

By: Orr

H.B. No. 4

A BILL TO BE ENTITLED

AN ACT

relating to eminent domain, including certain limitations, procedures, and standards relating to the use of eminent domain.

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

SECTION 1. Chapter 2206, Government Code, is amended to read as follows:

CHAPTER 2206. [~~LIMITATIONS ON USE OF~~] 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) 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 pipeline [~~subject to Chapter~~  
4 ~~111, Natural Resources Code, and Section B(3)(b), Article 2.01,~~  
5 ~~Texas 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 B. AUTHORIZATION TO INITIATE EMINENT DOMAIN PROCEEDING

24 Sec. 2206.051. APPLICABILITY OF SUBCHAPTER. This  
25 subchapter applies only to the use of eminent domain under the laws  
26 of this state by a governmental entity.

27 Sec. 2206.052. VOTE ON USE OF EMINENT DOMAIN. (a) Before a

1 governmental entity initiates a condemnation proceeding by filing a  
2 petition under Chapter 21, Property Code, the entity must authorize  
3 the initiation of the condemnation proceedings at an open public  
4 meeting by a record vote. Except as provided by Subsection (b), a  
5 separate record vote must be taken for each unit of property for  
6 which condemnation proceedings are to be initiated.

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

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

16 SUBCHAPTER C. EXPIRATION OF CERTAIN EMINENT DOMAIN AUTHORITY

17 Sec. 2206.101. REPORT OF EMINENT DOMAIN AUTHORITY;  
18 EXPIRATION OF AUTHORITY. (a) Not later than December 31, 2010, an  
19 entity, including a private entity, authorized by the state by a  
20 general or special law to exercise the power of eminent domain shall  
21 submit to the comptroller of public accounts a letter stating that  
22 the entity is authorized by the state to exercise the power of  
23 eminent domain and identifying the provision or provisions of law  
24 that grant the entity that authority. The entity must send the  
25 letter by certified mail, return receipt requested.

26 (b) The authority of an entity to exercise the power of  
27 eminent domain expires on September 1, 2011, unless the entity

1 submits a letter in accordance with Subsection (a).

2 (c) Not later than March 1, 2011, the comptroller shall  
3 submit to the governor, the lieutenant governor, the speaker of the  
4 house of representatives, the appropriate standing committees of  
5 the senate and the house of representatives, and the Texas  
6 Legislative Council a report that contains:

7 (1) the name of each entity that submitted a letter in  
8 accordance with this section; and

9 (2) a corresponding list of the provisions granting  
10 eminent domain authority as identified by each entity that  
11 submitted a letter.

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

17 SECTION 2. Section 21.0111, Property Code, is amended to  
18 read as follows:

19 Sec. 21.0111. DISCLOSURE OF CERTAIN INFORMATION REQUIRED;  
20 INITIAL OFFER. (a) An [~~A governmental~~] entity with eminent domain  
21 authority that wants to acquire real property for a public use  
22 shall, by certified mail, return receipt requested, disclose to the  
23 property owner at the time an offer to purchase or lease the  
24 property is made any and all [~~existing~~] appraisal reports produced  
25 or acquired by the [~~governmental~~] entity relating specifically to  
26 the owner's property and used in determining the final valuation  
27 offer.

1 (b) A property owner shall disclose to the [~~acquiring~~  
2 ~~governmental~~] entity seeking to acquire the property any and all  
3 current [~~existing~~] appraisal reports produced or acquired by the  
4 property owner relating specifically to the owner's property and  
5 used in determining the owner's opinion of value. Such disclosure  
6 shall take place not later than the earlier of:

7 (1) the 10th day after the date of [~~within 10 days of~~]  
8 receipt of an appraisal report; or

9 (2) the day before the date of a special commissioners  
10 hearing if an existing appraisal report is to be used at the  
11 hearing.

12 (c) The property owner's failure to obtain or disclose an  
13 appraisal report as required by Subsection (b) does not affect the  
14 authority of the special commissioners to admit other evidence  
15 relating specifically to the owner's property [~~reports but no later~~  
16 ~~than 10 days prior to the special commissioner's hearing~~].

17 (d) The initial offer to purchase made by the entity must  
18 also include:

19 (1) a copy of this section and Section 21.0114;

20 (2) a written estimate of:

21 (A) the fair market value of the property the  
22 entity is offering to acquire; and

23 (B) the amount of damages to the property owner's  
24 remaining property, if any, that will result from the acquisition;  
25 and

26 (3) a statement that the property owner has a right to  
27 make a written request to the entity for:

1           (A) an appraisal of the property, at the entity's  
2 expense, in accordance with Section 21.0114; and

3           (B) certain information regarding transactions  
4 involving the entity for nearby property the entity intends to use  
5 for a similar purpose.

6           (e) A property owner may submit a written request to the  
7 entity for each appraisal report completed, offer to purchase made,  
8 and negotiated purchase price paid by the entity for property that  
9 is wanted for a purpose that relates to the purpose for which the  
10 entity seeks to acquire the property owner's property and:

11           (1) that is adjacent to the property owner's property;

12           (2) that is adjacent to property adjacent to the  
13 property owner's property; or

14           (3) any point on the boundary of which is located one  
15 mile or less from any point on the boundary of the property owner's  
16 property.

17           (f) If, at the time the request under Subsection (e) is  
18 made, a special commissioners hearing has been set regarding the  
19 condemnation of the property, the request must be made not later  
20 than the 15th day before the date set for the hearing.

21           (g) The entity shall make the disclosures required by  
22 Subsection (e) in writing by certified mail, return receipt  
23 requested, or by hand delivery to the property owner not later than  
24 the earlier of:

25           (1) the 10th day after the date of the receipt of the  
26 request; or

27           (2) the 10th day before the date of any scheduled

1 special commissioners hearing.

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

7 (i) A subsequent bona fide purchaser for value from the  
8 acquiring [~~governmental~~] entity may conclusively presume that the  
9 requirement of this section has been met. This section does not  
10 apply to acquisitions of real property for which an [~~a~~  
11 ~~governmental~~] entity does not have eminent domain authority.

12 SECTION 3. Subchapter B, Chapter 21, Property Code, is  
13 amended by adding Sections 21.0113, 21.0114, and 21.0115 to read as  
14 follows:

15 Sec. 21.0113. FINAL OFFER. (a) An entity with eminent  
16 domain authority that wants to acquire real property for a public  
17 use shall provide to the property owner at least two written offers  
18 proposing a purchase or lease of the property, as the entity  
19 determines in good faith is appropriate in accordance with Section  
20 21.0115. The last offer the entity intends to make to the property  
21 owner shall be in writing and be designated on its face as the  
22 entity's final offer.

23 (b) This section does not require the entity's initial offer  
24 and final offer to differ in substance.

25 Sec. 21.0114. APPRAISAL REQUEST. (a) Subject to  
26 Subsection (b), after a property owner receives an offer from an  
27 entity with eminent domain authority proposing to acquire the



1 owner's property for a public use, but not later than the 20th day  
2 after the date the property owner receives an offer designated as a  
3 final offer under Section 21.0113, the property owner may, by  
4 certified mail, return receipt requested, request that the entity  
5 procure an appraisal report of the property produced and certified  
6 by an independent and certified appraiser chosen by the property  
7 owner. The entity shall pay the reasonable cost of the appraisal  
8 report and provide the report to the property owner not later than  
9 the 30th day after the date the entity receives a request under this  
10 subsection.

11 (b) An entity is not required to provide more than one  
12 appraisal report under this section.

13 Sec. 21.0115. GOOD FAITH NEGOTIATION REQUIRED. (a) Before  
14 an entity with eminent domain authority may file a condemnation  
15 petition under this chapter, the entity shall negotiate in good  
16 faith to acquire the property through a voluntary purchase or lease  
17 agreement.

18 (b) In determining whether an entity has negotiated in good  
19 faith to acquire a property through a voluntary purchase or lease  
20 agreement, the court shall consider:

21 (1) whether the entity has complied with applicable  
22 disclosure provisions and procedural requirements, including  
23 Sections 21.0111-21.0114;

24 (2) whether the entity has provided the property owner  
25 with a written initial offer and a written final offer to acquire  
26 the property; and

27 (3) whether an offer provided by the entity to the

1 property owner is a good faith offer that is not arbitrary or  
2 capricious and is based on a reasonably thorough investigation and  
3 honest assessment of the fair and reasonable compensation for  
4 acquisition of the property.

5 (c) For purposes of this section, evidence that an entity  
6 with eminent domain authority failed to disclose or provide  
7 information required to be disclosed under Section 21.0111,  
8 21.0112, or 21.0114 is prima facie evidence that the entity failed  
9 to negotiate in good faith to acquire the property through a  
10 voluntary purchase or lease agreement.

11 SECTION 4. Section 21.012, Property Code, is amended to  
12 read as follows:

13 Sec. 21.012. CONDEMNATION PETITION. (a) If an entity [~~the~~  
14 ~~United States, this state, a political subdivision of this state, a~~  
15 ~~corporation~~] with eminent domain authority[, ~~or an irrigation,~~  
16 ~~water improvement, or water power control district created by law~~]  
17 wants to acquire real property for public use but is unable to agree  
18 with the owner of the property on the amount of damages, the  
19 [~~condemning~~] entity may begin a condemnation proceeding by filing a  
20 petition in the proper court.

21 (b) The petition must:

22 (1) describe the property to be condemned;

23 (2) state with specificity the public purpose for  
24 which the entity intends to use the property;

25 (3) state the name of the owner of the property if the  
26 owner is known;

27 (4) state that the entity and the property owner are

1 unable to agree on the damages after negotiating in good faith; and

2 (5) if applicable, state that the entity provided the  
3 property owner with the landowner's bill of rights statement in  
4 accordance with Section 21.0112.

5 SECTION 5. Section 21.014(a), Property Code, is amended to  
6 read as follows:

7 (a) The judge of a court in which a condemnation petition is  
8 filed or to which an eminent domain case is assigned shall appoint  
9 three disinterested real property owners [~~freeholders~~] who reside  
10 in the county as special commissioners to assess the damages of the  
11 owner of the property being condemned. The judge appointing the  
12 special commissioners shall give preference to persons agreed on by  
13 the parties. The judge shall provide each party a reasonable period  
14 to strike one of the three commissioners appointed by the judge. If  
15 a person fails to serve as a commissioner or is struck by a party to  
16 the suit, the judge shall [~~may~~] appoint a replacement.

17 SECTION 6. Section 21.015(a), Property Code, is amended to  
18 read as follows:

19 (a) The special commissioners in an eminent domain  
20 proceeding shall promptly schedule a hearing for the parties at the  
21 earliest practical time but may not schedule a hearing to assess  
22 damages before the 20th day after the date the special  
23 commissioners were appointed. The special commissioners shall  
24 schedule a hearing for the parties [~~and~~] at a place that is as near  
25 as practical to the property being condemned or at the county seat  
26 of the county in which the proceeding is being held.

27 SECTION 7. Section 21.016(b), Property Code, is amended to

1 read as follows:

2 (b) Notice of the hearing must be served on a party not later  
3 than the 20th [~~11th~~] day before the day set for the hearing. A  
4 person competent to testify may serve the notice.

5 SECTION 8. Section 21.023, Property Code, is amended to  
6 read as follows:

7 Sec. 21.023. DISCLOSURE OF INFORMATION REQUIRED AT TIME OF  
8 ACQUISITION. An [~~A governmental~~] entity with eminent domain  
9 authority shall disclose in writing to the property owner, at the  
10 time of acquisition of the property through eminent domain, that:

11 (1) the owner or the owner's heirs, successors, or  
12 assigns may be [~~are~~] entitled to:

13 (A) repurchase the property under Subchapter E  
14 [~~if the public use for which the property was acquired through~~  
15 ~~eminent domain is canceled before the 10th anniversary of the date~~  
16 ~~of acquisition~~]; or

17 (B) request from the entity certain information  
18 relating to the use of the property and any actual progress made  
19 toward that use; and

20 (2) the repurchase price is the price paid to the owner  
21 by the entity at the time the entity acquired the property through  
22 eminent domain [~~fair market value of the property at the time the~~  
23 ~~public use was canceled~~].

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

26 Sec. 21.047. ASSESSMENT OF COSTS AND FEES.

27 SECTION 10. Section 21.047, Property Code, is amended by

1 adding Subsection (d) to read as follows:

2 (d) If a court hearing a suit under this chapter finds that  
3 the condemnor did not negotiate in good faith to acquire the  
4 property in accordance with Section 21.0115, the court shall order  
5 the condemnor to pay:

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

7 (2) all reasonable attorney's fees and other  
8 professional fees incurred by the owner.

9 SECTION 11. Subchapter E, Chapter 21, Property Code, is  
10 amended to read as follows:

11 SUBCHAPTER E. REPURCHASE OF REAL PROPERTY FROM CONDEMNING  
12 [GOVERNMENTAL] ENTITY

13 Sec. 21.101. RIGHT OF REPURCHASE [APPLICABILITY]. (a) A  
14 person from whom [Except as provided in Subsection (b), this  
15 subchapter applies only to] a real property interest is acquired by  
16 an [a governmental] entity through eminent domain for a public use,  
17 or that person's heirs, successors, or assigns, is entitled to  
18 repurchase the property as provided by this subchapter if:

19 (1) the public use for which the property was acquired  
20 through eminent domain is [that was] canceled;

21 (2) no actual progress is made toward the public use  
22 for which the property was acquired between the date of acquisition  
23 and the 10th anniversary of that date; or

24 (3) the property becomes unnecessary for the public  
25 use for which the property was acquired [before the 10th  
26 anniversary of the date of acquisition].

27 (b) In this section, "actual progress" means the completion

1 of two or more of the following actions:

2 (1) the performance of a significant amount of labor  
3 to develop the property or other property acquired for the same  
4 public use project for which the property owner's property was  
5 acquired;

6 (2) the furnishing of a significant amount of  
7 materials to develop the property or other property acquired for  
8 the same public use project for which the property owner's property  
9 was acquired;

10 (3) the hiring of and performance of a significant  
11 amount of work by an architect, engineer, or surveyor to prepare a  
12 plan or plat that includes the property or other property acquired  
13 for the same public use project for which the property owner's  
14 property was acquired;

15 (4) application for state or federal funds to develop  
16 the property or other property acquired for the same public use  
17 project for which the property owner's property was acquired; or

18 (5) the acquisition of a tract or parcel of real  
19 property adjacent to the property for the same public use project  
20 for which the owner's property was acquired [~~This subchapter does~~  
21 ~~not apply to a right-of-way under the jurisdiction of:~~

22 [~~(1) a county,~~

23 [~~(2) a municipality, or~~

24 [~~(3) the Texas Department of Transportation].~~

25 (c) A district court may determine all issues in any suit  
26 regarding the repurchase of a real property interest acquired  
27 through eminent domain by the former property owner or the owner's

1 heirs, successors, or assigns.

2           Sec. 21.102. NOTICE TO PREVIOUS PROPERTY OWNER REQUIRED [~~AT~~  
3 ~~TIME OF CANCELLATION OF PUBLIC USE~~]. Not later than the 180th day  
4 after the date an entity that acquired a real property interest  
5 through eminent domain determines that the former property owner is  
6 entitled to repurchase the property under Section 21.101 [~~of the~~  
7 ~~cancellation of the public use for which real property was acquired~~  
8 ~~through eminent domain from a property owner under Subchapter B~~],  
9 the [~~governmental~~] entity shall send by certified mail, return  
10 receipt requested, to the property owner or the owner's heirs,  
11 successors, or assigns a notice containing:

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

14                   (2) an identification of the public use for which the  
15 property had been acquired and a statement that:

16                           (A) the public use has been canceled;

17                           (B) no actual progress was made toward the public  
18 use; or

19                           (C) the property has become unnecessary for the  
20 public use; and

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

23           Sec. 21.1021. REQUESTS FOR INFORMATION REGARDING CONDEMNED  
24 PROPERTY. (a) On or after the 10th anniversary of the date on which  
25 real property was acquired by an entity through eminent domain, a  
26 property owner or the owner's heirs, successors, or assigns may  
27 request that the condemning entity make a determination and provide

1 a statement and other relevant information regarding:

2 (1) whether the public use for which the property was  
3 acquired has been canceled;

4 (2) whether any actual progress was made toward the  
5 public use between the date of acquisition and the 10th anniversary  
6 of that date, including an itemized description of the progress  
7 made, if applicable; and

8 (3) whether the property has become unnecessary for  
9 the public use of the property.

10 (b) A request under this section must contain sufficient  
11 detail to allow the entity to identify the specific tract of land in  
12 relation to which the information is sought.

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

16 Sec. 21.103. RESALE OF PROPERTY; PRICE. (a) Not later than  
17 the 180th day after the date of the postmark on a ~~[the]~~ notice sent  
18 under Section 21.102 or a response to a request made under Section  
19 21.1021 that indicates that the property owner or the owner's  
20 heirs, successors, or assigns is entitled to repurchase the  
21 property interest in accordance with Section 21.101, the property  
22 owner or the owner's heirs, successors, or assigns must notify the  
23 ~~[governmental]~~ entity of the person's intent to repurchase the  
24 property interest under this subchapter.

25 (b) As soon as practicable after receipt of a notice of  
26 intent to repurchase ~~[the notification]~~ under Subsection (a), the  
27 ~~[governmental]~~ entity shall offer to sell the property interest to



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

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

16 SECTION 13. This Act takes effect immediately if it  
17 receives a vote of two-thirds of all the members elected to each  
18 house, as provided by Section 39, Article III, Texas Constitution.  
19 If this Act does not receive the vote necessary for immediate  
20 effect, this Act takes effect September 1, 2009.