

SUBJECT: Prohibiting condemners from entering and using property

COMMITTEE: Land and Resource Management — committee substitute recommended

VOTE: 6 ayes — Bosse, B. Turner, Hamric, Howard, Mowery, Staples
0 nays
3 absent — Crabb, Jackson, Krusee

WITNESSES: For — Walker Beavers; Charles A. Menke
Against — James Mann, Texas Pipeline Association; Ed Snyder, City of Plano and Texas Municipal League

BACKGROUND : The Property Code allows certain entities to condemn properties for public use if they cannot negotiate a purchase agreement with the owner of the property. The condemning entity, known as a condemner, may begin a condemnation proceeding by filing a petition in the proper court. The condemner also may enter and use the property under its eminent domain authority, subject to court action.

DIGEST: CSHB 3338 would amend the Property Code to prohibit a condemner seeking to condemn property from entering or using the property without written permission of the owner until the court determined that the condemner had acquired the rights necessary to enter on and use the property for a public purpose.

If the court determined that the condemner did not own the property subject to the dispute, the court would award the property owner any damages caused by the wrongful possession and use of the property and all reasonable expenses, including reasonable and necessary attorney's fees.

These provisions would not apply to a condemner that acquired an interest in property, but in a good faith error constructed the improvement outside the boundaries of the property.

CSHB 3338 would take immediate effect if finally approved by a two-thirds record vote of the membership in each house.

**SUPPORTERS
SAY:**

CSHB 3338 would close a loophole in current law that has allowed condemnors to make an economic decision about whether or not to comply with the steps required by the Property Code for the proper condemnation of property. Take, for example, an entity with the authority to condemn property to construct a gas pipeline that has acquired all of the necessary rights-of-way for the pipeline except for one property. The current statute may encourage that entity to enter the property illegally, quickly complete the construction of the pipeline, and then seek to condemn the property. This would save the entity from having to pay delay damages to a contractor or forego revenues lost as a result of the time delays required to follow the procedures to legally establish the right-of-way in advance. The limited damages currently available to a property owner in a trespass suit would probably be less than the amount of money lost from the delay in constructing its pipeline.

CSHB 3338 would resolve this problem by prohibiting entities from entering on or using a property without the owner's consent until a court determined that the it had acquired the right-of-way. In addition, the entity would have to pay any damages and expenses caused by the wrongful possession and use of the property. These provisions would provide a strong incentive for condemnors to follow statutorily required procedures.

CSHB 3338 also would provide adequate protections for condemnors that unintentionally mislocated their constructions.

**OPPONENTS
SAY:**

CSHB 3338 would unfairly provide property owners with an automatic injunction by prohibiting condemnors from entering or using a property until the court made a determination. It may be hard to apply in many cases, for example where a sanitary sewer line cuts across across a property involved in the dispute.

The damages the bill would provide to the property owner should be narrowed to only include damages to the property.

Condemnors that make an agreement with a property owner for a right-of-way and then in good faith mislocate the improvement on property that belongs to a different owner would not be protected by the provisions of the bill.

NOTES:

The original version of the bill would have rewritten the Property Code section rather than amended it.

A related bill, HB 3339 by Hilbert, regarding dismissal of condemnation proceedings, also has been set for second reading on today's calendar.