

BILL ANALYSIS

Senate Research Center

S.B. 1442
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In obtaining private property for public use by means of eminent domain authority, a governmental entity may initiate condemnation proceedings if the entity and the property owner cannot reach an agreement as to the amount the entity will pay the owner for the property. Such conflicts are common because a governmental entity is not required to make initial offers matching the estimated fair market value, and as such, often makes an offer that is arbitrary, capricious, or in bad faith. An owner's only recourse to contest such an initial offer is to enter into litigation via a special commissioners court appointed by the court handling the condemnation proceedings, which may be time-consuming and expensive for the owner. Many owners are deterred from doing this because it rarely provides just compensation. Any fees the owner incurs throughout the proceedings, such as attorneys' or appraisers' fees, generally must be borne by the landowner, even if the court requires the condemnor to pay a higher appraised value to the owner. Only in limited circumstances can the owner recover these fees from the other party, thus effectively reducing the property value for the owner by the litigation costs.

As proposed, S.B. 1442 authorizes a property owner to use a binding third-party appraisal in lieu of a special commissioners court to determine the contested value of a property condemned by a governmental entity in the exercise of its eminent domain authority, and requires the entity to pay the owner damages equal to the fair market value determined by the appraisal, including the appraisal costs, if the value determined by the appraisal is higher than the entity's initial offer. The bill also requires a governmental entity to provide the property owner with a statement of the owner's rights and instructions for requesting an unbiased third-party appraiser.

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 21.0111(a), Property Code, to require a governmental entity to provide to the property owner (owner), at the time the entity offers to purchase the owner's property under the entity's eminent domain authority, a statement of the owner's rights under this chapter, including instructions for requesting a binding third-party appraisal.

SECTION 2. Amends Section 21.014(a), Property Code, to require a judge of a court hearing a case regarding eminent domain or a condemnation petition to appoint disinterested freeholders as special commissioners to assess the damages of the owner of the condemned property, unless the owner requests a binding third-party appraisal under Section 21.0141.

SECTION 3. Amends Subchapter B, Chapter 21, Property Code, by adding Sections 21.0141, 21.0142, and 21.0143, as follows:

Sec. 21.0141. BINDING THIRD-PARTY APPRAISAL. (a) Authorizes an owner to request a binding third-party appraisal (appraisal) to assess the fair market value of the condemned property as an alternative to a special commissioners court under Section 21.014. Requires the owner to file the request in the form prescribed by Section 21.0142 not later than the 120th day after the date the property owner receives notice of the condemnation. Requires the request to be filed with the court in which the condemnation petition was filed or to which the eminent domain case was assigned.

(b) Provides that an owner requesting a special commissioners hearing under Section 21.014 waives the right to request an appraisal. Requires the court to dismiss any pending appraisal if the owner's rights are waived under this subsection.

Sec. 21.0142. REQUEST FOR BINDING THIRD-PARTY APPRAISAL. Authorizes an owner to request an appraisal by completing a request form as prescribed by the comptroller of public accounts (comptroller). Requires that the form require the property owner to provide only certain information.

Sec. 21.0143. BINDING THIRD-PARTY APPRAISAL PROCEDURE. (a) Authorizes an owner requesting an appraisal to select an appraiser from a list provided by the comptroller.

(b) Requires the comptroller to keep a list with contact numbers on its website of approved appraisers authorized to perform an appraisal. Prohibits an appraiser from having appraised property for the condemnor during the latest 12-month period.

(c) Provides that the appraisal is the final assessment of the fair market value of the property, and prohibits the appraisal from being appealed. Requires the condemnor to pay the owner damages equal to the fair market value determined by the appraiser. Requires the condemnor to pay for the appraisal if the appraised value is greater than the initial amount offered to the owner. Requires the owner to pay for the appraisal if the appraised value is less than the damages initially offered by the condemnor.

SECTION 4. Makes application of this Act prospective.

SECTION 5. Effective date: September 1, 2007.