

BILL ANALYSIS

Senate Research Center
81R2148 UM-D

S.B. 533
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State Affairs
3/27/2009
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

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 compensate the owner for the property taken.

The exercise of the power of eminent domain is generally recognized as a necessary tool for government. However, many have argued that the process employed to use this power has been expanded and used in ways that are considered improper.

As proposed, S.B. 533 amends Chapter 2206 (Eminent Domain), Government Code, to provide limitation on purpose and use of private property acquired through eminent domain, authorize the initiation of eminent domain proceedings, and to provide expiration of certain eminent domain 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. LIMITATION ON PURPOSE AND USE OF PROPERTY ACQUIRED THROUGH EMINENT DOMAIN

Sec. 2206.001. LIMITATION ON EMINENT DOMAIN FOR PRIVATE PARTIES OR ECONOMIC DEVELOPMENT PURPOSES. (a) Makes no changes to this subsection.

(b) Makes no changes to this subsection.

(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 certain projects, including the operations of a common carrier pipeline. Deletes existing text providing 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 subject to Chapter 111 (Common Carriers, Public Utilities, and Common Purchasers), Natural Resources Code, and Section B(3)(b) (regarding the restrictions on petroleum oil producing businesses and the business of engaging directly in the oil pipe line business in this State), Article 2.01 (Purposes), Texas Business Corporation Act.

(d) Makes no changes to this subsection.

(e) Makes no changes to this subsection.

SUBCHAPTER B. AUTHORIZATION TO INITIATE EMINENT DOMAIN PROCEEDING

Sec. 2206.051. **APPLICABILITY OF SUBCHAPTER.** Provides that this subchapter applies only to the use of eminent domain under the laws of this state by a governmental entity.

Sec. 2206.052. **VOTE ON USE OF EMINENT DOMAIN.** (a) Requires the entity, before a governmental entity initiates a condemnation proceeding by filing a petition under Chapter 21 (Eminent Domain), Property Code, to authorize the initiation of the condemnation proceedings at an open public meeting by a record vote. Requires that, except as provided by Subsection (b), a separate record vote be taken for each unit of property for which condemnation proceedings are to be initiated.

(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 that the motion to adopt an ordinance, resolution, or order authorizing the initiation of condemnation proceedings under Chapter 21, Property Code be made in a form substantially similar to the following: "I move that the (name of governmental entity) authorize the use of the power of eminent domain to acquire (describe the property) for (describe the public use)."

SUBCHAPTER C. EXPIRATION OF CERTAIN EMINENT DOMAIN AUTHORITY

Sec. 2206.101. **REPORT OF EMINENT DOMAIN AUTHORITY; EXPIRATION OF AUTHORITY.** (a) Requires an entity, including a private entity, authorized by the state by a general or special law to exercise the power of eminent domain, not later than December 31, 2010, to submit to the comptroller of public accounts (comptroller) a letter stating that the entity is authorized by the state to exercise the power of eminent domain and identifying the provision or provisions of law that grant the entity that authority. Requires the entity to send the letter by certified mail, return receipt requested.

(b) Provides that the authority of an entity to exercise the power of eminent domain expires on September 1, 2011, unless the entity submits a letter in accordance with Subsection (a).

(c) Requires the comptroller, not later than March 1, 2011, to submit to the governor, the lieutenant governor, the speaker of the house of representatives, the appropriate standing committees of the senate and the house of representatives, and the Texas Legislative Council a report that contains the name of each entity that submitted a letter in accordance with this section and a corresponding list of the provisions granting eminent domain authority as identified by each entity that submitted a letter.

(d) Requires the Texas Legislative Council to prepare for consideration by the 83rd Legislature, Regular Session, a nonsubstantive revision of the statutes of this state as necessary to reflect the state of the law after the expiration of an entity's eminent domain authority effective under Subsection (b).

SECTION 2. Amends Section 21.0111, Property Code, as follows:

Sec. 21.0111. **New heading: DISCLOSURE OF CERTAIN INFORMATION REQUIRED; INITIAL OFFER.** (a) Requires an entity, rather than a governmental entity, with eminent domain authority that wants to acquire real property for public use to, by certified mail, return receipt requested, disclose to the property owner at the time an offer to purchase or lease the property is made any and all, rather than existing, appraisal reports produced or acquired by the entity relating specifically to the owner's property and used in determining the final valuation offer. Makes a conforming change.

(b) Requires a property owner to disclose to the entity, rather than the acquiring governmental entity, seeking to acquire the property any and all current, rather than existing, appraisal reports produced or acquired by the property owner

relating specifically to the owner's property and used in determining the owner's opinion of value. Requires such disclosure to take place not later than the earlier of the 10th day after the date of receipt of an appraisal report, or the day before the date of a special commissioners hearing if an existing appraisal report is to be used at the hearing. Deletes existing text requiring such disclosure to take place within 10 days of receipt of appraisal reports but no later than 10 days prior to the special commissioner's hearing.

(c) Provides that the property owner's failure to obtain or disclose an appraisal report as required by Subsection (b) does not affect the authority of the special commissioners to admit other evidence relating specifically to the owner's property.

(d) Requires the initial offer to purchase made by the entity to include a copy of this section and Section 21.0114; a written estimate of the fair market value of the property the entity is offering to acquire and the amount of damages to the property owner's remaining property, if any, that will result from the acquisition, and a statement that the property owner has a right to make a written request to the entity for an appraisal of the property, at the entity's expense, in accordance with Section 21.0114, and certain information regarding transactions involving the entity for nearby property the entity intends to use for a similar purpose.

(e) Authorizes a property owner to submit a written request to the entity for each appraisal report completed, offer to purchase made, and negotiated purchase price paid by the entity for property that is wanted for a purpose that relates to the purpose for which the entity seeks to acquire the property owner's property, and that is adjacent to the property owner's property, adjacent to property adjacent to the property owner's property, or any point on the boundary of which is located one mile or less from any point on the boundary of the property owner's property.

(f) Requires that the request, if, at the time the request under Subsection (e) is made, a special commissioners hearing has been set regarding the condemnation of the property, be made not later than the 15th day before the date set for the hearing.

(g) Requires the entity to make the disclosures required by Subsection (e) in writing by certified mail, return receipt requested, or by hand delivery to the property owner not later than the earlier of the 10th day after the date of the receipt of the request, or the 10th day before the date of any scheduled special commissioners hearing.

(h) Requires the condemning entity to supplement a disclosure made under this section with any new information received by the condemning entity that is required to be disclosed under this section not later than the 10th day after the date the entity receives the information.

(i) Authorizes a subsequent bona fide purchaser for value from the acquiring entity, rather than governmental, entity to be conclusively presume that the requirement of this section has been met. Makes conforming changes.

SECTION 3. Amends Subchapter B, Chapter 21, Property Code, by adding Sections 21.0113, 21.0114, and 21.0115, as follows:

Sec. 21.0113. FINAL OFFER. (a) Requires an entity with eminent domain authority that wants to acquire real property for a public use to provide to the property owner at least two written offers proposing a purchase or lease of the property, as the entity determines in good faith is appropriate in accordance with Section 21.0115. Requires the last offer the entity intends to make to the property owner be in writing and be designated on its face as the entity's final offer.

(b) Provides that this section does not require the entity's initial offer and final offer to differ in substance.

Sec. 21.0114. APPRAISAL REQUEST. (a) Authorizes a property owner, but not later than the 20th day after the date the property owner receives an offer designated as a final offer under Section 21.0113, subject to Subsection (b), after a property owner receives an offer from an entity with eminent domain authority proposing to acquire the owner's property for a public use, to request that the entity procure an appraisal report of the property produced and certified by an independent and certified appraiser chosen by the property owner. Requires the entity to pay the reasonable cost of the appraisal report and provide the report to the property owner not later than the 30th day after the date the entity receives a request under this subsection.

(b) Provides that the entity is not required to provide more than one appraisal report under this section.

Sec. 21.0115. GOOD FAITH NEGOTIATION REQUIRED. (a) Requires an entity, before an entity with eminent domain authority is authorized to file a condemnation petition under this chapter, to negotiate in good faith to acquire the property through a voluntary purchase or lease agreement.

(b) Requires the court, in determining whether an entity has negotiated in good faith to acquire a property through a voluntary purchase or lease agreement, to consider certain practices undertaken by the entity toward the property owner.

(c) Provides that for the purposes of this section, evidence that an entity with eminent domain authority failed to disclose or provide information required to be disclosed under Section 21.0111, 21.0112, or 21.0114 is prima facie evidence that the entity failed to negotiate in good faith to acquire the property through a voluntary purchase or lease agreement.

SECTION 4. Amends Section 21.012, Property Code, as follows:

Sec. 21.012. CONDEMNATION PETITION. (a) Authorizes an entity, if an entity with eminent domain authority wants to acquire real property for public use but is unable to agree with the owner of the property on the amount of damages, to begin condemnation proceeding by filing a petition in the proper court. Deletes existing text authorizing the condemning entity, if the United States, this state, a political subdivision of this state, a corporation with eminent domain authority, or an irrigation, water improvement, or water power control district created by law wants to acquire real property for public use but is unable to agree with the owner of the property on the amount of damages, to begin a condemnation proceeding by filing a petition in the proper court.

(b) Requires the petition to state with specificity the public purpose for which the entity intends to use the property, and state that the entity and the property owner are unable to agree on the damages after negotiating in good faith.

SECTION 5. Amends Section 21.014(a), Property Code, to require the judge in which a condemnation petition is filed or to which an eminent domain case is assigned to appoint three disinterested real property owners, rather than freeholders, who reside in the county as special commissioners to assess the damages of the owner of the property being condemned. Requires the judge to provide each party a reasonable period to strike one of the three commissioners appointed by the judge. Requires, rather than authorizes, the judge to appoint a replacement if a person fails to serve as a commissioner or is struck by a party to the suit.

SECTION 6. Amends Section 21.015(a), Property Code, to require the special commissioners in an eminent domain proceeding to promptly schedule a hearing for the parties at the earliest practical time but prohibits them from scheduling a hearing to assess damages before the 20th day after the date the special commissioners were appointed. Requires the special commissioners to schedule a hearing for the parties at a place that is as near as practical to the property being condemned or at the county seat of the county in which the proceeding is being

held. Deletes existing text requiring the special commissioners in an eminent domain hearing to promptly schedule a hearing for the parties at the earliest practical time and at a place that is as near as practical to the property being condemned or at the county seat of the county in which the proceeding is being held.

SECTION 7. Amends Section 21.016(b), Property Code, to provide that notice of the hearing be served on a party not later than the 20th, rather than the 11th, day before the day set for the hearing.

SECTION 8. Amends Section 21.023, Property Code, as follows:

Sec. 21.023. DISCLOSURE OF INFORMATION REQUIRED AT TIME OF ACQUISITION. Requires an entity with eminent domain authority, rather than a governmental entity, to disclose in writing to the property owner, at the time of acquisition of the property through eminent domain, that the owner or the owner's heirs, successors, or assigns are authorized to be entitled to repurchase the property under Subchapter E, or request from the entity certain information relating to the use of the property and any actual progress made toward that use; and the repurchase price is the price paid to the owner by the entity at the time the entity acquired the property through eminent domain. Deletes existing text providing that the owner or the owner's heirs, successor or assigns are entitled to repurchase the property if the public use for which the property was acquired through eminent domain is canceled before the 10th anniversary of the date of acquisition or the repurchase price is the fair market value of the property at the time the public use was canceled.

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 the court, if a court hearing a suit under this chapter finds that the condemnor did not negotiate in good faith to acquire the property in accordance with Section 21.0115, to order the condemnor to pay all costs as provided by Subsection (a) and all reasonable attorney's fees and other professional fees incurred by the owner.

SECTION 11. Amends Subchapter E, Chapter 21, Property Code, as follows:

SUBCHAPTER E. New heading: REPURCHASE OF REAL PROPERTY FROM CONDEMNING ENTITY

Sec. 21.101. New heading: RIGHT OF REPURCHASE. (a) Entitles a person from whom a real property interest is acquired by an entity through eminent domain for a public use, or that person's heirs, successors, or assigns, to repurchase the property as provided by this subchapter if the public use for which the property was acquired through eminent domain is canceled, no actual progress is made toward the public use for which the property was acquired between the date of acquisition and the 10th anniversary of that date, or the property becomes unnecessary for the public use for which the property was acquired. Deletes existing text providing that except as provided in Subsection (b), this chapter applies only to a real property interest acquired by a governmental entity through eminent domain for a public use that was canceled before the 10th anniversary of the date of acquisition.

(b) Redefines "actual progress."

(c) Authorizes a district court to determine all issues in any suit regarding the repurchase of a real property interest acquired through eminent domain by the former property owner or the owner's heirs, successors, or assigns.

Sec. 21.102. New heading: NOTICE TO PREVIOUS PROPERTY OWNER REQUIRED. Requires the entity, not later than the 180th day after the date an entity that acquired a real property interest through eminent domain determines that the former property owner is entitled to repurchase the property under Section 21.101, 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 no actual progress was made toward the public use, or the property has become unnecessary for the public use, and a description of the person's right under this subchapter to repurchase the property. Deletes existing text requiring the governmental entity, not later than the 180th day after the date of the cancellation of the public use for which real property was acquired through eminent domain from a property owner under Subchapter B, to send by certified mail, return receipt requested, to the property owner or the owner's heirs, successors, or assigns, a notice containing certain information. Makes nonsubstantive changes.

Sec. 21.1021. REQUESTS FOR INFORMATION REGARDING CONDEMNED PROPERTY. (a) Authorizes a property owner or the owner's heirs, successors, or assigns, on or after the 10th anniversary of the date on which real property was acquired by an entity through eminent domain, to request that the condemning entity make a determination and provide a statement and other relevant information regarding whether the public use for which the property was acquired has been canceled, whether any actual progress was made toward the public use between the date of acquisition and the 10th anniversary of that date, including an itemized description of the progress made, if applicable, and whether the property has become unnecessary for the public use of the property.

(b) Requires that a request under this section contain sufficient detail to allow the entity to identify the specific tract of land in relation to which the information is sought.

(c) Requires the entity to send a written response by certified mail, return receipt requested, to the requestor not later than the 90th day following the receipt of the request for information.

Sec. 21.103. RESALE OF PROPERTY; PRICE. (a) Requires the property owner or the owner's heirs, successors, or assigns, not later than the 180th day after the date of the postmark on a notice sent under Section 21.202 or a response to a request made under Section 21.1021 that indicates that the property owner or the owner's heirs, successors, or assigns is entitled to repurchase the property interest in accordance with Section 21.101, to properly notify the entity or the person's intent to repurchase the property interest under this subchapter. Makes conforming changes.

(b) Requires the entity, as soon as practicable after receipt of a notice of intent to repurchase, rather than after receipt of the notification, under Subsection (a), to offer to sell the property interest to the person for the price paid to the owner by the entity at the time the entity acquired the property through eminent domain. Deletes existing text requiring the governmental entity to offer to sell the property interest to the person for the fair market value of the property at the time the public use was canceled as soon as practicable after receipt of the notification under Subsection (a). Makes a conforming change.

SECTION 12. Makes application of this Act prospective.

SECTION 13. Effective date: upon passage or September 1, 2009.