

By: Hilderbran

H.B. No. 1760

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the exercise of eminent domain power by a municipality  
3 or supplier of water for a municipality to acquire a municipal water  
4 supply.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 251.001(a), Local Government Code, is  
7 amended to read as follows:

8 (a) Except as provided by Sections 11.033 and 36.003, Water  
9 Code, when [~~When~~] the governing body of a municipality considers it  
10 necessary, the municipality may exercise the right of eminent  
11 domain for a public purpose to acquire public or private property,  
12 whether located inside or outside the municipality, for any of the  
13 following purposes:

14 (1) the providing, enlarging, or improving of a city  
15 hall; police station; jail or other law enforcement detention  
16 facility; fire station; library; school or other educational  
17 facility; academy; auditorium; hospital; sanatorium; market  
18 house; slaughterhouse; warehouse; elevator; railroad terminal;  
19 airport; ferry; ferry landing; pier; wharf; dock or other  
20 shipping facility; loading or unloading facility; alley, street,  
21 or other roadway; park, playground, or other recreational  
22 facility; square; water works system, including reservoirs, other  
23 water supply sources, watersheds, and water storage, drainage,  
24 treatment, distribution, transmission, and emptying facilities;

1 sewage system including sewage collection, drainage, treatment,  
2 disposal, and emptying facilities; electric or gas power system;  
3 cemetery; and crematory;

4 (2) the determining of riparian rights relative to the  
5 municipal water works;

6 (3) the straightening or improving of the channel of  
7 any stream, branch, or drain;

8 (4) the straightening, widening, or extending of any  
9 alley, street, or other roadway; and

10 (5) [~~for~~] any other municipal purpose the governing  
11 body considers advisable.

12 SECTION 2. Section 402.012(c), Local Government Code, is  
13 amended to read as follows:

14 (c) Except as provided by Sections 11.033 and 36.003, Water  
15 Code, the [~~The~~] municipality, acting alone or with one or more other  
16 municipalities to which this section applies, may:

17 (1) receive or acquire by gift, dedication, purchase,  
18 or condemnation any property in this state, located inside or  
19 outside the municipal boundaries, to build or acquire:

20 (A) water purification and treatment facilities;

21 (B) reservoirs; or

22 (C) pipelines and any type of water  
23 transportation facilities considered necessary to provide the  
24 municipality or municipalities with fresh water for municipal,  
25 domestic, and industrial purposes; and

26 (2) construct or otherwise acquire any facility  
27 described by Subdivision (1).

1 SECTION 3. Section 402.013(c), Local Government Code, is  
2 amended to read as follows:

3 (c) Except as provided by Sections 11.033 and 36.003, Water  
4 Code, to [~~To~~] furnish an adequate and wholesome supply of water for  
5 the residents, the municipality may exercise the power of eminent  
6 domain to acquire and condemn public or private property to extend,  
7 improve, or enlarge its water system, including water supply  
8 reservoirs, riparian rights, standpipes, and watersheds, to  
9 construct water supply reservoirs, wells or artesian wells, or  
10 dams, and to construct or establish necessary facilities or  
11 appurtenances.

12 SECTION 4. Section 402.019(d), Local Government Code, is  
13 amended to read as follows:

14 (d) Except as provided by Sections 11.033 and 36.003, Water  
15 Code, as [~~As~~] is necessary or convenient to supply water under a  
16 contract made under this section, a district may:

17 (1) construct or otherwise acquire and equip canals,  
18 reservoirs, basins, pipelines, conduits, filtration and aeration  
19 plants, and other equipment and supplies; and

20 (2) acquire property by purchase, eminent domain, or  
21 other means.

22 SECTION 5. Section 11.033, Water Code, is amended to read as  
23 follows:

24 Sec. 11.033. EMINENT DOMAIN. (a) In this section:

25 (1) "Municipal water supplier" means any legal entity  
26 other than a municipality that:

27 (A) supplies water to a municipality for

1 municipal use; and

2 (B) has the right under other law to exercise the  
3 power of eminent domain.

4 (2) "Municipality" has the meaning assigned by Section  
5 1.005, Local Government Code.

6 (b) The right to take water necessary for domestic and  
7 municipal supply purposes is primary and fundamental, and the right  
8 to recover from other uses water which is essential to domestic and  
9 municipal supply purposes is paramount and unquestioned in the  
10 policy of the state. A municipality or municipal water supplier,  
11 however, may exercise the power of eminent domain to acquire a water  
12 supply for municipal use only to the extent that the water supply is  
13 essential for maintaining public health or safety by providing  
14 water for drinking, bathing, sewage disposal, fire protection, or  
15 other basic domestic needs. An acquisition of water by a  
16 municipality or municipal water supplier for other purposes,  
17 including for industry or recreation, may be made only through a  
18 voluntary purchase from a willing seller.

19 (c) A municipality or municipal water supplier acquiring  
20 water by the exercise of the power of eminent domain has the burden  
21 of proving that it cannot meet essential domestic needs through  
22 conserving its existing supplies or through diverting water from  
23 nonessential use in the municipality to essential domestic use.

24 (d) Except as provided by Subsection (b), all [All]  
25 political subdivisions of the state and constitutional  
26 governmental agencies exercising delegated legislative powers have  
27 the power of eminent domain to be exercised as provided by law for

1 domestic, municipal, and manufacturing uses and for other purposes  
2 authorized by this code, including the irrigation of land for all  
3 requirements of agricultural employment.

4 SECTION 6. Subchapter A, Chapter 36, Water Code, is amended  
5 by adding Section 36.003 to read as follows:

6 Sec. 36.003. LIMITATION ON EXERCISE OF EMINENT DOMAIN POWER  
7 BY OR FOR MUNICIPALITIES. (a) In this section:

8 (1) "Municipal water supplier" means any legal entity  
9 other than a municipality that:

10 (A) supplies water to a municipality for  
11 municipal use; and

12 (B) has the right under other law to exercise the  
13 power of eminent domain.

14 (2) "Municipality" has the meaning assigned by Section  
15 1.005, Local Government Code.

16 (b) A municipality or municipal water supplier may not  
17 exercise the power of eminent domain within the boundaries of a  
18 district for the purpose of acquiring a supply of groundwater for  
19 municipal use except as provided by Subsection (d) and to the extent  
20 that the supply is necessary for maintaining public health or  
21 safety by providing water for drinking, bathing, sewage disposal,  
22 fire protection, or other basic and essential domestic needs.

23 (c) A municipality or municipal water supplier acquiring  
24 water by the exercise of the power of eminent domain has the burden  
25 of proving that it cannot meet essential domestic needs through  
26 conserving its existing supplies or through diverting water from  
27 nonessential use in the municipality to essential domestic use.

1       (d) A municipality or municipal water supplier may not  
2 exercise the power of eminent domain to condemn land within the  
3 boundaries of a district for the purpose of acquiring groundwater  
4 supplies. The power of eminent domain is limited to condemnation of  
5 the right to:

6           (1) capture a quantified number of acre-feet of water  
7 annually; and

8           (2) acquire only as much land as is necessary for well  
9 sites, pipelines, and other water conveyance infrastructure.

10       (e) The amount of water condemned under Subsection (d) may  
11 not exceed the production limits set by district rules.

12       (f) A landowner whose groundwater is acquired under  
13 Subsection (d) is entitled, at the landowner's option, to an annual  
14 payment for the production that is condemned instead of a lump-sum  
15 compensation.

16       (g) If a municipality or municipal water supplier that  
17 obtains a production permit from a district for groundwater rights  
18 acquired under Subsection (d) does not produce groundwater under  
19 the permit before the 10th anniversary of the date of issuance of  
20 the permit:

21           (1) the right of capture acquired under Subsection (d)  
22 reverts to the landowner;

23           (2) any land acquired under Subsection (d) reverts to  
24 the landowner; and

25           (3) any annual payments being made under Subsection  
26 (f) cease.

27       (h) If the amount of groundwater produced from an

1 acquisition under Subsection (d) keeps the affected landowner from  
2 having a sufficient supply of water to meet the landowner's  
3 domestic and livestock needs, the municipality or municipal water  
4 supplier shall furnish the landowner with water to meet those  
5 needs.

6 SECTION 7. Section 67.011, Water Code, is amended to read as  
7 follows:

8 Sec. 67.011. POWERS OF CORPORATION IN CERTAIN COUNTIES. In  
9 a county with a population of less than 3.3 million, a corporation  
10 may:

11 (1) except as provided by Sections 11.033 and 36.003,  
12 own, hold, lease, or otherwise acquire water wells, springs, or  
13 other sources of water supply;

14 (2) build, operate, and maintain pipelines to  
15 transport water or wastewater;

16 (3) build and operate plants and equipment necessary  
17 to distribute water or to treat and dispose of wastewater; and

18 (4) sell water or provide wastewater services to a  
19 political subdivision, a private corporation, or an individual.

20 SECTION 8. The change in law made by this Act applies only  
21 to a petition to initiate condemnation proceedings to acquire a  
22 municipal water supply filed by a municipality or municipal water  
23 supplier, as defined by Sections 11.033(a) and 36.003(a), Water  
24 Code, as added by this Act, on or after the effective date of this  
25 Act.

26 SECTION 9. This Act takes effect immediately if it receives  
27 a vote of two-thirds of all the members elected to each house, as

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1 provided by Section 39, Article III, Texas Constitution. If this  
2 Act does not receive the vote necessary for immediate effect, this  
3 Act takes effect September 1, 2003.