

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 18
By: Estes et al.
State Affairs
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, the Fifth Amendment to the United States Constitution prohibits the taking of private property for public use without just compensation, commonly referred to as the "takings clause." Section 17, Article I, Texas Constitution, prohibits a person's property from being taken, damaged, or destroyed without consent for public use without adequate compensation.

C.S.S.B. 18 amends current law relating to the use of eminent domain authority.

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 Chapter 2206, Government Code, as follows:

CHAPTER 2206. New heading: EMINENT DOMAIN

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

Sec. 2206.001. LIMITATION ON EMINENT DOMAIN FOR PRIVATE PARTIES OR ECONOMIC DEVELOPMENT PURPOSES. (a) Makes no changes to this subsection.

(b) Prohibits a governmental or private entity from taking private property through the use of eminent domain if the taking is not for public use, among other criteria. Makes nonsubstantive changes.

(c) Provides that this section does not affect the authority of an entity authorized by law to take private property through the use of eminent domain for the operations of a common carrier pipeline, among other certain purposes. Deletes existing text relating to a common carrier subject to Chapter 111, Natural Resources Code, and Section B(3)(b), Article 2.01, Texas Business Corporation Act.

(d) Makes no changes to this subsection.

(e) Makes no changes to this subsection.

Sec. 2206.002. LIMITATIONS ON EASEMENTS. (a) Authorizes a property owner whose property is acquired through the use of eminent domain under Chapter 21 (Eminent Domain), Property Code, for the purpose of creating an easement through that owner's property to construct streets or roads, including a gravel, asphalt, or concrete road, at any locations above the easement that the property owner chooses.

(b) Provides that the portion of a road constructed under this section that is within the area covered by the easement is required to cross the easement at or near 90 degrees and may not exceed 40 feet in width, cause a violation of any applicable

pipeline regulation, or interfere with the operation and maintenance of any pipeline.

(c) Requires the property owner, at least 30 days before the date on which construction of an asphalt or concrete road or street that will be located, wholly or partly, in an area covered by an easement used for a pipeline is scheduled to begin, to submit plans for the proposed construction to the owner of the easement.

(d) Provides that this section does not apply to an easement acquired by an entity for the purpose of providing water or wastewater services.

SUBCHAPTER B. PROCEDURES REQUIRED TO INITIATE EMINENT DOMAIN PROCEEDINGS

Sec. 2206.051. **SHORT TITLE.** Authorizes this subchapter to be cited as the Truth in Condemnation Procedures Act.

Sec. 2206.052. **APPLICABILITY.** Provides that the procedures in this subchapter apply only to the use of eminent domain under the laws of this state by a governmental entity.

Sec. 2206.053. **VOTE ON USE OF EMINENT DOMAIN.** (a) Requires a governmental entity before the governmental entity initiates a condemnation proceeding by filing a petition under Section 21.012 (Condemnation Petition), Property Code, to authorize the initiation of the condemnation proceedings at a public meeting by a record vote.

(b) Authorizes a single ordinance, resolution, or order to be adopted for all units of property to be condemned if the motion required by Subsection (e) 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.

(c) Requires that, if more than one 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, a separate record vote be taken for each unit of property.

(d) Authorizes the governmental entity, for the purposes of Subsection (a) and (c), if two or more units of real property are owned by the same person, to treat those units of property as one unit of property.

(e) Requires the motion to adopt an ordinance, resolution, or order authorizing the initiation of condemnation proceedings under Chapter 21, Property Code, to be made in a form substantially similar to certain language set forth in this subsection. 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 (Condemnation Petition), Property Code.

(f) Authorizes the governing body, if a project for a public use described by Section 2206.051(c)(3) (relating to the circumstances under which a governmental or private entity is authorized to take private property through the use of eminent domain) will require a governmental entity to acquire multiple tracts or units of property to construct facilities connecting one location to another location, 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.

(g) Provides that an ordinance, resolution, or order adopted under Subsection (f) is not required to identify specific properties that the governmental entity will acquire. Requires that the ordinance, resolution, or order identify the general area to be covered by the project or the general route that will be used by the

governmental entity for the project in a way that provides property owners in and around the area or along the route reasonable notice that the owners' properties may be subject to condemnation proceedings during the planning or construction of the project.

SUBCHAPTER C. EXPIRATION OF CERTAIN EMINENT DOMAIN AUTHORITY

Sec. 2206.101. REPORT OF EMINENT DOMAIN AUTHORITY; EXPIRATION OF AUTHORITY. (a) Provides that this section does not apply to an entity that was created or that acquired the power of eminent domain on or after December 31, 2010.

(b) Requires an entity, including a private entity, authorized by the state by a general or special law to exercise the power of eminent domain, not later than December 31, 2010, to submit to the comptroller of public accounts (comptroller) a letter stating that the entity is authorized by the state to exercise the power of eminent domain and identifying the provision or provisions of law that grant the entity that authority. Requires the entity to send the letter by certified mail, return receipt requested.

(c) Provides that the authority of an entity to exercise the power of eminent domain expires on September 1, 2011, unless the entity submits a letter in accordance with Subsection (b).

(d) Requires the comptroller, not later than March 1, 2011, to submit to the governor, the lieutenant governor, the speaker of the house of representatives, the appropriate standing committees of the senate and the house of representatives, and the Texas Legislative Council (TLC) a report that contains the name of each entity that submitted a letter in accordance with this section and a corresponding list of the provisions granting eminent domain authority as identified by each entity that submitted a letter.

(e) Requires TLC to prepare for consideration by the 83rd Legislature, Regular Session, a nonsubstantive revision of the statutes of this state as necessary to reflect the state of the law after the expiration of an entity's eminent domain authority effective under Subsection (c).

SECTION 2. Amends Section 21.0111, Property Code, as follows:

Sec. 21.0111. New heading: DISCLOSURE OF CERTAIN INFORMATION REQUIRED; INITIAL OFFER. (a) Requires an entity with eminent domain authority, rather than a governmental entity with eminent domain authority, that wants to acquire real property for a public use to, by certified mail, return receipt requested, disclose to the property owner at the time an offer to purchase or lease the property is made any and all appraisal reports, rather than any and all existing appraisal reports, produced or acquired by the entity relating specifically to the owner's property and prepared in the 10 years preceding the offer, rather than used in determining the final valuation offer. Makes a conforming change.

(b) Requires a property owner to disclose to the entity seeking to acquire the property any and all current and existing appraisal reports produced or acquired by the property owner relating specifically to the owner's property and used in determining the owner's opinion of value. Requires that such disclosure take place not later than the earlier of the 10th day after the date of receipt of an appraisal report or the third business day before the date of a special commissioners hearing if an appraisal report is to be used at the hearing. Deletes existing text requiring that such disclosure take place within 10 days of receipt of appraisal reports but no later than 10 days prior to the special commissioner's hearing. Makes a conforming change.

(c) Requires that the initial offer to purchase made by the entity also include a copy of this section; a written estimate of the fair market value of the property the

entity is offering to acquire and the amount of damages to the property owner's remaining property, if any, that will result from the acquisition; and a statement that the property owner has a right to make a written request to the entity for an appraisal of the property, at the entity's expense.

(d) Prohibits an entity seeking to acquire property that the entity is authorized to obtain through the use of eminent domain from including a confidentiality provision in an offer or agreement to acquire the property. Requires the entity to inform the owner of the property that the owner has the right to discuss any offer or agreement regarding the entity's acquisition of the property with others or keep the offer or agreement confidential.

(e) Makes conforming and nonsubstantive changes.

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

Sec. 21.0113. **BONA FIDE OFFER REQUIRED.** Requires an entity with eminent domain authority that wants to acquire real property for a public use to make a bona fide offer to acquire the property from the property owner voluntarily.

(b) Provides that an entity with eminent domain authority has made a bona fide offer if a final offer is made in writing to a property owner; the final offer is made on or after the 30th day after the date the entity initially contacts the property owner; before making a final offer, the entity obtains a written appraisal from a certified appraiser of the value of the property being acquired and the damages, if any, to any remaining property; the final offer is equal to or greater than the amount of the written appraisal obtained by the entity; certain items are included with the final offer or have been previously provided to the owner by the entity; and the entity provides a property owner with at least 14 days to respond to the final offer and the property owner does not agree to the terms of the final offer within that time.

SECTION 4. Amends Section 21.012, Property Code, as follows:

Sec. 21.012. **CONDEMNATION PETITION.** (a) Authorizes an entity, if the entity with eminent domain authority wants to acquire real property for public use but is unable to agree with the owner of the property on the amount of damages, to begin a condemnation proceeding by filing a petition in the proper court. Deletes existing text authorizing a condemning entity, if 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 wants to acquire real property for public use but is unable to agree with the owner of the property on the amount of damages, to begin a condemnation proceeding by filing a petition in the proper court.

(b) Requires the petition to include certain information, including stating with specificity the public use, rather than the purpose, for which the entity intends to acquire the property, rather than use the property, and state that the entity made a bona fide offer to acquire the property from the property owner voluntarily.

(c) Requires an entity that files a petition under this section to provide a copy of the petition to the property owner by certified mail, return receipt requested.

SECTION 5. Amends Section 21.014(a), Property Code, to require the judge of a court in which a condemnation petition is filed or to which an eminent domain case is assigned to appoint three disinterested real property owners, rather than three disinterested freeholders, who reside in the county as special commissioners to assess the damages of the owner of the property being condemned. Requires the judge to provide each party a reasonable period to strike one of the three commissioners appointed by the judge. Requires, rather than authorizes, the judge, if a

person fails to serve as a commissioner or is struck by a party to the suit, to appoint a replacement.

SECTION 6. Amends Section 20.015(a), Property Code, to require the special commissioners in an eminent domain proceeding to promptly schedule a hearing for the parties at the earliest practical time but prohibit the special commissioners from scheduling a hearing to assess damages before the 20th day after the date the special commissioners were appointed. Requires the special commissioners to schedule a hearing for the parties at a place that is as near as practical to the property being condemned or at the county seat of the county in which the proceeding is being held.

SECTION 7. Amends Section 21.016(b), Property Code, to require that notice of the hearing be served on a party not later than the 20th day, rather than the 11th day, before the day set for the hearing.

SECTION 8. Amends Section 21.023, Property Code, as follows:

Sec. 21.023. DISCLOSURE OF INFORMATION REQUIRED AT TIME OF ACQUISITION. Requires an entity with eminent domain authority to disclose in writing to the property owner, at the time of acquisition of the property through eminent domain, that the owner or the owner's heirs, successors, or assigns may be entitled to repurchase the property under Subchapter E or request from the entity certain information relating to the use of the property and any actual progress made toward that use; and provides that the repurchase price is the price paid to the owner by the entity at the time the entity acquired the property through eminent domain. Deletes existing text requiring a governmental entity to disclose in writing to the property owner, at the time of acquisition of the property through eminent domain, that the owner or the owner's heirs, successors, or assigns are entitled, to repurchase the property if the public use for which the property was acquired through eminent domain is canceled before the 10th anniversary of the date of acquisition and the repurchase price is the fair market value of the property at the time the public use was canceled.

SECTION 9. Amends Subchapter B, Chapter 21, Property Code, by adding Section 21.025, as follows:

Sec. 21.025. PRODUCTION OF INFORMATION BY CERTAIN ENTITIES. (a) Requires 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, notwithstanding any other law, to produce information as provided by this section if the information is requested by a person who owns property that is the subject of a proposed or existing eminent domain proceeding and related to the taking of the person's private property by the entity through the use of eminent domain.

(b) Requires an entity described by Subsection (a), under this section only, to produce information relating to the condemnation of the specific property owned by the requestor as described in the request. Requires that a request under this section 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 the court in which the condemnation was initiated, or if the condemnation proceeding has not been initiated, a court that would have jurisdiction over a proceeding to condemn the requestor's property, or a court with eminent domain jurisdiction in the county in which the entity has its principal place of business.

(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.

SECTION 10. Amends Section 21.042(d), Property Code, to require the special commissioners, in estimating injury or benefit under Subsection (c), to consider an injury or benefit that is peculiar to the property owner and that relates to the property owner's ownership, use, or enjoyment of the particular parcel of real property, including a material impairment of direct access on or off the remaining property that affects the market value of the remaining property. Prohibits the special commissioners from considering an injury or benefit that the property owner experiences in common with the general community, including circuity of travel and diversion of traffic. Defines "direct access."

SECTION 11. 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 an individual, a family, a business concern, a farming or ranching operation, or a nonprofit organization that is compatible, rather than if the service is compatible, with the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C.A. 4601, et seq., rather than 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, as a cost of acquiring real property, to pay moving expenses and rental supplements, make relocation payments, provide financial assistance to acquire replacement housing, and compensate for expenses incidental to the transfer of the property if an individual, a family, the personal property of a business, a farming or ranching operation, or a nonprofit organization is displaced in connection with the acquisition.

SECTION 12. Amends the heading to Section 21.047, Property Code, to read as follows:

Sec. 21.047. ASSESSMENT OF COSTS AND FEES.

SECTION 13. Amends Section 21.047, Property Code, by adding Subsection (d), to require a court, if a court hearing a suit under this chapter determines that a condemnor did not make a bona fide offer to acquire the property from the property owner voluntarily as required by Section 21.0113 (Condemnation Petition), to abate the suit, order the condemnor to make a bona fide offer, and order the condemnor to pay all costs as provided by Subsection (a), and any reasonable attorney's fees incurred by the property owner that are directly related to the violation.

SECTION 14. Amends Subchapter E, Chapter 21, Property Code, as follows:

SUBCHAPTER E. New heading: REPURCHASE OF REAL PROPERTY FROM CONDEMNING ENTITY

Sec. 21.101. New heading: RIGHT OF REPURCHASE. (a) Entitles a person from whom a property interest is acquired by an entity through eminent domain for public use, or that person's heirs, successors, or assigns to repurchase the property as provided by this subchapter if the public use for which the property was acquired through eminent domain is canceled, no actual progress is made toward the public use for which the property was acquired between the date of acquisition and the 10th anniversary of that date, or the property becomes unnecessary for the public use for which the property was acquired. Deletes existing text providing that except as provided in Subsection (b), this subchapter applies only to a real property interest acquired by a governmental entity through eminent domain for a public use that was canceled before the 10th anniversary of the date of acquisition.

(b) Defines "actual progress."

(c) Authorizes a district court to determine all issues in any suit regarding the repurchase of a real property interest acquired through eminent domain by the former property owner or the owner's heirs, successors, or assigns.

Sec. 21.102. New heading: NOTICE TO PREVIOUS PROPERTY OWNER REQUIRED. Requires the entity, not later than the 180th day after the date an entity that acquired a real property interest through eminent domain determines that the former property owner is entitled to repurchase the property under Section 21.101, to send by certified mail, return receipt requested, to the property owner or the owner's heirs, successors, or assigns a notice containing an identification, which is not required to be a legal description, or the property that was acquired; an identification of the public use for which the property had been acquired and a statement that the public use has been canceled, no actual progress was made toward the public use, or the property has become unnecessary for the public use; and a description of the person's right under this subchapter to repurchase the property.

Sec. 21.1021. REQUESTS FOR INFORMATION REGARDING CONDEMNED PROPERTY. (a) Authorizes a property owner or the owner's heirs, successors, or assigns, on or after the 10th anniversary of the date on which real property was acquired by an entity through eminent domain, to request that the condemning entity make a determination and provide a statement and other relevant information regarding whether the public use for which the property was acquired has been canceled; whether any actual progress was made toward the public use between the date of acquisition and the 10th anniversary of that date, including an itemized description of the progress made, if applicable; and whether the property has become unnecessary for the public use of the property.

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

(c) Requires the entity, not later than the 90th day following the receipt of the request for information, to send a written response by certified mail, return receipt requested, to the requestor.

Sec. 21.103. RESALE OF PROPERTY; PRICE. (a) Requires the property owner or the owner's heirs, successors, or assigns, not later than the 180th day after the date of the postmark on a notice sent under Section 21.102 or a response to a request made under Section 21.1021 that indicates that the property owner or the owner's heirs, successors, or assigns is entitled to repurchase the property interest in accordance with Section 21.101, to notify the entity of the person's intent to repurchase the property interest under this subchapter. Makes a conforming change.

(b) Requires the entity, as soon as practicable after receipt of a notice of intent to repurchase, rather than the notification, under Subsection (a), to offer to sell the property interest to the person for the price paid to the owner by the entity at the time the entity acquired the property through eminent domain, rather than fair market value of the property at the time the public use was canceled. Makes conforming changes.

SECTION 15. Amends Section 202.021, Transportation Code, by adding Subsection (j), to provide that the standard for determination of the fair value of the state's interest in access rights to a highway right-of-way is the same legal standard that is applied by the Texas Transportation Commission in the acquisition of access rights under Subchapter D (Acquisition of Property), Chapter 203 (Modernization of State Highways; Controlled Access Highways), and payment of damages in the exercise of the authority, under Subchapter C (Control of Access), Chapter 203, for impairment of highway access to or from real property where the real property adjoins the highway.

SECTION 16. (a) Repealer: Section 552.0037 (Certain Entities Authorized to Take Property Through Eminent Domain), Government Code.

(b) Repealer: Section 21.024 (Production of Information by Certain Entities Considered to be Critical Infrastructure), Property Code.

(c) Repealer: Section 49.2205 (Use of Right-of-Way Easements for Certain Energy-Related Purposes), Water Code.

SECTION 17. Makes application of the changes in law made by Chapter 2206, Government Code, and Chapter 21, Property Code, as amended by this Act, prospective.

SECTION 18. Makes application of Section 202.021, Transportation Code, of this Act, prospective.

SECTION 19. Effective date: upon passage or September 1, 2009.