

SUBJECT: Granting the power of eminent domain to regional mobility authorities.

COMMITTEE: Transportation — committee substitute recommended

VOTE: 6 ayes — Krusee, Phillips, Garza, Harper-Brown, Hill, Laney

0 nays

3 absent — Hamric, Edwards, Mercer

WITNESSES: For — Brian Cassidy, Central Texas Regional Mobility Authority

Against — None

On — Glenn Gadbois, Just Transportation Alliances, A Project of Texas Citizen Fund; Ric Williamson, Texas Transportation Commission

BACKGROUND: Transportation Code, chap. 361, subchap. D sets forth the real property condemnation and acquisition powers and duties of the Texas Transportation Commission (TTC) and the Texas Department of Transportation (TxDOT), including its Turnpike Authority Division.

Generally, eminent domain is the legal doctrine allowing governments to use their sovereign power to acquire private property for legitimate public uses.

In 2001, the Legislature enacted SB 342 by Shapiro, et al., authorizing TTC to create regional mobility authorities (RMAs) at the request of TxDOT district offices. One or more counties may form RMAs to construct, maintain, and operate transportation projects. The first, and thus far only, such entity in the state is the Central Texas RMA in Travis and Williamson counties. It is planning a toll road extension of State Highway 183 in and near Cedar Park.

DIGEST: CSHB 156 would add a subsection to Transportation Code, sec. 361.003 specifying that RMAs have the same powers and duties as TTC and TxDOT for the condemnation or purchase of real property. The bill also would allow RMAs' governing bodies to condemn property without TTC concurrence.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2003.

**SUPPORTERS
SAY:**

The original intent of SB 342 was to give RMAs the power of eminent domain, thereby allowing them to acquire property for turnpikes, toll roads, or other projects. Express authority to do so was omitted inadvertently from the bill; CSHB 156 would correct that oversight.

To operate efficiently, RMAs must have eminent domain power, as do the North Texas Tollway Authority and the Harris County Toll Road Authority. This bill would ensure the legality of any property acquisitions and the validity of turnpike revenue bonds issued to help finance RMA projects, both of which are important to bond market investors.

RMAs have governing bodies appointed by county commissioners and the governor. TTC concurrence in advance of property acquisition is unnecessary and needlessly would delay projects.

Transportation Code, chap. 361 requires RMAs to comply with TxDOT rules on projects' environmental impact reviews. Granting RMAs eminent domain power would not abrogate their responsibility to protect the environment.

**OPPONENTS
SAY:**

Giving yet another unelected governmental body the power of eminent domain could further erode private property rights. Advance TTC concurrence at least should be required as a safeguard against potential abuses by these new hybrid entities lacking experience in transportation project development.

**OTHER
OPPONENTS
SAY:**

The bill should specify in more detail that RMAs are required to follow all requisite federal environmental protection procedures during project development and construction.

NOTES:

The committee substitute would grant RMAs specific purchasing authority in addition to condemnation, provide that TTC would not have to concur with an RMA's condemnation, and add TxDOT's powers and duties to those being granted to RMAs to conform with the referenced statute.

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HBs 157, 2311, 2312, and 2459, all by Krusee, also deal with the powers of RMAs. HB 157 was reported favorably as substituted by the Transportation Committee on March 4 and is pending in the Calendars Committee, and the other three bills have been referred to the Transportation Committee.