

BILL ANALYSIS

Senate Research Center

H.B. 2006
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State Affairs
5/18/2007
Committee Report (Amended)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Constitution limits the use of the power of eminent domain by requiring adequate compensation for the land on which eminent domain is used. The exercise of this power, while considered a necessary tool of government by some, has been argued to have been expanded and used in improper ways by others. Reform of the power of eminent domain may be necessary to limit the possibilities for abuse.

H.B. 2006 provides for certain changes, additions, and deletions to various codes and provisions in Texas law in order to reform the limitations, process, and other aspects of the power of eminent domain and condemnation in this state.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 552.0037, Government Code, as follows:

Sec. 552.0037. CERTAIN ENTITIES AUTHORIZED TO TAKE PROPERTY THROUGH EMINENT DOMAIN. (a) Creates this subsection from existing text. Provides that certain information collected, assembled, or maintained by an entity that is not a governmental body but is authorized to use the power of eminent domain is subject to this chapter, notwithstanding any other law and except as provided by this section.

(b) Requires an entity described by Subsection (a) only to produce documents relating to the condemnation of the specific property owned by the requestor as described in the request, notwithstanding Section 552.007.

(c) Requires a request under this section to contain sufficient details to allow the entity to identify the specific tract of land in relation to which the information is sought.

SECTION 2. Amends Chapter 2206, Government Code, as follows:

CHAPTER 2206. New heading: EMINENT DOMAIN

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2206.001. DEFINITION OF PUBLIC USE. Defines "public use," except as otherwise provided by this chapter.

SUBCHAPTER B. LIMITATIONS ON PURPOSE AND USE OF PROPERTY ACQUIRED THROUGH EMINENT DOMAIN

Sec. 2206.051. LIMITATION ON EMINENT DOMAIN FOR PRIVATE PARTIES OR ECONOMIC DEVELOPMENT PURPOSES. (a) Redesignates text from existing Subsection 2206.001(a), Government Code. Makes no changes to this subsection.

(b) Redesignates text from existing Subsection 2206.001(b), Government Code. Makes no changes to this subsection.

(c) Redesignates text from existing Subsection 2206.001(c), Government Code. Deletes existing text referencing Section B(3)(b) (regarding the business of engaging in petroleum oil producing or in the oil pipeline business in this state), Article 2.01, Texas Business Corporation Act, in reference to a common carrier.

(d) Redesignates text from existing Subsection 2206.001(d), Government Code. Makes no changes to this subsection.

(e) Redesignates text from existing Subsection 2206.001(e), Government Code. Makes no changes to this subsection.

SUBCHAPTER C. PROCEDURES REQUIRED TO INITIATE EMINENT DOMAIN PROCEEDINGS

Sec. 2206.101. **SHORT TITLE.** Authorizes the citation of this subchapter as the Truth in Condemnation Procedures Act.

Sec. 2206.102. **APPLICABILITY.** Provides that the procedures in this subchapter apply only to the use of eminent domain under this laws of this state by a governmental entity.

Sec. 2206.103. **VOTE ON USE OF EMINENT DOMAIN.** (a) Requires a governmental entity, before initiating a condemnation proceeding by filing a petition under Section 21.012 (Condemnation Petition), Property Code, to authorize said initiation at a public meeting by a record vote. Requires a separate record vote to be taken for each unit of property for which condemnation proceedings are to be initiated, except as provided by Subsection (b) or (d).

(b) Authorizes the governmental entity to treat two or more units of real property that are owned by the same person as one unit of property for purposes of Subsection (a).

(c) Sets forth the substantial language of a motion to adopt an ordinance, resolution, or order authorizing the initiation of condemnation proceedings under Chapter 21 (Eminent Domain), Property Code. Provides that the description of the property required by this subsection is sufficient if the description of the location of and interest in the property that the governmental entity seeks to acquire is substantially similar to the description that is or could properly be used in a petition to condemn the property under Section 21.012, Property Code.

(d) Authorizes the governmental body that seeks multiple tracts or units of property to construct facilities connection one location to another location in a project for a public use described by Section 2206.051(c)(3) to adopt a single ordinance, resolution, or order by a record vote that delegates the authority to initiate condemnation proceedings to the chief administrative official of the governmental entity.

(e) Provides that an ordinance, resolution, or order adopted under Subsection (d) is not required to identify specific properties that the governmental entity will acquire. Requires said ordinance, resolution, or order to identify the general area to be covered by the project or the general route that will be used for the project in a way that provides reasonable notice to property owners in and around the area or along the route that the owners' property may be subject to condemnation proceedings during the planning or construction of the project.

SECTION 3. Amends Subchapter B, Chapter 21, Property Code, by adding Sections 21.0112 and 21.0113, as follows:

Sec. 21.0112. **GOOD FAITH STANDARD.** Requires an entity with eminent domain

authority that wants to acquire real property for a public use to make a good faith effort to acquire the property from the property owner voluntarily.

Sec. 21.0113. ADDITIONAL PROCEDURES FOR CERTAIN COMMON CARRIERS.

(a) Provides that this section applies only to a condemnation proceeding initiated by a common carrier, as defined by Section 111.002 (Common Carriers Under Chapter), Natural Resources Code.

(b) Requires a common carrier that intends to exercise the power of eminent domain to serve the owner of the property to be acquired with notice of the common carrier's intention to initiate condemnation proceedings on or before the date the common carrier files a condemnation petition.

(c) Sets forth certain methods by which the notice is required to be served to the property owner.

(d) Provides that a common carrier has the burden of proof to establish that a property owner received the notice.

SECTION 4. Amends Section 21.012(b), Property Code, to require a statement that the entity with eminent domain authority made a good faith effort to acquire the property owner voluntarily be included on a condemnation petition.

SECTION 5. Amends Section 21.023, Property Code, to require a governmental entity to disclose in writing to the property owner, at the time of acquisition of the owner's property through eminent domain, that the repurchase price is the price paid to the owner by said entity at the time of acquisition, rather than the fair market value of the property at the time the public use was canceled.

SECTION 6. Amends Section 21.041, Property Code, to set forth certain evidence which the special commissioners are required to admit as the basis for assessing actual damages to a property owner from a condemnation.

SECTION 7. Amends Section 21.042(d), Property Code, to include the property owner's financial damages described by Section 21.041(2) in the required estimation by the special commissioners of injury or benefit under Subsection (c) that is peculiar to the property owner.

SECTION 8. Amends Sections 21.046(a) and (b), Property Code, as follows:

(a) Requires, rather than authorizes, a department, agency, instrumentality, or political subdivision of this state to provide a relocation advisory service for certain entities that is compatible, rather than if the service is compatible, with the Federal Uniform Relocation Assistance Advisory Program (23 U.S.C.A. 501, et seq.)

(b) Requires, rather than authorizes, this state or a political subdivision of this state to pay for certain expenses for the displacement of an entity from its property after acquisition by eminent domain.

SECTION 9. Amends the heading to Section 21.047, Property Code, to read as follows:

Sec. 21.047. ASSESSMENT OF COSTS AND FEES.

SECTION 10. Amends Section 21.047, Property Code, by adding Subsection (d) to authorize a court hearing a suit under this chapter to order a condemning entity to pay all costs and reasonable attorney's fees incurred by the property owner if the court finds that the entity did not make a good faith effort to acquire property from a property owner voluntarily as required under Section 21.0112.

SECTION 11. Amends Section 21.101(a), Property Code, to entitle a person from whom a property interest is acquired or that person's heirs, successors, or assigns to repurchase the property as provided by this subchapter (Repurchase of Real Property From Governmental

Entity) if the public use of that property was canceled before the 10th anniversary of the date of acquisition.

SECTION 12. Amends Section 21.103(b), Property Code, to make conforming changes.

SECTION 13. Amends Subchapter B, Chapter 111, Natural Resources Code, by adding Section 111.0195, as follows:

Sec. 111.0195. RIGHT OF EMINENT DOMAIN: ADDITIONAL PROCEDURES. (a) Provides that this section applies only to a condemnation proceeding initiated by a common carrier, as defined by Section 111.002.

(b) Requires a common carrier that intends to exercise the power of eminent domain to serve the owner of the property to be acquired with notice of such intention on or before the date the common carrier files a condemnation petition.

(c) Prohibits the special commissioners in an eminent domain proceeding to which this section applies from scheduling a hearing to assess damages before the 30th day after the date of the special commissioners' appointment and requires those commissioners to serve a property owner with notice of the time and place of the hearing not later than the 21st day before the date set for the hearing.

(d) Authorizes a court that has jurisdiction over a condemnation proceeding (court) to appoint a replacement special commissioner if the property owner or the common carrier objects to the appointment of a special commissioner by filing a written statement of the objection on the grounds of a conflict of interest or other good cause, and the court determines in a hearing that good cause is shown.

(e) Authorizes the special commissioners to delay scheduling of a hearing for a reasonable period if, by motion to the court, the property owner requests and is granted such a delay by the court for good cause shown.

(f) Sets forth certain methods by which the notice under this section is required to be served to the property owner.

(g) Provides that a common carrier has the burden of proof to establish that a property owner received the notice as required by Subsection (b).

SECTION 14. Amends Subchapter G, Chapter 13, Water Code, by adding Section 13.258, as follows:

Sec. 13.258. EMINENT DOMAIN. (a) Authorizes a water and sewer utility (utility) that is operating in accordance with its certificate of convenience and necessary to acquire by condemnation only easements or lesser property interest reasonably necessary to comply with federal and state regulations relating to sanitation.

(b) Requires a utility to exercise the power of eminent domain in the manner provided by Chapter 21, Property Code.

(c) Prohibits the utility from exercising the power of eminent domain to condemn land to acquire rights to underground water or for water or water rights.

(d) Prohibits a utility from exercising the power of eminent domain in certain municipalities.

SECTION 15. Amends Section 101.061, Government Code, include court costs of \$10 or more, as taxed by the court, for each special commissioner in an eminent domain proceeding, and court costs and attorney's fees as reasonable, as taxed by the court, in such a proceeding, among the fees and costs which the clerk of a district court is required to collect.

SECTION 16. Amends Section 101.081, Government Code, to make a conforming change respective to the fees and costs which the clerk of a statutory county court is required to collect.

SECTION 17. (a) Makes application of Section 552.0037, Government Code, as amended by this Act, prospective.

(b) Makes application of Chapter 2206, Government Code, and Chapter 21, Property Code, as amended by this Act, prospective.

SECTION 18. Makes application of Section 111.0195, Natural Resources Code, as added by this Act, prospective.

SECTION 19. (a) Effective date of this Act: September 1, 2007, except as provided by Subsection (b).

(b) Effective date, Sections 5 and 12 of this Act, amending Sections 21.023 and 21.103, Property Code: upon passage, contingent upon approval by the voters of the constitutional amendment relating to the authorization of a governmental entity to sell property acquired through eminent domain back to the previous owners at the price the entity paid to acquire the property.

SUMMARY OF COMMITTEE CHANGES

Committee Amendment No. 1:

(1) and (2) Amends SECTION 2 (House Engrossed version) by amending Section 2206.051(b), Government Code (page 3, line 1), to prohibit a governmental or private entity from taking private property through the use of eminent domain if the taking is not for a public use.

(3) Amends SECTION 2 of the bill by striking added Section 2206.051(e), Government Code (page 4, lines 18-22), and substituting language to provide that the determination by the governmental or private entity proposing to take the property that the taking is for a public use or does not involve an act or circumstance prohibited by Subsection (b) does not create a presumption with respect to whether the contemplated use is truly public or whether the taking involves that act or circumstance.

(4) Amends SECTION 2 of the bill in added Section 2206.103(a), Government Code (page 5, lines 7-8), by striking "except as provided by Subsection (b) or (d)," and substituting "If the motion required by Subsection (c) indicates that the first record vote applies to all units of property to be condemned, and the minutes of the entity reflect that the first vote applies to all of those units, a single ordinance, resolution, or order may be adopted for all of those units of property. If a member of the governing body objects to adopting a single ordinance, resolution, or order by a record vote for all units of property for which condemnation proceedings are to be initiated".

(5) Amends SECTION 2 of the bill in added Section 2206.103(a), Government Code (page 5, lines 9-10), by striking "for which condemnation proceedings are to be initiated".

(6) Amends SECTION 3 of the bill, in the heading of added Section 21.0112, Property Code (page 6, line 18), by striking "GOOD FAITH STANDARD" and substituting "BONA FIDE OFFER REQUIRED."

(7) Amends SECTION 3 of the bill in added Section 21.0112, Property Code (page 6, line 20), by striking "good faith effort" and substituting "bona fide offer."

(8) Amends SECTION 3 of the bill, in added Section 21.0112, Property Code (page 6, line 21), after the period, by inserting "A bona fide offer is an offer that is not arbitrary or capricious and is based on a reasonably thorough investigation and honest assessment of the amount of the just compensation due to the landowner as a result of the taking."

- (9) Amends SECTION 4 of the bill in added Subdivision (5), Subsection (b), Sections 21.012, Property Code (page 7, line 20), by striking "good faith effort" and substituting "bona fide offer."
- (10) Amends SECTION 6 of the bill, in amended Section 21.041, Property Code (page 8, line 14), between "shall" and "admit", by inserting ",subject to the applicable rules of evidence,".
- (11) Amends SECTION 6 of the bill, in amended Section 21.041, Property Code (page 8, line 14), between "evidence" and "on", by inserting "that would be considered by willing, knowledgeable, and prudent purchasers and sellers in the marketplace who are not under duress".
- (12) Amends SECTION 6 of the bill by striking amended Subdivisions (1) and (2), Section 21.041, Property Code (page 8, lines 15-26), and substituting language to require the special commissioners, as the basis for assessing actual damages to a property owner from a condemnation, to admit evidence on the value of the property being condemned and the injury to the property owner.
- (13) Strikes SECTION 7 of the bill (page 9, lines 4-13) and renumbers subsequent SECTIONS accordingly.
- (14) Amends SECTION 10 of the bill, by striking added Section 21.047(d), Property Code (page 10, lines 8-12), and substituting language to require the court, if a court hearing suit under this chapter determines that a condemning entity did not make a bona fide offer to acquire the property from the property owner voluntarily as required by Section 21.0112, to abate the suit and order the condemnor to make a bona fide offer. Requires the court, if a court hearing a suit in this chapter finds that by filing a petition under Section 21.012 or by filing any other motion or pleading in the proceeding initiated by the filing that petitions the condemnor violated Chapter 10 (Sanctions for Frivolous Pleadings and Motions), Civil Practices and Remedies Code, to order the condemnor to pay certain costs.
- (15) Amends SECTION 11 of the bill, in Section 21.101(a), Property Code (page 10, line 21), by inserting, between "acquisition" and the period, "or the governmental entity fails to begin operation or construction of the project for which the property was acquired before the 10th anniversary of that date".
- (16) Adds the following appropriately numbered SECTIONS to the bill and renumbers existing SECTIONS accordingly:

SECTION __. Amends Section 21.102, Property Code, as follows:

Sec. 21.102. New heading: NOTICE TO PREVIOUS PROPERTY OWNER AT TIME OF CANCELLATION OF PUBLIC USE OR ON FAILURE TO BEGIN OPERATION OR CONSTRUCTION OF A PUBLIC USE PROJECT. Requires a governmental entity, not later than the 180th day after the date of the cancellation of the public use for which real property was acquired through eminent domain from a property owner under Subchapter B or the 180th day after the 10th anniversary of the date on which the property was acquired if the governmental entity fails to begin operation or construction of the project for which the property was acquired before the 10th anniversary of that date, to send by certified mail, return receipt requested, to the property owner or the owner's heirs, successors, or assigns a notice containing certain information.

SECTION __. Requires the comptroller of public accounts, not later than January 1, 2009, to identify all public and private entities with eminent domain authority and make recommendations to the legislature and the governor regarding certain matters.

Committee Amendment No. 2:

- (1) Strikes SECTION 1 of the bill (page 1, lines 4 through 24).
- (2) Adds the following appropriately numbered SECTIONS to the bill:

SECTION __. Amends Subchapter B, Chapter 21, Property Code, by adding Section 21.024, as follows:

Sec. 21.024. PRODUCTION OF INFORMATION BY CERTAIN ENTITIES. (a) Provides that, notwithstanding any other law, an entity that is not subject to Chapter 552 (Public Information), Government Code, and is authorized by law to acquire private property through the use of eminent domain is required to produce information as provided by this section if the information meets certain criteria.

(b) Provides that an entity described by Subsection (a) is required under this section only to produce information relating to the condemnation of the specific property owned by the requestor or property adjacent to that property, if applicable, as described in the request. Requires a request under this section to contain sufficient details to allow the entity to identify the specific tract of land in relation to which the information is sought.

(c) Requires the entity to respond to a request in accordance with the Texas Rules of Civil Procedure as if the request was made in a matter pending before a state district court.

(d) Provides that exceptions to disclosure provided by this chapter and the Texas Rules of Civil Procedure apply to the disclosure of information under this section.

(e) Provides that jurisdiction to enforce the provisions of this section resides in certain courts.

(f) Authorizes the court, if the entity refuses to produce information requested in accordance with this section and the court determines that the refusal violates this section, to award the requestor's reasonable attorney's fees incurred to compel the production of the information.

(g) Authorizes the attorney general, if an entity that received a request in accordance with this section does not produce the requested information on or before the 30th day after the request is made, to file an action in a court described by Subsection (e) to enforce this section on the request of the person who made the request for the information. Authorizes the court, if the court determines that the failure to produce the information is a violation of this section, to award the attorney general's reasonable expenses incurred to compel the production of the information.

(h) Prohibits, if the attorney general files an action under Subsection (g), a person who requested that the attorney general file the action from filing a private action to enforce this section with respect to the same request for information.

SECTION __. Repealer: Section 552.0037 (Certain Entities Authorized to Take Property Through Eminent Domain), Government Code.

(3) Renumbers existing SECTIONS of the bill accordingly.