

By: Armbrister

S.B. No. 1249

A BILL TO BE ENTITLED

AN ACT

relating to procedures for compensating owners of outdoor advertising that is subject to condemnation.

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

SECTION 1. Title 4, Property Code, is amended by adding Chapter 30 to read as follows:

CHAPTER 30. CONDEMNATION OF OUTDOOR ADVERTISING

Sec. 30.001. POLICY; PURPOSE. (a) It is the policy of this state to encourage governmental entities to enter into relocation and reconstruction agreements with owners of outdoor advertising to allow the governmental entities to undertake public projects and accomplish public goals and to allow the continued maintenance of private investment in outdoor advertising as a medium of commercial and noncommercial communication.

(b) The purpose of this chapter is to establish an efficient, economical, and fair system of resolving disputes between governmental entities and owners of outdoor advertising as an alternative to eminent domain court proceedings.

Sec. 30.002. DEFINITIONS. In this chapter:

(1) "Governmental entity" means:

(A) the state, a county, or a municipality;

(B) a public school district or other special-purpose district or authority; or

(C) a board, commission, department, office, or

1 other agency in the executive branch of state government.

2 (2) "Sign" means an outdoor structure, sign, display,
3 light device, billboard, or any other thing that:

4 (A) is designed, intended, or used to advertise
5 or inform; and

6 (B) is visible from the main-traveled way of a
7 street or a highway.

8 (3) "Relocation and reconstruction agreement" means a
9 contractual agreement between a sign owner and a governmental
10 entity for:

11 (A) the reconstruction of an existing sign; or

12 (B) the removal of a sign and the construction of
13 a new sign to substitute for the sign removed.

14 Sec. 30.003. RELOCATION AND RECONSTRUCTION AGREEMENT. A
15 governmental entity and a sign owner may enter into a relocation and
16 reconstruction agreement on whatever terms are agreeable to the
17 parties and to provide for the relocation and reconstruction of a
18 sign by agreement, ordinance, or resolution.

19 Sec. 30.004. PAYMENT OF JUST COMPENSATION FOR REMOVAL OR
20 ALTERATION. A governmental entity may not remove or cause to be
21 removed, or cause in any way the alteration of, a lawfully erected
22 sign located along any portion of an interstate highway, state
23 highway, farm-to-market road, federal-aid primary highway, or
24 other highway system, or along any road or street, without first
25 paying just compensation to the owner of the sign for the removal or
26 alteration according to an agreement between the parties or through
27 eminent domain proceedings under Chapter 21.

1 Sec. 30.005. NOTIFICATION TO OWNER OF SIGN. (a) If a
2 governmental entity undertakes a public project or public goal
3 requiring the removal or alteration of a lawfully erected sign, the
4 governmental entity shall notify the owner of the affected sign in
5 writing of the public project or goal and of the intention of the
6 governmental entity to seek the removal or alteration of the sign.

7 (b) Not later than 30 days after the owner of the sign
8 receives notice under Subsection (a), the parties shall attempt to
9 meet for the purposes of negotiating and executing a relocation and
10 reconstruction agreement as provided under Section 30.003.

11 Sec. 30.006. NONBINDING ARBITRATION. (a) If the sign
12 owner and the governmental entity fail to enter into a relocation
13 and reconstruction agreement within 120 days after the initial
14 notification by the governmental entity under Section 30.005,
15 either party may request mandatory nonbinding arbitration to
16 resolve the disagreements between the parties.

17 (b) If a request for arbitration is made under Subsection
18 (a), each party shall select an arbitrator, and the individuals
19 selected shall choose a third arbitrator. The three arbitrators
20 shall constitute the panel that will arbitrate the dispute between
21 the parties. At the conclusion of the proceedings, the arbitration
22 panel shall present to the parties a proposed relocation and
23 reconstruction agreement that the panel believes equitably
24 balances the rights, interests, obligations, and reasonable
25 expectations of the parties.

26 (c) If the governmental entity and the sign owner accept the
27 proposed relocation and reconstruction agreement, each party shall

1 pay its respective costs of the arbitration and each shall pay
2 one-half of the costs of the arbitration panel unless the parties
3 agree to some other fractional sharing of the costs.

4 Sec. 30.007. RIGHT TO PROCEED AFTER PAYMENT OF
5 COMPENSATION. If the parties do not enter into a relocation and
6 reconstruction agreement, the governmental entity may proceed with
7 the public project or purpose and the removal or alteration of the
8 sign, but only after the governmental entity pays just compensation
9 to the sign owner, as determined by agreement between the parties or
10 through eminent domain proceedings under Chapter 21.

11 Sec. 30.008. NO EFFECT ON POWER OF EMINENT DOMAIN OR
12 AUTHORITY TO REGULATE SIGNS. (a) This chapter does not limit the
13 authority of a governmental entity to acquire a lawfully erected
14 sign through eminent domain or to regulate the placement, size,
15 height, or other aspects of a new sign within the governmental
16 entity's jurisdiction, including the prohibition of new signs,
17 unless otherwise provided by this chapter.

18 (b) This chapter does not impair any ordinance, or a
19 provision of any ordinance, that is not inconsistent with this
20 chapter, including a provision that creates a ban or partial ban on
21 new signs.

22 Sec. 30.009. ACQUISITION OF PROPERTY THROUGH VOLUNTARY
23 TRANSACTION. A governmental entity that acquires property in a
24 voluntary transaction may not require that a lawfully erected sign
25 be altered or removed from the premises on which it is located
26 without the payment of just compensation.

27 Sec. 30.010. APPLICATION OF CHAPTER. (a) This chapter

1 applies only to a lawfully erected sign the subject matter of which
2 relates to:

3 (1) merchandise, services, activities, or
4 entertainment not sold, produced, manufactured, or furnished on the
5 premises on which the sign is located; or

6 (2) premises other than the premises on which the sign
7 is located.

8 (b) This chapter does not apply to an action to require the
9 relocation, reconstruction, or removal of a sign under Subchapter
10 A, Chapter 216, Local Government Code, or to the acquisition of a
11 sign under Section 391.033, Transportation Code, if the owner of
12 the sign agrees in writing to use the provisions of either of those
13 laws.

14 (c) This chapter does not apply to an ordinance the
15 validity, constitutionality, or enforceability of which the owner
16 has, by written agreement, waived all right to challenge.

17 SECTION 2. Section 216.001, Local Government Code, is
18 amended by amending Subsection (a) and adding Subsection (d) to
19 read as follows:

20 (a) This subchapter is not intended to require a
21 municipality to provide for the relocation, reconstruction, or
22 removal of any sign in the municipality, nor is it intended to
23 prohibit a municipality from requiring the relocation,
24 reconstruction, or removal of any sign. This subchapter is
25 intended only to authorize a municipality to take that action and to
26 establish a [~~the~~] procedure by which the municipality may do so.

27 (d) This subchapter is intended as an alternative to Chapter

1 30, Property Code, and may be used only if the owner of a sign agrees
2 in writing to waive the owner's right to use the procedures provided
3 under that chapter.

4 SECTION 3. Subsection (a), Section 216.003, Local
5 Government Code, is amended to read as follows:

6 (a) Subject to the requirements of this subchapter and
7 Chapter 30, Property Code, a municipality may require the
8 relocation, reconstruction, or removal of any sign within its
9 corporate limits or extraterritorial jurisdiction.

10 SECTION 4. Subsection (a), Section 216.004, Local
11 Government Code, is amended to read as follows:

12 (a) If a municipality requires the relocation,
13 reconstruction, or removal of a sign within its corporate limits or
14 extraterritorial jurisdiction and the owner of the sign agrees in
15 writing to use the provisions of this subchapter, the presiding
16 officer of the governing body of the municipality shall appoint a
17 municipal board on sign control. The board, if appointed, must be
18 composed of:

19 (1) two real estate appraisers, each of whom must be a
20 member in good standing of a nationally recognized professional
21 appraiser society or trade organization that has an established
22 code of ethics, educational program, and professional
23 certification program;

24 (2) one person engaged in the sign business in the
25 municipality;

26 (3) one employee of the Texas Department of
27 Transportation who is familiar with real estate valuations in

1 eminent domain proceedings; and

2 (4) one architect or landscape architect licensed by
3 this state.

4 SECTION 5. Subsection (a), Section 216.005, Local
5 Government Code, is amended to read as follows:

6 (a) If the owner of a sign that is required to be relocated,
7 reconstructed, or removed agrees in writing to use the provisions
8 of this subchapter rather than the provisions of Chapter 30,
9 Property Code, the [The] municipal board on sign control shall
10 determine the amount of the compensation to which the owner [~~of a~~
11 ~~sign that is required to be relocated, reconstructed, or removed~~]
12 is entitled. The determination shall be made after the owner of the
13 sign is given the opportunity for a hearing before the board about
14 the issues involved in the matter.

15 SECTION 6. Section 216.006, Local Government Code, is
16 amended to read as follows:

17 Sec. 216.006. COMPENSATION FOR RELOCATED SIGN. The
18 compensable costs for a sign that is required to be relocated
19 include the expenses of dismantling the sign, transporting it to
20 another site, and reerecting it. If the owner of the sign agrees in
21 writing to use the provisions of this subchapter rather than the
22 provisions of Chapter 30, Property Code, the [The] board shall
23 determine the compensable costs according to the standards
24 applicable in a proceeding under Chapter 21, Property Code. In
25 addition, the municipality shall issue to the owner of the sign an
26 appropriate permit or other authority to operate a substitute sign
27 of the same type at an alternative site of substantially equivalent

1 value. Whether an alternative site is of substantially equivalent
2 value is determined by standards generally accepted in the outdoor
3 advertising industry, including visibility, traffic count, and
4 demographic factors. The municipality shall compensate the owner
5 for any increased operating costs, including increased rent, at the
6 new location. The owner is responsible for designating an
7 alternative site where the erection of the sign would be in
8 compliance with the sign ordinance.

9 SECTION 7. Section 391.033, Transportation Code, is amended
10 by amending Subsection (b) and adding Subsection (c) to read as
11 follows:

12 (b) If an acquisition is by eminent domain, the commission
13 shall, subject to Subsection (c), pay just compensation to:

14 (1) the owner for the right, title, leasehold, and
15 interest in the outdoor advertising; and

16 (2) the owner or, if appropriate, the lessee of the
17 real property on which the outdoor advertising is located for the
18 right to erect and maintain the outdoor advertising.

19 (c) The compensation provided under Subsection (b) is
20 intended as an alternative to Chapter 30, Property Code, and may be
21 used only if the owner of an outdoor advertising sign agrees in
22 writing to waive the owner's right to use the procedures provided
23 under that chapter.

24 SECTION 8. This Act takes effect September 1, 2003, and
25 applies only to the notification of an intention to require the
26 relocation, reconstruction, removal, or alteration of an outdoor
27 advertising sign delivered on or after the effective date of this

1 Act. A notification delivered before the effective date of this Act
2 is governed by the law in effect immediately before that date, and
3 that law is continued in effect for that purpose.