

By: Coleman

H.B. No. 3709

A BILL TO BE ENTITLED

AN ACT

1  
2 Relating to certain charitable corporations granted eminent domain  
3 power by Section 6(b), Chapter 178 (S.B. 289), Acts of the 56th  
4 Legislature, Regular Session, 1959 (Article 3183b-1, Vernon's  
5 Texas Civil Statutes), repealing the power of eminent domain and  
6 condemnation of residential property adjacent or contiguous to such  
7 medical center, for the purpose of constructing, maintaining, and  
8 operating health care, educational and support entities as a part  
9 of the medical center or related facilities; and amending Article  
10 3183b-1 to provide for legal remedies and measures to rectify past  
11 condemnation practices within residential neighborhoods.

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

13 SECTION 1. Title 51, Art. 3183b-1, Section 2, Texas Revised  
14 Civil Statutes, is amended to read as follows:

15 "Sec. 2.

16 (a) EMINENT DOMAIN POWER. Any charitable corporation as  
17 defined in Section 1 of this Act shall have the power of eminent  
18 domain and condemnation for the purpose of acquiring lands adjacent  
19 or contiguous (whether or not separated by public thoroughfares) to  
20 such medical center upon which are to be constructed, maintained,  
21 and operated as a part of the medical center, facilities dedicated  
22 to medical care, teaching, and research for the public welfare,  
23 including ancillary or service activities generally and  
24 customarily recognized as essential to such facilities in a medical

1 center.

2 (b) RESIDENTIAL PROPERTY LIMITATIONS.

3 (1) Definitions.

4 (A) "Deed restricted residential property" shall  
5 mean property governed by existing deed restrictions which restrict  
6 the property to residential use within a subdivision, or within a  
7 section of a subdivision. Residential use shall include  
8 townhouses, condominiums, and multifamily residential housing  
9 included as a section or component of a residential subdivision.

10 (B) "Single family residential property" shall  
11 have the meaning defined by the generally-applicable municipal  
12 land-use ordinance, and which is located in a predominately  
13 single-family residential subdivision or established residential  
14 area, without regard to whether deed restrictions are in force.  
15 "Single family residential property" shall include townhouses,  
16 condominiums, and multifamily residential housing generally  
17 considered to be part of the predominately single-family  
18 residential subdivision or the established residential area. A  
19 single family residential property owners association in a non-deed  
20 restricted area may be formed pursuant to the procedures prescribed  
21 in Article, which shall entitle it to exercise all of the rights of  
22 a property owners' association under the Property Code  
23 notwithstanding the lack of deed restrictions. A management  
24 district more than fifty (50) percent of whose voters are bona fide  
25 resident landowners may also qualify as a property owners  
26 association. In any election required or permitted by the Property  
27 Code, legal or beneficial owners of more than one lot in a property

1 owners association election shall have the right to cast no more  
2 than one vote.

3 (C) "Residential area" shall mean a deed  
4 restricted residential property subdivision, or a single family  
5 residential property area, or a combination of such areas.

6 (D) "Blockbusting activity" shall mean avoidable  
7 actions or omissions to act by a Medical Center Condemnation Entity  
8 or its members, including without limitation actions having the  
9 effect of increasing traffic, noise or light intrusion, or similar  
10 actions or omissions by investors, including actions involving  
11 demolition of or allowing improved property to become blighted,  
12 whether in anticipation of sale to a Medical Center Condemnation  
13 Entity or its members or otherwise, and which are intended, or which  
14 will foreseeably cause, a substantial reduction of residential-use  
15 property values in a residential area.

16 (E) "Medical Center Condemning Entity" shall  
17 mean any entity having the power of eminent domain under Section 1,  
18 or any entity which has the authority to purchase, lease, or  
19 otherwise use or occupy, property acquired by a Medical Center  
20 Condemnation Entity.

21 (F) "Future use" shall mean property acquired in  
22 a residential area through private contract or by formal  
23 condemnation proceedings by a Medical Center Condemnation Entity or  
24 its members, for which the Medical Center Condemnation Entity  
25 member has no plan for specific, immediate use. If substantial  
26 construction of permanent medical facilities designed to deliver  
27 health care for the use and benefit of the public, excluding surface

1 parking not related to the medical facilities, has not commenced on  
2 such property within two years of its acquisition, the property  
3 shall be deemed to be property acquired for future use.

4 (G) "Condemnation" shall mean a taking through  
5 formal court proceedings, or any acquisition by a Medical Center  
6 Condemning Entity which could have, at the time of the acquisition,  
7 initiated court proceedings for condemnation. It shall be  
8 irrelevant whether the Medical Center Condemning Entity shall have  
9 overtly threatened condemnation or not.

10 (2) NO CONDEMNATION OF RESIDENTIAL PROPERTY. The  
11 power of eminent domain and condemnation shall not apply to any  
12 residential area, nor may a corporation defined in Section 1 of this  
13 Act otherwise acquire residential area property, directly or  
14 through an agent or trustee, for future use, nor may it acquire  
15 residential property whose value has been materially diminished by  
16 blockbusting activity. Nothing herein shall limit any rights that  
17 may be expressly granted in current residential deed restrictions  
18 that authorize express waiver, amendment, or variances with respect  
19 to the restrictions, or as may be determined by the "Property  
20 owners' association" as defined in Section 202.001 of the Property  
21 Code pursuant to applicable provisions of the Property Code or to a  
22 residential property owners association formed in a non-deed  
23 restricted area. A Medical Center Condemnation Entity may not  
24 challenge the validity of the deed restrictions in a condemnation  
25 proceeding, or in contemplation of condemnation.

26 (3) BLOCKBUSTING PROHIBITED. No Medical Center  
27 Condemnation Entity or its members may purchase property, by

1 private contract or otherwise, in a residential area whose property  
2 values have been substantially diminished by blockbusting  
3 activity. Residential area property held for future use shall,  
4 within a reasonable time not to exceed one year, be sold by the  
5 Medical Center Condemnation Entity to a purchaser who shall  
6 covenant that the property will be restored to its former status as  
7 a bona fide single family residential property, or, if applicable,  
8 reintegrated into its original deed restricted residential  
9 property subdivision.

10 (4) REMEDIATION REQUIRED IN CERTAIN CASES. Parking  
11 facilities constructed on land owned by a Medical Center Condemning  
12 Entity that was acquired after January 1, 2004 within a residential  
13 area, or which is located directly adjacent to a residential area,  
14 shall be required to remediate the effects of such acquisition.  
15 Such remediation shall include:

16 (A) the installation of louvers, screens,  
17 panels, or other permanent fixtures that reduce the emission of  
18 light from parking garages to the same level of light emission from  
19 the windows of office or hospital facilities of the Medical Center  
20 Condemnation Entity or its members that were constructed after  
21 January 1, 2004;

22 (B) landscaping with large evergreen trees and  
23 evergreen plants to mitigate, to the maximum practical extent, the  
24 adverse property value impact of the parking facilities upon the  
25 adjoining residential area; and

26 (C) sound reduction measures to mitigate, to the  
27 maximum practical extent, the noise emitted from such facilities,

1 as well as from noise generated by mechanical systems erected in  
2 conjunction with such parking garages on the formerly residential  
3 property.

4 (c) COSTS OF LITIGATION. A property owners association,  
5 individual landowners who are actually in residence in a single  
6 family residence who prevails in any suit seeking damages or  
7 equitable relief arising under this Subsection 2(b) shall recover  
8 its costs of litigation, including reasonable attorneys fees,  
9 witness and other litigation expenses, and costs of court.

10 (1) Any property owners association from the affected  
11 residential area, or bordering on the residential area, and any  
12 management district more than percent of whose voters are bona fide  
13 landowner residents, shall be a proper party to any proceeding  
14 under this Act.

15 (2) The Court may, in its discretion,

16 (A) award, periodically during the pendency of  
17 the litigation, interim costs of litigation to the qualified  
18 landowners or property owners associations, which award shall be  
19 final and not subject to repayment; and

20 (B) award costs of litigation to landowners or  
21 property owners association in any case in which the litigation  
22 brought about, directly or indirectly, a beneficial result to the  
23 deed restricted residential area, adjoining residential areas, or  
24 to the public interest, notwithstanding which party may have  
25 technically prevailed on the merits.

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