

- SUBJECT:** Changing the criteria for actual progress by a condemning entity
- COMMITTEE:** Land and Resource Management — committee substitute recommended
- VOTE:** 8 ayes — Deshotel, Leman, Biedermann, Burrows, Craddick, Rosenthal, Spiller, Thierry
- 1 nay — Romero
- WITNESSES:** For — (*Registered, but did not testify:* Petrus Wassdorf, Delta Troy Interests; Adrian Shelley, Public Citizen; Eric Opiela, South Texans' Property Rights Association; Jeremy Fuchs, Texas and Southwestern Cattle Raisers Association; Josh Winegarner, Texas Cattle Feeders Association; Brian Adamek, Russell Boening, Mark Daniel, John Griffith, J. Walt Hagood, Charlie Leal, Pat McDowell, and Kevin Wikerson, Texas Farm Bureau; Jennifer Bremer, Texas Land & Mineral Owners Association; Rita Beving, Texas Landowners for Eminent Domain Reform; Jessica Karlsruher, TREAD Coalition; Trey Duhon, Waller County; and 10 individuals)
- Against — Lee Christie, Tarrant Regional Water District; (*Registered, but did not testify:* Lisa Kaufman, Coalition for Critical Infrastructure; Chris Wallace, North Texas Commission; Ben Shepperd, Permian Basin Petroleum Association; Blaire Parker, San Antonio Water System; John Dahill, Texas Conference of Urban Counties; Monty Wynn, Texas Municipal League)
- BACKGROUND:** Property Code sec. 21.101 establishes that a person from whom a real property interest is acquired by an entity through eminent domain for a public use, or that person's heirs, successors, or assigns, is entitled to repurchase the property if no actual progress is made toward the public use for which the property was acquired within 10 years of acquisition. Actual progress may be demonstrated by the completion of any two of certain specified actions.
- DIGEST:** CSHB 2044 would increase from two to three the minimum number of

specified actions a condemning entity had to perform to meet the criteria for actual progress for the purpose of determining the right of owners or their heirs to repurchase real property from the entity. The bill would eliminate certain options from those actions, including the acquisition of real property adjacent to the property for the same public use.

A navigation district or port authority, or a water district implementing a project included in the state water plan adopted by the Texas Water Development Board, could establish actual progress by performing one of the specified actions and by a majority of the entity's governing body at a public hearing adopting a development plan for a public use project indicating that the entity will not complete more than one other specified action before the 10th anniversary of the acquisition of the property.

The bill would add to the specified actions contracting with an architect, engineer, or surveyor who performs a significant amount of work related to the relevant project, in addition to the current law action of hiring such a person. Significant work would include preparation of an easement for property acquired for the project.

The bill would take effect September 1, 2021, and would apply only to a real property interest acquired through a condemnation proceeding in which the petition was filed on or after that date.

**SUPPORTERS
SAY:**

CSHB 2044 would strengthen private property rights by enabling landowners to repurchase their property unless it was substantively demonstrated that within 10 years actual progress had been made on a project for which land had been acquired by eminent domain. The bill would eliminate provisions that allow condemning entities to claim that actual progress has occurred and retain acquired land indefinitely without even beginning work on the project.

The requirements that CSHB 2044 would set for demonstrating progress are not especially burdensome. It is reasonable to expect that when property has been acquired for public use against the will of the landowner, concrete progress should be shown within 10 years. Taxpayers

and public interest are not benefited by projects that are not substantially progressing.

CRITICS
SAY:

CSHB 2044 could make it more difficult for municipalities to plan and carry out large infrastructure projects, which may face complex funding and permitting hurdles and often require the acquisition of land far in advance of completion. Making it easier for landowners to repurchase property acquired through eminent domain could lead to unnecessary litigation and increased costs that could be borne by taxpayers. The current requirements for actual progress reflect an appropriate balance between public and private interests.

NOTES:

According to the Legislative Budget Board, the bill would have an indeterminate fiscal impact to the state due to the case by case nature of the requirements on condemnations.