

By: Estes

S.B. No. 18

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. If the motion
23 required by Subsection (c) indicates that the first record vote
24 applies to all units of property to be condemned, and the minutes of
25 the entity reflect that the first vote applies to all of those
26 units, a single ordinance, resolution, or order may be adopted for
27 all of those units of property. If more than one member of the

1 governing body objects to adopting a single ordinance, resolution,
2 or order by a record vote for all units of property for which
3 condemnation proceedings are to be initiated, a separate record
4 vote must be taken for each unit of property.

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

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

20 (d) If a project for a public use described by Section
21 2206.051(c)(3) will require a governmental entity to acquire
22 multiple tracts or units of property to construct facilities
23 connecting one location to another location, the governing body of
24 the entity may adopt a single ordinance, resolution, or order by a
25 record vote that delegates the authority to initiate condemnation
26 proceedings to the chief administrative official of the
27 governmental entity.

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

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

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

19 SECTION 3. Subsection (b), Section 21.012, Property Code,
20 is amended to read as follows:

21 (b) The petition must:

- 22 (1) describe the property to be condemned;
- 23 (2) state the purpose for which the entity intends to
24 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; ~~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; and

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

7 SECTION 4. Section 21.023, Property Code, is amended to
8 read as follows:

9 Sec. 21.023. DISCLOSURE OF INFORMATION REQUIRED AT TIME OF
10 ACQUISITION. A governmental entity shall disclose in writing to
11 the property owner, at the time of acquisition of the property
12 through eminent domain, that:

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

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

22 SECTION 5. Subchapter B, Chapter 21, Property Code, is
23 amended by adding Section 21.025 to read as follows:

24 Sec. 21.025. PRODUCTION OF INFORMATION BY CERTAIN ENTITIES.

25 (a) Notwithstanding any other law, an entity that is not subject
26 to Chapter 552, Government Code, and is authorized by law to acquire
27 private property through the use of eminent domain is required to

1 produce information as provided by this section if the information
2 is:

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

5 (2) related to the taking of the person's private
6 property by the entity through the use of eminent domain.

7 (b) An entity described by Subsection (a) is required under
8 this section only to produce information relating to the
9 condemnation of the specific property owned by the requestor as
10 described in the request. A request under this section must contain
11 sufficient details to allow the entity to identify the specific
12 tract of land in relation to which the information is sought.

13 (c) The entity shall respond to a request in accordance with
14 the Texas Rules of Civil Procedure as if the request was made in a
15 matter pending before a state district court.

16 (d) Exceptions to disclosure provided by this chapter and
17 the Texas Rules of Civil Procedure apply to the disclosure of
18 information under this section.

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 (f) If the entity refuses to produce information requested
3 in accordance with this section and the court determines that the
4 refusal violates this section, the court may award the requestor's
5 reasonable attorney's fees incurred to compel the production of the
6 information.

7 (g) If an entity that received a request in accordance with
8 this section does not produce the requested information on or
9 before the 30th day after the request is made, the attorney general
10 may file an action in a court described by Subsection (e) to enforce
11 this section on the request of the person who made the request for
12 the information. If the court determines that the failure to
13 produce the information is a violation of this section, the court
14 may award the attorney general's reasonable expenses incurred to
15 compel the production of the information.

16 (h) If the attorney general files an action under Subsection
17 (g), the person who requested that the attorney general file the
18 action may not file a private action to enforce this section with
19 respect to the same request for information.

20 SECTION 6. Section 21.041, Property Code, is amended to
21 read as follows:

22 Sec. 21.041. EVIDENCE. (a) For the purposes of this
23 section, market value is the price a property will bring when
24 offered for sale by a person who desires to sell the property, but
25 is not obliged to sell the property, and is bought by a person who
26 desires to buy the property, but is not under a necessity to buy the
27 property.

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

4 (1) the market value, before the condemnation, of the
5 property being condemned;

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

8 [~~(3) the benefit to~~] the property owner's remaining
9 property, considering both injury and benefit to the property
10 owner; and

11 (3) [~~(4)~~] the use of the property for the purpose of
12 the condemnation.

13 SECTION 7. Subsection (e), Section 21.042, Property Code,
14 is amended to read as follows:

15 (e) If a portion of a tract or parcel of real property is
16 condemned for the use, construction, operation, or maintenance of
17 the state highway system or of a county toll project described by
18 Chapter 284, Transportation Code, that is eligible for designation
19 as part of the state highway system, the special commissioners
20 shall consider any diminished access to the highway and to or from
21 the remaining property to the extent that it affects the present
22 market value of the real property, including any factors considered
23 when determining actual fair market value of property for ad
24 valorem tax purposes [~~or for the use, construction, development,~~
25 ~~operation, or maintenance of an improvement or project by a~~
26 ~~metropolitan rapid transit authority created before January 1,~~
27 ~~1980, with a principal municipality having a population of less~~

1 ~~than 1.9 million and established under Chapter 451, Transportation~~
2 ~~Code, the special commissioners shall determine the damage to the~~
3 ~~property owner regardless of whether the property owner makes a~~
4 ~~claim for damages to the remaining property. In awarding~~
5 ~~compensation or assessing the damages, the special commissioners~~
6 ~~shall consider any special and direct benefits that arise from the~~
7 ~~highway improvement or the transit authority improvement or project~~
8 ~~that are peculiar to the property owner and that relate to the~~
9 ~~property owner's ownership, use, or enjoyment of the particular~~
10 ~~parcel of remaining real property].~~

11 SECTION 8. Subsections (a) and (b), Section 21.046,
12 Property Code, are amended to read as follows:

13 (a) A department, agency, instrumentality, or political
14 subdivision of this state shall ~~may~~ provide a relocation advisory
15 service for an individual, a family, a business concern, a farming
16 or ranching operation, or a nonprofit organization that ~~if the~~
17 ~~service~~ is compatible with the Federal Uniform Relocation
18 Assistance Advisory Program, 23 U.S.C.A. 501, et seq.

19 (b) This state or a political subdivision of this state
20 shall ~~may~~, as a cost of acquiring real property, pay moving
21 expenses and rental supplements, make relocation payments, provide
22 financial assistance to acquire replacement housing, and
23 compensate for expenses incidental to the transfer of the property
24 if an individual, a family, the personal property of a business, a
25 farming or ranching operation, or a nonprofit organization is
26 displaced in connection with the acquisition.

27 SECTION 9. The heading to Section 21.047, Property Code, is

1 amended to read as follows:

2 Sec. 21.047. ASSESSMENT OF COSTS AND FEES.

3 SECTION 10. Section 21.047, Property Code, is amended by
4 adding Subsection (d) to read as follows:

5 (d) If a court hearing a suit under this chapter determines
6 that a condemning entity did not make a bona fide offer to acquire
7 the property from the property owner voluntarily as required by
8 Section 21.0113, the court shall abate the suit and order the
9 condemnor to make a bona fide offer. If the court finds that by
10 filing a petition under Section 21.012 or by filing any other motion
11 or pleading in the proceeding initiated by the filing of that
12 petition the condemnor violated Chapter 10, Civil Practice and
13 Remedies Code, the court shall order the condemnor to pay:

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

15 (2) any reasonable attorney's fees incurred by the
16 owner that are directly related to the violation.

17 SECTION 11. Subsection (a), Section 21.101, Property Code,
18 is amended to read as follows:

19 (a) Except as provided in Subsection (b), this subchapter
20 applies only to a real property interest acquired by a governmental
21 entity other than a port that is acquiring property for deep water
22 navigation through eminent domain for a public use. A person from
23 whom the property interest is acquired or that person's heirs,
24 successors, or assigns are entitled to repurchase the property as
25 provided by this subchapter if that public use was canceled before
26 the 10th anniversary of the date of acquisition or the governmental
27 entity fails to begin the operation or construction of the project

1 for which the property was acquired before the 10th anniversary of
2 that date.

3 SECTION 12. Section 21.102, Property Code, is amended to
4 read as follows:

5 Sec. 21.102. NOTICE TO PREVIOUS PROPERTY OWNER AT TIME OF
6 CANCELLATION OF PUBLIC USE OR ON FAILURE TO BEGIN OPERATION OR
7 CONSTRUCTION OF PROJECT. Not later than the 180th day after the
8 date of the cancellation of the public use for which real property
9 was acquired through eminent domain from a property owner under
10 Subchapter B or the 180th day after the 10th anniversary of the date
11 on which the property was acquired if the governmental entity fails
12 to begin the operation or construction of the project for which the
13 property was acquired before the 10th anniversary of that date, the
14 governmental entity shall send by certified mail, return receipt
15 requested, to the property owner or the owner's heirs, successors,
16 or assigns a notice containing:

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

19 (2) an identification of the public use for which the
20 property had been acquired and a statement that the public use has
21 been canceled or the governmental entity has failed to begin the
22 operation or construction of the project for which the property was
23 acquired; and

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

26 SECTION 13. Subsection (b), Section 21.103, Property Code,
27 is amended to read as follows:

1 (b) As soon as practicable after receipt of a ~~[the]~~
2 notification under Subsection (a), the governmental entity shall
3 offer to sell the property interest to the person for the price paid
4 to the owner by the governmental entity at the time the governmental
5 entity acquired the property through eminent domain ~~[fair market~~
6 ~~value of the property at the time the public use was canceled]~~. The
7 person's right to repurchase the property expires on the 90th day
8 after the date on which the governmental entity makes the offer.

9 SECTION 14. Subchapter B, Chapter 111, Natural Resources
10 Code, is amended by adding Section 111.0195 to read as follows:

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

15 (b) A common carrier that intends to exercise the power of
16 eminent domain must serve the owner of the property to be acquired
17 with notice that the common carrier intends to initiate
18 condemnation proceedings on or before the date the common carrier
19 files a condemnation petition.

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

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

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

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

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

6 (A) a conflict of interest; or

7 (B) other good cause; and

8 (2) the court determines in a hearing that good cause
9 is shown.

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

14 (f) A notice required under this section must be served by:

15 (1) regular mail; and

16 (2) certified mail, return receipt requested, to the
17 property owner.

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

20 SECTION 15. Subchapter G, Chapter 13, Water Code, is
21 amended by adding Section 13.258 to read as follows:

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

27 (b) The water and sewer utility shall exercise the power of

1 eminent domain in the manner provided by Chapter 21, Property Code.

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

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

10 SECTION 16. Subchapter D, Chapter 101, Government Code, is
11 amended by adding Section 101.06151 to read as follows:

12 Sec. 101.06151. DISTRICT COURT FEES AND COSTS: PROPERTY
13 CODE. The clerk of a district court shall collect fees and costs
14 under the Property Code as follows:

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

18 (2) court costs, other than costs collected under
19 Subdivision (1), and attorney's fees in an eminent domain
20 proceeding (Sec. 21.047, Property Code) . . . as taxed by the court
21 and as reasonable, respectively.

22 SECTION 17. Section 101.0816, Government Code, is amended
23 to read as follows:

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

27 (1) [a] court costs [~~cost in the amount of \$10 or more,~~

1 ~~as taxed by the court under Section 21.047, Property Code,~~] for each
2 special commissioner in an eminent domain proceeding (Sec. 21.047,
3 Property Code) . . . as taxed by the court, \$10 or more; and

4 (2) court costs, other than costs collected under
5 Subdivision (1), and attorney's fees in an eminent domain
6 proceeding (Sec. 21.047, Property Code) . . . as taxed by the court
7 and as reasonable, respectively.

8 SECTION 18. The following laws are repealed:

9 (1) Section 552.0037, Government Code; and

10 (2) Subsection (i), Section 21.024, Property Code.

11 SECTION 19. Not later than January 1, 2011, the comptroller
12 of public accounts shall:

13 (1) identify all public and private entities with
14 eminent domain authority; and

15 (2) make recommendations to the legislature and the
16 governor regarding:

17 (A) which entities have, need, or should have
18 eminent domain authority;

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

21 (C) the cause and effect of continuing,
22 eliminating, expanding, or limiting the eminent domain authority of
23 those entities.

24 SECTION 20. The changes in law made by Chapter 2206,
25 Government Code, and Chapter 21, Property Code, as amended by this
26 Act, apply only to a condemnation proceeding in which the petition
27 is filed on or after the effective date of this Act and to any

1 property condemned through the proceeding. A condemnation
2 proceeding in which the petition is filed before the effective date
3 of this Act and any property condemned through the proceeding is
4 governed by the law in effect immediately before that date, and that
5 law is continued in effect for that purpose.

6 SECTION 21. Section 111.0195, Natural Resources Code, as
7 added by this Act, applies only to a condemnation proceeding in
8 which the petition is filed on or after the effective date of this
9 Act and to any property condemned through the proceeding. A
10 condemnation proceeding in which the petition is filed before the
11 effective date of this Act and any property condemned through the
12 proceeding is governed by the law in effect immediately before that
13 date, and that law is continued in effect for that purpose.

14 SECTION 22. This Act takes effect September 1, 2009.