

BILL ANALYSIS

C.S.H.B. 3017
By: Orr
Land & Resource Management
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Eminent domain is a governmental power often viewed as a necessary evil. A recent Texas Supreme Court decision, *Hubenak v. San Jacinto Pipeline Transmission Co.*, will likely have the effect of making condemnations even more unpopular because traditional procedural safeguards have now been weakened.

The purpose of C.S.H.B. 3017 is to help maintain the public's trust in the proper use of eminent domain authority and to protect landowners from abuse during the condemnation process by strengthening procedural elements of condemnation and provide for cost recovery when a judge determines that a condemning authority negotiated in bad faith.

RULEMAKING AUTHORITY

It is the opinion of the committee that this bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

ANALYSIS

SECTION 1. *Amends Section 21.0111, Property Code, by amending Subsection (a) and adding Subsection (a-1), as follows:*

Requires certain entities with condemning authority to perform an appraisal of the property to be condemned prior to making an offer to purchase, with exceptions.

Requires the appraiser to consider only the specific unit of real property and property interest the condemnor is seeking to acquire **and** must consider the effect the condemnation will have on the value of any portion of property not condemned.

Prohibits the appraisal from being a generalized evaluation of similarly situated property.

Prohibits an offer by a condemnor from including an offer for any real property or property interest that the condemnor does not have the authority or intention to acquire through condemnation.

SECTION 2. *Amends Section 21.012, Property Code, by adding Subsection (c), as follows:*

States that an offer by a condemnor based on the appraisal is prima facie evidence that the condemnor negotiated with the landowner in good faith.

SECTION 3. *Amends Subchapter D, Chapter 21, Property Code, by adding Section 21.066, as follows:*

Authorizes a court to order the condemnor to pay all the costs the landowner was forced to incur defending against the bad faith condemnation if the court finds that the condemnor did not make an offer or negotiate in good faith

SECTION 4. *Amends Section 101.061, Government Code, as follows:*

Authorizes the clerk of a district court to collect reasonable attorney's fees in condemnation cases as taxed by the court.

SECTION 5. *Amends Section 101.081, Government Code, as follows:*

Authorizes the clerk of a statutory county court to collect reasonable attorney's fees in condemnation cases as taxed by the court.

SECTION 6. Act Prospective.

SECTION 7. Effective Date.

EFFECTIVE DATE

September 1, 2005.

COMPARISON OF ORIGINAL TO SUBSTITUTE

SECTION 1. The Original makes Section 21.0111, Property Code, applicable only to governmental entities while the Substitute makes it applicable to the United States, this state, a political subdivision of this state, a corporation with eminent domain authority, or an irrigation, water improvement, or water power control district created by law.

The Substitute exempts condemnations that are for less than 2,000 square feet from requiring an appraisal prior to an offer unless the landowner requests one be performed.

The Substitute clarifies that appraisals are to be performed on real property and real property interests and that offers for real property and real property interests which cannot be condemned by the authority cannot be included in a condemnation offer.

SECTION 2. The Substitute makes changes to conform with those made in SECTION 1.

SECTION 3. The Substitute makes changes to conform with those made in SECTION 1.

The Substitute removes an unnecessary reference to Property Code Sec. 21.003, clarifying that fees for expert witnesses can be recovered and sets an aggregate cap of \$250,000 which may be awarded by the court.