

## **BILL ANALYSIS**

Senate Research Center  
82R59 AJA-F

S.B. 18  
By: Estes, et al.  
State Affairs  
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As Filed

### **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 of Article I of the Texas Constitution, prohibits a person's property from being taken, damaged, or destroyed for public use without adequate compensation, unless by consent of that person.

S.B. 18 makes changes, additions, and deletions, to various provisions in Texas law in an attempt to reform the power, limitations, process, and various other aspects of the power of eminent domain and condemnation in this state.

As proposed, 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

Creates Subchapter A from existing text and adds a new subchapter heading, as follows:

#### **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 a public use. Makes a conforming change.

(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 certain projects and purposes, including the operations of a common carrier pipeline, rather than a common carrier subject to Chapter 111 (Common Carriers, Public Utilities, and Common Purchasers), Natural Resources Code, and Section B(3)(b) (relating to the petroleum oil producing business in Texas), Article 2.01, Texas Business Corporation Act.

(d) and (e) Makes no changes to these subsections.

Sec. 2206.002. LIMITATIONS ON EASEMENTS. (a) Provides that this section applies only to an easement acquired by an entity for the purpose of a pipeline to be used for oil or gas exploration or production activities.

(b) 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 gravel, asphalt, or concrete streets or roads, at any locations above the easement that the property owner chooses.

(c) Provides that the portion of a street or road constructed under this section that is within the area covered by the easement:

(1) is required to cross the easement at or near 90 degrees; and

(2) is prohibited from exceeding 40 feet in width, causing a violation of any applicable pipeline regulation, or interfering with the operation and maintenance of any pipeline.

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

Adds Subchapter B, as follows:

#### 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 proceeding at a public meeting by a record vote.

(b) Authorizes the adoption of a single ordinance, resolution, or order 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 governmental entity reflect that the first vote applies to all of those units.

(c) Requires that a separate record vote be taken for each unit of property 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.

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

(e) Requires that the motion to adopt an ordinance, resolution, or order authorizing the initiation of condemnation proceedings under Chapter 21, Property Code, be made in a form substantially similar to the following: "I move that the (name of governmental entity) authorize the use of the power of eminent domain to acquire (describe the property) for (describe the public use)." 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.

(f) Authorizes the governing body of a governmental entity 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 if a project for public use described by Section 2206.001(c)(3) (relating to water supply, wastewater, flood control, and drainage projects) will require the governmental entity to acquire multiple tracts or units of property to construct facilities connecting one location to another location.

(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.

Adds Subchapter C, as follows:

#### 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, 2012.

(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, to submit to the comptroller of public accounts (comptroller), not later than December 31, 2012, a letter stating that the entity is authorized by the state to exercise the power of eminent domain and identifying each provision of law that grants 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, 2013, unless the entity submits a letter in accordance with Subsection (b).

(d) Requires the comptroller, not later than March 1, 2013, to submit to the governor, the lieutenant governor, the speaker of the house of representatives, the presiding officers of the appropriate standing committees of the senate and the house of representatives, and the Texas Legislative Council 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 the Texas Legislative Council to prepare for consideration by the 84th 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, rather than a governmental

entity, with eminent domain authority that wants to acquire real property for a public use to disclose to the property owner at the time an offer to purchase or lease the property is made, by certified mail, return receipt requested, any and all appraisal reports produced or acquired by the entity relating specifically to the owner's property and prepared in the 10 years preceding the date of the offer, rather than all existing appraisal reports produced or acquired by the governmental entity relating specifically to the owner's property and used in determining the final valuation offer.

(b) Requires a property owner to disclose to the entity seeking to acquire the property, rather than the acquiring governmental entity, 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, rather than within 10 days of receipt of appraisal reports but no later than 10 days prior to the special commissioner's hearing.

(c) 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, unless the offer or agreement is subject to Chapter 552 (Public Information), Government Code.

(d) Creates this subsection from existing text. Makes conforming changes.

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

Sec. 21.0113. BONA FIDE OFFER REQUIRED. (a) 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:

(1) an initial offer is made in writing to a property owner;

(2) a final offer is made in writing to the property owner;

(3) the final offer is made on or after the 30th day after the date on which the entity makes a written initial offer to the property owner;

(4) 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 of the property owner's remaining property;

(5) the final offer is equal to or greater than the amount of the written appraisal obtained by the entity;

(6) the following items are included with the final offer or have been previously provided to the owner by the entity:

(A) a copy of the written appraisal;

(B) a copy of the deed, easement, or other instrument conveying the property sought to be acquired; and

(C) the landowner's bill of rights statement prescribed by Section 21.0112; and

(7) the entity provides the 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 period.

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

Sec. 21.012. CONDEMNATION PETITION. (a) Authorizes an entity with eminent domain authority, rather than 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, if the entity 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. Makes a conforming change.

(b) Requires that the petition include certain provisions, including that the petition state with specificity the public use for which the entity intends to acquire the property, rather than state the purpose for which the entity intends to use the property, and that the petition state that the entity made a bona fide offer to acquire the property from the property owner voluntarily as provided by Section 21.0113. Makes nonsubstantive changes.

(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, as follows:

(a) Requires 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 freeholders, who reside in the county as special commissioners to assess the damages of the owner of the property being condemned. Requires the judge appointing the special commissioners to give preference to persons agreed on by the parties and to provide each party a reasonable period to strike one of the three commissioners appointed by the judge. Requires, rather than authorizes, the judge to appoint a replacement if a person fails to serve as a commissioner or is struck by a party to the suit.

SECTION 6. Amends Section 21.015(a), Property Code, as follows:

(a) Requires the special commissioners in an eminent domain proceeding to promptly schedule a hearing for the parties at the earliest practical time but prohibits 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. Makes a nonsubstantive change.

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 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 disclosure in writing to the property owner 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 acquisition and the repurchase price is the fair market value of the property at the time the public use was canceled. Makes conforming and nonsubstantive changes.

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:

(1) requested by a person who owns property that is the subject of a proposed or existing eminent domain proceeding; and

(2) related to the taking of the person's private property by the entity through the use of eminent domain.

(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 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 (TRCP) 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 TRCP apply to the disclosure of information under this section.

(e) Provides that jurisdiction to enforce the provisions of this section resides in:

(1) the court in which the condemnation was initiated; or

(2) if the condemnation proceeding has not been initiated:

(A) a court that would have jurisdiction over a proceeding to condemn the requestor's property; or

(B) a court with eminent domain jurisdiction in the county in which the entity has its principal place of business.

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

SECTION 10. Amends Section 21.042(d), Property Code, as follows:

(d) Requires 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, but prohibits them 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" in this subsection.

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 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. Makes a nonsubstantive change.

(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), as follows:

(d) Requires the 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, to abate the suit, order the condemnor to make a bona fide offer, and order the condemnor to pay:

(1) all costs as provided by Subsection (a) (relating to entitling special commissioners to adjudge the costs of an eminent domain proceeding and the allotment of additional costs); and

(2) any reasonable attorney's fees and other professional 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 real property interest is acquired by an entity through eminent domain for a 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 before the property is used for that public use, 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, or a substantially similar public use, before the 10th anniversary of the date of acquisition. Deletes existing text providing that this subchapter, except as provided in Subsection (b), applies only to a real property interest acquired by a governmental entity through eminent domain for a public use that was cancelled before the 10th anniversary of the date of acquisition.

(b) Provides that, in this section, "actual progress" means the completion of two or more of the following actions:

(1) the performance of a significant amount of labor to develop the property or other property acquired for the same public use project for which the property owner's property was acquired;

(2) the provision of a significant amount of materials to develop the property or other property acquired for the same public use project for which the property owner's property was acquired;

(3) the hiring of and performance of a significant amount of work by an architect, engineer, or surveyor to prepare a plan or plat that includes the property or other property acquired for the same public use project for which the property owner's property was acquired;

(4) application for state or federal funds to develop the property or other property acquired for the same public use project for which the property owner's property was acquired;

(5) application for a state or federal permit to develop the property or other property acquired for the same public use project for which the property owner's property was acquired;

(6) the acquisition of a tract or parcel of real property adjacent to the property for the same public use project for which the owner's property was acquired; or

(7) for a governmental entity, the adoption by a majority of the entity's governing body at a public hearing of a development plan for a public use project that indicates that the entity will not complete more than one action described by Subdivisions (1)-(6) before the 10th anniversary of the date of acquisition of the property. Deletes existing text providing that this subchapter does not apply to a right-of-way under the jurisdiction of certain entities.

(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 an entity, not later than the 180th day after the date the 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 certain information, including an identification of the public use for which the property had been acquired and a statement that the public use was canceled before the property was used for the public use, no actual progress was made toward the public use, or the property became unnecessary for the public use, or a substantially similar public use, before the 10th anniversary of the date of acquisition. Deletes existing text requiring a governmental entity not later than the 180th day after the date of the cancellation of public use for which real property was acquired through eminent domain from a property owner under Subchapter B (Procedure) to send a notice containing certain information.

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:

(1) whether the public use for which the property was acquired was canceled before the property was used for the public use;

(2) 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

(3) whether the property became unnecessary for the public use, or a substantially similar public use, before the 10th anniversary of the date of acquisition.

(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 date of 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 nonsubstantive and a conforming change.

(b) Requires the entity, as soon as practicable after receipt of a notice of intent to repurchase 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 for the fair market value of the property at the time the public use was cancelled. Provides that the person's right to repurchase the property expires on the 90th day after the date on which the entity makes the offer. Makes nonsubstantive and conforming changes.

SECTION 15. Amends Section 202.021, Transportation Code, by adding Subsection (j), as follows:

(j) Provides 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 (TTC) in the:

(1) acquisition of access rights under Subchapter D (Acquisition of Property), Chapter 203 (Modernization of State Highways; Controlled Access Highways); and

(2) 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. Amends Section 54.209, Water Code, as follows:

Sec. 54.209. LIMITATION ON USE OF EMINENT DOMAIN. Prohibits a district from exercising the power of eminent domain outside the district boundaries to acquire:

(1) a site for a water treatment plant, water storage facility, wastewater treatment plant, or wastewater disposal plant;

(2) a site for a park, swimming pool, or other recreational facility, as defined by Section 49.462 (Definitions);

(3) an exclusive easement through a county regional park; or

(4) a site or easement for a road project.

Deletes existing text providing an exception under Subdivision (2). Deletes existing text prohibiting a district from exercising the power of eminent domain outside the district boundaries to acquire a site for a trail on real property designated as a homestead as defined by Section 41.002 (Definition of Homestead), Property Code. Makes conforming changes.

SECTION 17. (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.

SECTION 18. Makes application of Chapter 2206, Government Code, and Chapter 21, Property Code, as amended by this Act, prospective.

SECTION 19. Makes application of the change in law made by this Act to Section 202.021, Transportation Code, prospective.

SECTION 20. Makes application of the changes in law made by this Act to Section 54.209, Water Code, prospective.

SECTION 21. Effective date: September 1, 2011.