

By: Woolley

H.B. No. 402

A BILL TO BE ENTITLED

AN ACT

relating to the use of eminent domain authority.

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. GENERAL PROVISIONS

Sec. 2206.001. DEFINITION OF PUBLIC USE. Except as otherwise provided by this chapter, "public use," with respect to the use of eminent domain authority, means a use of property, including a use described by Section 2206.051(c), that allows the state, a political subdivision of the state, or the general public of the state to possess, occupy, and enjoy the property.

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) 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

1 act on behalf of the entity.

2 (b) A governmental or private entity may not take private
3 property through the use of eminent domain if the taking:

4 (1) confers a private benefit on a particular private
5 party through the use of the property;

6 (2) is for a public use that is merely a pretext to
7 confer a private benefit on a particular private party; ~~or~~

8 (3) is for economic development purposes, unless the
9 economic development is a secondary purpose resulting from
10 municipal community development or municipal urban renewal
11 activities to eliminate an existing affirmative harm on society
12 from slum or blighted areas under:

13 (A) Chapter 373 or 374, Local Government Code,
14 other than an activity described by Section 373.002(b)(5), Local
15 Government Code; or

16 (B) Section 311.005(a)(1)(I), Tax Code; or

17 (4) is not for a public use.

18 (c) This section does not affect the authority of an entity
19 authorized by law to take private property through the use of
20 eminent domain for:

21 (1) transportation projects, including, but not
22 limited to, railroads, airports, or public roads or highways;

23 (2) entities authorized under Section 59, Article XVI,
24 Texas Constitution, including:

25 (A) port authorities;

26 (B) navigation districts; and

27 (C) any other conservation or reclamation

1 districts that act as ports;

2 (3) water supply, wastewater, flood control, and
3 drainage projects;

4 (4) public buildings, hospitals, and parks;

5 (5) the provision of utility services;

6 (6) a sports and community venue project approved by
7 voters at an election held on or before December 1, 2005, under
8 Chapter 334 or 335, Local Government Code;

9 (7) the operations of:

10 (A) a common carrier pipeline [~~subject to Chapter~~
11 ~~111, Natural Resources Code, and Section B(3)(b), Article 2.01,~~
12 ~~Texas Business Corporation Act~~]; or

13 (B) an energy transporter, as that term is
14 defined by Section 186.051, Utilities Code;

15 (8) a purpose authorized by Chapter 181, Utilities
16 Code;

17 (9) underground storage operations subject to Chapter
18 91, Natural Resources Code;

19 (10) a waste disposal project; or

20 (11) a library, museum, or related facility and any
21 infrastructure related to the facility.

22 (d) This section does not affect the authority of a
23 governmental entity to condemn a leasehold estate on property owned
24 by the governmental entity.

25 (e) The determination by the governmental or private entity
26 proposing to take the property that the taking does not involve an
27 act or circumstance prohibited by Subsection (b) does not create a

1 presumption with respect to whether the taking involves that act or
2 circumstance.

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

9 (b) The portion of a road constructed under this section
10 that is over the easement may not exceed 40 feet in width.

11 SUBCHAPTER C. PROCEDURES REQUIRED TO INITIATE
12 EMINENT DOMAIN PROCEEDINGS

13 Sec. 2206.101. SHORT TITLE. This subchapter may be cited as
14 the Truth in Condemnation Procedures Act.

15 Sec. 2206.102. APPLICABILITY. The procedures in this
16 subchapter apply only to the use of eminent domain under the laws of
17 this state by a governmental entity.

18 Sec. 2206.103. VOTE ON USE OF EMINENT DOMAIN. (a) Before a
19 governmental entity initiates a condemnation proceeding by filing a
20 petition under Section 21.012, Property Code, the governmental
21 entity must authorize the initiation of the condemnation
22 proceedings at a public meeting by a record vote.

23 (b) A single ordinance, resolution, or order may be adopted
24 for all units of property to be condemned if:

25 (1) the motion required by Subsection (e) indicates
26 that the first record vote applies to all units of property to be
27 condemned; and

1 (2) the minutes of the entity reflect that the first
2 vote applies to all of those units.

3 (c) If more than one member of the governing body objects to
4 adopting a single ordinance, resolution, or order by a record vote
5 for all units of property for which condemnation proceedings are to
6 be initiated, a separate record vote must be taken for each unit of
7 property.

8 (d) For the purposes of Subsections (a) and (c), if two or
9 more units of real property are owned by the same person, the
10 governmental entity may treat those units of property as one unit of
11 property.

12 (e) The motion to adopt an ordinance, resolution, or order
13 authorizing the initiation of condemnation proceedings under
14 Chapter 21, Property Code, must be made in a form substantially
15 similar to the following: "I move that the (name of governmental
16 entity) authorize the use of the power of eminent domain to acquire
17 (describe the property) for (describe the public use)." The
18 description of the property required by this subsection is
19 sufficient if the description of the location of and interest in the
20 property that the governmental entity seeks to acquire is
21 substantially similar to the description that is or could properly
22 be used in a petition to condemn the property under Section 21.012,
23 Property Code.

24 (f) If a project for a public use described by Section
25 2206.051(c)(3) will require a governmental entity to acquire
26 multiple tracts or units of property to construct facilities
27 connecting one location to another location, the governing body of

1 the entity may adopt a single ordinance, resolution, or order by a
2 record vote that delegates the authority to initiate condemnation
3 proceedings to the chief administrative official of the
4 governmental entity.

5 (g) An ordinance, resolution, or order adopted under
6 Subsection (f) is not required to identify specific properties that
7 the governmental entity will acquire. The ordinance, resolution,
8 or order must identify the general area to be covered by the project
9 or the general route that will be used by the governmental entity
10 for the project in a way that provides property owners in and around
11 the area or along the route reasonable notice that the owners'
12 properties may be subject to condemnation proceedings during the
13 planning or construction of the project.

14 SECTION 2. Subchapter B, Chapter 21, Property Code, is
15 amended by adding Section 21.0113 to read as follows:

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

23 SECTION 3. Section 21.012(b), Property Code, is amended to
24 read as follows:

25 (b) The petition must:

26 (1) describe the property to be condemned;

27 (2) state the purpose for which the entity intends to

1 use the property;

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

4 (4) state that the entity and the property owner are
5 unable to agree on the damages; ~~and~~

6 (5) if applicable, state that the entity provided the
7 property owner with the landowner's bill of rights statement in
8 accordance with Section 21.0112; and

9 (6) state that the entity made a bona fide offer to
10 acquire the property from the property owner voluntarily.

11 SECTION 4. Section 21.023, Property Code, is amended to
12 read as follows:

13 Sec. 21.023. DISCLOSURE OF INFORMATION REQUIRED AT TIME OF
14 ACQUISITION. A governmental entity shall disclose in writing to
15 the property owner, at the time of acquisition of the property
16 through eminent domain, that:

17 (1) the owner or the owner's heirs, successors, or
18 assigns are entitled to repurchase the property if the public use
19 for which the property was acquired through eminent domain is
20 canceled before the 10th anniversary of the date of acquisition;
21 and

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

26 SECTION 5. The heading to Section 21.024, Property Code, is
27 amended to read as follows:

1 Sec. 21.024. PRODUCTION OF INFORMATION BY CERTAIN ENTITIES
2 ~~[CONSIDERED TO BE CRITICAL INFRASTRUCTURE]~~.

3 SECTION 6. Sections 21.024(a) and (e), Property Code, are
4 amended to read as follows:

5 (a) ~~[A utility, a common carrier, or a transporter of oil,~~
6 ~~gas, or the products of oil or gas is considered to be within the~~
7 ~~definition of critical infrastructure under Section 421.001,~~
8 ~~Government Code.]~~ Notwithstanding any other law, an entity that is
9 not subject to Chapter 552, Government Code, and that ~~[which is~~
10 ~~considered critical infrastructure and which]~~ is authorized by law
11 to acquire ~~[take]~~ private property through the use of eminent
12 domain is required to produce information as provided by this
13 section if the information is:

14 (1) requested by a person who owns property that is the
15 subject of a proposed or existing eminent domain proceeding; and

16 (2) ~~[, but only if the information is]~~ related to the
17 taking of the person's private property by the entity through the
18 use of eminent domain.

19 (e) Jurisdiction to enforce the provisions of this section
20 resides in:

21 (1) the court in which the condemnation was initiated;
22 or

23 (2) if the condemnation proceeding has not been
24 initiated:

25 (A) a court that would have jurisdiction over a
26 proceeding to condemn the requestor's property; or

27 (B) a court with eminent domain jurisdiction in

1 the county in which the entity has its principal place of business
2 [~~that has jurisdiction over condemnation proceedings under this~~
3 ~~chapter~~].

4 SECTION 7. Section 21.041, Property Code, is amended to
5 read as follows:

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

12 (b) As the basis for assessing actual damages to a property
13 owner from a condemnation, the special commissioners shall, subject
14 to the Texas Rules of Evidence, admit evidence on:

15 (1) the market value, before the condemnation, of the
16 property being condemned;

17 (2) subject to Section 21.042, the net change to the
18 market value of [the injury to the property owner,

19 ~~(3) the benefit to]~~ the property owner's remaining
20 property, considering both injury and benefit to the property
21 owner; and

22 (3) ~~(4)~~ the use of the property for the purpose of
23 the condemnation.

24 SECTION 8. Section 21.042(e), Property Code, is amended to
25 read as follows:

26 (e) If a portion of a tract or parcel of real property is
27 condemned for the use, construction, operation, or maintenance of

1 the state highway system or of a county toll project described by
2 Chapter 284, Transportation Code, that is eligible for designation
3 as part of the state highway system, the special commissioners
4 shall consider any diminished access to the highway and to or from
5 the remaining property to the extent that it affects the present
6 market value of the real property, including any factors considered
7 when determining actual fair market value of property for ad
8 valorem tax purposes [~~or for the use, construction, development,~~
9 ~~operation, or maintenance of an improvement or project by a~~
10 ~~metropolitan rapid transit authority created before January 1,~~
11 ~~1980, with a principal municipality having a population of less~~
12 ~~than 1.9 million and established under Chapter 451, Transportation~~
13 ~~Code, the special commissioners shall determine the damage to the~~
14 ~~property owner regardless of whether the property owner makes a~~
15 ~~claim for damages to the remaining property. In awarding~~
16 ~~compensation or assessing the damages, the special commissioners~~
17 ~~shall consider any special and direct benefits that arise from the~~
18 ~~highway improvement or the transit authority improvement or project~~
19 ~~that are peculiar to the property owner and that relate to the~~
20 ~~property owner's ownership, use, or enjoyment of the particular~~
21 ~~parcel of remaining real property].~~

22 SECTION 9. Sections 21.046(a) and (b), Property Code, are
23 amended to read as follows:

24 (a) A department, agency, instrumentality, or political
25 subdivision of this state shall [~~may~~] provide a relocation advisory
26 service for an individual, a family, a business concern, a farming
27 or ranching operation, or a nonprofit organization that [~~if the~~

1 ~~service]~~ is compatible with the Federal Uniform Relocation
2 Assistance Advisory Program, 42 U.S.C.A. 4601 [~~23 U.S.C.A. 501~~], et
3 seq.

4 (b) This state or a political subdivision of this state
5 shall [~~may~~], as a cost of acquiring real property, pay moving
6 expenses and rental supplements, make relocation payments, provide
7 financial assistance to acquire replacement housing, and
8 compensate for expenses incidental to the transfer of the property
9 if an individual, a family, the personal property of a business, a
10 farming or ranching operation, or a nonprofit organization is
11 displaced in connection with the acquisition.

12 SECTION 10. The heading to Section 21.047, Property Code,
13 is amended to read as follows:

14 Sec. 21.047. ASSESSMENT OF COSTS AND FEES.

15 SECTION 11. Section 21.047, Property Code, is amended by
16 adding Subsection (d) to read as follows:

17 (d) If a court hearing a suit under this chapter determines
18 that a condemning entity did not make a bona fide offer to acquire
19 the property from the property owner voluntarily as required by
20 Section 21.0113, the court shall abate the suit and order the
21 condemnor to make a bona fide offer. If the court finds that by
22 filing a petition under Section 21.012 or by filing any other motion
23 or pleading in the proceeding initiated by the filing of that
24 petition the condemnor violated Chapter 10, Civil Practice and
25 Remedies Code, the court shall order the condemnor to pay:

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

27 (2) any reasonable attorney's fees incurred by the

1 owner that are directly related to the violation.

2 SECTION 12. Section 21.101(a), Property Code, is amended to
3 read as follows:

4 (a) Except as provided in Subsection (b), this subchapter
5 applies only to a real property interest acquired by a governmental
6 entity through eminent domain for a public use, other than a real
7 property interest acquired by a port for deep water navigation. A
8 person from whom the property interest is acquired or that person's
9 heirs, successors, or assigns are entitled to repurchase the
10 property as provided by this subchapter if that public use was
11 cancelled before the 10th anniversary of the date of acquisition or
12 the governmental entity fails to begin the operation or
13 construction of the project for which the property was acquired
14 before the 10th anniversary of that date.

15 SECTION 13. Section 21.102, Property Code, is amended to
16 read as follows:

17 Sec. 21.102. NOTICE TO PREVIOUS PROPERTY OWNER AT TIME OF
18 CANCELLATION OF PUBLIC USE OR ON FAILURE TO BEGIN OPERATION OR
19 CONSTRUCTION OF PROJECT. Not later than the 180th day after the
20 date of the cancellation of the public use for which real property
21 was acquired through eminent domain from a property owner under
22 Subchapter B or the 180th day after the 10th anniversary of the date
23 on which the property was acquired if the governmental entity fails
24 to begin the operation or construction of the project for which the
25 property was acquired before the 10th anniversary of that date, the
26 governmental entity shall send by certified mail, return receipt
27 requested, to the property owner or the owner's heirs, successors,

1 or assigns a notice containing:

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

4 (2) an identification of the public use for which the
5 property had been acquired and a statement that the public use has
6 been canceled or the governmental entity has failed to begin the
7 operation or construction of the project for which the property was
8 acquired; and

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

11 SECTION 14. Section 21.103(b), Property Code, is amended to
12 read as follows:

13 (b) As soon as practicable after receipt of a [the]
14 notification under Subsection (a), the governmental entity shall
15 offer to sell the property interest to the person for the price paid
16 to the owner by the governmental entity at the time the governmental
17 entity acquired the property through eminent domain [~~fair market~~
18 ~~value of the property at the time the public use was canceled~~]. The
19 person's right to repurchase the property expires on the 90th day
20 after the date on which the governmental entity makes the offer.

21 SECTION 15. Subchapter B, Chapter 111, Natural Resources
22 Code, is amended by adding Section 111.0195 to read as follows:

23 Sec. 111.0195. RIGHT OF EMINENT DOMAIN: ADDITIONAL
24 PROCEDURES. (a) This section applies only to a condemnation
25 proceeding initiated by a common carrier, as that term is defined by
26 Section 111.002.

27 (b) On or before the date a common carrier that intends to

1 exercise the power of eminent domain files a condemnation petition,
2 the common carrier must serve the owner of the property to be
3 acquired with notice that the common carrier intends to initiate
4 condemnation proceedings.

5 (c) The special commissioners in an eminent domain
6 proceeding to which this section applies:

7 (1) may not schedule a hearing to assess damages
8 before the 30th day after the date of the special commissioners'
9 appointment; and

10 (2) must serve a property owner with notice informing
11 the property owner of the time and place of the hearing not later
12 than the 21st day before the date set for the hearing.

13 (d) A court that has jurisdiction over a condemnation
14 proceeding may appoint a replacement special commissioner if:

15 (1) the property owner or the common carrier objects
16 to the appointment of a special commissioner by filing a written
17 statement of the person's objections on the grounds of:

18 (A) a conflict of interest; or

19 (B) other good cause; and

20 (2) the court determines in a hearing that good cause
21 is shown.

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

26 (f) A notice to a property owner under this section must be
27 served by:

1 (1) regular mail; and

2 (2) certified mail, return receipt requested.

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

5 SECTION 16. Subchapter G, Chapter 13, Water Code, is
6 amended by adding Section 13.258 to read as follows:

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

12 (b) The water and sewer utility shall exercise the power of
13 eminent domain in the manner provided by Chapter 21, Property Code.

14 (c) The water and sewer utility may not exercise the power
15 of eminent domain to condemn land to acquire rights to underground
16 water or for water or water rights.

17 (d) A water and sewer utility may not exercise the power of
18 eminent domain in a municipality with a population of more than 1.7
19 million or in the municipality's extraterritorial jurisdiction to
20 condemn land in which the municipality owns a fee, easement, or
21 lesser property interest.

22 SECTION 17. Subchapter D, Chapter 101, Government Code, is
23 amended by adding Section 101.06161 to read as follows:

24 Sec. 101.06161. DISTRICT COURT FEES AND COSTS: PROPERTY
25 CODE. The clerk of a district court shall collect the following
26 fees and costs under the Property Code:

27 (1) court costs for each special commissioner in an

1 eminent domain proceeding (Sec. 21.047, Property Code) . . . as
2 taxed by the court, \$10 or more; and

3 (2) court costs and attorney's fees in an eminent
4 domain proceeding (Sec. 21.047, Property Code) . . . as taxed by
5 the court and as reasonable, respectively.

6 SECTION 18. Section 101.0816, Government Code, is amended
7 to read as follows:

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

11 (1) court costs [~~a court cost in the amount of \$10 or~~
12 ~~more, as taxed by the court under Section 21.047, Property Code,~~]
13 for each special commissioner in an eminent domain proceeding (Sec.
14 21.047, Property Code) . . . as taxed by the court, \$10 or more; and

15 (2) court costs and attorney's fees in an eminent
16 domain proceeding (Sec. 21.047, Property Code) . . . as taxed by
17 the court and as reasonable, respectively.

18 SECTION 19. Subchapter G, Chapter 101, Government Code, is
19 amended by adding Section 101.12151 to read as follows:

20 Sec. 101.12151. COUNTY COURT FEES AND COSTS: PROPERTY CODE.
21 The clerk of a county court shall collect the following fees and
22 costs under the Property Code:

23 (1) court costs for each special commissioner in an
24 eminent domain proceeding (Sec. 21.047, Property Code) . . . as
25 taxed by the court, \$10 or more; and

26 (2) court costs and attorney's fees in an eminent
27 domain proceeding (Sec. 21.047, Property Code) . . . as taxed by

1 the court and as reasonable, respectively.

2 SECTION 20. (a) Section 21.024(i), Property Code, is
3 repealed.

4 (b) Section 552.0037, Government Code, is repealed.

5 SECTION 21. Not later than January 1, 2011, the comptroller
6 shall:

7 (1) identify all public and private entities with
8 eminent domain authority; and

9 (2) make recommendations to the legislature and the
10 governor regarding:

11 (A) which entities have, need, or should have
12 eminent domain authority;

13 (B) whether that eminent domain authority of
14 those entities should be continued, expanded, or limited; and

15 (C) the cause and effect of continuing,
16 eliminating, expanding, or limiting the eminent domain authority of
17 those entities.

18 SECTION 22. The changes in law made by Chapter 2206,
19 Government Code, and Chapter 21, Property Code, as amended by this
20 Act, and Section 111.0195, Natural Resources Code, and Section
21 13.258, Water Code, as added by this Act, apply only to a
22 condemnation proceeding in which the petition is filed on or after
23 the effective date of this Act and to any property condemned through
24 the proceeding. A condemnation proceeding in which the petition is
25 filed before the effective date of this Act and any property
26 condemned through the proceeding is governed by the law in effect
27 immediately before that date, and that law is continued in effect

1 for that purpose.

2 SECTION 23. This Act takes effect September 1, 2009.