

1 AN ACT

2 relating to limits on the use of the power of eminent domain.

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

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

6 CHAPTER 2206. LIMITATIONS ON USE OF EMINENT DOMAIN

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

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

14 (2) a political subdivision of this state; or

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

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

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

21 (2) is for a public use that is merely a pretext to
22 confer a private benefit on a particular private party; or

23 (3) is for economic development purposes, unless the
24 economic development is a secondary purpose resulting from

1 municipal community development or municipal urban renewal
2 activities to eliminate an existing affirmative harm on society
3 from slum or blighted areas under:

4 (A) Chapter 373 or 374, Local Government Code,
5 other than an activity described by Section 373.002(b)(5), Local
6 Government Code; or

7 (B) Section 311.005(a)(1)(I), Tax Code.

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

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

13 (2) entities authorized under Section 59, Article XVI,
14 Texas Constitution, including:

15 (A) port authorities;

16 (B) navigation districts; and

17 (C) any other conservation or reclamation
18 districts that act as ports;

19 (3) water supply, wastewater, flood control, and
20 drainage projects;

21 (4) public buildings, hospitals, and parks;

22 (5) the provision of utility services;

23 (6) 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;

26 (7) the operations of:

27 (A) a common carrier subject to Chapter 111,

1 Natural Resources Code, and Section B(3)(b), Article 2.01, Texas
2 Business Corporation Act; or

3 (B) an energy transporter, as that term is
4 defined by Section 186.051, Utilities Code;

5 (8) a purpose authorized by Chapter 181, Utilities
6 Code;

7 (9) underground storage operations subject to Chapter
8 91, Natural Resources Code;

9 (10) a waste disposal project; or

10 (11) a library, museum, or related facility and any
11 infrastructure related to the facility.

12 (d) This section does not affect the authority of a
13 governmental entity to condemn a leasehold estate on property owned
14 by the governmental entity.

15 (e) The determination by the governmental or private entity
16 proposing to take the property that the taking does not involve an
17 act or circumstance prohibited by Subsection (b) does not create a
18 presumption with respect to whether the taking involves that act or
19 circumstance.

20 SECTION 2. Subchapter A, Chapter 552, Government Code, is
21 amended by adding Section 552.0037 to read as follows:

22 Sec. 552.0037. CERTAIN ENTITIES AUTHORIZED TO TAKE PROPERTY
23 THROUGH EMINENT DOMAIN. Notwithstanding any other law, information
24 collected, assembled, or maintained by an entity that is not a
25 governmental body but is authorized by law to take private property
26 through the use of eminent domain is subject to this chapter in the
27 same manner as information collected, assembled, or maintained by a

1 governmental body, but only if the information is related to the
2 taking of private property by the entity through the use of eminent
3 domain.

4 SECTION 3. 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, unless the
15 acquisition of the property is for one of multiple ancillary
16 facilities included in a comprehensive development plan approved by
17 the county commissioners court of each county in which the property
18 is located.

19 SECTION 4. Subsection (b), Section 227.041, Transportation
20 Code, as amended by H.B. No. 2702, Acts of the 79th Legislature,
21 Regular Session, 2005, is amended to read as follows:

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

1 include:

2 (1) providing right-of-way or a location for a
3 facility;

4 (2) providing land for mitigation of adverse
5 environmental effects;

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

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

10 (5) subject to Section 203.052(c), providing a
11 location for a gas station, convenience store, or similar ancillary
12 facility.

13 SECTION 5. Subchapter Z, Chapter 51, Education Code, is
14 amended by adding Section 51.9045 to read as follows:

15 Sec. 51.9045. LIMITATION ON USE OF EMINENT DOMAIN. (a) In
16 this section:

17 (1) "Institution of higher education" has the meaning
18 assigned by Section 61.003.

19 (2) "Lodging facility" does not include a dormitory or
20 other student housing facility.

21 (b) The governing board of an institution of higher
22 education may not use the power of eminent domain to acquire land to
23 be used for a lodging facility or for parking or a parking structure
24 intended to be used in connection with the use of a lodging
25 facility.

26 SECTION 6. Section 6, Chapter 178, Acts of the 56th
27 Legislature, Regular Session, 1959 (Article 3183b-1, Vernon's

1 Texas Civil Statutes), is amended to read as follows:

2 Sec. 6. (a) Except as provided by Subsection (b) of this
3 section, the [The] power of eminent domain granted by this Act shall
4 be exercised in accordance with Chapter 21, Property Code [the
5 procedure, conditions, and provisions as prescribed in Title 52,
6 Revised Civil Statutes of Texas, 1925, as amended].

7 (b) If a charitable corporation to which this Act applies
8 seeks to acquire any real property by condemnation or seeks to
9 purchase any real property that the corporation intends to use in a
10 manner that would not comply with any deed restriction that applies
11 to the property immediately before the purchase, before the
12 charitable corporation initiates condemnation proceedings or
13 records the deed conveying title to the property the charitable
14 corporation shall, in addition to providing any other notice
15 required by law, provide written notice by certified mail to the
16 owner of record, as recorded in the real property records of the
17 county, of each unit of real property:

18 (1) that the charitable corporation seeks to acquire
19 or purchase; or

20 (2) that is not more than 200 feet from any boundary of
21 any unit of real property the charitable corporation seeks to
22 acquire or purchase.

23 SECTION 7. Subsection (e), Section 227.041, Transportation
24 Code, as added by H.B. No. 2702, Acts of the 79th Legislature,
25 Regular Session, 2005, is repealed.

26 SECTION 8. (a) An interim committee is created to study
27 the use of the power of eminent domain.

1 (b) The interim committee consists of:

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

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

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

11 (d) The interim committee shall:

12 (1) study the use of the power of eminent domain,
13 including the use of the power of eminent domain for economic
14 development purposes and the issue of what constitutes adequate
15 compensation for property taken through the use of eminent domain;
16 and

17 (2) prepare a report of the committee's study for the
18 80th Legislature.

19 (e) The report required by Subdivision (2), Subsection (d)
20 of this section, must be filed with the lieutenant governor and
21 speaker of the house of representatives not later than December 1,
22 2006.

23 SECTION 9. The changes in law made by this Act to Chapter
24 178, Acts of the 56th Legislature, Regular Session, 1959 (Article
25 3183b-1, Vernon's Texas Civil Statutes), apply to the acquisition
26 of real property by eminent domain or the purchase of real property
27 on or after the effective date of this Act unless condemnation

1 proceedings are initiated or a deed conveying title to the property
2 is filed before the effective date of this Act, in which event the
3 acquisition or purchase is governed by the law in effect at the time
4 the proceedings are initiated or the deed is filed, and the former
5 law is continued in effect for that purpose. The changes in law
6 made by this Act to Chapter 178, Acts of the 56th Legislature,
7 Regular Session, 1959 (Article 3183b-1, Vernon's Texas Civil
8 Statutes), do not apply to acquisition of real property by eminent
9 domain or the purchase of real property before the effective date of
10 this Act.

11 SECTION 10. This Act takes effect immediately if it
12 receives a vote of two-thirds of all the members elected to each
13 house, as provided by Section 39, Article III, Texas Constitution.
14 If this Act does not receive the vote necessary for immediate
15 effect, this Act takes effect on the 91st day after the last day of
16 the legislative session.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 7 passed the Senate on August 9, 2005, by the following vote: Yeas 25, Nays 4; and that the Senate concurred in House amendments on August 16, 2005, by the following vote: Yeas 19, Nays 5.

Secretary of the Senate

I hereby certify that S.B. No. 7 passed the House, with amendments, on August 10, 2005, by the following vote: Yeas 140, Nays 1, three present not voting.

Chief Clerk of the House

Approved:

Date

Governor