

By: Jackson

H.B. No. 217

A BILL TO BE ENTITLED

1 AN ACT

2 relating to a landowner's repurchase of real property previously
3 acquired by a governmental entity through eminent domain.

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

5 SECTION 1. Section 21.0121(a), Property Code, is amended to
6 read as follows:

7 (a) In addition to the contents prescribed by Section
8 21.012(b), a condemnation petition filed by a political subdivision
9 of this state for the purpose of acquiring rights to groundwater or
10 surface water must state that the facts to be proven are that the
11 political subdivision has:

12 (1) prepared a drought contingency plan;

13 (2) developed and implemented a water conservation
14 plan that will result in the highest practicable levels of water
15 conservation and efficiency achievable in the political
16 subdivision's jurisdiction;

17 (3) made a bona fide good faith effort to obtain
18 practicable alternative water supplies to the water rights the
19 political subdivision proposes to condemn;

20 (4) made a bona fide good faith effort to acquire the
21 rights to the water the political subdivision proposes to condemn
22 by voluntary purchase or lease; and

23 (5) made a showing that the political subdivision
24 needs the water rights to provide for the domestic needs of the

1 political subdivision within the next 20-year [~~10-year~~] period.

2 SECTION 2. (a) Section 21.023, Property Code, is amended to
3 read as follows:

4 Sec. 21.023. DISCLOSURE OF INFORMATION REQUIRED AT TIME OF
5 ACQUISITION. A governmental entity shall disclose in writing to
6 the property owner, at the time of acquisition of the property
7 through eminent domain, that:

8 (1) the owner or the owner's heirs, successors, or
9 assigns may be [~~are~~] entitled to repurchase the property under
10 Subchapter E [~~if the public use for which the property was acquired~~
11 ~~through eminent domain is canceled before the 10th anniversary of~~
12 ~~the date of acquisition~~]; and

13 (2) the repurchase price is the price paid to the owner
14 by the governmental entity at the time the governmental entity
15 acquired the property through eminent domain [~~fair market value of~~
16 ~~the property at the time the public use was canceled~~].

17 (b) Section 21.023, Property Code, is amended to read as
18 follows:

19 Sec. 21.023. DISCLOSURE OF INFORMATION REQUIRED AT TIME OF
20 ACQUISITION. A governmental entity shall disclose in writing to
21 the property owner, at the time of acquisition of the property
22 through eminent domain, that:

23 (1) the owner or the owner's heirs, successors, or
24 assigns may be [~~are~~] entitled to repurchase the property under
25 Subchapter E [~~if the public use for which the property was acquired~~
26 ~~through eminent domain is canceled before the 10th anniversary of~~
27 ~~the date of acquisition~~]; and

1 (2) the repurchase price is the fair market value of
2 the property at the time the property becomes eligible for
3 repurchase under Section 21.101 [~~public use was canceled~~].

4 SECTION 3. Section 21.101(a), Property Code, is amended to
5 read as follows:

6 (a) A person from whom [~~Except as provided in Subsection~~
7 ~~(b), this subchapter applies only to~~] a real property interest is
8 acquired by a governmental entity through eminent domain for a
9 public use or that person's heirs, successors, or assigns are
10 entitled to repurchase the property as provided by this subchapter
11 if:

12 (1) that public use was canceled before the 20th
13 [10th] anniversary of the date of acquisition;

14 (2) no actual progress, as defined by Section
15 21.104(b), is made toward that public use during the five-year
16 period between:

17 (A) the date of acquisition and the fifth
18 anniversary of that date;

19 (B) the fifth anniversary of that date and the
20 10th anniversary of that date;

21 (C) the 10th anniversary of that date and the
22 15th anniversary of that date; or

23 (D) the 15th anniversary of that date and the
24 20th anniversary of that date;

25 (3) the property becomes unnecessary for that public
26 use before the 20th anniversary of the date of acquisition; or

27 (4) a right of repurchase is established under Section

1 21.106.

2 SECTION 4. (a) Section 21.103, Property Code, is amended to
3 read as follows:

4 Sec. 21.103. RESALE OF PROPERTY; PRICE. (a) Not later than
5 the 180th day after the date of the postmark on the notice sent
6 under Section 21.102, 21.104, or 21.105, the property owner or the
7 owner's heirs, successors, or assigns must notify the governmental
8 entity of the person's intent to repurchase the property interest
9 under this subchapter.

10 (b) As soon as practicable after receipt of a [~~the~~]
11 notification under Subsection (a) or a right to repurchase a
12 property interest is established under Section 21.106, the
13 governmental entity shall offer to sell the property interest to
14 the person for the price paid to the owner by the governmental
15 entity at the time the governmental entity acquired the property
16 through eminent domain [~~fair market value of the property at the~~
17 ~~time the public use was canceled~~]. The person's right to repurchase
18 the property expires on the 90th day after the date on which the
19 governmental entity makes the offer.

20 (b) Section 21.103, Property Code, is amended to read as
21 follows:

22 Sec. 21.103. RESALE OF PROPERTY; PRICE. (a) Not later
23 than the 180th day after the date of the postmark on the notice sent
24 under Section 21.102, 21.104, or 21.105, the property owner or the
25 owner's heirs, successors, or assigns must notify the governmental
26 entity of the person's intent to repurchase the property interest
27 under this subchapter.

1 (b) As soon as practicable after receipt of a [the]
2 notification under Subsection (a) or a right to repurchase a
3 property interest is established under Section 21.106, the
4 governmental entity shall offer to sell the property interest to
5 the person for the fair market value of the property at the time the
6 property becomes eligible for repurchase under Section 21.101
7 [public use was canceled]. The person's right to repurchase the
8 property expires on the 90th day after the date on which the
9 governmental entity makes the offer.

10 SECTION 5. Subchapter E, Chapter 21, Property Code, is
11 amended by adding Sections 21.104, 21.105, and 21.106 to read as
12 follows:

13 Sec. 21.104. NOTICE TO PREVIOUS PROPERTY OWNER OF ACTUAL
14 PROGRESS. (a) Not later than the 180th day after the fifth, 10th,
15 15th, and 20th anniversaries of the date on which real property was
16 acquired through eminent domain by a governmental entity, the
17 governmental entity shall send by certified mail, return receipt
18 requested, to the property owner or the owner's heirs, successors,
19 or assigns, a notice containing:

20 (1) an identification, which is not required to be a
21 legal description, of the property that was acquired;

22 (2) an identification of the public use for which the
23 property had been acquired;

24 (3) an itemized description of the actual progress
25 made toward that public use during the relevant five-year period or
26 a statement that no actual progress has been made toward that use
27 during that period, as applicable; and

1 (4) a description of the person's right under this
2 subchapter to repurchase the property if no actual progress has
3 been made during the five-year period preceding the fifth, 10th,
4 15th, or 20th anniversary of the date on which the property was
5 acquired.

6 (b) Actual progress includes:

7 (1) any labor done to develop the property or other
8 property acquired for the same public use project for which the
9 property owner's property was acquired;

10 (2) furnishing materials to develop the property or
11 other property acquired for the same public use project for which
12 the property owner's property was acquired;

13 (3) hiring an architect, engineer, or surveyor to
14 prepare a plan or plat that includes the property or other property
15 acquired for the same public use project for which the property
16 owner's property was acquired;

17 (4) applying for state or federal funds to develop the
18 property or other property acquired for the same public use project
19 for which the property owner's property was acquired; and

20 (5) acquiring a tract or parcel of real property
21 adjacent to the property for the same public use project for which
22 the owner's property was acquired.

23 Sec. 21.105. (a) NOTICE TO PREVIOUS PROPERTY OWNER
24 REGARDING NECESSITY. If, before the 20th anniversary of the date
25 real property was acquired through eminent domain, the property
26 becomes unnecessary for the public use for which the property was
27 acquired, the governmental entity shall, not later than the 180th

1 day after the date the property becomes unnecessary, send by
2 certified mail, return receipt requested, to the property owner or
3 the owner's heirs, successors, or assigns, a notice containing:

4 (1) an identification, which is not required to be a
5 legal description, of the property that was acquired;

6 (2) an identification of the public use for which the
7 property had been acquired;

8 (3) a statement that the property is no longer
9 necessary for the public use for which the property was acquired;
10 and

11 (4) a description of the person's right under this
12 subchapter to repurchase the property.

13 (b) For the purposes of this subchapter, real property
14 acquired through eminent domain is necessary if any part of the
15 tract or parcel of the real property is required to accomplish the
16 public use described in the condemnation petition required under
17 Section 21.012.

18 Sec. 21.106. PETITION FOR REPURCHASE. (a) After the 20th
19 anniversary of the date on which property was acquired through
20 eminent domain, a property owner or the owner's heirs, successors,
21 or assigns may file a petition in a court having proper jurisdiction
22 under this chapter to require the governmental entity that acquired
23 the owner's property through eminent domain to sell the property
24 interest to the person as specified by Section 21.103(b) if the
25 governmental entity does not prove that the property is necessary
26 for the public use for which the property was acquired.

27 (b) The petition must contain:

1 (1) an identification, which is not required to be a
2 legal description, of the property that was acquired;

3 (2) an identification of the public use for which the
4 property had been acquired;

5 (3) a statement that the property is no longer
6 necessary for the public use for which the property was acquired;
7 and

8 (4) a description of the person's right under this
9 subchapter to repurchase the property.

10 (c) The governmental entity that acquired the property
11 through eminent domain has the burden of establishing that the
12 property is necessary for the public use for which the property was
13 acquired.

14 (d) If a court grants the property owner the right to
15 repurchase property acquired through eminent domain under this
16 section, the court shall award the owner reasonable and necessary
17 attorney's fees.

18 SECTION 6. Section 21.101(b), Property Code, is repealed.

19 SECTION 7. The changes in law made by this Act apply only to
20 a condemnation proceeding in which the petition is filed on or after
21 the effective date of this Act and to any property condemned through
22 the proceeding. A condemnation proceeding in which the petition is
23 filed before the effective date of this Act and any property
24 condemned through the proceeding is governed by the law in effect
25 immediately before that date, and that law is continued in effect
26 for that purpose.

27 SECTION 8. (a) Except as provided by Subsection (b) of this

1 section, this Act takes effect September 1, 2007.

2 (b) Sections 2(a) and 4(a) of this Act, amending Sections
3 21.023 and 21.103, Property Code, take effect on the date on which
4 the constitutional amendment proposed by the 80th Legislature,
5 Regular Session, 2007, allowing a governmental entity to sell
6 property acquired through eminent domain back to the previous
7 owners at the price the entity paid to acquire the property takes
8 effect. If that amendment is not approved by the voters, Sections
9 2(a) and 4(a) of this Act have no effect. Sections 2(b) and 4(b) of
10 this Act, amending Sections 21.023 and 21.103, Property Code, take
11 effect only if the proposed constitutional amendment described by
12 this subsection does not take effect, and the effective date of
13 Sections 2(b) and 4(b) is January 1, 2008.