

BILL ANALYSIS

C.S.H.J.R. 14
By: Corte
Land & Resource Management
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Both the United States and Texas Constitutions require that the taking of private property must be for a public use, and that when an authorized entity takes private property for a public use it must fairly compensate the owner for the property taken.

C.S.H.J.R. 14 amends the Texas Constitution to more clearly define the circumstances under which a person's private property may be taken for a public use, and what compensation is required in such cases.

RULEMAKING AUTHORITY

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

ANALYSIS

C.S.H.J.R. 14 proposes an amendment to the Texas Constitution to prohibit the taking of a person's private property for public use unless the taking, damage, or destruction is necessary for the possession, occupation, and enjoyment of the property by a common carrier, by an entity providing utility service, by the public at large, by the State, or by a political subdivision of the State. The resolution requires that the property not be taken unless the compensation is just as well as adequate.

C.S.H.J.R. 14 sets forth the required language for the ballot.

ELECTION DATE

The constitutional amendment proposed by this joint resolution will be submitted to the voters at an election to be held November 3, 2009.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.J.R. 14 differs from the original by designating a common carrier or an entity providing utility service (in addition to entities designated by the original) as an entity who must possess, occupy, and enjoy property that is taken, damaged, or destroyed. The substitute removes a provision included in the original requiring the state or a political subdivision of the state that takes, damages, or destroys property to prove by clear and convincing evidence that the contemplated use of the property is public and necessary at the time an attempt is made to take, damage, or destroy the property. The substitute removes language included in the original that states that the question of whether the contemplated use is in fact public and necessary shall be a judicial question. The substitute makes changes to the required ballot language included in the original to conform to the changes in the substitute.