

By: Castro

H.B. No. 3964

A BILL TO BE ENTITLED

AN ACT

relating to the authority of certain home-rule municipalities to acquire certain property by condemnation.

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

SECTION 1. Chapter 251, Local Government Code, is amended by designating Sections 251.001 and 251.002 as Subchapter A and adding a subchapter heading to read as follows:

SUBCHAPTER A. GENERAL PROVISIONS

SECTION 2. Chapter 251, Local Government Code, is amended by adding Subchapter B to read as follows:

SUBCHAPTER B. AUTHORITY TO CONDEMN CERTAIN PROPERTY

Sec. 251.051. APPLICABILITY. This subchapter applies only to the exercise of eminent domain by a home-rule municipality:

(1) for a public use by a gas, water, sewer, or reuse water utility that is wholly owned by the municipality and operated by:

(A) the governing body of the municipality; or

(B) a board of trustees appointed under Section 1502.070, Government Code, to manage and control a municipal utility system; and

(2) that requires in the municipality's charter that the municipality may not acquire real property until the location and extent of the property is approved by the municipality's planning commission.

1 Sec. 251.052. DUTY OF PLANNING COMMISSION. (a) A municipal
2 planning commission considering a condemnation action subject to
3 this chapter must approve or disapprove the action not later than
4 the 60th day after the date the planning commission receives
5 written notice of the action from the utility or other entity
6 requesting the acquisition of the property.

7 (b) A planning commission disapproving the proposed extent
8 and location of property to be acquired by condemnation must submit
9 the commission's reasons for the disapproval in writing to the
10 governing body of the municipality.

11 (c) If the planning commission does not give its approval or
12 disapproval during the 60-day period, the condemnation is
13 considered approved by the commission.

14 Sec. 251.053. DUTY OF MUNICIPALITY. (a) An ordinance
15 initiating or authorizing a condemnation proceeding subject to this
16 chapter must:

17 (1) provide the date on which a municipality's
18 planning commission considered the location and extent of the
19 property;

20 (2) state whether the planning commission approved or
21 disapproved the acquisition of the property; and

22 (3) if the ordinance is adopted after overruling the
23 disapproval of the planning commission, state:

24 (A) the reasons for the planning commission's
25 disapproval;

26 (B) the fact that the municipal governing body
27 overruled the planning commission's recommendation; and

1 (C) the reasons that the municipality's
2 governing body overruled the planning commission's recommendation.

3 (b) The municipal governing body may overrule the
4 disapproval of the municipality's planning commission only if the
5 meeting notice of the governing body contains a statement in
6 substantially the following form: "A public hearing to consider
7 overruling the action taken by the planning commission of the city
8 of (insert municipality's name) on (insert date of planning
9 commission action) disapproving the proposed acquisition of
10 property for (insert description of project)."

11 Sec. 251.054. ENFORCEMENT; REMEDIES. (a) An action to
12 enforce this subchapter or enjoin a violation of this subchapter
13 may be brought by an owner of an interest in real property acquired
14 in violation of this subchapter.

15 (b) The sovereign immunity of the municipality against suit
16 and liability is specifically and expressly waived with respect to
17 a suit brought by a person identified by Subsection (a) against the
18 municipality for the purpose of enforcing this subchapter.

19 (c) A suit to enforce this subchapter may be brought for
20 injunctive relief, mandamus, declaratory judgment, and damages,
21 including damages to property acquired in violation of this
22 subchapter if the action is brought by the owner of that property.

23 (d) A plaintiff shall file a NOTICE OF INTENTION TO FILE
24 SUIT under this subchapter with the clerk of the municipality no
25 later than seven (7) days after a violation occurs under this
26 subchapter. The municipality shall have fourteen (14) days
27 following the receipt of such notice to cure any violation

1 described herein.

2 (e) A plaintiff who prevails in an action brought to enforce
3 this subchapter is entitled to:

4 (1) reasonable attorney's fees;

5 (2) court costs; and

6 (3) expenses directly related to the litigation
7 required to enforce this subchapter.

8 (f) A municipality's failure to comply with this subchapter
9 before authorizing or initiating a condemnation proceeding causes
10 the proceeding to be void.

11 Sec. 251.055. CONFLICTS. This subchapter controls to the
12 extent of a conflict between this subchapter and another law of this
13 state or an ordinance, charter provision, or other act of a
14 municipality.

15 SECTION 3. Subchapter B, Chapter 251, Local Government
16 Code, as added by this Act, applies to an action by a municipality
17 that is taken on or after the effective date of this Act.

18 SECTION 4. This Act takes effect immediately if it receives
19 a vote of two-thirds of all the members elected to each house, as
20 provided by Section 39, Article III, Texas Constitution. If this
21 Act does not receive the vote necessary for immediate effect, this
22 Act takes effect September 1, 2007.