

- SUBJECT:** Petition information in condemnation proceedings for water rights
- COMMITTEE:** Natural Resources — favorable, without amendment
- VOTE:** 6 ayes — Callegari, Hope, Campbell, Geren, Hamilton, Hardcastle  
0 nays  
3 absent — Puente, R. Cook, Wolens
- SENATE VOTE:** On final passage, May 1 — 31-0, on Local and Uncontested Calendar
- WITNESSES:** For — Ed Small, Texas and Southwestern Cattleraisers Association; *(Registered, but did not testify:)* Susan Combs; Tommy Engelke, Texas Agricultural Cooperative Council; Scott Holland, Irion County Water Conservation District and Sterling County Underground Water Conservation District; Billy Howe, Texas Farm Bureau; Lonnie Stewart, Bee Groundwater Conservation District and Live Oak Underground Water Conservation District; Bob Turner, Texas Sheep and Goat Raisers Association; Ross Wilson, Texas Cattle Feeders Association; Shayne Woodard, Texas Rice Producers  
  
Against — None
- BACKGROUND:** Property Code, ch. 21 governs condemnation proceedings under the power of eminent domain. If a public entity, such as a municipality, seeks to acquire property for public use and cannot agree with the owner on the amount of damages, the city may begin condemnation proceedings by filing a petition in court. The judge must appoint three disinterested freeholders in the county as special commissioners to assess the amount owed to the property owner. If either party appeals the decision of the special commissioners within 20 days, the court must try the case in the same manner as other civil causes.
- DIGEST:** SB 1227 would require a condemnation petition filed by a political subdivision seeking to condemn property for its surface water or groundwater rights to state that the facts to be proven were that the political subdivision had:

- prepared a drought contingency plan;
- developed and implemented a water conservation plan that would result in the highest practical levels of water conservation and efficiency achievable;
- made a good-faith effort to obtain practical alternative water supplies and acquire the water rights by voluntary purchase or lease; and
- showed that the political subdivision needed the water rights to provide for domestic water needs over the next 10 years.

A court could deny the right to condemn unless the political subdivision proved that it had met the requirements of its statement.

The bill would take effect September 1, 2003.

**SUPPORTERS  
SAY:**

SB 1227 would require a city to perform due diligence before condemning land for water rights. As water marketers across the state develop new markets for surface and groundwater rights, concerns have arisen regarding the ability of cities to condemn property for its water. Water is the lifeblood of the agricultural or rural areas that often are targeted to provide new water supplies for cities. Because of this, condemnation of land for its water could have significant consequences for property owners and the community and should not be pursued without first exploring other options. The bill simply would require that a city took reasonable and responsible measures before seeking to condemn land for water rights.

The bill would not prevent a city from condemning land for water rights. However, it would ensure that a city looked first at its existing water supply before seeking new water through condemnation. Drought contingency planning and implementing a water conservation plan could increase the amount of water available from a city's existing supply. In addition, these measures are often cheaper and more environmentally friendly than securing new water supplies.

The bill also would ensure that a city explored other ways to increase its water supply, without condemning land. A city would have to seek practical alternative water supplies and make a good-faith effort to buy water through a voluntary transaction before condemnation.

A city would have to take the precondemnation measures only once. For example, if a city was acquiring through condemnation multiple properties for a water project, it would have to prepare only one drought contingency plan and one water conservation plan. The plans would satisfy the precondemnation requirements for multiple proceedings. Moreover, a city would not have to make a new attempt to secure alternative water supplies for every proceeding involved in a single project.

**OPPONENTS  
SAY:**

SB 1227 is unnecessarily vague in setting requirements for a condemnation petition. For example, determining whether a city's water conservation plan had resulted in the highest practical levels of conservation and efficiency achievable would require a subjective judgment. The bill should specify objective criteria so that a city would know beforehand whether it had met the requirements of a condemnation petition.

The bill would create a burden for a city trying to acquire land for a large project. For example, a city might have to acquire hundreds of parcels of land to build a lake or reservoir to augment the city's water supply. Because it was acquiring the properties for the purpose of acquiring rights to surface water, a city would have to prove the additional requirements of the bill in every case in which the owner would not sell the property voluntarily. The city could succeed in nearly every case and begin spending money to compensate the landowners. However, if a jury denied the city's right to condemn a property that would be in the middle of the lake because the jury felt that the city had not met the bill's requirements, the city would have spent money on a project it could not complete. The bill should specify that in multiple condemnation proceedings for a large project, the political subdivision had to meet the requirements only once, such as in a regional forum.

**NOTES:**

A similar bill, HB 1532 by R. Cook, was placed on the House General State Calendar for May 1 but was postponed twice and died in the House.