

SUBJECT: Requiring appraisals and good faith in condemnation proceedings

COMMITTEE: Land and Resource Management — committee substitute recommended

VOTE: 5 ayes — Mowery, Harper-Brown, Escobar, Leibowitz, Orr
0 nays
4 absent — Blake, Cook, Miller, Pickett

WITNESSES: For — Billy Howe, Texas Farm Bureau; James N. Johnson
Against — Linda Storey, Harris County
On — Randy Ward, Texas Department of Transportation; Cavitt Wendlandt, Texas Attorney General. (*Registered, but did not testify:* Dan Byfield, American Land Foundation; Craig Chick, Texas Association of Realtors; Marida Favia del Core, Exotic Wildlife Association)

BACKGROUND: Property Code, sec. 21.012, allows a government entity to bring a condemnation proceeding in court if that entity wants to acquire land for public use but is unable to reach an agreement with the landowner as to the amount the entity is to pay the owner for the land. The entity must show that it and the landowner were unable to reach an agreement.

Current law does not require that the entity have negotiated in good faith or have conducted an appraisal of the property it wishes to acquire before making an offer. Sec. 21.0111 does require the entity to disclose to the landowner at the time it makes an offer any existing appraisal reports produced or acquired by the entity relating to the landowner's property and used in determining its offer.

DIGEST: CSHB 3017 would amend sec. 21.0111 to require that an entity conduct an appraisal of the specific property it wished to obtain before making an offer to buy the land. A general appraisal of similarly situated property would not be sufficient to meet this requirement. The appraisal would have to consider the effect of the proposed condemnation on the value of any portion of the property not condemned. If the property to be acquired

were less than 2,000 square feet, then an appraisal would not be required unless the landowner requested one.

The bill also would prohibit an entity, when making an offer to buy land for public use, from including an offer to purchase land that it did not have the authority and intention to acquire through condemnation.

If the entity and the landowner were not able to agree on a price and a condemnation proceeding were brought by the entity, evidence that the entity's offer to purchase was based on the required appraisal would be prima facie evidence that the offer and negotiations were conducted in good faith on the entity's part. If the court found that the entity did not act in good faith, the court could order the entity to pay the landowner's costs in defending the condemnation suit, including the landowner's attorney's fees and expert witness fees. An award of fees would be limited to \$250,000.

The bill also would amend secs. 101.161 and 101.081 to require the clerk of a district or county court to collect court costs and attorney's fees and expert witness fees in an eminent domain proceeding if the court awarded such fees to the landowner.

The bill would take effect September 1, 2005, and would apply only to a condemnation proceeding initiated on or after that date.

**SUPPORTERS
SAY:**

The Texas Supreme Court recently held that in making an offer and negotiating to purchase land for public use, a government entity is not required to act in good faith (*Hubenak v. San Jacinto Pipeline Transmission Co.*, 47 Tex. Sup. Ct. J. 768, 2004). This decision put landowners at a great disadvantage in negotiating to sell their property to a government entity for public use. CSHB 3017 simply would restore the balance between government entities and landowners.

To determine the fair market value of a piece of land, an appraisal must be conducted of the specific plot of land to be acquired. Requiring the entity to conduct such an appraisal would ensure that both it and the landowner were aware of the fair price for the land to be acquired. This would protect the entity if the parties could not reach an agreement on the price and a condemnation suit were brought because the entity could use the fact that it based its offer on the appraisal to show that it acted in good faith. However, if the entity did not act in good faith, such as by making an offer

significantly below the appraised value, and the court so found, then the landowner could be awarded his attorney's fees and expert witness fees. This would create a situation where it was in the best interest of the entity to make a fair offer and reach an agreement with the landowner, but where the entity also was protected against false claims that it did not negotiate in good faith.

The argument that more landowners would hold out for a higher price because the entity would seek to avoid litigation is not justified. The entity could be ordered to pay the landowner's attorney's fees only if the entity were found to not have acted in good faith, and such a finding is rare.

OPPONENTS
SAY:

Requiring an entity to negotiate in good faith or risk paying a landowner's attorney's fees could result in more landowners refusing to reach agreements on a fair price and instead holding out for a higher offer from the entity. Entities would be more likely to pay a higher price than pay the high costs associated with condemnation proceedings, and the increased costs the bill would create through attorney's fees if a court found the entity did not act in good faith.

Most entities already act in good faith and many conduct appraisals before making an offer, so the bill would create an unnecessary burden on government entities.

NOTES:

The committee substitute changed the bill as introduced by establishing an exception from the requirement for an appraisal for property to be obtained that is less than 2,000 square feet unless the landowner requested an appraisal. It replaced the phrase "governmental entity" with the language "an entity described by sec. 21.012(a)" of the Property Code. An entity described in sec. 21.012(a) includes the United States, this state, a political subdivision of this state, a corporation with eminent domain authority, or an irrigation, water improvement, or water power control district created by law. Finally, the substitute added a cap of \$250,000 on fees that could be awarded if the entity was found not to have acted in good faith.