

By: Shapleigh

S.B. No. 26

A BILL TO BE ENTITLED

AN ACT

relating to the use of the power of eminent domain.

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. DEFINITION. In this chapter, "economic development" means efforts to promote prosperity and comfort in a community, stimulate the economy, expand employment opportunities, encourage the establishment and growth of commerce and industry, or expand the property and sales tax base.

Sec. 2206.002. 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

1 party through the use of the property;

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

4 (3) is for economic development purposes; or

5 (4) is to raise revenue to meet the cost of a public  
6 project if the property being taken is not otherwise necessary for  
7 the successful or safe operation of that public project.

8 (c) This section does not prohibit the distribution of  
9 surplus toll revenue as otherwise allowed by law. Toll revenue  
10 raised from a part of a transportation system may be used to help  
11 fund the transportation system generally if otherwise allowed by  
12 law.

13 (d) 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 if:

16 (1) there is a definite public right or use in the  
17 purpose to which the property is to be devoted other than economic  
18 development;

19 (2) the taking of the property is reasonably essential  
20 for the successful operation of a public project in which there is a  
21 definite public right or use as described by Subdivision (1); or

22 (3) the taking:

23 (A) prevents a menace to the health, safety,  
24 morals, and welfare of citizens; or

25 (B) is part of municipal community development or  
26 municipal urban renewal activities under Chapter 373 or 374, Local  
27 Government Code, or Section 311.005(a)(1)(I), Tax Code, to

1 eliminate an existing affirmative harm on society from slum or  
2 blighted areas.

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

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

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

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

14 (A) provides services to and directly benefits  
15 users of a toll project; and

16 (B) is not located within 10 miles of an  
17 intersection of the toll project and a segment of another state or  
18 federal highway.

19 SECTION 3. (a) An interim committee is created to study  
20 the use of the power of eminent domain.

21 (b) The interim committee consists of:

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

24 (2) five members of the house of representatives  
25 appointed by the speaker of the house of representatives.

26 (c) The lieutenant governor shall designate one senator  
27 appointed to the interim committee to act as chair. The speaker of

1 the house of representatives shall designate one member of the  
2 house of representatives appointed to the committee to act as vice  
3 chair.

4 (d) The interim committee shall:

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

8 (2) prepare a report of the committee's study for the  
9 80th Legislature.

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

13 SECTION 4. Chapter 2206, Government Code, as added by this  
14 Act, applies to a taking of private property by eminent domain  
15 pending on the effective date of this Act. For purposes of this  
16 section, a taking is pending if a condemnation petition is filed  
17 under Section 21.012, Property Code, and a judgment awarding  
18 possession of the property to the condemning entity has not become  
19 final.

20 SECTION 5. This Act takes effect immediately if it receives  
21 a vote of two-thirds of all the members elected to each house, as  
22 provided by Section 39, Article III, Texas Constitution. If this  
23 Act does not receive the vote necessary for immediate effect, this  
24 Act takes effect on the 91st day after the last day of the  
25 legislative session.