

By: Brown of Kaufman

H.B. No. 369

A BILL TO BE ENTITLED

AN ACT

relating to assessment of damages in a condemnation proceeding.

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

SECTION 1. Section 21.042, Property Code, is amended by amending Subsection (c) and adding Subsections (d-1), (e-1), (h), and (i) to read as follows:

(c) If a portion of a tract or parcel of real property is condemned and the property owner seeks an award for damages caused by the condemnation to the remaining portion of the tract or parcel, the total amount of the award for damages to the property condemned and the remaining property must be based on the difference in the local market value of the entire tract or parcel immediately before the condemnation and the local market value of the remaining property immediately after the condemnation, considering any benefit or injury that the construction or operation of the project for which the property was condemned has ~~[special commissioners shall determine the damage to the property owner after estimating the extent of the injury and benefit to the property owner, including the effect of the condemnation]~~ on the local market value of the property owner's remaining property.

(d-1) Any increase or decrease in the local market value of an entire tract or parcel of real property caused by the condemnor's proposed project before the condemnation may not be considered in estimating the local market value of that property before

1 condemnation. Any increase or decrease in the local market value of
2 an owner's remaining real property caused by the condemnor's
3 proposed project after the condemnation shall be considered in
4 estimating the local market value of that property after the
5 condemnation.

6 (e-1) In the case of a condemnation of real property by or
7 for the Texas Department of Transportation for a state or federal
8 highway, in estimating the local market value of the property
9 condemned, including the local market value of any remaining
10 property, if a portion of a tract or parcel of real property is
11 condemned, the special commissioners shall consider all factors
12 considered in the marketplace that may affect the property's local
13 market value, including:

14 (1) vehicular and pedestrian access to and from and on
15 and off the property;

16 (2) traffic circulation and count in and around the
17 property;

18 (3) visibility and appearance of and from the
19 property;

20 (4) productivity and convenience of use of the
21 property, including the property's highest and best use; and

22 (5) the property's access to utilities and drainage.

23 (h) The effect that the condemnation has on any of the local
24 market value characteristics required to be considered under
25 Subsection (e-1) shall be considered in estimating the local market
26 value of any remaining portion of a tract or parcel of real property
27 that is condemned regardless of whether any other property in the

1 area is similarly affected by the condemnation.

2 (i) Notwithstanding any other provision of this section, if
3 the property condemned is owned by a public entity or by a person
4 organized and operated on a nonprofit basis and the property is
5 devoted to and needed by the property owner in good faith to perform
6 a public function or to provide a nonprofit educational,
7 charitable, or eleemosynary service, the damage award may not be
8 less than the financial cost of replacing the property.

9 SECTION 2. Sections 21.042(d), (e), and (g), Property Code,
10 are repealed.

11 SECTION 3. The changes in law made by this Act apply only to
12 the assessment of damages in a condemnation proceeding for which a
13 special commissioners' hearing begins on or after the effective
14 date of this Act. Assessment of damages in a condemnation
15 proceeding for which a special commissioners' hearing begins before
16 the effective date of this Act is governed by the law in effect
17 immediately before the effective date of this Act, and that law is
18 continued in effect for that purpose.

19 SECTION 4. This Act takes effect immediately if it receives
20 a vote of two-thirds of all the members elected to each house, as
21 provided by Section 39, Article III, Texas Constitution. If this
22 Act does not receive the vote necessary for immediate effect, this
23 Act takes effect September 1, 2009.