

BILL ANALYSIS

Senate Research Center
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S.B. 1023
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, a property owner whose property is taken by condemnation might be able to recover the costs of the proceeding.

This bill allows the property owner to recover attorneys fees and expert witness fees under the same circumstances as they may recover costs now. It also makes the condemnor provide an initial showing of right, necessity and the use of least intrusive means (if less than fee simple title is to be taken).

As proposed, S.B. 1023 amends current law relating to the exercise of 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, by adding Section 2206.002, as follows:

Sec. 2206.002. USE OF CERTAIN PROPERTY INTERESTS ACQUIRED THROUGH EMINENT DOMAIN: MINIMAL INTRUSION REQUIRED. (a) Requires a public or private entity that obtains through the use of eminent domain a property interest that is less than fee simple title to, with respect to the property owner from whom the interest is obtained, use the least intrusive means for achieving the purpose for which the interest is obtained.

(b) Provides that the court in which the property interest was condemned has continuing jurisdiction over the condemning entity's use of the property interest condemned for the purpose of ensuring compliance of the entity with this section.

(c) Authorizes a property owner from whom a property interest subject to this section was taken to petition the court in which the property interest was condemned at any time for injunctive relief to obtain compliance of the condemning entity with this section.

SECTION 2. Amends Subchapter B, Chapter 21, Property Code, by adding Section 21.0122, as follows:

Sec. 21.0122. PROOF OF NECESSITY; MINIMAL INTRUSIVENESS. (a) Requires that in addition to the contents prescribed by Section 21.012(b) (relating to certain requirements of the condemnation petition), a condemnation petition state that the facts to be proven are that:

(1) the petitioner is authorized to condemn property for the purpose for which the property that is the subject of the petition is sought;

(2) the use for which the property is sought is a public use that is not prohibited by Section 2206.001 (Limitation on Eminent Domain For Private Parties or Economic Development Purposes), Government Code;

(3) the property sought is necessary to accomplish that public use; and

(4) with respect to the property owner from whom a property interest that is less than fee simple title is sought, the petitioner will use the least intrusive means for achieving that public use.

(b) Authorizes a property owner, in a condemnation proceeding subject to Subsection (a)(4), to submit evidence that a less intrusive means of achieving the purpose for which the condemning entity seeks the property interest exists. Provides that if the property owner submits evidence under this subsection, the condemning entity has the burden of proving that the means sought through the condemnation is less intrusive than the means proposed by the property owner.

(c) Requires the court, if a condemning entity fails to prove any of the facts under Subsection (a) or meet the entity's burden under Subsection (b), to deny the condemnation and award to the property owner the owner's court costs and reasonable attorney's fees incurred in relation to the condemnation proceeding.

SECTION 3. Amends Section 21.047(a), Property Code, to require the condemnor, if the commissioners award greater damages than the condemnor offered to pay before the proceedings began or if the decision of the commissioners is appealed and a court awards greater damages than the commissioners awarded, to pay all costs and the property owner's reasonable attorney's fees and expert witness fees. Requires the property owner, if the commissioners' award or the court's determination of the damages is less than or equal to the amount the condemnor offered before proceedings began, to pay the costs.

SECTION 4. Makes application of this Act prospective.

SECTION 5. Effective date: upon passage or September 1, 2009.