

By: Janek, Nelson

S.B. No. 7

A BILL TO BE ENTITLED

AN ACT

relating to limiting the use of eminent domain to take private property.

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. LIMITATIONS ON USE OF EMINENT DOMAIN

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, except to the extent necessary to accomplish the secondary purpose described in Subdivision (3);

(2) is merely a pretext to confer a private benefit on

1 a particular private party; or

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, to  
6 eliminate an existing affirmative harm on society from slum or  
7 blighted areas, or Chapter 311, Tax Code, to eliminate the  
8 conditions described in Section 311.005(a)(1)(I), Tax Code.

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

12 (1) transportation projects, including, but not  
13 limited to, railroads, ports, airports, or public roads or  
14 highways;

15 (2) water supply, wastewater, flood control, and  
16 drainage projects;

17 (3) other public infrastructure, including public  
18 buildings, hospitals, and parks;

19 (4) the operations of a common carrier or regulated  
20 energy transporter;

21 (5) the provision of utility services;

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

25 (7) a library, museum, auditorium, or similar facility  
26 and related infrastructure; or

27 (8) radioactive waste disposal projects.

1 SECTION 2. Section 21.001, Property Code, is amended to  
2 read as follows:

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

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

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

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

21 (c) [~~A party initiating a condemnation proceeding in a~~  
22 ~~county in which there is not a county court at law must file the~~  
23 ~~condemnation petition with the district clerk.~~] The filing fee  
24 shall be due at the time of filing in accordance with Section  
25 51.317, Government Code.

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

1 that the clerk serves.

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

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

9 (1) protect a state highway;

10 (2) drain a state highway;

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

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

15 (5) construct or operate a warehouse or other facility  
16 used in connection with the construction, maintenance, or operation  
17 of a state highway;

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

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

22 (8) mitigate an adverse environmental effect that  
23 directly results from construction or maintenance of a state  
24 highway;

25 (9) provide a location for ~~[an ancillary facility that~~  
26 ~~is anticipated to generate revenue for use in the design,~~  
27 ~~development, financing, construction, maintenance, or operation of~~

1 ~~a toll project, including] a gas station[, garage, store, hotel,~~  
2 ~~restaurant, or other commercial facility];~~

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

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

9 SECTION 5. Section 203.052, Transportation Code, is amended  
10 by adding Subsection (c) to read as follows:

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

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

16 (2) the purpose is to provide a location between the  
17 main lanes of a highway or between a highway and a department rail  
18 facility for a gas station, convenience store, or similar facility  
19 that:

20 (A) provides services to and directly benefits  
21 users of a toll project; and

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

25 SECTION 6. (a) An interim committee is created to study  
26 the use of the power of eminent domain.

27 (b) The interim committee consists of:

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

3           (2) five members of the house of representatives  
4 appointed by the speaker of the house of representatives.

5           (c) The lieutenant governor shall designate one senator  
6 appointed to the interim committee to act as chair. The speaker of  
7 the house of representatives shall designate one member of the  
8 house of representatives appointed to the committee to act as vice  
9 chair.

10          (d) The interim committee shall:

11           (1) study the use of the power of eminent domain,  
12 including the use of the power of eminent domain for economic  
13 development purposes; and

14           (2) prepare a report of the committee's study for the  
15 80th Legislature.

16          (e) The report required by Subsection (d)(2) of this section  
17 must be filed with the lieutenant governor and speaker of the house  
18 of representatives not later than December 1, 2006.

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

25          SECTION 8. This Act takes effect immediately if it receives  
26 a vote of two-thirds of all the members elected to each house, as  
27 provided by Section 39, Article III, Texas Constitution. If this

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1 Act does not receive the vote necessary for immediate effect, this  
2 Act takes effect on the 91st day after the last day of the  
3 legislative session.