

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

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H.B. No. 2006

A BILL TO BE ENTITLED

AN ACT

relating to the use of eminent domain authority.

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

SECTION 1. Section 552.0037, Government Code, is amended to read as follows:

Sec. 552.0037. CERTAIN ENTITIES AUTHORIZED TO TAKE PROPERTY THROUGH EMINENT DOMAIN. (a) Notwithstanding any other law, and except as provided by this section, information collected, assembled, or maintained by an entity that is not a governmental body but is authorized by law to take private property through the use of eminent domain is subject to this chapter in the same manner as information collected, assembled, or maintained by a governmental body, but only if the information is:

(1) requested by a person who owns property that is the subject of a proposed or existing eminent domain proceeding; and

(2) related to the taking of the person's private property by the entity through the use of eminent domain.

(b) Notwithstanding Section 552.007, an entity described by Subsection (a) is required under this section only to produce documents relating to the condemnation of the specific property owned by the requestor as described in the request.

(c) A request under this section must contain sufficient details to allow the entity to identify the specific tract of land in relation to which the information is sought.

SECTION 2. Chapter 2206, Government Code, is amended to read as follows:

CHAPTER 2206. [~~LIMITATIONS ON USE OF~~] EMINENT DOMAIN

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2206.001. DEFINITION OF PUBLIC USE. Except as otherwise provided by this chapter, "public use," with respect to the use of eminent domain authority, means a use of property, including a use described by Section 2206.051(c), that allows the state, a political subdivision of the state, or the general public of the state to possess, occupy, and enjoy the property.

SUBCHAPTER B. LIMITATIONS ON PURPOSE AND USE OF PROPERTY

ACQUIRED THROUGH EMINENT DOMAIN

Sec. 2206.051. LIMITATION ON 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 party through the use of the property;

(2) is for a public use that is merely a pretext to

1 confer a private benefit on a particular private party; or

2 (3) is for economic development purposes, unless the  
3 economic development is a secondary purpose resulting from  
4 municipal community development or municipal urban renewal  
5 activities to eliminate an existing affirmative harm on society  
6 from slum or blighted areas under:

7 (A) Chapter 373 or 374, Local Government Code,  
8 other than an activity described by Section 373.002(b)(5), Local  
9 Government Code; or

10 (B) Section 311.005(a)(1)(I), Tax Code.

11 (c) This section does not affect the authority of an entity  
12 authorized by law to take private property through the use of  
13 eminent domain for:

14 (1) transportation projects, including, but not  
15 limited to, railroads, airports, or public roads or highways;

16 (2) entities authorized under Section 59, Article XVI,  
17 Texas Constitution, including:

18 (A) port authorities;

19 (B) navigation districts; and

20 (C) any other conservation or reclamation  
21 districts that act as ports;

22 (3) water supply, wastewater, flood control, and  
23 drainage projects;

24 (4) public buildings, hospitals, and parks;

25 (5) the provision of utility services;

26 (6) a sports and community venue project approved by  
27 voters at an election held on or before December 1, 2005, under

1 Chapter 334 or 335, Local Government Code;

2 (7) the operations of:

3 (A) a common carrier subject to Chapter 111,  
4 Natural Resources Code~~[, and Section B(3)(b), Article 2.01, Texas~~  
5 ~~Business Corporation Act]; or~~

6 (B) an energy transporter, as that term is  
7 defined by Section 186.051, Utilities Code;

8 (8) a purpose authorized by Chapter 181, Utilities  
9 Code;

10 (9) underground storage operations subject to Chapter  
11 91, Natural Resources Code;

12 (10) a waste disposal project; or

13 (11) a library, museum, or related facility and any  
14 infrastructure related to the facility.

15 (d) This section does not affect the authority of a  
16 governmental entity to condemn a leasehold estate on property owned  
17 by the governmental entity.

18 (e) The determination by the governmental or private entity  
19 proposing to take the property that the taking does not involve an  
20 act or circumstance prohibited by Subsection (b) does not create a  
21 presumption with respect to whether the taking involves that act or  
22 circumstance.

23 SUBCHAPTER C. PROCEDURES REQUIRED TO INITIATE

24 EMINENT DOMAIN PROCEEDINGS

25 Sec. 2206.101. SHORT TITLE. This subchapter may be cited as  
26 the Truth in Condemnation Procedures Act.

27 Sec. 2206.102. APPLICABILITY. The procedures in this

1 subchapter apply only to the use of eminent domain under the laws of  
2 this state by a governmental entity.

3 Sec. 2206.103. VOTE ON USE OF EMINENT DOMAIN. (a) Before a  
4 governmental entity initiates a condemnation proceeding by filing a  
5 petition under Section 21.012, Property Code, the governmental  
6 entity must authorize the initiation of the condemnation  
7 proceedings at a public meeting by a record vote. Except as  
8 provided by Subsection (b) or (d), a separate record vote must be  
9 taken for each unit of property for which condemnation proceedings  
10 are to be initiated.

11 (b) For the purposes of Subsection (a), if two or more units  
12 of real property are owned by the same person, the governmental  
13 entity may treat those units of property as one unit of property.

14 (c) The motion to adopt an ordinance, resolution, or order  
15 authorizing the initiation of condemnation proceedings under  
16 Chapter 21, Property Code, must be made in a form substantially  
17 similar to the following: "I move that the (name of governmental  
18 entity) authorize the use of the power of eminent domain to acquire  
19 (describe the property) for (describe the public use)." The  
20 description of the property required by this subsection is  
21 sufficient if the description of the location of and interest in the  
22 property that the governmental entity seeks to acquire is  
23 substantially similar to the description that is or could properly  
24 be used in a petition to condemn the property under Section 21.012,  
25 Property Code.

26 (d) If a project for a public use described by Section  
27 2206.051(c)(3) will require a governmental entity to acquire

1 multiple tracts or units of property to construct facilities  
2 connecting one location to another location, the governing body of  
3 the entity may adopt a single ordinance, resolution, or order by a  
4 record vote that delegates the authority to initiate condemnation  
5 proceedings to the chief administrative official of the  
6 governmental entity.

7 (e) An ordinance, resolution, or order adopted under  
8 Subsection (d) is not required to identify specific properties that  
9 the governmental entity will acquire. The ordinance, resolution,  
10 or order must identify the general area to be covered by the project  
11 or the general route that will be used by the governmental entity  
12 for the project in a way that provides property owners in and around  
13 the area or along the route reasonable notice that the owners'  
14 properties may be subject to condemnation proceedings during the  
15 planning or construction of the project.

16 SECTION 3. Subchapter B, Chapter 21, Property Code, is  
17 amended by adding Sections 21.0112 and 21.0113 to read as follows:

18 Sec. 21.0112. GOOD FAITH STANDARD. An entity with eminent  
19 domain authority that wants to acquire real property for a public  
20 use must make a good faith effort to acquire the property from the  
21 property owner voluntarily.

22 Sec. 21.0113. ADDITIONAL PROCEDURES FOR CERTAIN COMMON  
23 CARRIERS. (a) This section applies only to a condemnation  
24 proceeding initiated by a common carrier, as that term is defined by  
25 Section 111.002, Natural Resources Code.

26 (b) A common carrier that intends to exercise the power of  
27 eminent domain must serve the owner of the property to be acquired

1 with notice that the common carrier intends to initiate  
2 condemnation proceedings on or before the date the common carrier  
3 files a condemnation petition.

4 (c) A notice required under this section must be served to  
5 the property owner by:

6 (1) regular mail; and

7 (2) certified mail, return receipt requested.

8 (d) A common carrier has the burden of proof to establish  
9 that a property owner received notice required by Subsection (b).

10 SECTION 4. Section 21.012(b), Property Code, is amended to  
11 read as follows:

12 (b) The petition must:

13 (1) describe the property to be condemned;

14 (2) state the purpose for which the entity intends to  
15 use the property;

16 (3) state the name of the owner of the property if the  
17 owner is known; ~~and~~

18 (4) state that the entity and the property owner are  
19 unable to agree on the damages; and

20 (5) state that the entity made a good faith effort to  
21 acquire the property from the property owner voluntarily.

22 SECTION 5. Section 21.023, Property Code, is amended to  
23 read as follows:

24 Sec. 21.023. DISCLOSURE OF INFORMATION REQUIRED AT TIME OF  
25 ACQUISITION. A governmental entity shall disclose in writing to  
26 the property owner, at the time of acquisition of the property  
27 through eminent domain, that:

1           (1) the owner or the owner's heirs, successors, or  
2 assigns are entitled to repurchase the property if the public use  
3 for which the property was acquired through eminent domain is  
4 canceled before the 10th anniversary of the date of acquisition;  
5 and

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

10           SECTION 6. Section 21.041, Property Code, is amended to  
11 read as follows:

12           Sec. 21.041. EVIDENCE. As the basis for assessing actual  
13 damages to a property owner from a condemnation, the special  
14 commissioners shall admit evidence on:

15           (1) the value of the property being condemned,  
16 including any evidence that an owner of real property who desires  
17 but is not obligated to sell the property and a potential purchaser  
18 of the property who is under no necessity to purchase the property  
19 would consider with respect to the property if it were offered for  
20 sale;

21           (2) the injury to the property owner, including the  
22 financial damages associated with the cost of relocating from the  
23 condemned property, if the property was habitable, to another  
24 property that allows the property owner to have a standard of living  
25 comparable to the property owner's standard of living before the  
26 condemnation of the property;

27           (3) the benefit to the property owner's remaining



1 property; and

2 (4) the use of the property for the purpose of the  
3 condemnation.

4 SECTION 7. Section 21.042(d), Property Code, is amended to  
5 read as follows:

6 (d) In estimating injury or benefit under Subsection (c),  
7 the special commissioners shall consider an injury or benefit that  
8 is peculiar to the property owner, including the property owner's  
9 financial damages described by Section 21.041(2), and that relates  
10 to the property owner's ownership, use, or enjoyment of the  
11 particular parcel of real property, but they may not consider an  
12 injury or benefit that the property owner experiences in common  
13 with the general community.

14 SECTION 8. Sections 21.046(a) and (b), Property Code, are  
15 amended to read as follows:

16 (a) A department, agency, instrumentality, or political  
17 subdivision of this state shall ~~may~~ provide a relocation advisory  
18 service for an individual, a family, a business concern, a farming  
19 or ranching operation, or a nonprofit organization that ~~[if the~~  
20 ~~service]~~ is compatible with the Federal Uniform Relocation  
21 Assistance Advisory Program, 23 U.S.C.A. 501, et seq.

22 (b) This state or a political subdivision of this state  
23 shall ~~may~~, as a cost of acquiring real property, pay moving  
24 expenses and rental supplements, make relocation payments, provide  
25 financial assistance to acquire replacement housing, and  
26 compensate for expenses incidental to the transfer of the property  
27 if an individual, a family, the personal property of a business, a

1 farming or ranching operation, or a nonprofit organization is  
2 displaced in connection with the acquisition.

3 SECTION 9. The heading to Section 21.047, Property Code, is  
4 amended to read as follows:

5 Sec. 21.047. ASSESSMENT OF COSTS AND FEES.

6 SECTION 10. Section 21.047, Property Code, is amended by  
7 adding Subsection (d) to read as follows:

8 (d) If a court hearing a suit under this chapter finds that a  
9 condemning entity did not make a good faith effort to acquire the  
10 property from the property owner voluntarily as required by Section  
11 21.0112, the court may order the condemning entity to pay all costs  
12 and any reasonable attorney's fees incurred by the property owner.

13 SECTION 11. Section 21.101(a), Property Code, is amended to  
14 read as follows:

15 (a) Except as provided in Subsection (b), this subchapter  
16 applies only to a real property interest acquired by a governmental  
17 entity through eminent domain for a public use. A person from whom  
18 the property interest is acquired or that person's heirs,  
19 successors, or assigns are entitled to repurchase the property as  
20 provided by this subchapter if that public use was canceled before  
21 the 10th anniversary of the date of acquisition.

22 SECTION 12. Section 21.103(b), Property Code, is amended to  
23 read as follows:

24 (b) As soon as practicable after receipt of a [the]  
25 notification under Subsection (a), the governmental entity shall  
26 offer to sell the property interest to the person for the price paid  
27 to the owner by the governmental entity at the time the governmental

1 entity acquired the property through eminent domain [~~fair market~~  
2 ~~value of the property at the time the public use was canceled~~]. The  
3 person's right to repurchase the property expires on the 90th day  
4 after the date on which the governmental entity makes the offer.

5 SECTION 13. Subchapter B, Chapter 111, Natural Resources  
6 Code, is amended by adding Section 111.0195 to read as follows:

7 Sec. 111.0195. RIGHT OF EMINENT DOMAIN: ADDITIONAL  
8 PROCEDURES. (a) This section applies only to a condemnation  
9 proceeding initiated by a common carrier, as that term is defined by  
10 Section 111.002.

11 (b) A common carrier that intends to exercise the power of  
12 eminent domain must serve the owner of the property to be acquired  
13 with notice that the common carrier intends to initiate  
14 condemnation proceedings on or before the date the common carrier  
15 files a condemnation petition.

16 (c) The special commissioners in an eminent domain  
17 proceeding to which this section applies:

18 (1) may not schedule a hearing to assess damages  
19 before the 30th day after the date of the special commissioners'  
20 appointment; and

21 (2) must serve a property owner with notice informing  
22 the property owner of the time and place of the hearing not later  
23 than the 21st day before the date set for the hearing.

24 (d) A court that has jurisdiction over a condemnation  
25 proceeding may appoint a replacement special commissioner if:

26 (1) the property owner or the common carrier objects  
27 to the appointment of a special commissioner by filing a written

1 statement of the person's objections on the grounds of:

2 (A) a conflict of interest; or

3 (B) other good cause; and

4 (2) the court determines in a hearing that good cause  
5 is shown.

6 (e) The special commissioners may delay scheduling a  
7 hearing for a reasonable period if, by motion to the court that has  
8 jurisdiction over the condemnation proceeding, the property owner  
9 requests and is granted a delay by the court for good cause shown.

10 (f) A notice required under this section must be served by:

11 (1) regular mail; and

12 (2) certified mail, return receipt requested, to the  
13 property owner.

14 (g) A common carrier has the burden of proof to establish  
15 that notice was provided as required by Subsection (b).

16 SECTION 14. Subchapter G, Chapter 13, Water Code, is  
17 amended by adding Section 13.258 to read as follows:

18 Sec. 13.258. EMINENT DOMAIN. (a) A water and sewer utility  
19 that is operating in accordance with its certificate of convenience  
20 and necessity may acquire by condemnation only easements or lesser  
21 property interests reasonably necessary to comply with federal and  
22 state regulations relating to sanitation.

23 (b) The water and sewer utility shall exercise the power of  
24 eminent domain in the manner provided by Chapter 21, Property Code.

25 (c) The water and sewer utility may not exercise the power  
26 of eminent domain to condemn land to acquire rights to underground  
27 water or for water or water rights.

1           (d) A water and sewer utility may not exercise the power of  
2 eminent domain in a municipality with a population of more than 1.7  
3 million or in the municipality's extraterritorial jurisdiction to  
4 condemn land in which the municipality owns a fee, easement, or  
5 lesser property interest.

6           SECTION 15. Section 101.061, Government Code, is amended to  
7 read as follows:

8           Sec. 101.061. DISTRICT COURT FEES AND COSTS. The clerk of a  
9 district court shall collect fees and costs as follows:

10           (1) filing fee in action with respect to a fraudulent  
11 court record or fraudulent lien or claim filed against property  
12 (Sec. 12.005, Civil Practice and Remedies Code) . . . \$15;

13           (2) fee for service of notice of action with respect to  
14 a fraudulent court record or fraudulent lien or claim filed against  
15 property (Sec. 12.005, Civil Practice and Remedies Code) . . . not  
16 to exceed \$20, if notice delivered in person, or the cost of  
17 postage, if service is by registered or certified mail;

18           (3) court cost in certain civil cases to establish and  
19 maintain an alternative dispute resolution system, if authorized by  
20 the county commissioners court (Sec. 152.004, Civil Practice and  
21 Remedies Code) . . . not to exceed \$10;

22           (4) appellate judicial system filing fees for:

23                   (A) First or Fourteenth Court of Appeals District  
24 (Sec. 22.2021, Government Code) . . . not more than \$5;

25                   (B) Second Court of Appeals District (Sec.  
26 22.2031, Government Code) . . . not more than \$5;

27                   (C) Fourth Court of Appeals District (Sec.

1 22.2051, Government Code) . . . not more than \$5;

2 (D) Fifth Court of Appeals District (Sec.  
3 22.2061, Government Code) . . . not more than \$5; and

4 (E) Thirteenth Court of Appeals District (Sec.  
5 22.2141, Government Code) . . . not more than \$5;

6 (5) additional filing fees:

7 (A) for each suit filed for insurance contingency  
8 fund, if authorized by the county commissioners court (Sec. 51.302,  
9 Government Code) . . . not to exceed \$5;

10 (B) for each civil suit filed, for court-related  
11 purposes for the support of the judiciary and for civil legal  
12 services to an indigent:

13 (i) for family law cases and proceedings as  
14 defined by Section 25.0002, Government Code (Sec. 133.151, Local  
15 Government Code) . . . \$45; or

16 (ii) for any case other than a case  
17 described by Subparagraph (i) (Sec. 133.151, Local Government Code)  
18 . . . \$50;

19 (C) to fund the improvement of Dallas County  
20 civil court facilities, if authorized by the county commissioners  
21 court (Sec. 51.705, Government Code) . . . not more than \$15; and

22 (D) on the filing of any civil action or  
23 proceeding requiring a filing fee, including an appeal, and on the  
24 filing of any counterclaim, cross-action, intervention,  
25 interpleader, or third-party action requiring a filing fee, to fund  
26 civil legal services for the indigent:

27 (i) for family law cases and proceedings as

1 defined by Section 25.0002, Government Code (Sec. 133.152, Local  
2 Government Code) . . . \$5; or

3 (ii) for any case other than a case  
4 described by Subparagraph (i) (Sec. 133.152, Local Government Code)  
5 . . . \$10;

6 (6) for filing a suit, including an appeal from an  
7 inferior court:

8 (A) for a suit with 10 or fewer plaintiffs (Sec.  
9 51.317, Government Code) . . . \$50;

10 (B) for a suit with at least 11 but not more than  
11 25 plaintiffs (Sec. 51.317, Government Code) . . . \$75;

12 (C) for a suit with at least 26 but not more than  
13 100 plaintiffs (Sec. 51.317, Government Code) . . . \$100;

14 (D) for a suit with at least 101 but not more than  
15 500 plaintiffs (Sec. 51.317, Government Code) . . . \$125;

16 (E) for a suit with at least 501 but not more than  
17 1,000 plaintiffs (Sec. 51.317, Government Code) . . . \$150; or

18 (F) for a suit with more than 1,000 plaintiffs  
19 (Sec. 51.317, Government Code) . . . \$200;

20 (7) for filing a cross-action, counterclaim,  
21 intervention, contempt action, motion for new trial, or third-party  
22 petition (Sec. 51.317, Government Code) . . . \$15;

23 (8) for issuing a citation or other writ or process not  
24 otherwise provided for, including one copy, when requested at the  
25 time a suit or action is filed (Sec. 51.317, Government Code) . . .  
26 \$8;

27 (9) for records management and preservation (Sec.

- 1 51.317, Government Code) . . . \$10;
- 2 (10) for issuing a subpoena, including one copy (Sec.  
3 51.318, Government Code) . . . \$8;
- 4 (11) for issuing a citation, commission for  
5 deposition, writ of execution, order of sale, writ of execution and  
6 order of sale, writ of injunction, writ of garnishment, writ of  
7 attachment, or writ of sequestration not provided for in Section  
8 51.317, or any other writ or process not otherwise provided for,  
9 including one copy if required by law (Sec. 51.318, Government  
10 Code) . . . \$8;
- 11 (12) for searching files or records to locate a cause  
12 when the docket number is not provided (Sec. 51.318, Government  
13 Code) . . . \$5;
- 14 (13) for searching files or records to ascertain the  
15 existence of an instrument or record in the district clerk's office  
16 (Sec. 51.318, Government Code) . . . \$5;
- 17 (14) for abstracting a judgment (Sec. 51.318,  
18 Government Code) . . . \$8;
- 19 (15) for approving a bond (Sec. 51.318, Government  
20 Code) . . . \$4;
- 21 (16) for a certified copy of a record, judgment,  
22 order, pleading, or paper on file or of record in the district  
23 clerk's office, including certificate and seal, for each page or  
24 part of a page (Sec. 51.318, Government Code) . . . \$1;
- 25 (17) for a noncertified copy, for each page or part of  
26 a page (Sec. 51.318, Government Code) . . . not to exceed \$1;
- 27 (18) jury fee (Sec. 51.604, Government Code) . . .



1 \$30;

2 (19) for filing a report of divorce or annulment (Sec.  
3 194.002, Health and Safety Code) . . . \$1;

4 (20) for filing a suit in Comal County (Sec. 152.0522,  
5 Human Resources Code) . . . \$4;

6 (21) additional filing fee for family protection on  
7 filing a suit for dissolution of a marriage under Chapter 6, Family  
8 Code, if authorized by the county commissioners court (Sec. 51.961,  
9 Government Code) . . . not to exceed \$30;

10 (22) fee on filing a suit for dissolution of a marriage  
11 for services of child support department in Harris County, if  
12 authorized by the county commissioners court (Sec. 152.1074, Human  
13 Resources Code) . . . not to exceed \$12;

14 (22-a) a child support service fee in Nueces County if  
15 ordered by the commissioners court and assessed by the court (Sec.  
16 152.1844, Human Resources Code) . . . not to exceed \$5 a month  
17 payable annually in advance;

18 (22-b) a service fee to be paid by a person ordered by  
19 a district court to pay child or spousal support:

20 (A) in Collin County if authorized by the  
21 juvenile board (Sec. 152.0492, Human Resources Code) . . . not to  
22 exceed \$2.50 added to first support payment each month;

23 (B) in Johnson County if authorized by the  
24 juvenile board (Sec. 152.1322, Human Resources Code) . . . \$1.00  
25 added to first support payment each month; and

26 (C) in Montague County (Sec. 152.1752, Human  
27 Resources Code) . . . \$1 if fee is ordered to be paid monthly, 50

1 cents if fee is ordered to be paid semimonthly or weekly;

2 (22-c) attorney's fees as an additional cost in  
3 Montague County on a finding of contempt of court for failure to pay  
4 child or spousal support if the contempt action is initiated by the  
5 probation department (Sec. 152.1752, Human Resources Code) . . .  
6 \$15;

7 (23) fee on filing a suit requesting an adoption in  
8 Montague County (Sec. 152.1752, Human Resources Code) . . . \$25;

9 (24) court cost on citation for contempt of court for  
10 failure to comply with child support order in Nueces County, if  
11 authorized by the commissioners court (Sec. 152.1844, Human  
12 Resources Code) . . . not to exceed \$10;

13 (25) fee on filing a suit for divorce in Orange County  
14 (Sec. 152.1873, Human Resources Code) . . . not less than \$5;

15 (26) court costs on citation for contempt of court in  
16 Orange County for failure to comply with a child support order or  
17 order providing for possession of or access to a child (Sec.  
18 152.1873, Human Resources Code) . . . amount determined by district  
19 clerk;

20 (27) fee on filing a suit requesting an adoption in  
21 Orange County (Sec. 152.1874, Human Resources Code) . . . not less  
22 than \$25;

23 (28) fee on filing a suit requesting an adoption in  
24 Wichita County (Sec. 152.2496, Human Resources Code) . . . \$100;

25 (29) additional filing fee to fund the courthouse  
26 security fund, if authorized by the county commissioners court  
27 (Sec. 291.008, Local Government Code) . . . not to exceed \$5;

1           (30) additional filing fee for filing documents not  
2 subject to certain filing fees to fund the courthouse security  
3 fund, if authorized by the county commissioners court (Sec.  
4 291.008, Local Government Code) . . . \$1;

5           (31) additional filing fee to fund the courthouse  
6 security fund in Webb County, if authorized by the county  
7 commissioners court (Sec. 291.009, Local Government Code) . . . not  
8 to exceed \$20;

9           (32) court cost in civil cases other than suits for  
10 delinquent taxes to fund the county law library fund, if authorized  
11 by the county commissioners court (Sec. 323.023, Local Government  
12 Code) . . . not to exceed \$35;

13           (33) when administering a case for the Rockwall County  
14 Court at Law (Sec. 25.2012, Government Code) . . . civil fees and  
15 court costs as if the case had been filed in district court;

16           (34) at a hearing held by an associate judge in Dallas  
17 County, a court cost to preserve the record, in the absence of a  
18 court reporter, by other means (Sec. 54.509, Government Code) . . .  
19 as assessed by the referring court or associate judge;

20           (35) at a hearing held by an associate judge in Duval  
21 County, a court cost to preserve the record (Sec. 54.1151,  
22 Government Code, as added by Chapter 1150, Acts of the 78th  
23 Legislature, Regular Session, 2003) . . . as imposed by the  
24 referring court or associate judge;

25           (36) court fees and costs, if ordered by the court, for  
26 a suit filed by an inmate in which an affidavit or unsworn  
27 declaration of inability to pay costs is filed by the inmate (Sec.

1 14.006, Civil Practice and Remedies Code) . . . the lesser of:

2 (A) 20 percent of the preceding six months'  
3 deposits to the inmate's trust account administered by the Texas  
4 Department of Criminal Justice under Section 501.014, Government  
5 Code; or

6 (B) the total amount of court fees and costs;

7 (37) monthly payment for remaining court fees and  
8 costs after the initial payment for a suit in which an affidavit or  
9 unsworn declaration of inability to pay costs is filed by the inmate  
10 (Sec. 14.006, Civil Practice and Remedies Code) . . . the lesser  
11 of:

12 (A) 10 percent of that month's deposit to the  
13 inmate's trust account administered by the Texas Department of  
14 Criminal Justice under Section 501.014, Government Code; or

15 (B) the total amount of court fees and costs that  
16 remain unpaid;

17 (38) the following costs not otherwise charged to the  
18 inmate under Section 14.006, Civil Practice and Remedies Code, if  
19 the inmate has previously filed an action dismissed as malicious or  
20 frivolous (Sec. 14.007, Civil Practice and Remedies Code):

21 (A) expenses of service of process;

22 (B) postage; and

23 (C) transportation, housing, or medical care  
24 incurred in connection with the appearance of the inmate in the  
25 court for any proceeding;

26 (39) fee for performing a service:

27 (A) related to the matter of the estate of a

1 deceased person (Sec. 51.319, Government Code) . . . the same fee  
2 allowed the county clerk for those services;

3 (B) related to the matter of a minor (Sec.  
4 51.319, Government Code) . . . the same fee allowed the county  
5 clerk for the service;

6 (C) of serving process by certified or registered  
7 mail (Sec. 51.319, Government Code) . . . the same fee a sheriff or  
8 constable is authorized to charge for the service under Section  
9 118.131, Local Government Code; and

10 (D) prescribed or authorized by law but for which  
11 no fee is set (Sec. 51.319, Government Code) . . . a reasonable fee;

12 (40) court costs, which may include expert witness  
13 fees in Travis County in an action in which the plaintiff prevails  
14 against an insurer for economic damages sustained by the plaintiff  
15 as a result of unfair discrimination (Sec. 544.054, Insurance Code)  
16 . . . court costs and reasonable and necessary expert witness fees;

17 (41) security deposit on filing, by any person other  
18 than the personal representative of an estate, an application,  
19 complaint, or opposition in relation to the estate, if required by  
20 the clerk (Sec. 12, Texas Probate Code) . . . probable cost of the  
21 proceeding;

22 (42) security deposit on filing, by any person other  
23 than the guardian, attorney ad litem, or guardian ad litem, an  
24 application, complaint, or opposition in relation to a guardianship  
25 matter, if required by the clerk (Sec. 622, Texas Probate Code)  
26 . . . probable cost of the guardianship proceeding; ~~and~~

27 (43) fee for filing an additional petition for review

1 of an appraisal review board order relating to certain regulated  
2 property running through or operating in more than one county after  
3 the first petition for review relating to the same property is filed  
4 for a tax year (Sec. 42.221, Tax Code) . . . \$5;

5 (44) court costs for each special commissioner in an  
6 eminent domain proceeding (Sec. 21.047, Property Code) . . . as  
7 taxed by the court, \$10 or more; and

8 (45) court costs and attorney's fees in an eminent  
9 domain proceeding (Sec. 21.047, Property Code) . . . as taxed by  
10 the court and as reasonable, respectively.

11 SECTION 16. Section 101.081, Government Code, is amended to  
12 read as follows:

13 Sec. 101.081. STATUTORY COUNTY COURT FEES AND COSTS. The  
14 clerk of a statutory county court shall collect fees and costs as  
15 follows:

16 (1) court cost in certain civil cases to establish and  
17 maintain an alternative dispute resolution system, if authorized by  
18 the county commissioners court (Sec. 152.004, Civil Practice and  
19 Remedies Code) . . . not to exceed \$10;

20 (2) appellate judicial system filing fees:

21 (A) First or Fourteenth Court of Appeals District  
22 (Sec. 22.2021, Government Code) . . . not more than \$5;

23 (B) Second Court of Appeals District (Sec.  
24 22.2031, Government Code) . . . not more than \$5;

25 (C) Fourth Court of Appeals District (Sec.  
26 22.2051, Government Code) . . . not more than \$5;

27 (D) Fifth Court of Appeals District (Sec.

1 22.2061, Government Code) . . . not more than \$5; and

2 (E) Thirteenth Court of Appeals District (Sec.  
3 22.2141, Government Code) . . .not more than \$5;

4 (3) an official court reporter fee, County Court at  
5 Law No. 2 of Bexar County (Sec. 25.0172, Government Code) . . . \$3;

6 (4) a court reporter fee when testimony is taken in a  
7 county court at law in McLennan County (Sec. 25.1572, Government  
8 Code) . . . \$3;

9 (5) a stenographer fee, if a record or part of a record  
10 is made:

11 (A) in a county court at law in Hidalgo County  
12 (Sec. 25.1102, Government Code) . . . \$20; and

13 (B) in a county court at law in Nolan County (Sec.  
14 25.1792, Government Code) . . . \$25;

15 (6) jury fee (Sec. 51.604, Government Code) . . . \$22;

16 (7) an additional filing fee:

17 (A) for each civil case filed to be used for  
18 court-related purposes for the support of the judiciary, if  
19 authorized by the county commissioners court (Sec. 51.702,  
20 Government Code) . . . \$40;

21 (B) to fund the improvement of Dallas County  
22 civil court facilities, if authorized by the county commissioners  
23 court (Sec. 51.705, Government Code) . . . not more than \$15; and

24 (C) for filing any civil action or proceeding  
25 requiring a filing fee, including an appeal, and on the filing of  
26 any counterclaim, cross-action, intervention, interpleader, or  
27 third-party action requiring a filing fee, to fund civil legal

1 services for the indigent (Sec. 133.153, Local Government Code)  
2 . . . \$5;

3 (8) for filing an application for registration of  
4 death (Sec. 193.007, Health and Safety Code) . . . \$1;

5 (9) fee for judge's services on an application for  
6 court-ordered mental health services (Sec. 574.031, Health and  
7 Safety Code) . . . not to exceed \$50;

8 (10) fee for prosecutor's services on an application  
9 for court-ordered mental health services (Sec. 574.031, Health and  
10 Safety Code) . . . not to exceed \$50;

11 (11) for filing a suit in Comal County (Sec. 152.0522,  
12 Human Resources Code) . . . \$4;

13 (12) additional filing fee to fund contingency fund  
14 for liability insurance, if authorized by the county commissioners  
15 court (Sec. 82.003, Local Government Code) . . . not to exceed \$5;

16 (13) civil court actions (Sec. 118.052, Local  
17 Government Code):

18 (A) filing of original action (Secs. 118.052 and  
19 118.053, Local Government Code):

20 (i) garnishment after judgment (Sec.  
21 118.052, Local Government Code) . . . \$15; and

22 (ii) all others (Sec. 118.052, Local  
23 Government Code) . . . \$40;

24 (B) filing of action other than original (Secs.  
25 118.052 and 118.054, Local Government Code) . . . \$30; and

26 (C) services rendered after judgment in original  
27 action (Secs. 118.052 and 118.0545, Local Government Code):



- 1                   (i) abstract of judgment (Sec. 118.052,  
2 Local Government Code) . . . \$5; and
- 3                   (ii) execution, order of sale, writ, or  
4 other process (Sec. 118.052, Local Government Code) . . . \$5;
- 5               (14) probate court actions (Sec. 118.052, Local  
6 Government Code):
  - 7               (A) probate original action (Secs. 118.052 and  
8 118.055, Local Government Code):
    - 9               (i) probate of a will with independent  
10 executor, administration with will attached, administration of an  
11 estate, guardianship or receivership of an estate, or muniment of  
12 title (Sec. 118.052, Local Government Code) . . . \$40;
    - 13               (ii) community survivors (Sec. 118.052,  
14 Local Government Code) . . . \$40;
    - 15               (iii) small estates (Sec. 118.052, Local  
16 Government Code) . . . \$40;
    - 17               (iv) declarations of heirship (Sec.  
18 118.052, Local Government Code) . . . \$40;
    - 19               (v) mental health or chemical dependency  
20 services (Sec. 118.052, Local Government Code) . . . \$40; and
    - 21               (vi) additional, special fee (Secs. 118.052  
22 and 118.064, Local Government Code) . . . \$5;
  - 23               (B) services in pending probate action (Secs.  
24 118.052 and 118.056, Local Government Code):
    - 25               (i) filing an inventory and appraisalment  
26 after the 120th day after the date of the initial filing of the  
27 action (Sec. 118.052, Local Government Code) . . . \$25;

- 1                   (ii) approving and recording bond (Sec.  
2 118.052, Local Government Code) . . . \$3;
- 3                   (iii) administering oath (Sec. 118.052,  
4 Local Government Code) . . . \$2;
- 5                   (iv) filing annual or final account of  
6 estate (Sec. 118.052, Local Government Code) . . . \$25;
- 7                   (v) filing application for sale of real or  
8 personal property (Sec. 118.052, Local Government Code) . . . \$25;
- 9                   (vi) filing annual or final report of  
10 guardian of a person (Sec. 118.052, Local Government Code) . . .  
11 \$10; and
- 12                   (vii) filing a document not listed under  
13 this paragraph after the filing of an order approving the inventory  
14 and appraisal or after the 120th day after the date of the  
15 initial filing of the action, whichever occurs first (Secs. 118.052  
16 and 191.007, Local Government Code), if more than 25 pages . . .  
17 \$25;
- 18                   (C) adverse probate action (Secs. 118.052 and  
19 118.057, Local Government Code) . . . \$40; and
- 20                   (D) claim against estate (Secs. 118.052 and  
21 118.058, Local Government Code) . . . \$2;
- 22                   (15) other fees (Sec. 118.052, Local Government Code):  
23                   (A) issuing document (Secs. 118.052 and 118.059,  
24 Local Government Code):  
25                   (i) original document and one copy (Sec.  
26 118.052, Local Government Code) . . . \$4; and  
27                   (ii) each additional set of an original and

1 one copy (Sec. 118.052, Local Government Code) . . . \$4;

2 (B) certified papers (Secs. 118.052 and 118.060,  
3 Local Government Code):

4 (i) for the clerk's certificate (Sec.  
5 118.052, Local Government Code) . . . \$5; and

6 (ii) a fee per page or part of a page (Sec.  
7 118.052, Local Government Code) . . . \$1;

8 (C) noncertified papers, for each page or part of  
9 a page (Secs. 118.052 and 118.0605, Local Government Code) . . .  
10 \$1;

11 (D) letters testamentary, letter of  
12 guardianship, letter of administration, or abstract of judgment  
13 (Secs. 118.052 and 118.061, Local Government Code) . . . \$2;

14 (E) safekeeping of wills (Secs. 118.052 and  
15 118.062, Local Government Code) . . . \$5;

16 (F) mail service of process (Secs. 118.052 and  
17 118.063, Local Government Code) . . . same as sheriff; and

18 (G) records management and preservation fee  
19 (Secs. 118.052, 118.0546, and 118.0645, Local Government Code)  
20 . . . \$5;

21 (16) additional filing fee to fund the courthouse  
22 security fund, if authorized by the county commissioners court  
23 (Sec. 291.008, Local Government Code) . . . not to exceed \$5;

24 (17) additional filing fee for filing documents not  
25 subject to certain filing fees to fund the courthouse security  
26 fund, if authorized by the county commissioners court (Sec.  
27 291.008, Local Government Code) . . . \$1;

1           (18) additional filing fee to fund the courthouse  
2 security fund in Webb County, if authorized by the county  
3 commissioners court (Sec. 291.009, Local Government Code) . . . not  
4 to exceed \$20;

5           (19) court cost in civil cases other than suits for  
6 delinquent taxes to fund the county law library fund, if authorized  
7 by the county commissioners court (Sec. 323.023, Local Government  
8 Code) . . . not to exceed \$35;

9           (20) fee for deposit of a will with the county clerk  
10 during testator's lifetime (Sec. 71, Texas Probate Code) . . . \$3;

11           (21) court cost for each special commissioner in an  
12 eminent domain proceeding (Sec. 21.047, Property Code) . . . as  
13 taxed by the court, \$10 or more;

14           (21-a) court costs and attorney's fees in an eminent  
15 domain proceeding (Sec. 21.047, Property Code) . . . as taxed by  
16 the court and as reasonable, respectively;

17           (22) fee for county attorney in a suit regarding a  
18 railroad company's failure to keep roadbed and right-of-way in  
19 proper condition (Art. 6327, Vernon's Texas Civil Statutes) . . .  
20 \$10;

21           (23) court fees and costs, if ordered by the court, for  
22 a suit filed by an inmate in which an affidavit or unsworn  
23 declaration of inability to pay costs is filed by the inmate (Sec.  
24 14.006, Civil Practice and Remedies Code) . . . the lesser of:

25           (A) 20 percent of the preceding six months'  
26 deposits to the inmate's trust account administered by the Texas  
27 Department of Criminal Justice under Section 501.014, Government

1 Code; or

2 (B) the total amount of court fees and costs;

3 (24) monthly payment for remaining court fees and  
4 costs after the initial payment for a suit in which an affidavit or  
5 unsworn declaration of inability to pay costs is filed by the inmate  
6 (Sec. 14.006, Civil Practice and Remedies Code) . . . the lesser  
7 of:

8 (A) 10 percent of that month's deposit to the  
9 inmate's trust account administered by the Texas Department of  
10 Criminal Justice under Section 501.014, Government Code; or

11 (B) the total amount of court fees and costs that  
12 remain unpaid;

13 (25) the following costs not otherwise charged to the  
14 inmate under Section 14.006, Civil Practice and Remedies Code, if  
15 the inmate has previously filed an action dismissed as malicious or  
16 frivolous (Sec. 14.007, Civil Practice and Remedies Code):

17 (A) expenses of service of process;

18 (B) postage; and

19 (C) transportation, housing, or medical care  
20 incurred in connection with the appearance of the inmate in the  
21 court for any proceeding;

22 (26) the official court reporter's fee taxed as costs  
23 in civil actions in a statutory county court:

24 (A) in Bexar County Courts at Law:

25 (i) Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12  
26 (Sec. 25.0172, Government Code) . . . taxed in the same manner as  
27 the fee is taxed in district court; and

1 (ii) No. 2 (Sec. 25.0172, Government Code)

2 . . . \$3;

3 (B) in Galveston County (Sec. 25.0862,  
4 Government Code) . . . taxed in the same manner as the fee is taxed  
5 in civil cases in the district courts; and

6 (C) in Parker County (Sec. 25.1862, Government  
7 Code) . . . taxed in the same manner as the fee is taxed in civil  
8 cases in the district courts;

9 (27) a stenographer's fee as costs in each civil,  
10 criminal, and probate case in which a record is made by the official  
11 court reporter in a statutory county court in Nolan County (Sec.  
12 25.1792, Government Code) . . . \$25;

13 (28) in Brazoria County, in matters of concurrent  
14 jurisdiction with the district court, fees (Sec. 25.0222,  
15 Government Code) . . . as prescribed by law for district judges  
16 according to the nature of the matter;

17 (29) in Nueces County, in matters of concurrent  
18 jurisdiction with the district court, with certain exceptions, fees  
19 (Sec. 25.1802, Government Code) . . . equal to those in district  
20 court cases;

21 (30) security deposit on filing, by any person other  
22 than the personal representative of an estate, an application,  
23 complaint, or opposition in relation to the estate, if required by  
24 the clerk (Sec. 12, Texas Probate Code) . . . probable cost of the  
25 proceeding;

26 (31) security deposit on filing, by any person other  
27 than the guardian, attorney ad litem, or guardian ad litem, an

1 application, complaint, or opposition in relation to a guardianship  
2 matter, if required by the clerk (Sec. 622, Texas Probate Code)  
3 . . . probable cost of the guardianship proceeding;

4 (32) for a hearing or proceeding under the Texas  
5 Mental Health Code (Subtitle C, Title 7, Health and Safety Code) as  
6 costs (Secs. 571.017 and 571.018, Health and Safety Code) . . .  
7 reasonable compensation to the following persons appointed under  
8 the Texas Mental Health Code:

- 9 (A) attorneys;
- 10 (B) physicians;
- 11 (C) language interpreters;
- 12 (D) sign interpreters; and
- 13 (E) masters;

14 (33) for a hearing or proceeding under the Texas  
15 Mental Health Code (Subtitle C, Title 7, Health and Safety Code) as  
16 costs (Sec. 571.018, Health and Safety Code):

- 17 (A) attorney's fees;
- 18 (B) physician examination fees;
- 19 (C) expense of transportation to a mental health  
20 facility or to a federal agency not to exceed \$50 if transporting  
21 within the same county and not to exceed the reasonable cost of  
22 transportation if transporting between counties;
- 23 (D) costs and salary supplements authorized  
24 under Section 574.031, Health and Safety Code; and
- 25 (E) prosecutors' fees authorized under Section  
26 574.031, Health and Safety Code;

27 (34) expenses of transporting certain patients from

1 the county of treatment to a hearing in the county in which the  
2 proceedings originated (Sec. 574.008, Health and Safety Code) . . .  
3 actual expenses unless certain arrangements are made to hold the  
4 hearing in the county in which the patient is receiving services;

5 (35) expenses for expert witness testimony for an  
6 indigent patient (Sec. 574.010, Health and Safety Code) . . . if  
7 authorized by the court as reimbursement to the attorney ad litem,  
8 court-approved expenses;

9 (36) fee for judge's services for holding a hearing on  
10 an application for court-ordered mental health services (Sec.  
11 574.031, Health and Safety Code) . . . as assessed by the judge, not  
12 to exceed \$50;

13 (37) expenses to reimburse judge for holding a hearing  
14 in a hospital or location other than the county courthouse (Sec.  
15 574.031, Health and Safety Code) . . . reasonable and necessary  
16 expenses as certified;

17 (38) fee for services of a prosecuting attorney,  
18 including costs incurred for preparation of documents related to a  
19 hearing on an application for court-ordered mental health services  
20 (Sec. 574.031, Health and Safety Code) . . . as assessed by the  
21 judge, not to exceed \$50; and

22 (39) a fee not otherwise listed in this section that is  
23 required to be collected under Section 25.0008, Government Code  
24 (Sec. 25.0008, Government Code), in a county other than Brazos,  
25 Cameron, Ellis, Guadalupe, Harris, Henderson, Liberty, Moore,  
26 Nolan, Panola, Parker, Starr, Victoria, and Williamson . . . as  
27 prescribed by law relating to county judges' fees.



1           SECTION 17. (a) The change in law made by Section 552.0037,  
2 Government Code, as amended by this Act, applies only to a request  
3 for disclosure made on or after the effective date of this Act. A  
4 request for disclosure made before the effective date of this Act is  
5 governed by the law in effect immediately before the effective date  
6 of this Act, and that law is continued in effect for that purpose.

7           (b) The changes in law made by Chapter 2206, Government  
8 Code, and Chapter 21, Property Code, as amended by this Act, apply  
9 only to a condemnation proceeding in which the petition is filed on  
10 or after the effective date of this Act and to any property  
11 condemned through the proceeding. A condemnation proceeding in  
12 which the petition is filed before the effective date of this Act  
13 and any property condemned through the proceeding is governed by  
14 the law in effect immediately before that date, and that law is  
15 continued in effect for that purpose.

16           SECTION 18. Section 111.0195, Natural Resources Code, as  
17 added by this Act, applies only to a condemnation proceeding in  
18 which the petition is filed on or after the effective date of this  
19 Act and to any property condemned through the proceeding. A  
20 condemnation proceeding in which the petition is filed before the  
21 effective date of this Act and any property condemned through the  
22 proceeding is governed by the law in effect immediately before that  
23 date, and that law is continued in effect for that purpose.

24           SECTION 19. (a) Except as provided by Subsection (b) of  
25 this section, this Act takes effect September 1, 2007.

26           (b) Sections 5 and 12 of this Act, amending Sections 21.023  
27 and 21.103, Property Code, take effect on the date on which the

1 constitutional amendment proposed by the 80th Legislature, Regular  
2 Session, 2007, allowing a governmental entity to sell property  
3 acquired through eminent domain back to the previous owners at the  
4 price the entity paid to acquire the property takes effect. If that  
5 amendment is not approved by the voters, Sections 5 and 12 of this  
6 Act have no effect.

# ADOPTED

MAY 22 2007

*Latacy Spauld*  
Secretary of the Senate

*16/2/07*

FLOOR AMENDMENT NO. 1

BY: \_\_\_\_\_

1 Amend H.B. No. 2006 (Senate Committee Printing) as follows:

2 (1) Strike SECTION 1 of the bill (page 3, line 66, through  
3 page 4, line 19).

4 (2) Add the following appropriately numbered SECTIONS to  
5 the bill:

6 SECTION \_\_. Subchapter B, Chapter 21, Property Code, is  
7 amended by adding Section 21.024 to read as follows:

8 Sec. 21.024. PRODUCTION OF INFORMATION BY CERTAIN ENTITIES.

9 (a) Notwithstanding any other law, an entity that is not subject to  
10 Chapter 552, Government Code, and is authorized by law to acquire  
11 private property through the use of eminent domain is required to  
12 produce information as provided by this section if the information  
13 is:

14 (1) requested by a person who owns property that is the  
15 subject of a proposed or existing eminent domain proceeding; and

16 (2) related to the taking of the person's private  
17 property by the entity through the use of eminent domain.

18 (b) An entity described by Subsection (a) is required under  
19 this section only to produce information relating to the  
20 condemnation of the specific property owned by the requestor as  
21 described in the request. A request under this section must contain  
22 sufficient details to allow the entity to identify the specific  
23 tract of land in relation to which the information is sought.

24 (c) The entity shall respond to a request in accordance with  
25 the Texas Rules of Civil Procedure as if the request was made in a  
26 matter pending before a state district court.

27 (d) Exceptions to disclosure provided by this chapter and  
28 the Texas Rules of Civil Procedure apply to the disclosure of  
29 information under this section.

1           (e) Jurisdiction to enforce the provisions of this section  
2 resides in:

3                   (1) the court in which the condemnation was initiated;

4 or

5                   (2) if the condemnation proceeding has not been  
6 initiated:

7                           (A) a court that would have jurisdiction over a  
8 proceeding to condemn the requestor's property; or

9                           (B) a court with eminent domain jurisdiction in  
10 the county in which the entity has its principal place of business.

11           (f) If the entity refuses to produce information requested  
12 in accordance with this section and the court determines that the  
13 refusal violates this section, the court may award the requestor's  
14 reasonable attorney's fees incurred to compel the production of the  
15 information.

16           (g) If an entity that received a request in accordance with  
17 this section does not produce the requested information on or  
18 before the 30th day after the request is made, the attorney general  
19 may file an action in a court described by Subsection (e) to enforce  
20 this section on the request of the person who made the request for  
21 the information. If the court determines that the failure to  
22 produce the information is a violation of this section, the court  
23 may award the attorney general's reasonable expenses incurred to  
24 compel the production of the information.

25           (h) If the attorney general files an action under Subsection  
26 (g), the person who requested that the attorney general file the  
27 action may not file a private action to enforce this section with  
28 respect to the same request for information.

29           SECTION \_\_. Section 552.0037, Government Code, is repealed.

30           (3) Renumber existing SECTIONS of the bill accordingly.

# ADOPTED

FLOOR AMENDMENT NO. 2

MAY 22 2007

BY:

*Lotay Spaw*  
Secretary of the Senate

*Kepner*

1 Amend H.B. No. 2006 (Senate Committee Printing) as follows:

2 (1) In SECTION 2 of the bill, in Subdivision (2),  
3 Subsection (b), added Section 2206.051, Government Code (page 4,  
4 line 47), strike "or" and substitute "[~~or~~]".

5 (2) In SECTION 2 of the bill, in Subdivision (3),  
6 Subsection (b), added Section 2206.051, Government Code (page 4,  
7 line 56), between "Tax Code" and the period, insert the  
8 following:

9 ; or

10 (4) is not for a public use

11 (3) In SECTION 2 of the bill, in Paragraph (A),  
12 Subdivision (7), Subsection (c), added Section 2206.051,  
13 Government Code (page 5, line 7), between "carrier" and  
14 "subject", insert "pipeline".

15 (4) In SECTION 2 of the bill, in Paragraph (A), Subdivision  
16 (7), Subsection (c), added Section 2206.051, Government Code  
17 (page 5, lines 7-8), strike "subject to Chapter 111, Natural  
18 Resources Code".

19 (5) In SECTION 2 of the bill, in added Subsection (a),  
20 Section 2206.103, Government Code (page 5, lines 38-39), strike  
21 "Except as provided by Subsection (b) or (d)," and substitute  
22 "If the motion required by Subsection (c) indicates that the  
23 first record vote applies to all units of property to be  
24 condemned, and the minutes of the entity reflect that the first  
25 vote applies to all of those units, a single ordinance,  
26 resolution, or order may be adopted for all of those units of  
27 property. If more than one member of the governing body objects  
28 to adopting a single ordinance, resolution, or order by a record

1 vote for all units of property for which condemnation  
2 proceedings are to be initiated,".

3 (6) In SECTION 2 of the bill, in added Subsection (a),  
4 Section 2206.103, Government Code (page 5, lines 40-41), strike  
5 "for which condemnation proceedings are to be initiated".

6 (7) In SECTION 3 of the bill, in the recital (page 6, line  
7 6), strike "Sections 21.0112 and 21.0113" and substitute  
8 "Section 21.0112".

9 (8) In SECTION 3 of the bill, in the heading of added  
10 Section 21.0112, Property Code (page 6, line 7), strike "GOOD  
11 FAITH STANDARD" and substitute "BONA FIDE OFFER REQUIRED".

12 (9) In SECTION 3 of the bill, in added Section 21.0112,  
13 Property Code (page 6, line 9), strike "good faith effort" and  
14 substitute "bona fide offer".

15 (10) In SECTION 3 of the bill, in added Section 21.0112,  
16 Property Code (page 6, line 10), after the period, insert "A  
17 bona fide offer is an offer that is not arbitrary or capricious  
18 and is based on a reasonably thorough investigation and honest  
19 assessment of the amount of the just compensation due to the  
20 landowner as a result of the taking."

21 (11) In SECTION 3 of the bill, strike added Section  
22 21.0113, Property Code (page 6, lines 11-25).

23 (12) In SECTION 4 of the bill, in added Subdivision (5),  
24 Subsection (b), Section 21.012, Property Code (page 6, line 36),  
25 strike "good faith effort" and substitute "bona fide offer".

26 (13) Strike SECTION 6 of the bill (page 6, line 53, through

1 page 7, line 4) and substitute the following:

2 SECTION 6. Section 21.041, Property Code, is amended to  
3 read as follows:

4 Sec. 21.041. EVIDENCE. (a) For the purposes of this  
5 section, market value is the price a property will bring when  
6 offered for sale by a person who desires to sell the property,  
7 but is not obliged to sell the property, and is bought by a  
8 person who desires to buy the property, but is not under a  
9 necessity to buy the property.

10 (b) As the basis for assessing actual damages to a property  
11 owner from a condemnation, the special commissioners shall,  
12 subject to the Texas Rules of Evidence, admit evidence on:

13 (1) the market value, before the condemnation, of the  
14 property being condemned;

15 (2) subject to Section 21.042, the net change to the  
16 market value of [the injury to the property owner,

17 [~~(3) the benefit to~~] the property owner's remaining  
18 property, considering both injury and benefit to the property  
19 owner; and

20 (3) [~~(4)~~] the use of the property for the purpose of  
21 the condemnation.

22 (14) Strike SECTION 7 of the bill (page 7, lines 5-14) and  
23 renumber subsequent SECTIONS of the bill accordingly.

24 (15) In SECTION 10 of the bill, strike added Subsection  
25 (d), Section 21.047, Property Code (page 7, lines 36-40), and  
26 substitute the following:

1        (d) If a court hearing a suit under this chapter  
2 determines that a condemning entity did not make a bona fide  
3 offer to acquire the property from the property owner  
4 voluntarily as required by Section 21.0112, the court shall  
5 abate the suit and order the condemnor to make a bona fide  
6 offer. If the court finds that by filing a petition under  
7 Section 21.012 or by filing any other motion or pleading in the  
8 proceeding initiated by the filing of that petition the  
9 condemnor violated Chapter 10, Civil Practice and Remedies Code,  
10 the court shall order the condemnor to pay:

11            (1) all costs as provided by Subsection (a); and

12            (2) any reasonable attorney's fees incurred by the  
13 owner that are directly related to the violation.

14        (16) In SECTION 11 of the bill, in amended Subsection (a),  
15 Section 21.101, Property Code (page 7, line 45), between  
16 "entity" and "through", insert "other than a port that is  
17 acquiring property for deep water navigation".

18        (17) In SECTION 11 of the bill, in amended Subsection (a),  
19 Section 21.101, Property Code (page 7, line 49), between  
20 "acquisition" and the period, insert "or the governmental entity  
21 fails to begin the operation or construction of the project for  
22 which the property was acquired before the 10th anniversary of  
23 that date".

24        (18) Add the following appropriately numbered SECTIONS to  
25 the bill and renumber existing SECTIONS accordingly:

26        SECTION \_\_. Section 21.102, Property Code, is amended to



1 read as follows:

2 Sec. 21.102. NOTICE TO PREVIOUS PROPERTY OWNER AT TIME OF  
3 CANCELLATION OF PUBLIC USE OR ON FAILURE TO BEGIN OPERATION OR  
4 CONSTRUCTION OF PROJECT. Not later than the 180th day after the  
5 date of the cancellation of the public use for which real  
6 property was acquired through eminent domain from a property  
7 owner under Subchapter B or the 180th day after the 10th  
8 anniversary of the date on which the property was acquired if  
9 the governmental entity fails to begin the operation or  
10 construction of the project for which the property was acquired  
11 before the 10th anniversary of that date, the governmental  
12 entity shall send by certified mail, return receipt requested,  
13 to the property owner or the owner's heirs, successors, or  
14 assigns a notice containing:

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

17 (2) an identification of the public use for which the  
18 property had been acquired and a statement that the public use  
19 has been canceled or the governmental entity has failed to begin  
20 the operation or construction of the project for which the  
21 property was acquired; and

22 (3) a description of the person's right under this  
23 subchapter to repurchase the property.

24 SECTION \_\_\_\_ . Not later than January 1, 2009, the  
25 comptroller shall:

26 (1) identify all public and private entities with

1 eminent domain authority; and

2 (2) make recommendations to the legislature and the  
3 governor regarding:

4 (A) which entities have, need, or should have  
5 eminent domain authority;

6 (B) whether that eminent domain authority of  
7 those entities should be continued, expanded, or limited; and

8 (C) the cause and effect of continuing,  
9 eliminating, expanding, or limiting the eminent domain authority  
10 of those entities.

42

FLOOR AMENDMENT NO. 4

BY: *Chris Harris*

1 Amend H.B. No. 2006 (Senate Committee Printing) in SECTION  
2 2 of the bill, immediately following added Section 2206.051,  
3 Government Code (page 5, between line 26-27), by adding the  
4 following:

5 Sec. 2206.052. LIMITATIONS ON EASEMENTS. (a) A property  
6 owner whose property is acquired through the use of eminent  
7 domain under Chapter 21, Property Code, for the purpose of  
8 creating an easement through that owner's property may construct  
9 streets or roads, including a gravel, asphalt, or concrete road,  
10 at any locations above the easement that the property owner  
11 chooses.

12 (b) The portion of a road constructed under this section  
13 that is over the easement may not exceed 40 feet in width.

**ADOPTED**

MAY 22 2007

*Patay Spaw*  
Secretary of the Senate

+ 43

ADOPTED

MAY 22 2007

*Aditya Datta*  
Secretary of the Senate

Floor Amendment No. 6

By: *[Signature]*

1 Amend C.S.H.B. 2006 (House Committee Report), as follows:

2 (1) On page 8, between lines 14 and 15, insert the  
3 following:

4 SECTION 8. Section 21.042, Property Code, is  
5 amended to read as follows:

6 (e) If a portion of a tract or parcel of real property is  
7 condemned for the use, construction, operation, or maintenance  
8 of the state highway system or of a county toll project  
9 described by Chapter 284, Transportation Code, that is eligible  
10 for designation as part of the state highway system, the special  
11 commissioners shall consider any diminished access to the  
12 highway and to or from the remaining property to the extent that  
13 it affects the present market value of the real property,  
14 including any factors considered when determining actual fair  
15 market value of property for ad valorem tax purposes [~~or for the~~  
16 ~~use, construction, development, operation, or maintenance of an~~  
17 ~~improvement or project by a metropolitan rapid transit authority~~  
18 ~~created before January 1, 1980, with a principal municipality~~  
19 ~~having a population of less than 1.9 million and established~~  
20 ~~under Chapter 451, Transportation Code, the special~~  
21 ~~commissioners shall determine the damage to the property owner~~  
22 ~~regardless of whether the property owner makes a claim for~~

1 ~~damages to the remaining property. In awarding compensation or~~  
2 ~~assessing the damages, the special commissioners shall consider~~  
3 ~~any special and direct benefits that arise from the highway~~  
4 ~~improvement or the transit authority improvement or project that~~  
5 ~~are peculiar to the property owner and that relate to the~~  
6 ~~property owner's ownership, use, or enjoyment of the particular~~  
7 ~~parcel of remaining real property].~~

8 (2) Renumber subsequent sections accordingly.



**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

**May 18, 2007**

**TO:** Honorable Robert Duncan, Chair, Senate Committee on State Affairs

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB2006** by Woolley (Relating to the use of eminent domain authority.), **Committee Report 2nd House, As Amended**

**The amount of additional costs and overall negative fiscal impact to a condemnor under the provisions of the bill would vary by condemnor and by case, and therefore the fiscal impact to the state cannot be estimated.**

The bill would amend the Government Code, the Local Government Code, and the Property Code relating to procedures for the state or a political subdivision of the state to exercise the power of eminent domain. Included in those procedures would be the requirement for a governmental entity to authorize the initiation of the condemnation proceedings at a public meeting by a record vote. In addition, an entity with eminent domain authority that wants to acquire real property for a public use would be required to make a bona fide offer to acquire the property from the owner voluntarily. If a court hearing a suit related to eminent domain proceedings finds that the condemning entity did not make a bona fide offer to acquire the property from the owner voluntarily, the court would be required to abate the suit and order the condemnor to make a bona fide offer. If a court hearing a suite finds the condemnor violated Chapter 10, Civil Practices and Remedies Code, the court shall order the condemnor to pay all costs and any reasonable attorney's fees incurred by the property owner.

The bill would add specifications to the evidence related to the value of property being condemned and related to the injury to the property owner that the special commissioners must consider when assessing actual damages to a property owner from a condemnation.

Under provisions of the bill, the repurchase price of property acquired under eminent domain would be the price paid to the owner by the governmental entity at the time the property was acquired, whereas under current statute, the repurchase price is the fair market value of the property at the time the public use is canceled.

The bill would amend the Natural Resources Code regarding the procedures that must be followed by a common carrier when exercising the power of eminent domain. A common carrier would be required to serve the owner of the property to be acquired with advance notice by regular mail and certified mail, return receipt requested, that the carrier intends to initiate condemnation proceedings. In addition to the requirement for a common carrier to notify the owner of the property to be acquired, the provisions of the bill would prohibit the special commissioners in an eminent domain proceeding from scheduling a hearing to assess damages before the 30th day after the date of the special commissioners' appointment and would require the special commissioners to notify the property owner of the scheduled hearing.

The Property Code would be amended to require certain entities authorized by law to acquire property through the use of eminent domain to produce certain information within specified timeframes. If the entity does not comply, the attorney general may file an action and if the court determines a violation occurred, the court may award the attorney general reasonable expenses incurred.

The bill would amend Chapter 13, Water Code to authorize certain water and sewer utilities to acquire by condemnation only easements or lesser property interests reasonably necessary to comply with





federal and state regulations relating to sanitation. A water and sewer utility would not be allowed to exercise the power of eminent domain in a municipality with a population of 1.7 million or more (City of Houston) or in its extraterritorial jurisdiction. Under Chapter 13, a "water and sewer utility" does not include a municipal corporation or a political subdivision of the state, except an affected county.

The bill would add to district court fees and costs, court costs for each special commissioner in an eminent domain proceeding as taxed by the court, \$10 or more, and would add to district court and to statutory county court fees and costs, court costs and attorney's fees as taxed by the court and as reasonable.

Not later than January 1, 2009, the comptroller would be required to identify all public and private entities with eminent domain authority and make recommendations to the legislature and the governor regarding listed issues concerning those entities and their eminent domain authority.

The bill would take effect on September 1, 2007, except for those sections of the bill that relate to the amount of the repurchase price of property previously taken by eminent domain but for which the public use has expired. Those sections would take effect on the date on which the constitutional amendment proposed by the Eightieth Legislature, Regular Session, 2007, takes effect. If that amendment is not approved by the voters, those sections of the bill would have no effect.

Based on the analysis of the Texas Department of Transportation, it is assumed the provisions of the bill would result in increased costs for the acquisition of highway right of way through condemnation. Because the factors considered in evaluating the value of the property to be condemned and estimating damages to a property owner would vary by case, any additional costs or negative fiscal implications to the state cannot be determined.

The Office of the Attorney General estimates that requirements in the bill that would affect the office could be absorbed utilizing existing resources.

It is anticipated that the provisions affecting the Comptroller of Public Accounts can also be implemented utilizing existing resources.

### **Local Government Impact**

As with the state impact, the negative fiscal impact to units of local government related to changes to the Government Code, the Local Government Code, and the Property Code would vary depending on the number of situations in which the entity would seek to exercise its eminent domain authority, costs associated with and imposed by court proceedings, and the number of parcels of land involved in initial condemnation or in repurchase by the previous owner or their heirs. Actual amounts are not known, but as an example, Harris County reports having condemned 460 parcels at an aggregate market value of \$108 million between calendar years 2002 and 2006.

Proposed changes to the Natural Resources Code are not expected to have a significant fiscal impact on units of local government.

Regarding the proposed changes to the Water Code, according to analysis provided by the Texas Rural Water Association and the Texas Municipal Utility Association, no significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 302 Office of the Attorney General, 601 Department of Transportation

**LBB Staff:** JOB, KJG, SD, WK, MW, TG, DB



**LEGISLATIVE BUDGET BOARD**

Austin, Texas

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

**May 15, 2007**

**TO:** Honorable Robert Duncan, Chair, Senate Committee on State Affairs

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB2006** by Woolley (Relating to the use of eminent domain authority.), **As Engrossed**

**The amount of additional costs and overall negative fiscal impact to a condemnor under the provisions of the bill would vary by condemnor and by case, and therefore the fiscal impact to the state cannot be estimated.**

The bill would amend the Government Code, the Local Government Code, and the Property Code relating to procedures for the state or a political subdivision of the state to exercise the power of eminent domain. Included in those procedures would be the requirement for a governmental entity to authorize the initiation of the condemnation proceedings at a public meeting by a record vote. In addition, an entity with eminent domain authority that wants to acquire real property for a public use would be required to make a good faith effort to acquire the property from the owner voluntarily. If a court hearing a suit related to eminent domain proceedings finds that the condemning entity did not make a good faith effort to acquire the property from the owner voluntarily, the court would be allowed to order the condemning entity to pay all costs and any reasonable attorney's fees incurred by the property owner.

The bill would add specifications to the evidence related to the value of property being condemned and related to the injury to the property owner that the special commissioners must consider when assessing actual damages to a property owner from a condemnation.

Under provisions of the bill, the repurchase price of property acquired under eminent domain would be the price paid to the owner by the governmental entity at the time the property was acquired, whereas under current statute, the repurchase price is the fair market value of the property at the time the public use is canceled.

The bill would amend the Natural Resources Code regarding the procedures that must be followed by a common carrier when exercising the power of eminent domain. A common carrier would be required to serve the owner of the property to be acquired with advance notice by regular mail and certified mail, return receipt requested, that the carrier intends to initiate condemnation proceedings. In addition to the requirement for a common carrier to notify the owner of the property to be acquired, the provisions of the bill would prohibit the special commissioners in an eminent domain proceeding from scheduling a hearing to assess damages before the 30th day after the date of the special commissioners' appointment and would require the special commissioners to notify the property owner of the scheduled hearing.

The bill would amend Chapter 13, Water Code to authorize certain water and sewer utilities to acquire by condemnation only easements or lesser property interests reasonably necessary to comply with federal and state regulations relating to sanitation. A water and sewer utility would not be allowed to exercise the power of eminent domain in a municipality with a population of 1.7 million or more (City of Houston) or in its extraterritorial jurisdiction. Under Chapter 13, a "water and sewer utility" does not include a municipal corporation or a political subdivision of the state, except an affected county.

The bill would add to district court fees and costs, court costs for each special commissioner in an eminent domain proceeding as taxed by the court, \$10 or more, and would add to district court and to



statutory county court fees and costs, court costs and attorney's fees as taxed by the court and as reasonable.

The bill would take effect on September 1, 2007, except for those sections of the bill that relate to the amount of the repurchase price of property previously taken by eminent domain but for which the public use has expired. Those sections would take effect on the date on which the constitutional amendment proposed by the Eightieth Legislature, Regular Session, 2007, takes effect. If that amendment is not approved by the voters, those sections of the bill would have no effect.

Based on the analysis of TxDOT, it is assumed the provisions of the bill would result in increased costs for the acquisition of highway right of way through condemnation. Because the factors considered in evaluating the value of the property to be condemned and estimating damages to a property owner would vary by case, any additional costs or negative fiscal implications to the state cannot be determined.

### **Local Government Impact**

As with the state impact, the negative fiscal impact to units of local government related to changes to the Government Code, the Local Government Code, and the Property Code would vary depending on the number of situations in which the entity would seek to exercise its eminent domain authority, costs associated with and imposed by court proceedings, and the number of parcels of land involved in initial condemnation or in repurchase by the previous owner or their heirs. Actual amounts are not known, but as an example, Harris County reports having condemned 460 parcels at an aggregate market value of \$108 million between calendar years 2002 and 2006.

Proposed changes to the Natural Resources Code are not expected to have a significant fiscal impact on units of local government.

Regarding the proposed changes to the Water Code, according to analysis provided by the Texas Rural Water Association and the Texas Municipal Utility Association, no significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 601 Department of Transportation

**LBB Staff:** JOB, KJG, SD, WK, MW, TG, DB



**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

**Revision 2**

**May 3, 2007**

**TO:** Honorable Anna Mowery, Chair, House Committee on Land & Resource Management

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB2006** by Woolley (Relating to the use of eminent domain authority.), **Committee Report 1st House, Substituted**

The amount of additional costs and overall negative fiscal impact to a condemnor under the provisions of the bill would vary by condemnor and by case, and therefore the fiscal impact to the state cannot be estimated.

The bill would amend the Government Code, the Local Government Code, and the Property Code relating to procedures for the state or a political subdivision of the state to exercise the power of eminent domain. Included in those procedures would be the requirement for a governmental entity to authorize the initiation of the condemnation proceedings at a public meeting by a record vote. In addition, an entity with eminent domain authority that wants to acquire real property for a public use would be required to make a good faith effort to acquire the property by voluntary purchase or lease. If a court hearing a suit related to eminent domain proceedings finds that the condemning entity did not make a good faith effort, the court would be allowed to order the condemning entity to pay all costs and any reasonable attorney's fees incurred by the property owner.

In addition to other requirements for exercising eminent domain authority, a common carrier, as defined by Section 111.002, Natural Resources Code, would be required to serve the owner of the property to be acquired with advance notice by regular mail and certified mail, return receipt requested, that the carrier intends to initiate condemnation proceedings.

The bill would require special commissioners in an eminent domain proceeding to consider any evidence that a property owner would consider in a negotiated transaction for the property subject to the proceeding when assessing damages from a condemnation.

Under provisions of the bill, the repurchase price of property acquired under eminent domain would be the price paid to the owner by the governmental entity at the time the property was acquired, whereas under current statute, the repurchase price is the fair market value of the property at the time the public use is canceled.

The bill would add to district court fees and costs, court costs for each special commissioner in an eminent domain proceeding as taxed by the court, \$10 or more, and would add to district court and to statutory county court fees and costs, court costs and attorney's fees as taxed by the court and as reasonable.

The bill would take effect on September 1, 2007, except for those sections of the bill that relate to the amount of the repurchase price of property previously taken by eminent domain but for which the public use has expired. Those sections would take effect on the date on which the constitutional amendment proposed by the Eightieth Legislature, Regular Session, 2007, takes effect. If that amendment is not approved by the voters, those sections of the bill would have no effect.

Based on the analysis of TxDOT, it is assumed the provisions of the bill would result in increased costs for the acquisition of highway right of way through condemnation. Because the factors





considered in evaluating the value of the property to be condemned and estimating damages to a property owner would vary by case, any additional costs or negative fiscal implications to the state cannot be determined.

### **Local Government Impact**

As with the state impact, the negative fiscal impact to units of local government would vary depending on the number of situations in which the entity would seek to exercise its eminent domain authority, costs associated with and imposed by court proceedings, and the number of parcels of land involved in initial condemnation or in repurchase by the previous owner or their heirs. Actual amounts are not known, but as an example, Harris County reports having condemned 460 parcels at an aggregate market value of \$108 million between calendar years 2002 and 2006.

**Source Agencies:** 601 Department of Transportation

**LBB Staff:** JOB, SD, WK, MW, TG, DB



**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

**Revision 1**

**May 2, 2007**

**TO:** Honorable Anna Mowery, Chair, House Committee on Land & Resource Management

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB2006** by Woolley (Relating to the use of eminent domain authority.), **Committee Report 1st House, Substituted**

The amount of additional costs and overall negative fiscal impact to a condemnor under the provisions of the bill would vary by condemnor and by case, and therefore the fiscal impact to the state cannot be estimated.

The bill would amend the Government Code, the Local Government Code, and the Property Code relating to procedures for the state or a political subdivision of the state to exercise the power of eminent domain. Included in those procedures would be the requirement for a governmental entity to authorize the initiation of the condemnation proceedings at a public meeting by a record vote. In addition, an entity with eminent domain authority that wants to acquire real property for a public use would be required to make a good faith effort to acquire the property by voluntary purchase or lease. If a court hearing a suit related to eminent domain proceedings finds that the condemning entity did not make a good faith effort, the court would be allowed to order the condemning entity to pay all costs and any reasonable attorney's fees incurred by the property owner.

In addition to other requirements for exercising eminent domain authority, a common carrier, as defined by Section 111.002, Natural Resources Code, would be required to serve the owner of the property to be acquired with advance notice by regular mail and certified mail, return receipt requested, that the carrier intends to initiate condemnation proceedings.

The bill would require special commissioners in an eminent domain proceeding to consider any evidence that a property owner would consider in a negotiated transaction for the property subject to the proceeding when assessing damages from a condemnation.

Under provisions of the bill, the repurchase price of property acquired under eminent domain would be the price paid to the owner by the governmental entity at the time the property was acquired, whereas under current statute, the repurchase price is the fair market value of the property at the time the public use is canceled.

The bill would add to district court fees and costs, court costs for each special commissioner in an eminent domain proceeding as taxed by the court, \$10 or more, and would add to district court and to statutory county court fees and costs, court costs and attorney's fees as taxed by the court and as reasonable.

The bill would take effect on September 1, 2007, except for those sections of the bill that relate to the amount of the repurchase price of property previously taken by eminent domain but for which the public use has expired. Those sections would take effect on the date on which the constitutional amendment proposed by the Eightieth Legislature, Regular Session, 2007, takes effect. If that amendment is not approved by the voters, those sections of the bill would have no effect.

Based on the analysis of TxDOT, it is assumed the provisions of the bill would result in increased costs for the acquisition of highway right of way through condemnation. Because the factors



considered in evaluating the value of the property to be condemned and estimating damages to a property owner would vary by case, any additional costs or negative fiscal implications to the state cannot be determined.

### **Local Government Impact**

As with the state impact, the negative fiscal impact to units of local government would vary depending on the number of situations in which the entity would seek to exercise its eminent domain authority, costs associated with and imposed by court proceedings, and the number of parcels of land involved in initial condemnation or in repurchase by the previous owner or their heirs. Actual amounts are not known, but as an example, Harris County reports having condemned 460 parcels at an aggregate market value of \$108 million between calendar years 2002 and 2006.

**Source Agencies:** 601 Department of Transportation

**LBB Staff:** JOB, SD, WK, MW, TG, DB



**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

**April 24, 2007**

**TO:** Honorable Anna Mowery, Chair, House Committee on Land & Resource Management

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB2006** by Woolley (Relating to the use of eminent domain authority. ), **Committee Report 1st House, Substituted**

The amount of additional costs and overall negative fiscal impact to a condemnor under the provisions of the bill would vary by condemnor and by case, and therefore the fiscal impact to the state cannot be estimated.

The bill would amend the Government Code, the Local Government Code, and the Property Code relating to procedures for the state or a political subdivision of the state to exercise the power of eminent domain. Included in those procedures would be the requirement for a governmental entity to authorize the initiation of the condemnation proceedings at a public meeting by a record vote. In addition, an entity with eminent domain authority that wants to acquire real property for a public use would be required to make a good faith effort to acquire the property by voluntary purchase or lease. If a court hearing a suit related to eminent domain proceedings finds that the condemning entity did not make a good faith effort, the court would be allowed to order the condemning entity to pay all costs and any reasonable attorney's fees incurred by the property owner.

In addition to other requirements for exercising eminent domain authority, a common carrier, as defined by Section 111.002, Natural Resources Code, would be required to serve the owner of the property to be acquired with advance notice by regular mail and certified mail, return receipt requested, that the carrier intends to initiate condemnation proceedings.

The bill would require special commissioners in an eminent domain proceeding to consider any evidence that a property owner would consider in a negotiated transaction for the property subject to the proceeding when assessing damages from a condemnation.

Under provisions of the bill, the repurchase price of property acquired under eminent domain would be the price paid to the owner by the governmental entity at the time the property was acquired, whereas under current statute, the repurchase price is the fair market value of the property at the time the public use is canceled.

The bill would add to district court fees and costs, court costs for each special commissioner in an eminent domain proceeding as taxed by the court, \$10 or more, and would add to district court and to statutory county court fees and costs, court costs and attorney's fees as taxed by the court and as reasonable.

The bill would take effect on September 1, 2007, except for those sections of the bill that relate to the amount of the repurchase price of property previously taken by eminent domain but for which the public use has expired. Those sections would take effect on the date on which the constitutional amendment proposed by the Eightieth Legislature, Regular Session, 2007, takes effect. If that amendment is not approved by the voters, those sections of the bill would have no effect.

Based on the analysis of TxDOT, it is assumed the provisions of the bill would result in increased costs for the acquisition of highway right of way through condemnation. Because the factors considered in evaluating the value of the property to be condemned and estimating damages to a





property owner would vary by case, any additional costs or negative fiscal implications to the state cannot be determined.

### **Local Government Impact**

As with the state impact, the negative fiscal impact to units of local government would vary depending on the number of situations in which the entity would seek to exercise its eminent domain authority, costs associated with and imposed by court proceedings, and the number of parcels of



land involved in initial condemnation or in repurchase by the previous owner or their heirs. Actual amounts are not known, but as an example, Harris County reports having condemned 460 parcels at an aggregate market value of \$108 million between calendar years 2002 and 2006.

**Source Agencies:** 601 Department of Transportation

**LBB Staff:** JOB, WK, MW, TG, DB



**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

Revision 2

**May 3, 2007**

**TO:** Honorable Anna Mowery, Chair, House Committee on Land & Resource Management

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB2006** by Woolley (Relating to the use of eminent domain authority.), **As Introduced**

The amount of additional costs and overall negative fiscal impact to a condemnor under the provisions of the bill would vary by condemnor and by case, and therefore cannot be estimated.
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The bill would amend the Government Code to require a governmental entity that attempts to exercise the power of eminent domain for a public use to prove by clear and convincing evidence that the entity's proposed use for the property is a public use as defined in the proposed statute and the taking, damage, or destruction of the property is necessary for the proposed use.

The bill would amend the Local Government Code to prohibit a local political subdivision from exercising the power of eminent domain unless the entity is governed by an elected official of this state, and then could exercise eminent domain only if the entity obtains and submits in addition to the condemnation petition written approval from the applicable county commissioners court.

The bill would amend the Local Government Code to limit to five years validity a determination by a municipality that a unit of real property has the characteristics of blight or a slum, although a new determination may be made for another five years.

The bill would amend the Property Code to require an entity prior to exercising the power of eminent domain to make a bona fide good faith effort to acquire the property by voluntary purchase or lease. The Property Code would also be amended to require governmental entities to notify landowners whose property was acquired by the entity through eminent domain of their right to repurchase real property if the property is not used for the purpose for which it was condemned within five years. The sale price would be the original price that was paid when the property was condemned, provided that a constitutional amendment proposed by the 80th Legislature, Regular Session, 2007, takes effect to allow a governmental entity to sell such property to the previous owners at the price paid when the property was condemned. Otherwise the bill would specify a purchase price based on the fair market value at the time the property becomes eligible for repurchase under the provisions of the bill.

The bill would amend the Property Code to specify that the special commissioners in a condemnation proceeding may consider any evidence that a property owner would consider in a negotiated transaction relating to the value of the property being condemned that is not subject to Chapter 21 of the Property Code when assessing actual damages to a property owner from a condemnation.

Based on the analysis of TxDOT, it is assumed the provisions of the bill would result in increased costs for the acquisition of highway right of way through condemnation. Because the factors considered in evaluating the value of the property to be condemned would vary by case, any additional costs or negative fiscal implications to the state cannot be determined.

Except as otherwise provided by the bill, the bill would take effect on September 1, 2007. Certain provisions of the bill relating to the resale of property acquired through eminent domain to previous owners would either take effect on the date on which the proposed constitutional amendment takes effect or, if the proposed constitutional amendment does not take effect, on January 1, 2008.



## **Local Government Impact**

As with the state impact, the local government fiscal impact regarding requirements prior to exercising eminent domain would vary depending on the number of situations in which the entity would seek to exercise its eminent domain authority. In addition, the fiscal impact regarding the resale of property and notification of resale as an option, would vary depending on the number of parcels of land to which the criteria would apply and to the number of eligible persons who would seek to repurchase land previously acquired by the local entity through eminent domain. Actual amounts are not known, but as an example, Harris County reports having condemned 460 parcels at an aggregate market value of \$108 million between calendar years 2002 and 2006.

**Source Agencies:** 601 Department of Transportation

**LBB Staff:** JOB, SD, WK, MW, TG, DB





**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

**Revision 1**

**May 2, 2007**

**TO:** Honorable Anna Mowery, Chair, House Committee on Land & Resource Management

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB2006** by Woolley (Relating to the use of eminent domain authority.), **As Introduced**

The amount of additional costs and overall negative fiscal impact to a condemnor under the provisions of the bill would vary by condemnor and by case, and therefore cannot be estimated.
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The bill would amend the Government Code to require a governmental entity that attempts to exercise the power of eminent domain for a public use to prove by clear and convincing evidence that the entity's proposed use for the property is a public use as defined in the proposed statute and the taking, damage, or destruction of the property is necessary for the proposed use.

The bill would amend the Local Government Code to prohibit a local political subdivision from exercising the power of eminent domain unless the entity is governed by an elected official of this state, and then could exercise eminent domain only if the entity obtains and submits in addition to the condemnation petition written approval from the applicable county commissioners court.

The bill would amend the Local Government Code to limit to five years validity a determination by a municipality that a unit of real property has the characteristics of blight or a slum, although a new determination may be made for another five years.

The bill would amend the Property Code to require an entity prior to exercising the power of eminent domain to make a bona fide good faith effort to acquire the property by voluntary purchase or lease. The Property Code would also be amended to require governmental entities to notify landowners whose property was acquired by the entity through eminent domain of their right to repurchase real property if the property is not used for the purpose for which it was condemned within five years. The sale price would be the original price that was paid when the property was condemned, provided that a constitutional amendment proposed by the 80th Legislature, Regular Session, 2007, takes effect to allow a governmental entity to sell such property to the previous owners at the price paid when the property was condemned. Otherwise the bill would specify a purchase price based on the fair market value at the time the property becomes eligible for repurchase under the provisions of the bill.

The bill would amend the Property Code to specify that the special commissioners in a condemnation proceeding may consider any evidence that a property owner would consider in a negotiated transaction relating to the value of the property being condemned that is not subject to Chapter 21 of the Property Code when assessing actual damages to a property owner from a condemnation.

Based on the analysis of TxDOT, it is assumed the provisions of the bill would result in increased costs for the acquisition of highway right of way through condemnation. Because the factors considered in evaluating the value of the property to be condemned would vary by case, any additional costs or negative fiscal implications to the state cannot be determined.

Except as otherwise provided by the bill, the bill would take effect on September 1, 2007. Certain provisions of the bill relating to the resale of property acquired through eminent domain to previous owners would either take effect on the date on which the proposed constitutional amendment takes effect or, if the proposed constitutional amendment does not take effect, on January 1, 2008.



## **Local Government Impact**

As with the state impact, the local government fiscal impact regarding requirements prior to exercising eminent domain would vary depending on the number of situations in which the entity would seek to exercise its eminent domain authority. In addition, the fiscal impact regarding the resale of property and notification of resale as an option, would vary depending on the number of parcels of land to which the criteria would apply and to the number of eligible persons who would seek to repurchase land previously acquired by the local entity through eminent domain. Actual amounts are not known, but as an example, Harris County reports having condemned 460 parcels at an aggregate market value of \$108 million between calendar years 2002 and 2006.

**Source Agencies:** 601 Department of Transportation

**LBB Staff:** JOB, SD, WK, MW, TG, DB



**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

**March 20, 2007**

**TO:** Honorable Anna Mowery, Chair, House Committee on Land & Resource Management

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB2006** by Woolley (Relating to the use of eminent domain authority.), **As Introduced**

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