

SUBJECT: Dismissal of condemnation petitions

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  
Against — 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 condemnor, may begin a condemnation proceeding by filing a petition in the proper court. The condemnor also may move to dismiss the proceedings, unless the motion is intended solely to institute new condemnation proceedings. A court that hears and grants a condemnor's motion to dismiss a condemnation proceeding *must* make an allowance to the property owner for reasonable and necessary fees incurred to the date of the hearing. A court that hears and grants a property owner's motion to dismiss a condemnation proceeding *may* make an allowance for expenses incurred by the property owner to the date of the hearing.

DIGEST: CSHB 3339 would amend the Property Code to stipulate that a court could grant a motion to dismiss a condemnation petition only if it determined that the property owner's interest would not be materially affected by the dismissal.

A court that dismissed any condemnation proceeding would have to make an allowance to the property owner for the value of the condemnor's use of the property while in possession of the property, any damage that the condemnation had caused to the property owner, and any expenses that property owner had incurred in connection with the condemnation, including reasonable and necessary attorney's fees.

The bill would take immediate effect if finally approved by a two-thirds record vote of the membership in each house, and would apply only to dismissal of a condemnation proceeding for which a motion is made on or after the effective date.

**SUPPORTERS  
SAY:**

CSHB 3339 would solve a problem in the current statute that has given condemnors the leverage to force property owners to settle for less than the amount of damages they have actually incurred. Under the current statute, the condemnor may appeal the court's award of fees and expenses to property owners. The property owners incur additional legal and other expenses to fight the appeal, and may end up spending more money than they were awarded originally. Some condemnors have taken advantage of this during settlement negotiations by threatening to appeal if the property owners do not take an offered settlement. Property owners generally know an appeal would be prohibitively expensive and so they are forced to settle.

This bill would resolve that problem by requiring the court to make an allowance to the property owner for the value of the condemnor's use of the property, any damage that the condemnation has caused to the property owner, and any expenses the property owner has incurred in connection with the condemnation. The bill would delete the provisions in current law limiting an award to expenses incurred by the property owner up to the date of the hearing or judgment. By providing property owners with an award for the full amount of expenses they have incurred, the bill would prevent condemnors from unfairly compelling property owners to settle.

**OPPONENTS  
SAY:**

The provision requiring the court to make an allowance to the property owner for "any damage" that the condemnation caused to the property owner would be too broad and could allow recovery for very remote, tangentially related damages. Also, the bill should not all treat motions for dismissal in the same manner. Condemnors that only filed a petition for condemnation and never entered onto or used the property should not be treated the same as a condemnor that took some action on the property.

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

A related bill, HB 3338 by Hilbert, prohibiting condemnors from entering and using property without the owner's permission, has been set for second reading on the General State Calendar.