

1-1 By: Janek S.B. No. 7
1-2 (In the Senate - Filed July 21, 2005; July 21, 2005, read
1-3 first time and referred to Committee on State Affairs; July 21, 2005,
1-4 reported favorably by the following vote: Yeas 7, Nays 0;
1-5 July 21, 2005, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to limiting the use of eminent domain to take private
1-9 property.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Subtitle E, Title 10, Government Code, is
1-12 amended by adding Chapter 2206 to read as follows:

1-13 CHAPTER 2206. LIMITATIONS ON USE OF EMINENT DOMAIN

1-14 Sec. 2206.001. LIMITATION ON EMINENT DOMAIN FOR PRIVATE
1-15 PARTIES OR ECONOMIC DEVELOPMENT PURPOSES. (a) This section
1-16 applies to the use of eminent domain under the laws of this state,
1-17 including a local or special law, by any governmental or private
1-18 entity, including:

1-19 (1) a state agency, including an institution of higher
1-20 education as defined by Section 61.003, Education Code;

1-21 (2) a political subdivision of this state; or

1-22 (3) a corporation created by a governmental entity to
1-23 act on behalf of the entity.

1-24 (b) A governmental or private entity may not take private
1-25 property through the use of eminent domain if the taking:

1-26 (1) confers a private benefit on a particular private
1-27 party through the use of the property;

1-28 (2) is for a public use that is merely a pretext to
1-29 confer a private benefit on a particular private party;

1-30 (3) is for economic development purposes, unless the
1-31 economic development is a secondary purpose resulting from
1-32 municipal community development or municipal urban renewal
1-33 activities under Chapter 373 or 374, Local Government Code, or
1-34 Section 311.005(a)(1)(I), Tax Code, to eliminate an existing
1-35 affirmative harm on society from slum or blighted areas; or

1-36 (4) is to raise revenue to meet the cost of a public
1-37 project if the property being taken is not otherwise necessary for
1-38 the safe or convenient operation of that public project, except
1-39 that this subdivision does not affect the distribution of surplus
1-40 toll revenue as otherwise provided by law.

1-41 (c) This section does not affect the authority of an entity
1-42 authorized by law to take private property through the use of
1-43 eminent domain for:

1-44 (1) transportation projects, including railroads,
1-45 ports, airports, or public roads or highways;

1-46 (2) water supply, wastewater, flood control, and
1-47 drainage projects;

1-48 (3) the operations of a common carrier or regulated
1-49 energy transporter;

1-50 (4) the provision of utility services; or

1-51 (5) a sports and community venue project approved by
1-52 voters at an election held on or before December 1, 2005, under
1-53 Chapter 334 or 335, Local Government Code.

1-54 SECTION 2. Section 21.001, Property Code, is amended to
1-55 read as follows:

1-56 Sec. 21.001. CONCURRENT JURISDICTION. District courts and
1-57 county courts at law have concurrent jurisdiction in eminent domain
1-58 cases in every county in the state, notwithstanding any other law.
1-59 A county court has no jurisdiction in eminent domain cases.

1-60 SECTION 3. Section 21.013, Property Code, is amended to
1-61 read as follows:

1-62 Sec. 21.013. VENUE; FEES AND PROCESSING FOR ACTION [~~SUIT~~]
1-63 FILED IN DISTRICT COURT. (a) The venue of a condemnation proceeding
1-64 is the county in which the owner of the property being condemned

2-1 resides if the owner resides in a county in which part of the property
2-2 is located. Otherwise, the venue of a condemnation proceeding is any
2-3 county in which at least part of the property is located.

2-4 (b) Except where otherwise provided by law, a party
2-5 initiating a condemnation proceeding [~~in a county in which there is~~
2-6 ~~one or more county courts at law with jurisdiction~~] shall file the
2-7 petition with any clerk authorized to handle such filings for a
2-8 [that] court that has jurisdiction in eminent domain cases [~~or~~
2-9 ~~courts~~].

2-10 (c) [~~A party initiating a condemnation proceeding in a~~
2-11 ~~county in which there is not a county court at law must file the~~
2-12 ~~condemnation petition with the district clerk.~~] The filing fee
2-13 shall be due at the time of filing in accordance with Section
2-14 51.317, Government Code.

2-15 (d) District and county clerks shall assign an equal number
2-16 of eminent domain cases in rotation to each court with jurisdiction
2-17 that the clerk serves.

2-18 SECTION 4. Section 203.052, Transportation Code, is amended
2-19 by adding Subsection (c) to read as follows:

2-20 (c) The commission may not condemn property for a purpose
2-21 described in Subsection (b)(9) unless:

2-22 (1) subject to the provisions of Section 227.041(b-1),
2-23 the purpose is for a gas station, convenience store, or similar
2-24 facility; or

2-25 (2) the purpose is to provide a location between the
2-26 main lanes of a highway or between a highway and a department rail
2-27 facility for a gas station, convenience store, or similar facility
2-28 that:

2-29 (A) provides services to and directly benefits
2-30 users of a toll project; and

2-31 (B) is not located within 10 miles of an
2-32 intersection of the toll project and a segment of another state
2-33 highway that is designated as an interstate highway.

2-34 SECTION 5. (a) An interim committee is created to study
2-35 the use of the power of eminent domain.

2-36 (b) The interim committee consists of:

2-37 (1) five members of the senate appointed by the
2-38 lieutenant governor; and

2-39 (2) five members of the house of representatives
2-40 appointed by the speaker of the house of representatives.

2-41 (c) The lieutenant governor shall designate one senator
2-42 appointed to the interim committee to act as chair. The speaker of
2-43 the house of representatives shall designate one member of the
2-44 house of representatives appointed to the committee to act as vice
2-45 chair.

2-46 (d) The interim committee shall:

2-47 (1) study the use of the power of eminent domain,
2-48 including the use of the power of eminent domain for economic
2-49 development purposes; and

2-50 (2) prepare a report of the committee's study for the
2-51 80th Legislature.

2-52 (e) The report required by Subsection (d)(2) of this section
2-53 must be filed with the lieutenant governor and speaker of the house
2-54 of representatives not later than December 1, 2006.

2-55 SECTION 6. Sections 21.001 and 21.013, Property Code, as
2-56 amended by this Act, apply only to a condemnation proceeding
2-57 initiated on or after the effective date of this Act. A
2-58 condemnation proceeding initiated before the effective date of this
2-59 Act is governed by the law in effect immediately before that date,
2-60 and that law is continued in effect for that purpose.

2-61 SECTION 7. This Act takes effect immediately if it receives
2-62 a vote of two-thirds of all the members elected to each house, as
2-63 provided by Section 39, Article III, Texas Constitution. If this
2-64 Act does not receive the vote necessary for immediate effect, this
2-65 Act takes effect on the 91st day after the last day of the
2-66 legislative session.

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