure as if the request was made in a
17 matter pending before a state district court.

18 (d) Exceptions to disclosure provided by this chapter and
19 the Texas Rules of Civil Procedure apply to the disclosure of
20 information under this section.

21 (e) Jurisdiction to enforce the provisions of this section
22 resides in:

23 (1) the court in which the condemnation was initiated;
24 or

25 (2) if the condemnation proceeding has not been
26 initiated:

27 (A) a court that would have jurisdiction over a

1 proceeding to condemn the requestor's property; or

2 (B) a court with eminent domain jurisdiction in
3 the county in which the entity has its principal place of business.

4 (f) If the entity refuses to produce information requested
5 in accordance with this section and the court determines that the
6 refusal violates this section, the court may award the requestor's
7 reasonable attorney's fees incurred to compel the production of the
8 information.

9 SECTION 15. Subsection (d), Section 21.042, Property Code,
10 is amended to read as follows:

11 (d) In estimating injury or benefit under Subsection (c),
12 the special commissioners shall consider an injury or benefit that
13 is peculiar to the property owner and that relates to the property
14 owner's ownership, use, or enjoyment of the particular parcel of
15 real property, including a material impairment of direct access on
16 or off the remaining property that affects the market value of the
17 remaining property, but they may not consider an injury or benefit
18 that the property owner experiences in common with the general
19 community, including circuitry of travel and diversion of traffic.
20 In this subsection, "direct access" means ingress and egress on or
21 off a public road, street, or highway at a location where the
22 remaining property adjoins that road, street, or highway.

23 SECTION 16. Subsections (a) and (b), Section 21.046,
24 Property Code, are amended to read as follows:

25 (a) A department, agency, instrumentality, or political
26 subdivision of this state shall [~~may~~] provide a relocation advisory
27 service for an individual, a family, a business concern, a farming

1 or ranching operation, or a nonprofit organization that [~~if the~~
2 ~~service~~] is compatible with the Federal Uniform Relocation
3 Assistance and Real Property Acquisition Policies Act of 1970
4 [~~Advisory Program~~], 42 U.S.C.A. 4601 [~~23 U.S.C.A. 501~~], et seq.

5 (b) This state or a political subdivision of this state
6 shall [~~may~~], as a cost of acquiring real property, pay moving
7 expenses and rental supplements, make relocation payments, provide
8 financial assistance to acquire replacement housing, and
9 compensate for expenses incidental to the transfer of the property
10 if an individual, a family, the personal property of a business, a
11 farming or ranching operation, or a nonprofit organization is
12 displaced in connection with the acquisition.

13 SECTION 17. The heading to Section 21.047, Property Code,
14 is amended to read as follows:

15 Sec. 21.047. ASSESSMENT OF COSTS AND FEES.

16 SECTION 18. Section 21.047, Property Code, is amended by
17 adding Subsection (d) to read as follows:

18 (d) If a court hearing a suit under this chapter determines
19 that a condemnor did not make a bona fide offer to acquire the
20 property from the property owner voluntarily as required by Section
21 21.0113, the court shall abate the suit, order the condemnor to make
22 a bona fide offer, and order the condemnor to pay:

23 (1) all costs as provided by Subsection (a); and
24 (2) any reasonable attorney's fees and other
25 professional fees incurred by the property owner that are directly
26 related to the violation.

27 SECTION 19. Subchapter E, Chapter 21, Property Code, is

1 amended to read as follows:

2 SUBCHAPTER E. REPURCHASE OF REAL PROPERTY FROM CONDEMNING
3 [GOVERNMENTAL] ENTITY

4 Sec. 21.101. RIGHT OF REPURCHASE [APPLICABILITY]. (a) A
5 person from whom [~~Except as provided in Subsection (b), this~~
6 ~~subchapter applies only to~~] a real property interest is acquired by
7 an [a governmental] entity through eminent domain for a public use,
8 or that person's heirs, successors, or assigns, is entitled to
9 repurchase the property as provided by this subchapter if:

10 (1) the public use for which the property was acquired
11 through eminent domain is [that was] canceled before the property
12 is used for that public use;

13 (2) no actual progress is made toward the public use
14 for which the property was acquired between the date of acquisition
15 and the 10th anniversary of that date; or

16 (3) the property becomes unnecessary for the public
17 use for which the property was acquired, or a substantially similar
18 public use, before the 10th anniversary of the date of acquisition.

19 (b) In this section, "actual progress" means the completion
20 of two or more of the following actions:

21 (1) the performance of a significant amount of labor
22 to develop the property or other property acquired for the same
23 public use project for which the property owner's property was
24 acquired;

25 (2) the provision of a significant amount of materials
26 to develop the property or other property acquired for the same
27 public use project for which the property owner's property was

1 acquired;

2 (3) the hiring of and performance of a significant
3 amount of work by an architect, engineer, or surveyor to prepare a
4 plan or plat that includes the property or other property acquired
5 for the same public use project for which the property owner's
6 property was acquired;

7 (4) application for state or federal funds to develop
8 the property or other property acquired for the same public use
9 project for which the property owner's property was acquired;

10 (5) application for a state or federal permit to
11 develop the property or other property acquired for the same public
12 use project for which the property owner's property was acquired;

13 (6) the acquisition of a tract or parcel of real
14 property adjacent to the property for the same public use project
15 for which the owner's property was acquired; or

16 (7) for a governmental entity, the adoption by a
17 majority of the entity's governing body at a public hearing of a
18 development plan for a public use project that indicates that the
19 entity will not complete more than one action described by
20 Subdivisions (1)-(6) before the 10th anniversary of the date of
21 acquisition of the property [~~This subchapter does not apply to a~~
22 ~~right-of-way under the jurisdiction of:~~

23 ~~[(1) a county,~~

24 ~~[(2) a municipality, or~~

25 ~~[(3) the Texas Department of Transportation].~~

26 (c) A district court may determine all issues in any suit
27 regarding the repurchase of a real property interest acquired

1 through eminent domain by the former property owner or the owner's
 2 heirs, successors, or assigns.

3 Sec. 21.102. NOTICE TO PREVIOUS PROPERTY OWNER REQUIRED [~~AT~~
 4 ~~TIME OF CANCELLATION OF PUBLIC USE~~]. Not later than the 180th day
 5 after the date an entity that acquired a real property interest
 6 through eminent domain determines that the former property owner is
 7 entitled to repurchase the property under Section 21.101 [~~of the~~
 8 ~~cancellation of the public use for which real property was acquired~~
 9 ~~through eminent domain from a property owner under Subchapter B~~],
 10 the [~~governmental~~] entity shall send by certified mail, return
 11 receipt requested, to the property owner or the owner's heirs,
 12 successors, or assigns a notice containing:

13 (1) an identification, which is not required to be a
 14 legal description, of the property that was acquired;

15 (2) an identification of the public use for which the
 16 property had been acquired and a statement that:

17 (A) the public use was [~~has been~~] canceled before
 18 the property was used for the public use;

19 (B) no actual progress was made toward the public
 20 use; or

21 (C) the property became unnecessary for the
 22 public use, or a substantially similar public use, before the 10th
 23 anniversary of the date of acquisition; and

24 (3) a description of the person's right under this
 25 subchapter to repurchase the property.

26 Sec. 21.1021. REQUESTS FOR INFORMATION REGARDING CONDEMNED
 27 PROPERTY. (a) On or after the 10th anniversary of the date on

1 which real property was acquired by an entity through eminent
2 domain, a property owner or the owner's heirs, successors, or
3 assigns may request that the condemning entity make a determination
4 and provide a statement and other relevant information regarding:

5 (1) whether the public use for which the property was
6 acquired was canceled before the property was used for the public
7 use;

8 (2) whether any actual progress was made toward the
9 public use between the date of acquisition and the 10th anniversary
10 of that date, including an itemized description of the progress
11 made, if applicable; and

12 (3) whether the property became unnecessary for the
13 public use, or a substantially similar public use, before the 10th
14 anniversary of the date of acquisition.

15 (b) A request under this section must contain sufficient
16 detail to allow the entity to identify the specific tract of land in
17 relation to which the information is sought.

18 (c) Not later than the 90th day following the date of
19 receipt of the request for information, the entity shall send a
20 written response by certified mail, return receipt requested, to
21 the requestor.

22 Sec. 21.1022. LIMITATIONS PERIOD FOR REPURCHASE RIGHT.
23 Notwithstanding Section 21.103, the right to repurchase provided by
24 this subchapter is extinguished on the first anniversary of the
25 expiration of the period for an entity to provide notice under
26 Section 21.102 if the entity:

27 (1) is required to provide notice under Section

1 21.102;

2 (2) makes a good faith effort to locate and provide
3 notice to each person entitled to notice before the expiration of
4 the deadline for providing notice under that section; and

5 (3) does not receive a response to any notice provided
6 under that section in the period for response prescribed by Section
7 21.103.

8 Sec. 21.103. RESALE OF PROPERTY; PRICE. (a) Not later
9 than the 180th day after the date of the postmark on a [the] notice
10 sent under Section 21.102 or a response to a request made under
11 Section 21.1021 that indicates that the property owner, or the
12 owner's heirs, successors, or assigns, is entitled to repurchase
13 the property interest in accordance with Section 21.101, the
14 property owner or the owner's heirs, successors, or assigns must
15 notify the ~~[governmental]~~ entity of the person's intent to
16 repurchase the property interest under this subchapter.

17 (b) As soon as practicable after receipt of a notice of
18 intent to repurchase ~~[the notification]~~ under Subsection (a), the
19 ~~[governmental]~~ entity shall offer to sell the property interest to
20 the person for the price paid to the owner by the entity at the time
21 the entity acquired the property through eminent domain ~~[fair~~
22 ~~market value of the property at the time the public use was~~
23 ~~anceled]~~. The person's right to repurchase the property expires
24 on the 90th day after the date on which the ~~[governmental]~~ entity
25 makes the offer.

26 SECTION 20. Section 202.021, Transportation Code, is
27 amended by adding Subsection (j) to read as follows:

1 (j) The standard for determination of the fair value of the
2 state's interest in access rights to a highway right-of-way is the
3 same legal standard that is applied by the commission in the:

4 (1) acquisition of access rights under Subchapter D,
5 Chapter 203; and

6 (2) payment of damages in the exercise of the
7 authority, under Subchapter C, Chapter 203, for impairment of
8 highway access to or from real property where the real property
9 adjoins the highway.

10 SECTION 21. Section 54.209, Water Code, is amended to read
11 as follows:

12 Sec. 54.209. LIMITATION ON USE OF EMINENT DOMAIN. A
13 district may not exercise the power of eminent domain outside the
14 district boundaries to acquire:

15 (1) a site for a water treatment plant, water storage
16 facility, wastewater treatment plant, or wastewater disposal
17 plant;

18 (2) a site for a park, swimming pool, or other
19 recreational facility, as defined by Section 49.462 [~~except a~~
20 ~~trail~~];

21 (3) [~~a site for a trail on real property designated as~~
22 ~~a homestead as defined by Section 41.002, Property Code, or~~

23 [~~(4)~~] an exclusive easement through a county regional
24 park; or

25 (4) a site or easement for a road project.

26 SECTION 22. Section 1, Chapter 178 (S.B. 289), Acts of the
27 56th Legislature, Regular Session, 1959 (Article 3183b-1, Vernon's

1 Texas Civil Statutes), is amended to read as follows:

2 Sec. 1. Except as provided by this section, and
3 notwithstanding any other law, any [Any] nonprofit corporation
4 incorporated under the laws of this state for purely charitable
5 purposes and which is directly affiliated or associated with a
6 medical center having a medical school recognized by the Council on
7 Medical Education and Hospitals of the American Medical Association
8 as an integral part of its establishment, and which has for a
9 purpose of its incorporation the provision or support of medical
10 facilities or services for the use and benefit of the public, and
11 which is situated in any county of this state having a population in
12 excess of six hundred thousand (600,000) inhabitants according to
13 the most recent Federal Census shall have the power of eminent
14 domain and condemnation for the purposes set forth in Section 2 and
15 Section 3 of this Act. A charitable corporation described by this
16 section may not exercise the power of eminent domain and
17 condemnation to acquire a detached, single-family residential
18 property or a multifamily residential property that contains eight
19 or fewer dwelling units.

20 SECTION 23. (a) Section 552.0037, Government Code, is
21 repealed.

22 (b) Section 21.024, Property Code, is repealed.

23 SECTION 24. Section 11.155, Education Code, Chapter 2206,
24 Government Code, Sections 251.001, 261.001, 263.201, and 273.002,
25 Local Government Code, Chapter 21, Property Code, and Section 1,
26 Chapter 178 (S.B. 289), Acts of the 56th Legislature, Regular
27 Session, 1959 (Article 3183b-1, Vernon's Texas Civil Statutes), as

1 amended by this Act, apply only to a condemnation proceeding in
2 which the petition is filed on or after the effective date of this
3 Act and to any property condemned through the proceeding. A
4 condemnation proceeding in which the petition is filed before the
5 effective date of this Act and any property condemned through the
6 proceeding are governed by the law in effect immediately before
7 that date, and that law is continued in effect for that purpose.

8 SECTION 25. The change in law made by this Act to Section
9 202.021, Transportation Code, applies only to a sale or transfer
10 under that section that occurs on or after the effective date of
11 this Act. A sale or transfer that occurs before the effective date
12 of this Act is governed by the law applicable to the sale or
13 transfer immediately before the effective date of this Act, and
14 that law is continued in effect for that purpose.

15 SECTION 26. The changes in law made by this Act to Section
16 54.209, Water Code, apply only to a condemnation proceeding in
17 which the petition is filed on or after the effective date of this
18 Act. A condemnation proceeding in which the petition is filed
19 before the effective date of this Act is governed by the law in
20 effect on the date the petition was filed, and that law is continued
21 in effect for that purpose.

22 SECTION 27. This Act takes effect September 1, 2011.

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SENATE VERSION

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No equivalent provision.

SECTION __. Section 11.155(a), Education Code, is amended, in a provision relating to an independent school district's authority to acquire by the exercise of the right of eminent domain the fee simple title to real property on which to construct school buildings, to remove the specification that the acquisition be for the purpose of securing sites for such construction and to authorize an independent school district to acquire by the exercise of the right of eminent domain the fee simple title to real property for any other public use, rather than for any other purpose, necessary for the district.

SECTION 1. Same as House version.

No equivalent provision.

SECTION __. Section 402.031(b), Government Code, relating to the preparation of landowner's bill of rights statement, is amended.

Same as Senate version.

SECTION 1. Chapter 2206, Government Code, is amended as follows:

SECTION 1. Same as Senate version except as follows:

SECTION 2. Same as Senate version except as follows:

Subchapter A, relating to limitations on purpose and use of property acquired through eminent domain. Among others, establishes provisions that apply only to an easement acquired by an entity for the purpose of a pipeline to be used for oil and gas exploration or production activity and specifies that the portion of a street or road constructed under Section 2206.002 that is within the area covered by the easement must meet the following terms: must cross the easement at or near 90 degrees and may not exceed 40 feet in width, cause a violation of any applicable pipeline regulation, or interfere with the operation and maintenance of any pipeline.

Same as Senate version except also includes an authorization for a property owner and the owner of an easement to agree to terms other than the terms specified in the bill relating to a portion of a constructed street or road that is within an area covered by an easement.

Same as House version.

Subchapter B, Truth in Condemnation Procedures Act, is added. Among other provisions, requires a governmental

Same as Senate version except also requires a governmental entity, before the governmental entity initiates a condemnation

Same as House version except omits the requirement that the notice include a map of the general area or general route that

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entity, before the governmental entity initiates a condemnation proceeding by filing a petition, to authorize the initiation of the condemnation proceeding at a public meeting by a record vote.

Subchapter C, **EXPIRATION** OF CERTAIN EMINENT DOMAIN AUTHORITY, is added. Among other provisions, in a provision relating to a report of eminent domain authority and expiration of authority that is inapplicable to an entity that was created or that acquired the power of eminent domain on or after December 31, 2012, establishes that the authority of an entity, including a private entity, to exercise the power of eminent domain *expires on* September 1, 2013, unless the entity submits an applicable letter to the comptroller of public accounts. Requires the Texas Legislative Council to prepare for consideration by the 84th Legislature, Regular Session, a nonsubstantive revision of the statutes of this state as necessary to reflect the state of the law after the expiration of such an entity's eminent domain authority.

No equivalent provision.

HOUSE VERSION (IE)

proceeding by filing a petition, to include in the required notice for the public meeting, in addition to other required information, the consideration of the use of eminent domain to condemn property as an agenda item and a map of the general area or general route that may be affected by the condemnation proceeding.

Subchapter C, **SUSPENSION** OF CERTAIN EMINENT DOMAIN AUTHORITY, is added. Same as Senate version except establishes that the authority of an entity to exercise the power of eminent domain *is suspended beginning* September 1, 2013, if the entity does not submit an applicable letter to the comptroller on or before that date and that such authority remains suspended until the entity submits the letter, and makes a conforming changes. Omits the provision requiring the Texas Legislative Council to prepare a certain nonsubstantive revision of the statutes.

SECTION __. Section 251.001(a), Local Government Code, is amended to authorize a municipality to exercise the right of eminent domain for a public use, rather than public purpose, to acquire public or private property for certain uses and to make conforming changes. Among the authorized public uses for which the municipality may exercise the right of eminent domain, specifies that the city hall for which a municipality is authorized to exercise the right of eminent domain for the providing, enlarging, or improving of a city hall, be a municipally owned city hall.

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may be affected by the condemnation proceeding..

Same as Senate version.

SECTION 3. Same as House version.

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Section-by-Section Analysis

SENATE VERSION	HOUSE VERSION (IE)	CONFERENCE
No equivalent provision.	SECTION __. Section 261.001(a), Local Government Code, is amended to authorize a county to exercise the right of eminent domain to condemn and acquire land, an easement in land, or a right-of-way if the acquisition is necessary for an authorized public use, rather than public purpose.	SECTION 4. Same as House version.
No equivalent provision.	SECTION __. Section 263.201(c), Local Government Code, is amended to require that a declaration of taking relating to the acquisition and conveyance of land for a water project applicable to certain counties contain, in part, a declaration that the land or interest in land described in the original petition is taken for a public use, rather than a public purpose.	SECTION 5. Same as House version.
No equivalent provision.	SECTION __. Section 273.002, Local Government Code, is amended, regarding the requirement that condemnation of property under provisions relating to the acquisition of property for public purposes by municipalities, counties, and other local governments be in accordance with state law relating to eminent domain, to specify that such condemnation of land by a municipality be for public use, rather than public purposes.	SECTION 6. Same as House version.
SECTION 2. Section 21.0111, Property Code, is amended.	SECTION 2. Same as Senate version.	SECTION 7. Same as Senate version.
No equivalent provision.	SECTION __. Section 21.0112, Property Code, relating to the provision of a landowner's bill of rights statement, is amended.	Same as Senate version.
SECTION 3. Subchapter B, Chapter 21, Property Code, is	SECTION 3. Same as Senate version except as follows:	SECTION 8. Same as Senate version.

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SENATE VERSION	HOUSE VERSION (IE)	CONFERENCE
amended as follows:		
Sec. 21.0113, relating to the conditions under which an entity with eminent domain authority that wants to acquire real property for public use has made a required bona fide offer, is added. Establishes that a bona fide offer has been made if, among meeting other conditions, before making a final offer, the entity obtains a written appraisal from a <i>certified appraiser</i> of the value of the property being acquired and the damages, if any, to any of the property owner's remaining property.	Same as Senate version except specifies a written appraisal from <i>an independent and certified appraiser not employed by the entity</i> .	Same as Senate version.
No equivalent provision.	Section 21.0114, relating to notice to a county of condemnation for pipeline, is added.	Same as Senate version.
No equivalent provision.	Section 21.0115, relating to the right to rescind a certain agreement between a property owner and an entity with eminent domain authority, is added.	Same as Senate version.
SECTION 4. Section 21.012, Property Code, is amended.	SECTION 4. Same as Senate version.	SECTION 9. Same as Senate version.
SECTION 5. Subsection (a), Section 21.014, Property Code, is amended.	SECTION 5. Same as Senate version.	SECTION 10. Same as Senate version.
SECTION 6. Subsection (a), Section 21.015, Property Code, is amended.	SECTION 6. Same as Senate version.	SECTION 11. Same as Senate version.
SECTION 7. Subsection (b), Section 21.016, Property Code, is amended.	SECTION 7. Same as Senate version.	SECTION 12. Same as Senate version.

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SECTION 8. Section 21.023, Property Code, is amended to require an entity with eminent domain authority to disclose in writing to a property owner, at the time of acquisition of the property through eminent domain, that, among other things, the repurchase price is the price paid to the owner by the entity at the time the entity acquired the property through eminent domain.

SECTION 9. Subchapter B, Chapter 21, Property Code, is amended by adding Section 21.025.

SECTION 10. Subsection (d), Section 21.042, Property Code, is amended.

SECTION 11. Subsections (a) and (b), Section 21.046, Property Code, are amended.

SECTION 12. The heading to Section 21.047, Property Code, is amended.

SECTION 13. Section 21.047, Property Code, is amended by adding Subsection (d).

No equivalent provision.

SECTION 14. Amends Subchapter E, Chapter 21, Property Code, as follows:

HOUSE VERSION (IE)

SECTION 8. Same as the Senate version except establishes that the repurchase price is the fair market value of the property at the time the property owner becomes entitled to repurchase the property or the price paid to the owner by the entity at the time the entity acquired the property through eminent domain, whichever is less.

SECTION 9. Same as Senate version.

SECTION 10. Same as Senate version.

SECTION 11. Same as Senate version.

SECTION 12. Same as Senate version.

SECTION 13. Same as Senate version.

SECTION 14. Subchapter C, Chapter 21, Property Code, is amended by adding Section 21.0471, relating to the award of attorney's fees and other professional fees in certain condemnation proceedings.

SECTION 15. Same as Senate version except as follows:

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SECTION 13. Same as Senate version.

SECTION 14. Same as Senate version.

SECTION 15. Same as Senate version.

SECTION 16. Same as Senate version.

SECTION 17. Same as Senate version.

SECTION 18. Same as Senate version.

Same as Senate version.

SECTION 19. Same as Senate version except as follows:

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SENATE VERSION	HOUSE VERSION (IE)	CONFERENCE
<p>SUBCHAPTER E. REPURCHASE OF REAL PROPERTY FROM <u>CONDEMNING</u> [GOVERNMENTAL] ENTITY</p>	Same as Senate version.	Same as Senate version.
<p>Sec. 21.101, relating to right of repurchase, is amended. Among other provisions, entitles a person from whom a real property interest is acquired by an entity through eminent domain for a public use, or that person's heirs, successors, or assigns, to repurchase the property under certain alternative conditions.</p>	Same as Senate version except adds as one of the conditions that the initial use of the property is not the public use for which the property was acquired.	Same as Senate version.
<p>Sec. 21.102, relating to required notice to a previous property owner, is amended. Among other provisions, requires an entity, not later than the <i>180th day after the date the entity that acquired a real property interest through eminent domain determines that the former property owner</i> is entitled to repurchase the property under Section 21.101, to send a notice containing, in part, an identification of the public use for which the property had been acquired and <i>a statement that the public use was canceled before the property was used for the public use; no actual progress was made toward the public use; or the property became unnecessary for the public use, or a substantially similar public use, before the 10th anniversary of the date of acquisition.</i></p>	Same as Senate version except requires an entity, not later than the <i>180th day after the date that the former property owner</i> is entitled to repurchase the property under Section 21.101, to send a notice containing, in part, an identification of the public use for which the property had been acquired, <i>a statement that the person has a right to repurchase the property under this subchapter, and an explanation of the reason under this subchapter the person has acquired the right to repurchase the property.</i>	Same as Senate version.
<p>Sec. 21.1021, relating to a request for information regarding condemned property, is amended. Among other provisions, authorizes a property owner or the owner's heirs, successors, or assigns, on or after the 10th anniversary of the date on which real property was acquired by an entity through eminent domain, to request that the condemning entity make a determination and provide a statement and other relevant information regarding certain factors.</p>	Same as Senate version except omits language limiting the authorization to request a determination and the provision of a statement and certain information to on or after the 10th anniversary of the date on which real property was acquired by an entity through eminent domain. Adds as a factor whether the initial use of the property was the public use for which the property was acquired.	Same as Senate version.

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SENATE VERSION	HOUSE VERSION (IE)	CONFERENCE
No equivalent provision.	Sec. 21.1022 is added, establishing that the right to repurchase provided by this subchapter is extinguished on the first anniversary of the expiration of the period for an entity to provide certain notice under Section 21.102 if the entity is required to provide such notice, makes a good faith effort to locate and provide notice to each person entitled to notice before the expiration of the notice deadline, and does not receive a response to any applicable notice in the prescribed period for response.	Same as House version.
Sec. 21.103, relating to resale of property and price, is amended. Among other provisions, requires an entity, as soon as practicable after receipt of a notice of intent to repurchase, to offer to sell the property interest to the property owner or the owner's heirs, successors, or assigns, as applicable, for the price paid to the owner by the entity at the time the entity acquired the property through eminent domain.	Same as Senate version except requires an entity to offer to sell the property interest to such persons for the fair market value of the property at the time the property owner becomes entitled to repurchase the property or the price paid to the owner by the entity at the time the entity acquired the property through eminent domain, whichever is less.	Same as Senate version.
SECTION 15. Section 202.021, Transportation Code, is amended.	SECTION 16. Same as Senate version.	SECTION 20. Same as Senate version.
SECTION 16. Section 54.209, Water Code, is amended.	SECTION 17. Same as Senate version.	SECTION 21. Same as Senate version.
No equivalent provision.	SECTION 18. Section 1, Chapter 178 (S.B. 289), Acts of the 56th Legislature, Regular Session, 1959 (Article 3183b-1, Vernon's Texas Civil Statutes), is amended to prohibit certain charitable corporations from exercising the power of eminent domain and condemnation to acquire a detached, single-family residential property or a multifamily residential property that contains eight or fewer dwelling units.	SECTION 22. Same as House version.

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SENATE VERSION	HOUSE VERSION (IE)	CONFERENCE
SECTION 17. Repealers.	SECTION 19. Same as Senate version.	SECTION 23. Same as Senate version.
SECTION 18. Saving provision.	SECTION 20. Same as Senate version except makes conforming changes to reflect provisions in the House version not contained in the Senate version.	SECTION 24. Same as House version.
SECTION 19. Saving provision.	SECTION 21. Same as Senate version.	SECTION 25. Same as Senate version.
SECTION 20. Saving provision.	SECTION 22. Same as Senate version.	SECTION 26. Same as Senate version.
SECTION 21. This Act takes effect September 1, 2011.	SECTION 23. Same as Senate version.	SECTION 27. Same as Senate version.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 4, 2011

TO: Honorable David Dewhurst, Lieutenant Governor, Senate
Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: SB18 by Estes (Relating to the use of eminent domain authority.), **Conference Committee Report**

There would be an indeterminate cost to the state from the provisions of the bill.

The bill would amend various statutes related to the scope and process of private property condemnation under the power of eminent domain. The bill also amends Vernon's Texas Civil Statutes regarding the eminent domain authority of certain charitable corporations in obtaining a residential property. The bill would take effect September 1, 2011.

Based on an analysis by state agencies, it is anticipated the bill would result in increased costs for the acquisition of property through condemnation proceedings, specifically those related to highway right-of-way projects and actions by institutions of higher education. Due to the number of project specific variables involved in state property acquisitions and an unknown projected number of such projects during the 2012-13 biennium, any additional costs or negative fiscal implications to the state cannot be determined.

Based on the analysis of the Texas Department of Transportation, it is assumed the bill would result in increased costs for the acquisition of highway right-of-way through condemnation, primarily due to right of repurchase provisions and the creation of new standards for the determination of damages for access and assessment of attorney and professional fees. Because the factors considered in evaluating the value of the property to be condemned and estimating damages to a property owner would vary case by case, any additional costs or negative fiscal implications to the state cannot be determined.

Institutions of higher education also reported anticipated increased costs to property acquisitions given the provisions of the bill. These additional costs include: additional record keeping and document storage requirements; obligations to make offers for property at or above appraisal values; loss of investment value from property repurchased by previous owners; and the payment of relocation services and expenses for persons displaced by the transfer of the property to the condemning entity. The fiscal impact of these requirements is indeterminate because the number and type of condemnation proceedings to be conducted during the 2012-13 biennium is unknown.

Local Government Impact

It is anticipated that the fiscal impact to local governmental entities could be significant and would vary depending on several factors: (1) the restriction on counties to regulate the placement of driveways and other access points to its roads; (2) the right to repurchase land within 10 years after condemnation, unless actual progress toward public use is made to the property under Section 21.101, which would impair a county flood control district's ability to plan and implement major flood control projects; (3) the number of tracts of land involved, because a governmental entity would be required to vote on each tract, causing an additional administrative burden on the courts and staff; and (4) whether a property owner whose property is acquired through eminent domain for the purpose of creating an easement would choose to construct items listed in the bill above the easement, causing additional expenses to a local governmental entity to make repairs to those constructed items when accessing

utilities such as a buried pipeline under the easement.

According to the Texas Association of Counties (TAC), the fiscal impact on counties that condemn and acquire properties could be significant. However, it is impossible to determine how many properties would be acquired through the condemnation process and the value of those properties. In addition, it is also impossible to know how many properties acquired through the condemnation process that would have to be acquired through another process in the future. Therefore, it is not possible to quantify the extent of the fiscal impact on counties.

According to the Texas Municipal League (TML), the negative fiscal impact to a political subdivision relating to the acquisition and compensation for real property could be significant, but would vary depending on the number of property acquisitions for which the additionally listed costs would be required, and therefore cannot be determined.

The bill would amend the Water Code to include road projects and additional recreational facilities to the list of items that a water district may not exercise the power of eminent domain outside the district boundaries.

Source Agencies: 103 Legislative Council, 305 General Land Office and Veterans' Land Board, 710 Texas A&M University System Administrative and General Offices, 720 The University of Texas System Administration, 802 Parks and Wildlife Department, 304 Comptroller of Public Accounts, 601 Department of Transportation

LBB Staff: JOB, KY, KM, JI, SZ, KJG, TP

Certification of Compliance with Rule 13, Section 6(b), House Rules of Procedure

Rule 13, Section 6(b), House Rules of Procedure, requires that a copy of a conference committee report signed by a majority of each committee of the conference must be furnished to each member of the committee in person or if unable to deliver in person by placing a copy in the member's newspaper mailbox at least one hour before the report is furnished to each member of the house under Section 10(a) of this rule. The paper copies of the report submitted to the chief clerk under Section 10(b) of this rule must contain a certificate that the requirement of this subsection has been satisfied, and that certificate must be attached to the printed copy of the report furnished to each member under Section 10(d) of this rule. Failure to comply with this subsection is not a sustainable point of order under this rule.

I certify that a copy of the conference committee report on S. B. 18 was furnished to each member of the conference committee in compliance with Rule 13, Section 6(b), House Rules of Procedure, before submission of the paper copies of the report to the chief clerk under Section 10(b), Rule 13, House Rules of Procedure.



(name)

5/2/11

(date)