

By: Kolkhorst

H.B. No. 65

A BILL TO BE ENTITLED

AN ACT

relating to limiting the use of eminent domain to take private property for private uses or economic development purposes.

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 a purpose of the taking:

(1) is to promote or facilitate private retail, office, commercial, industrial, or residential development;

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

1 promote or facilitate development described by Subdivision (1);

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

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 (5) is to enhance or increase tax revenue; or

14 (6) is to transfer the property to a nongovernmental
15 entity, including an individual, corporation, partnership, or
16 other business entity.

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

20 (1) transportation projects, including railroads,
21 ports, airports, or public roads or highways;

22 (2) water supply, wastewater, flood control, and
23 drainage projects;

24 (3) the operations of a common carrier or energy
25 transporter;

26 (4) the provision of utility services;

27 (5) a sports and community venue project approved by

1 voters at an election held on or before December 1, 2005, under
2 Chapter 334 or 335, Local Government Code; or
3 (6) public infrastructure.

4 SECTION 2. Section 203.052, Transportation Code, as amended
5 by H.B. No. 2702, Acts of the 79th Legislature, Regular Session,
6 2005, is amended by amending Subsection (b) and adding Subsection
7 (c) to read as follows:

8 (b) Property necessary or convenient to a state highway for
9 purposes of Subsection (a) includes an interest in real property, a
10 property right, or a material that the commission determines is
11 necessary or convenient to:

12 (1) protect a state highway;

13 (2) drain a state highway;

14 (3) divert a stream, river, or other watercourse from
15 the right-of-way of a state highway;

16 (4) store materials or equipment for use or used in the
17 construction or maintenance of a state highway;

18 (5) construct or operate a warehouse or other facility
19 used in connection with the construction, maintenance, or operation
20 of a state highway;

21 (6) lay out, construct, or maintain a roadside park;

22 (7) lay out, construct, or maintain a parking lot that
23 will contribute to maximum use of a state highway with the least
24 possible congestion;

25 (8) mitigate an adverse environmental effect that
26 directly results from construction or maintenance of a state
27 highway;

1 (9) subject to Subsection (c), provide a location for
2 an ancillary facility that is anticipated to generate revenue for
3 use in the design, development, financing, construction,
4 maintenance, or operation of a toll project, including a gas
5 station, garage, store, hotel, restaurant, or other commercial
6 facility;

7 (10) construct or operate a toll booth, toll plaza,
8 service center, or other facility used in connection with the
9 construction, maintenance, or operation of a toll project; or

10 (11) accomplish any other purpose related to the
11 location, construction, improvement, maintenance, beautification,
12 preservation, or operation of a state highway.

13 (c) The commission may not acquire property for an ancillary
14 facility through the exercise of eminent domain.

15 SECTION 3. Section 227.041(b), Transportation Code, as
16 amended by H.B. No. 2702, Acts of the 79th Legislature, Regular
17 Session, 2005, is amended to read as follows:

18 (b) An interest in real property or a property right is
19 necessary or convenient for the construction or operation of a
20 facility if it is located in or contiguous to an existing or planned
21 segment of the Trans-Texas Corridor or is needed for mitigation of
22 adverse environmental effects, and if its acquisition will further
23 the primary purposes of the Trans-Texas Corridor. Primary purposes
24 include:

25 (1) providing right-of-way or a location for a
26 facility;

27 (2) providing land for mitigation of adverse

1 environmental effects;

2 (3) providing buffer zones for scenic or safety
3 purposes;

4 (4) allowing for possible future expansion of any
5 facility; and

6 (5) subject to Section 203.052(c), providing a
7 location for a gas station, convenience store, or similar ancillary
8 facility.

9 SECTION 4. Section 227.041(e), Transportation Code, as
10 added by H.B. No. 2702, Acts of the 79th Legislature, Regular
11 Session, 2005, is repealed.

12 SECTION 5. Chapter 2206, Government Code, as added by this
13 Act, applies only to the taking of private property by eminent
14 domain for which a condemnation petition is filed on or after the
15 effective date of this Act. A taking for which a condemnation
16 petition is filed before, and is pending on, the effective date of
17 this Act is governed by the law in effect immediately before that
18 date, and that law is continued in effect for that purpose.

19 SECTION 6. This Act takes effect immediately if it receives
20 a vote of two-thirds of all the members elected to each house, as
21 provided by Section 39, Article III, Texas Constitution. If this
22 Act does not receive the vote necessary for immediate effect, this
23 Act takes effect December 1, 2005.