

By: Janek, et al.

S.B. No. 62

A BILL TO BE ENTITLED

AN ACT

relating to limiting the use of eminent domain to take private property for private parties or economic development purposes and to certain eminent domain procedures.

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

SECTION 1. Subtitle E, Title 10, Government Code, is amended by adding Chapter 2206 to read as follows:

CHAPTER 2206. LIMITATION ON USE OF EMINENT DOMAIN FOR PRIVATE PARTIES OR ECONOMIC DEVELOPMENT PURPOSES

Sec. 2206.001. LIMITATION ON EMINENT DOMAIN FOR PRIVATE PARTIES OR ECONOMIC DEVELOPMENT PURPOSES. (a) This section applies to the use of eminent domain under the laws of this state, including a local or special law, by any governmental or private entity, including:

(1) a state agency, including an institution of higher education as defined by Section 61.003, Education Code;

(2) a political subdivision of this state; or

(3) a corporation created by a governmental entity to act on behalf of the entity.

(b) A governmental or private entity may not take private property through the use of eminent domain if the taking:

(1) confers a private benefit on a particular private party through the use of the property;

(2) is for a public use that is merely a pretext to

1 confer a private benefit on a particular private party;

2 (3) is for economic development purposes, unless the
3 economic development is a secondary purpose resulting from
4 municipal community development or municipal urban renewal
5 activities under Chapter 373 or 374, Local Government Code, or
6 Section 311.005(a)(1)(I), Tax Code, to eliminate an existing
7 affirmative harm on society from slum or blighted areas; or

8 (4) is to raise revenue to meet the cost of a public
9 project if the property being taken is not otherwise necessary for
10 the successful or safe operation of that public project, provided,
11 however, that nothing in this section shall prohibit the
12 distribution of surplus toll revenue as otherwise allowed by law.

13 (c) This section does not affect the authority of an entity
14 authorized by law to take private property through the use of
15 eminent domain for:

16 (1) transportation projects, including railroads,
17 ports, airports, or public roads or highways;

18 (2) water supply, wastewater, flood control, and
19 drainage projects;

20 (3) the operations of a common carrier or regulated
21 energy transporter;

22 (4) the provision of utility services;

23 (5) a sports and community venue project approved by
24 voters at an election held on or before December 1, 2005, under
25 Chapter 334 or 335, Local Government Code; or

26 (6) public infrastructure.

27 SECTION 2. Section 21.001, Property Code, is amended to

1 read as follows:

2 Sec. 21.001. CONCURRENT JURISDICTION. District courts and
3 county courts at law have concurrent jurisdiction in eminent domain
4 cases in every county in the state, notwithstanding any other law.
5 A county court has no jurisdiction in eminent domain cases.

6 SECTION 3. Section 21.013, Property Code, is amended to
7 read as follows:

8 Sec. 21.013. VENUE; FEES AND PROCESSING FOR ACTION [~~SUIT~~]
9 FILED IN DISTRICT COURT. (a) The venue of a condemnation proceeding
10 is the county in which the owner of the property being condemned
11 resides if the owner resides in a county in which part of the property
12 is located. Otherwise, the venue of a condemnation proceeding is any
13 county in which at least part of the property is located.

14 (b) Except where otherwise provided by law, a party
15 initiating a condemnation proceeding [~~in a county in which there is~~
16 ~~one or more county courts at law with jurisdiction~~] shall file the
17 petition with any clerk authorized to handle such filings for a
18 [~~that~~] court that has jurisdiction in eminent domain cases [~~or~~
19 ~~courts~~].

20 (c) [~~A party initiating a condemnation proceeding in a~~
21 ~~county in which there is not a county court at law must file the~~
22 ~~condemnation petition with the district clerk.~~] The filing fee
23 shall be due at the time of filing in accordance with Section
24 51.317, Government Code.

25 (d) District and county clerks shall assign an equal number
26 of eminent domain cases in rotation to each court with jurisdiction
27 that the clerk serves.

1 SECTION 4. Section 203.052, Transportation Code, is amended
2 by adding Subsection (c) to read as follows:

3 (c) The commission may not condemn property for a purpose
4 described in Subsection (b)(9) unless:

5 (1) subject to the provisions of Section 227.041(b-1),
6 the purpose is for a gas station, convenience store, or similar
7 facility; or

8 (2) the purpose is to provide a location between the
9 main lanes of a highway or between a highway and a department rail
10 facility for a gas station, convenience store, or similar facility
11 that:

12 (A) provides services to and directly benefits
13 users of a toll project; and

14 (B) is not located within 10 miles of an
15 intersection of the toll project and a segment of another state
16 highway that is designated as an interstate highway.

17 SECTION 5. (a) An interim committee is created to study
18 the use of the power of eminent domain.

19 (b) The interim committee consists of:

20 (1) five members of the senate appointed by the
21 lieutenant governor; and

22 (2) five members of the house of representatives
23 appointed by the speaker of the house of representatives.

24 (c) The lieutenant governor shall designate one senator
25 appointed to the interim committee to act as chair. The speaker of
26 the house of representatives shall designate one member of the
27 house of representatives appointed to the committee to act as vice

1 chair.

2 (d) The interim committee shall:

3 (1) study the use of the power of eminent domain,
4 including the use of the power of eminent domain for economic
5 development purposes; and

6 (2) prepare a report of the committee's study for the
7 80th Legislature.

8 (e) The report required by Subsection (d)(2) of this section
9 must be filed with the lieutenant governor and speaker of the house
10 of representatives not later than January 1, 2007.

11 SECTION 6. Chapter 2206, Government Code, as added by this
12 Act, applies to the taking of private property by eminent domain
13 pending on the effective date of this Act. For purposes of this
14 section, a taking is pending if a condemnation petition is filed
15 under Section 21.012, Property Code, and a judgement awarding
16 possession of the property to the condemning entity has not become
17 final.

18 SECTION 7. Sections 21.001 and 21.013, Property Code, as
19 amended by this Act, apply only to a condemnation proceeding
20 initiated on or after the effective date of this Act. A
21 condemnation proceeding initiated before the effective date of this
22 Act is governed by the law in effect immediately before that date,
23 and that law is continued in effect for that purpose.

24 SECTION 8. This Act takes effect immediately if it receives
25 a vote of two-thirds of all the members elected to each house, as
26 provided by Section 39, Article III, Texas Constitution. If this
27 Act does not receive the vote necessary for immediate effect, this

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1 Act takes effect November 1, 2005.