

- SUBJECT:** Dismissal of alternative plea for illegal use of land by condemnor
- COMMITTEE:** Land and Resource Management — committee substitute recommended
- VOTE:** 9 ayes — Walker, Crabb, Bosse, F. Brown, Hardcastle, Howard, Krusee, Mowery, B. Turner
- 0 nays
- WITNESSES:** (*On original bill:*)
- For — Billy Dyer, Texans for Fair Compensation; Durwood Tucker, Texas Farm Bureau
- Against — Ivan Bland, Texas Municipal League; John Knight, City of Lubbock; Susan R. Littleton and James Mann, Association of Texas Intrastate Natural Gas Pipelines
- On — James A. Henry, III, Texas Department of Transportation; John L. Ritts, Office of the Attorney General
- BACKGROUND:** Property Code, sec. 21.017 allows parties to a suit over eminent domain to enter an alternative plea in the case to assert a claim to the property in question or to seek to condemn it.
- DIGEST:** CSHB 1185 would require a court to dismiss an alternative plea for a private condemning entity if the court found that that entity intentionally had failed to acquire full legal interest in the property for which the entity was making the plea. The entity would have to pay the property owner for:
- the value of the use or occupancy of the property while possessed or used by the entity;
 - any damage resulting from the use or occupancy by the entity; and
 - any expenses incurred by the property owner under the alternative plea, including reasonable attorney's fees.
- This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. It would apply to alternative pleas that were pending or filed on or after the effective date.

**SUPPORTERS
SAY:**

Some utilities have acted in bad faith by trespassing on property without full legal title and installing equipment and infrastructure on the land. If the property owner sues for redress, the utility files an alternative plea to condemn the property in an attempt to gain control by force. Landowners face significant financial disincentives to sue for control of their own property against utility companies.

The bill would allow a court to dismiss the alternative plea and award compensation to the landowner if a utility intentionally acted in bad faith. It would give landowners a chance to fight back against illegal trespassing. The bill would not affect land claims by utilities made in good faith or mistakes made in good faith.

**OPPONENTS
SAY:**

CSHB 1185 would apply retroactively to alternative pleas that were pending as of the effective date of the bill. This would penalize private condemning authorities now in litigation by changing the rules in the middle of the game. The state should not pass legislation that is retroactive in effect.

The penalty provisions for illegal trespass are vague. The bill could lead to frivolous lawsuits and the awarding of unreasonable damages against condemning entities. Current law provides sufficient opportunity for landowners to receive compensatory and punitive damages. This bill would create a new measure of damages that would be undefined and subject to inconsistent interpretation among county courts.

NOTES:

The committee substitute excluded governmental entities from the effect of the bill. It also removed language that would have required an entity in violation to surrender possession of the property and that would have prohibited the entity from possessing the property until it had complied with standard condemnation procedures. The substitute also changed the standard for a violation from “knowingly failed” to “intentionally failed.”