

BILL ANALYSIS

Senate Research Center

S.B. 18
By: Estes
State Affairs
3/27/2009
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, the Fifth Amendment to the United States Constitution prohibits the taking of private property for public use without just compensation, commonly referred to as the "takings clause." Section 17, Article I, Texas Constitution, prohibits a person's property from being taken, damaged, or destroyed without consent for public use without adequate compensation.

As proposed, S.B. 18 modifies the process governing eminent domain proceedings, standards of evidence that could be considered by a court in the course of making decisions regarding damages, obligations placed upon condemning entities, and the rights of previous owners to repurchase taken property. S.B. 18 authorizes special commissioners to take into account any evidence that a property owner would consider in a negotiated transaction outside the standards set forth in the chapter. This bill modifies the price at which previous owners could repurchase condemned property on which a public use was cancelled within 10 years of the acquisitions to be the price paid to the owner by the governmental entity at the time the property originally was acquired, rather than the fair market value of the property at the time the public use was canceled. S.B. 18 requires a governmental entity, for each property or group of jointly owned contiguous properties to be condemned, to formally authorize by motion the initiation of condemnation proceedings at a public hearing by a record vote by adding the Truth in Condemnation Procedures Act. S.B. 18 requires the comptroller of public accounts to identify all entities public and private, with eminent domain authority and make recommendations to the legislature regarding that authority.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 2206, Government Code, as follows:

CHAPTER 2206. New heading: EMINENT DOMAIN

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2206.001. DEFINITION OF PUBLIC USE. Defines "public use," except as otherwise provided by this chapter.

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) Redesignates Section 2206.001 as Section 2206.051. Makes no changes to this subsection.

(b) Prohibits a governmental or private entity from taking private property through the use of eminent domain if among other criteria the taking is not for public use. Makes nonsubstantive changes.

(c) Provides that this section does not affect the authority of an entity authorized by law to take private property through the use of eminent domain for the operations of a common carrier pipeline, among other certain purposes. Deletes existing text relating to a common carrier subject to Chapter 111, Natural Resources Code, and Section B(3)(b), Article 2.01, Texas Business Corporation Act.

(d) Makes no changes to this subsection.

(e) Makes no changes to this subsection.

Sec. 2206.052. LIMITATIONS ON EASEMENTS. (a) Authorizes a property owner whose property is acquired through the use of eminent domain under Chapter 21 (Eminent Domain), Property Code, for the purpose of creating an easement through that owner's property to construct streets or roads, including a gravel, asphalt, or concrete road, at any locations above the easement that the property owner chooses.

(b) Prohibits the portion of a road constructed under this section that is over the easement from exceeding 40 feet in width.

SUBCHAPTER C. PROCEDURES REQUIRED TO INITIATE EMINENT DOMAIN PROCEEDINGS

Sec. 2206.101. SHORT TITLE. Authorizes this subchapter to be cited as the Truth in Condemnation Procedures Act.

Sec. 2206.102. APPLICABILITY. Provides that the procedures in this subchapter apply only to the use of eminent domain under the laws of this state by a governmental entity.

Sec. 2206.103. VOTE ON USE OF EMINENT DOMAIN. (a) Requires a governmental entity before the governmental entity initiates a condemnation proceeding by filing a petition under Section 21.012 (Condemnation Petition), Property Code, to authorize the initiation of the condemnation proceedings at a public meeting by a record vote. Requires that if the motion required by Subsection (c) indicates that the first record vote applies to all units of property to be condemned, and the minutes of the entity reflect that the first vote applies to all of those units, a single ordinance, resolution, or order is authorized to be adopted for all of those units of property. Requires that, if more than one member of the governing body objects to adopting a single ordinance, resolution, or order by a record vote for all units of property for which condemnation proceedings are to be initiated, a separate record vote be taken for each unit of property.

(b) Authorizes the governmental entity, for the purposes of Subsection (a), if two or more units of real property are owned by the same person, to treat those units of property as one unit of property.

(c) Requires the motion to adopt an ordinance, resolution, or order authorizing the initiation of condemnation proceedings under Chapter 21, Property Code, to be made in a form substantially similar to certain language set forth in this subsection. Provides that the description of the property required by this subsection is sufficient if the description of the location of and interest in the property that the governmental entity seeks to acquire is substantially similar to the description that is or could properly be used in a petition to condemn the property under Section 21.012 (Condemnation Petition), Property Code.

(d) Authorizes the governing body, if a project for a public use described by Section 2206.051(c)(3) (relating to the circumstances under which a governmental or private entity is authorized to take private property through the use of eminent domain) will require a governmental entity to acquire multiple tracts or units of property to construct facilities connecting one location to another location, to adopt a single ordinance, resolution, or order by a record vote that delegates the

authority to initiate condemnation proceedings to the chief administrative official of the governmental entity.

(e) Provides that an ordinance, resolution, or order adopted under Subsection (d) is not required to identify specific properties that the governmental entity will acquire. Requires that the ordinance, resolution, or order identify the general area to be covered by the project or the general route that will be used by the governmental entity for the project in a way that provides property owners in and around the area or along the route reasonable notice that the owners' properties may be subject to condemnation proceedings during the planning or construction of the project.

SECTION 2. Amends Subchapter B, Chapter 21, Property Code, by adding Section 21.0113, as follows:

Sec. 21.0113. **BONA FIDE OFFER REQUIRED.** Requires an entity with eminent domain authority that wants to acquire real property for a public use to make a bona fide offer to acquire the property from the property owner voluntarily. Provides that a bona fide offer is an offer that is not arbitrary or capricious and is based on a reasonably thorough investigation and honest assessment of the amount of the just compensation due to the landowner as a result of the taking.

SECTION 3. Amends Section 21.012(b), Property Code, to require the petition to state that the entity made a bona fide offer to acquire the property from the property owner voluntarily. Makes nonsubstantive changes.

SECTION 4. Amends Section 21.023, Property Code, as follows:

Sec. 21.023. **DISCLOSURE OF INFORMATION REQUIRED AT TIME OF ACQUISITION.** Requires a governmental entity to disclose in writing to the property owner, at the time of acquisition of the property through eminent domain, that the repurchase price is the price paid to the owner by the governmental entity at the time the governmental entity acquired the property through eminent domain, rather than the fair market value of the property at the time the public use was canceled.

SECTION 5. Amends Subchapter B, Chapter 21, Property Code, by adding Section 21.025, as follows:

Sec. 21.025. **PRODUCTION OF INFORMATION BY CERTAIN ENTITIES.** (a) Requires an entity that is not subject to Chapter 552 (Public Information), Government Code, and is authorized by law to acquire private property through the use of eminent domain, notwithstanding any other law, to produce information as provided by this section if the information is requested by a person who owns property that is the subject of a proposed or existing eminent domain proceeding and related to the taking of the person's private property by the entity through the use of eminent domain.

(b) Requires an entity described by Subsection (a), under this section only, to produce information relating to the condemnation of the specific property owned by the requestor as described in the request. Requires that a request under this section contain sufficient details to allow the entity to identify the specific tract of land in relation to which the information is sought.

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

(d) Provides that exceptions to disclosure provided by this chapter and the Texas Rules of Civil Procedure apply to the disclosure of information under this section.

(e) Provides that jurisdiction to enforce the provisions of this section resides in the court in which the condemnation was initiated, or if the condemnation

proceeding has not been initiated, a court that would have jurisdiction over a proceeding to condemn the requestor's property, or a court with eminent domain jurisdiction in the county in which the entity has its principal place of business.

(f) Authorizes the court, if the entity refuses to produce information requested in accordance with this section and the court determines that the refusal violates this section, to award the requestor's reasonable attorney's fees incurred to compel the production of the information.

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

(h) Prohibits the person who requested that the attorney general file the action, if the attorney general files an action under Subsection (g), from filing a private action to enforce this section with respect to the same request for information.

SECTION 6. Amends Section 21.041, Property Code, as follows:

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

(b) Creates this subsection from existing text. Requires the special commissioners, subject to the Texas Rules of Evidence, as the basis for assessing actual damages to a property owner from a condemnation, to admit evidence on: the market value, before the condemnation, of the property being condemned; subject to Section 21.042 (Assessment of Damages), the net change to the market value of the property owner's remaining property, considering both injury and benefit to the property owner; and the use of the property for the purpose of the condemnation. Deletes existing text relating to the injury to the property owner and the benefit to the property owner's remaining property. Redesignates Subdivision (4) as Subdivision (3).

SECTION 7. Amends Section 21.042(e), Property Code, as follows:

(e) Requires the special commissioners, if a portion of a tract or parcel of real property is condemned for the use, construction, operation, or maintenance of the state highway system or of a county toll project described by Chapter 284 (Causeways, Bridges, Tunnels, Turnpikes, Ferries, and Highways in Certain Counties), Transportation Code, that is eligible for designation as part of the state highway system, to consider any diminished access to the highway and to or from the remaining property to the extent that it affects the present market value of the real property, including any factors considered when determining actual fair market value of property for ad valorem tax purposes. Deletes existing text relating to real property that is eligible for the use, construction, development, operation, or maintenance of an improvement or project by a metropolitan rapid transit authority created before January 1, 1980, with a principal municipality having a population of less than 1.9 million and established under Chapter 451 (Metropolitan Rapid Transit Authorities), Transportation Code, for which the special commissioners are required to determine the damage to the property owner regardless of whether the property owner makes a claim for damages to the remaining property. Deletes existing text requiring the special commissioners, in awarding compensation or assessing the damages, to consider any special and direct benefits that arise from the highway improvement or the transit authority improvement or project that are peculiar to

the property owner and that relate to the property owner's ownership, use, or enjoyment of the particular parcel of remaining real property.

SECTION 8. Amends Sections 21.046(a) and (b), Property Code, as follows:

(a) Requires, rather than authorizes, a department, agency, instrumentality, or political subdivision of this state to provide a relocation advisory service for an individual, a family, a business concern, a farming or ranching operation, or a nonprofit organization that is compatible, rather than if the service is compatible, with the Federal Uniform Relocation Assistance Advisory Program, 23 U.S.C.A. 501, et seq.

(b) Requires, rather than authorizes, this state or a political subdivision of this state, as a cost of acquiring real property, pay moving expenses and rental supplements, make relocation payments, provide financial assistance to acquire replacement housing, and compensate for expenses incidental to the transfer of the property if an individual, a family, the personal property of a business, a farming or ranching operation, or a nonprofit organization is displaced in connection with the acquisition.

SECTION 9. Amends the heading to Section 21.047, Property Code, to read as follows:

Sec. 21.047. ASSESSMENT OF COSTS AND FEES.

SECTION 10. Amends Section 21.047, Property Code, by adding Subsection (d), as follows:

(d) Requires a court, if a court hearing a suit under this chapter determines that a condemning entity did not make a bona fide offer to acquire the property from the property owner voluntarily as required by Section 21.0113 (Condemnation Petition), to abate the suit and order the condemnor to make a bona fide offer. Requires the court, if the court finds that by filing a petition under Section 21.012 or by filing another motion or pleading in the proceeding initiated by the filing of that petition the condemnor violated Chapter 10 (Sanctions for Frivolous Pleadings and Motions), Civil Practice and Remedies Code, to order the condemnor to pay all costs as provided by Subsection (a), and any reasonable attorney's fees incurred by the owner that are directly related to the violation.

SECTION 11. Amends Subsection (a), Section 21.101, Property Code, as follows:

(a) Provides that this subchapter applies, except as provided in Subsection (b), only to a real property interest acquired by a governmental entity other than a port that is acquiring property for deep water navigation through eminent domain for a public use. Entitles a person from whom the property interest is acquired or that person's heirs, successors, or assigns to repurchase the property as provided by this subchapter if that public use was canceled before the 10th anniversary of the date of acquisition or the government entity fails to begin the operation or construction of the project for which the property was acquired before the 10th anniversary of that date.

SECTION 12. Amends Section 21.102, Property Code, as follows:

Sec. 21.102. New heading: NOTICE TO PREVIOUS PROPERTY OWNER AT TIME OF CANCELLATION OF PUBLIC USE OR ON FAILURE TO BEGIN OPERATION OR CONSTRUCTION OF PROJECT. Requires the governmental entity, not later than the 180th day after the 10th anniversary of the date on which the property was acquired if the governmental entity fails to begin the operation or construction of the project for which the property was acquired before the 10th anniversary of that date, to send by certified mail, return receipt requested, to the property owner or the owner's heirs, successors, or assigns a notice containing an identification of the public use for which the property had been acquired and a statement that the public use has been canceled or the governmental entity has failed to begin the operation or construction of the project for which the property was acquired, among other things.

SECTION 13. Amends Section 21.103(b), Property Code, to require the governmental entity, as soon as practicable after receipt of a, rather than the, notification under Subsection (a), to offer to sell the property interest to the person for the price paid to the owner by the governmental entity at the time the governmental entity acquired the property through eminent domain, rather than fair market value of the property at the time the public use was canceled.

SECTION 14. Amends Subchapter B, Chapter 111, Natural Resources Code, by adding Section 111.0195, as follows:

Sec. 111.0195. RIGHT OF EMINENT DOMAIN: ADDITIONAL PROCEDURES. (a) Provides that this section applies only to a condemnation proceeding initiated by a common carrier, as that term is defined by Section 111.002 (Common Carriers Under Chapter).

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

(c) Provides that the special commissioners in an eminent domain proceeding to which this section applies is prohibited from scheduling a hearing to assess damages before the 30th day after the date of the special commissioners' appointment, and must serve a property owner with notice informing the property owner of the time and place of the hearing not later than the 21st day before the date set for the hearing.

(d) Authorizes a court that has jurisdiction over a condemnation proceeding to appoint a replacement special commissioner if the property owner or the common carrier objects to the appointment of a special commissioner by filing a written statement of the person's objections on the grounds of a conflict or interest or other good cause and the court determines in a hearing that good cause is shown.

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

(f) Requires that a notice required under this section be served by regular mail and certified mail, return receipt requested, to the property owner.

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

SECTION 15. Amends Subchapter G, Chapter 13, Water Code, by adding Section 13.258, as follows:

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

(b) Requires the water and sewer utility to exercise the power of eminent domain in the manner provided by Chapter 21, Property Code.

(c) Prohibits the water and sewer utility from exercising the power of eminent domain to condemn land to acquire rights to underground water or for water or water rights.

(d) Prohibits a water and sewer utility from exercising the power of eminent domain in a municipality with a population of more than 1.7 million or in the

municipality's extraterritorial jurisdiction to condemn land in which the municipality owns a fee, easement, or lesser property interest.

SECTION 16. Amends Subchapter D, Chapter 101, Government Code, by adding Section 101.06151, as follows:

Sec. 101.06151. DISTRICT COURT FEES AND COSTS: PROPERTY CODE. Requires the clerk of a district court to collect fees and costs under the Property Code as follows:

- (1) court costs for each special commissioner in an eminent domain proceeding (Sec. 21.047, Property Code) (Assessment of Costs) as taxed by the court, \$10 or more; and
- (2) court costs, other than costs collected under Subdivision (1), and attorney's fees in an eminent domain proceeding (Sec. 21.047, Property Code) as taxed by the court and as reasonable, respectively.

SECTION 17. Amends Section 101.0816, Government Code, as follows:

Sec. 101.0816. STATUTORY COUNTY COURT FEES AND COSTS: PROPERTY CODE. Requires the clerk of a statutory county court to collect fees and costs under the Property Code as follows:

- (1) Creates Subdivision (1) out of existing text. Provides that court costs for each special commissioner in an eminent domain proceeding (Sec. 21.047, Property Code) as taxed by court, \$10 or more; and
- (2) court costs, other than costs collected under Subdivision (1), and attorney's fees in an eminent domain proceeding (Sec. 21.047, Property Code) as taxed by the court and as reasonable, respectively. Deletes existing text relating to a court cost in the amount of \$10 or more, as taxed by the court under Section 21.047, Property Code for each special commissioner in an eminent domain proceeding.

SECTION 18. Repealer: Section 552.0037 (Certain Entities Authorized to Take Property Through Eminent Domain), Government Code.

Repealer: Section 21.024(i) (relating to the nonapplication of Section 52.0037, Government Code, in relation to those entities described in Subsection (a)), Property Code.

SECTION 19. Requires the comptroller, not later than January 1, 2011, to identify all public and private entities with eminent domain authority, and make recommendations to the legislature and the governor regarding which entities have, need, or should have eminent domain authority; whether that eminent domain authority of those entities should be continued, expanded, or limited; and the cause and effect of continuing, eliminating, expanding, or limiting the eminent domain authority of those entities.

SECTION 20. Makes application of the changes in law made by Chapter 2206, Government Code, and Chapter 21, Property Code, as amended by this Act, prospective.

SECTION 21. Makes application of Section 111.0195, Natural Resources Code, as added by this Act, prospective.

SECTION 22. Effective date: September 1, 2009.