

## **BILL ANALYSIS**

C.S.S.B. 18  
By: Estes  
Land & Resource Management  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The Fifth Amendment to the United States Constitution, commonly referred to as the "takings clause," prohibits the taking of private property for public use without just compensation. Section 17, Article I, Texas Constitution, prohibits a person's property from being taken, damaged, or destroyed for or applied to public use without adequate compensation unless that person consents to the taking and only if the taking is for certain purposes. C.S.S.B 18 makes changes, additions, and deletions to provisions in state law relating to eminent domain and condemnation in an attempt to reform various aspects of the power of eminent domain and condemnation in Texas.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.S.B. 18 amends the Government Code to add a taking that is not for a public use to the list of prohibited private property takings through the use of eminent domain by a governmental or private entity. The bill specifies that provisions relating to the limitation on eminent domain for private parties or economic development purposes do not affect the authority of an entity authorized by law to take private property through the use of eminent domain for the operations of a common carrier pipeline, rather than a common carrier subject to Natural Resources Code provisions relating to common carriers, public utilities, and common purchasers and subject to a certain provision of the expired Texas Business Corporation Act.

C.S.S.B. 18 authorizes a property owner whose property is acquired through the use of eminent domain for the purpose of creating an easement through that owner's property to construct streets or roads, including gravel, asphalt, or concrete streets or roads, at any locations above the easement that the property owner chooses. The bill requires the portion of such a street or road that is within the area covered by the easement to cross the easement at or near 90 degrees and prohibits that portion from exceeding 40 feet in width, from causing a violation of any applicable pipeline regulation, or from interfering with the operation and maintenance of any pipeline. The bill requires the property owner, at least 30 days before the date on which construction of an asphalt or concrete street or road that will be located wholly or partly in an area covered by an easement used for a pipeline is scheduled to begin, to submit plans for the proposed construction to the owner of the easement. The bill makes these limitations on easements provisions applicable only to an easement acquired by an entity for the purpose of a pipeline to be used for oil or gas exploration or production activities.

C.S.S.B. 18 establishes the Truth in Condemnation Procedures Act as a short title for citing its provisions relating to procedures required to initiate an eminent domain proceeding and makes such procedures applicable only to the use of eminent domain under state law by a governmental entity. The bill requires a governmental entity, before initiating an eminent domain

condemnation proceeding by filing a petition, to authorize the initiation of the condemnation proceeding at a public meeting by a record vote and include in the required notice for the public meeting, in addition to other information as required by open meetings laws, the consideration of the use of eminent domain to condemn property as an agenda item and a map of the general area or general route that may be affected by the condemnation proceeding. The bill authorizes a single ordinance, resolution, or order to be adopted for all units of property to be condemned if the required motion to adopt an ordinance, resolution, or order authorizing the initiation of condemnation proceedings indicates that the first record vote applies to all units of property to be condemned and the minutes of the governmental entity reflect that the first vote applies to all of those units. The bill requires a separate record vote to be taken for each unit of property if more than one member of the governing body objects to adopting a single ordinance, resolution, or order by a record vote for all units of property for which condemnation proceedings are to be initiated. The bill authorizes the governmental entity, for certain purposes, to treat two or more units of real property owned by the same person as one unit of property. The bill sets out the required form of the motion to adopt an ordinance, resolution, or order authorizing the initiation of condemnation proceedings and establishes requirements for the property description required in the motion to be considered sufficient. The bill authorizes the governing body of a governmental entity to adopt a single ordinance, resolution, or order by a record vote that delegates the authority to initiate condemnation proceedings to the chief administrative official of the governmental entity if a water supply, wastewater, flood control, or drainage project for a public use will require the governmental entity to acquire multiple tracts or units of property to construct facilities connecting one location to another location. The bill establishes that such an adopted ordinance, resolution, or order is not required to identify specific properties that the governmental entity will acquire. The bill requires the ordinance, resolution, or order to identify the general area to be covered by the project or the general route that will be used by the governmental entity for the project in a way that provides property owners in and around the area or along the route reasonable notice that the owners' properties may be subject to condemnation proceedings during the planning or construction of the project.

C.S.S.B. 18 requires an entity, including a private entity, authorized by the state by a general or special law to exercise the power of eminent domain, not later than December 31, 2012, to submit to the comptroller of public accounts a letter stating that the entity is authorized by the state to exercise the power of eminent domain and identifying each provision of law that grants the entity that authority. The bill requires the entity to send the letter by certified mail, return receipt requested. The bill suspends the authority of an entity to exercise the power of eminent domain beginning September 1, 2013, if the entity does not submit such a letter on or before that date and provides that such authority remains suspended until the entity submits the letter. The bill requires the comptroller, not later than March 1, 2013, to submit to the governor, the lieutenant governor, the speaker of the house of representatives, the presiding officers of the appropriate standing committees of the senate and the house of representatives, and the Texas Legislative Council a report that contains the name of each entity that submitted the letter and a corresponding list of the provisions granting eminent domain authority as identified by each entity. The bill makes these provisions relating to the reporting and suspension of eminent domain authority inapplicable to an entity that was created or that acquired the power of eminent domain on or after December 31, 2012.

C.S.S.B. 18 amends the Property Code to refer to "entity" rather than "governmental entity" in the general law on eminent domain proceedings. The bill, in a provision requiring an entity with eminent domain authority that wants to acquire real property for a public use to disclose any and all appraisal reports to the property owner, requires the disclosure to be made by certified mail, return receipt requested, to be made at the time an offer to lease the property is made, in addition to the time an offer to purchase is made, as applicable, and to be made on any and all appraisal reports prepared in the 10 years preceding the date of the offer rather than all reports used in determining the final valuation offer. The bill, in a provision requiring a property owner to disclose certain appraisal reports to the entity seeking to acquire the property, requires such disclosure to take place not later than the earlier of the 10th day after the date of receipt of an

appraisal report or the third business day before the date of a special commissioner's hearing if an appraisal report is to be used at the hearing, rather than take place within 10 days of receipt of appraisal reports but no later than 10 days prior to the special commissioner's hearing. The bill prohibits an entity seeking to acquire property that the entity is authorized to obtain through eminent domain from including a confidentiality provision in an offer or agreement to acquire the property. The bill requires the entity to inform the property owner that the owner has the right to discuss any offer or agreement regarding the entity's acquisition of the property with others or to keep the offer or agreement confidential, unless the offer or agreement is subject to state public information law.

C.S.S.B. 18 requires an entity with eminent domain authority that wants to acquire real property for a public use to make a bona fide offer to acquire the property from the owner voluntarily. The bill establishes that a bona fide offer has been made if an initial offer is made in writing to a property owner; a final offer is made in writing to the property owner; the final offer is made on or after the 30th day after the date on which the entity makes a written initial offer to the property owner; before making a final offer, the entity obtains a written appraisal from a certified appraiser of the value of the property being acquired and the damages, if any, to any of the property owner's remaining property; the final offer is equal to or greater than the amount of the written appraisal obtained by the entity; a copy of the written appraisal, a copy of the deed, easement, or other instrument conveying the property sought to be acquired, and the landowner's bill of rights statement are included with the final offer or have been previously provided to the property owner by the entity; and the entity provides the property owner with at least 14 days to respond to the final offer and the property owner does not agree to the terms of the final offer within that period. The bill requires a private entity with eminent domain authority, before the entity begins negotiations with a property owner to acquire real property for the purpose of a pipeline, to provide the commissioners court of a county in which the property to be acquired is located notice of the proposed route for the pipeline in that county.

C.S.S.B. 18, in a provision authorizing the United States, the State of Texas, a political subdivision of the state, a corporation with eminent domain authority, or an irrigation, water improvement, or water power control district created by law that wants to acquire real property for public use but is unable to agree with the owner of the property on the amount of damages to begin a condemnation proceeding by filing a petition in the proper court, removes the specification of types of entities and instead refers to an entity with eminent domain authority. The bill requires the petition, among other things, to state with specificity the public use for which the entity intends to acquire the property, rather than to state the purpose for which the entity intends to use the property, and to state that the entity made a bona fide offer to acquire the property from the owner voluntarily. The bill requires an entity that files a petition to provide a copy of the petition to the property owner by certified mail, return receipt requested.

C.S.S.B. 18, in a provision requiring the judge of a court in which a condemnation petition is filed or to which an eminent domain case is assigned to appoint special commissioners to assess the damages of the owner of the property being condemned, requires the judge to appoint three disinterested real property owners, rather than freeholders, who reside in the county. The bill requires the judge to provide each party a reasonable period to strike one of the three commissioners appointed by the judge. The bill makes the judge's appointment of a replacement mandatory, rather than discretionary, if a person fails to serve as a commissioner or is struck by a party to the suit.

C.S.S.B. 18 prohibits the special commissioners in an eminent domain proceeding from scheduling a hearing to assess damages before the 20th day after the date the special commissioners were appointed.

C.S.S.B. 18 extends, from not later than the 11th day before the day set for a hearing to not later than the 20th day before the day set for a hearing, the deadline by which notice of the hearing is required to be served on a party in an eminent domain proceeding.

C.S.S.B. 18, in a provision requiring certain disclosure by the entity with eminent domain authority at the time of acquisition of the property through eminent domain, establishes that the owner or the owner's heirs, successors, or assigns may be entitled, rather than are entitled, to repurchase the property or request from the disclosing entity certain information relating to the use of the property and any actual progress made toward that use and establishes that the repurchase price is the price paid to the owner by the entity at the time the entity acquired the property through eminent domain, rather than the fair market value of the property at the time the public use was canceled.

C.S.S.B. 18 makes a change conforming to provisions governing the right of repurchase as amended by the bill.

C.S.S.B. 18 provides that an entity that is not subject to state public information law and is authorized by law to acquire private property through the use of eminent domain is required to produce certain information if the information is requested by a person who owns property that is the subject of a proposed or existing eminent domain proceeding and is related to the taking of the person's private property by the entity through the use of eminent domain. The bill provides that such an entity is required only to produce information relating to the condemnation of the specific property owned by the requestor as described in the request. The bill requires a request to contain sufficient details to allow the entity to identify the specific tract of land in relation to which the information is sought. The bill requires the entity to respond to a request in accordance with the Texas Rules of Civil Procedure as if the request was made in a matter pending before a state district court. The bill makes exceptions to disclosure provided by state law on eminent domain proceedings and the Texas Rules of Civil Procedure applicable to the required disclosure of information by such an entity. The bill establishes that jurisdiction to enforce these disclosure provisions resides in the court in which the condemnation was initiated or, if the condemnation proceeding has not been initiated, a court that would have jurisdiction over a proceeding to condemn the requestor's property or a court with eminent domain jurisdiction in the county in which the entity has its principal place of business. The bill authorizes the court to award the requestor's reasonable attorney's fees incurred to compel the production of the information if the entity refuses to produce information requested and the court determines that the refusal violates the production of information provisions.

C.S.S.B. 18 includes among the evidence of injuries and benefits a special commissioners court is required to consider in assessing damages in a condemnation proceeding in which a portion of a tract or parcel of property is condemned a material impairment of direct access on or off the remaining property that affects the market value of the remaining property and excludes circuity of travel and diversion of traffic. The bill defines "direct access" for these provisions.

C.S.S.B. 18 requires, rather than authorizes, a department, agency, instrumentality, or political subdivision of the state to provide a relocation advisory service for an individual, a family, a business concern, a farming or ranching operation, or a nonprofit organization. The bill requires such service to be compatible with the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, rather than the Federal Uniform Relocation Assistance Advisory Program. The bill requires, rather than authorizes, the state or a political subdivision of the state, as a cost of acquiring real property, to pay moving expenses and rental supplements, make relocation payments, provide financial assistance to acquire replacement housing, and compensate for expenses incidental to the transfer of the property if an individual, a family, the personal property of a business, a farming or ranching operation, or a nonprofit organization is displaced in connection with an acquisition.

C.S.S.B. 18 requires a court hearing an eminent domain suit that determines that a condemnor did not make a bona fide offer to acquire property from a property owner voluntarily as required by the bill to abate the suit, order the condemnor to make a bona fide offer, and order the condemnor to pay all costs of an eminent domain proceeding and any reasonable attorney's fees

and other professional fees incurred by the property owner that are directly related to the violation. The bill requires the special commissioners or a court, if the commissioners or a court awards damages in a condemnation proceeding in an amount that is greater than 110 percent of the amount of damages the condemnor offered to pay before the proceedings began, to award reasonable attorney's fees and other professional fees to the property owner in addition to costs awarded in a suit in which a condemnor is determined to have not made a bona fide offer.

C.S.S.B. 18 extends the right to repurchase from a condemning entity a real property interest acquired by an entity through eminent domain for a public use to the heirs, successors, or assigns of the person from whom the property was acquired and establishes the conditions under which such persons are entitled to repurchase the property to include the following: if the public use for which the property was acquired through eminent domain is canceled before the property is used for that public use; if no actual progress is made toward the public use for which the property was acquired between the date of acquisition and the 10th anniversary of that date; or if the property becomes unnecessary for the public use for which the property was acquired, or a substantially similar public use, before the 10th anniversary of the date of acquisition. The bill eliminates language making provisions on the repurchase of real property from a governmental entity applicable only to a real property interest acquired through eminent domain for a public use that was canceled before the 10th anniversary of the date of acquisition. The bill removes language making the repurchase of real property provisions inapplicable to a right-of-way under the jurisdiction of a county, a municipality, or the Texas Department of Transportation.

C.S.S.B. 18 defines the term "actual progress" to mean the completion of two or more of the following actions:

- the performance of a significant amount of labor to develop the property or other property acquired for the same public use project for which the property owner's property was acquired;
- the provision of a significant amount of materials to develop the property or other property acquired for the same public use project for which the property owner's property was acquired;
- the hiring of and performance of a significant amount of work by an architect, engineer, or surveyor to prepare a plan or plat that includes the property or other property acquired for the same public use project for which the property owner's property was acquired;
- application for state or federal funds to develop the property or other property acquired for the same public use project for which the property owner's property was acquired;
- application for a state or federal permit to develop the property or other property acquired for the same public use project for which the property owner's property was acquired;
- the acquisition of a tract or parcel of real property adjacent to the property for the same public use project for which the owner's property was acquired; or
- for a governmental entity, the adoption by a majority of the entity's governing body at a public hearing of a development plan for a public use project that indicates that the entity will not complete more than one of the above actions before the 10th anniversary of the date of acquisition of the property.

C.S.S.B. 18 authorizes a district court to determine all issues in any suit regarding the repurchase of a real property interest acquired through eminent domain by the former property owner or the owner's heirs, successors, or assigns.

C.S.S.B. 18 requires an entity that acquired a real property interest through eminent domain that determines the former property owner is entitled to repurchase the property to send, not later

than the 180th day after the date the entity makes such a determination, by certified mail, return receipt requested, to the property owner or the owner's heirs, successors, or assigns a certain notice and makes conforming changes. The bill expands the information required to be contained in the notice to include a statement that the public use was canceled before the property was used for the public use, no actual progress was made toward the public use, or the property became unnecessary for the public use, or a substantially similar public use, before the 10th anniversary of the date of acquisition, and makes conforming changes.

C.S.S.B. 18 authorizes a property owner or the owner's heirs, successors, or assigns, on or after the 10th anniversary of the date on which real property was acquired by an entity through eminent domain, to request that the condemning entity make a determination and provide a statement and other relevant information regarding whether the public use for which the property was acquired was canceled before the property was used for the public use; whether any actual progress was made toward the public use between the date of acquisition and the 10th anniversary of that date, including an itemized description of the progress made, if applicable; and whether the property became unnecessary for the public use, or a substantially similar public use, before the 10th anniversary of the date of acquisition. The bill requires a request to contain sufficient detail to allow the entity to identify the specific tract of land in relation to which the information is sought. The bill requires the entity, not later than the 90th day following the date of receipt of the request for information, to send a written response by certified mail, return receipt requested, to the requestor. The bill establishes that the right to repurchase real property from a condemning entity is extinguished on the first anniversary of the expiration of the period for an entity to provide notice if the entity is required to provide notice to a previous property owner, makes a good faith effort to locate and provide notice to each person entitled to notice before the expiration of the deadline for providing such notice, and does not receive a response to any such notice in the prescribed period.

C.S.S.B. 18, in a provision establishing the time period within which a property owner, or the owner's heirs, successors, or assigns are required to notify an entity that acquired condemned property through eminent domain of an intent to repurchase the property interest, establishes a starting point for that period to reflect the bill's provisions beginning with the date of the postmark on a response to a request for information regarding the condemned property that indicates that the person is entitled to repurchase the property interest. The bill makes a conforming change related to the price at which the acquiring entity is required to offer to sell the property interest to the person.

C.S.S.B. 18 amends the Transportation Code, in a provision on the sale and transfer of real property no longer needed for a state highway purpose, to establish that the standard for determining the fair value of the state's interest in access rights to a highway right-of-way is the same legal standard that the Texas Transportation Commission applies in the acquisition of access rights for a controlled access highway and in the payment of damages in the exercise of its control of access authority for impairment of highway access to or from real property where the real property adjoins the highway.

C.S.S.B. 18 amends the Water Code to prohibit a municipal utility district from exercising the power of eminent domain outside its boundaries to acquire a site or easement for a road project. The bill removes the acquisition of a trail as an exception to the prohibition on a municipal utility district exercising the power of eminent domain outside its boundaries to acquire a site for a park, swimming pool, or other recreational facility. The bill provides for the definition of recreational facility by reference. The bill removes the prohibition on a municipal utility district exercising the power of eminent domain outside its boundaries to acquire a site for a trail on real property designated as a homestead.

C.S.S.B. 18 amends Section 1, Chapter 178 (S.B. 289), Acts of the 56th Legislature, Regular Session, 1959, to prohibit a nonprofit corporation incorporated under the laws of the state for purely charitable purposes and which is directly affiliated or associated with a medical center

having a medical school recognized by the Council on Medical Education and Hospitals of the American Medical Association as an integral part of its establishment, and which has for a purpose of its incorporation the provision or support of medical facilities or services for the use and benefit of the public, and which is situated in any county of the state having a population in excess of 600,000 inhabitants according to the most recent federal census from exercising the power of eminent domain and condemnation to acquire a detached, single-family residential property or a multifamily residential property that contains eight or fewer dwelling units.

C.S.S.B. 18 makes conforming changes.

C.S.S.B. 18 repeals the following provisions:

- Section 552.0037, Government Code, relating to the production of information by a nongovernmental body authorized to exercise eminent domain
- Section 21.024, Property Code, relating to production of information on condemnation by certain entities considered to be critical infrastructure

### **EFFECTIVE DATE**

September 1, 2011.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.S.B. 18 differs from the original requiring the notice of a public meeting during which the initiation of a condemnation proceeding is authorized to include the consideration of the use of eminent domain to condemn property as an agenda item and a map of the general area or general route that may be affected by the condemnation proceeding.

C.S.S.B. 18 differs from the original by suspending an entity's authority to exercise the power of eminent domain beginning September 1, 2013, if the entity does not submit a required letter on or before that date and providing that such authority remains suspended until the entity submits the letter, whereas the original provides for the expiration of the entity's authority to exercise the power of eminent domain on that date unless the entity submits such a letter. The substitute omits a provision included in the original requiring the Texas Legislative Council to prepare for consideration by the 84th Legislature, Regular Session, a nonsubstantive revision of the statutes of the state as necessary to reflect the state of the law after the expiration of an entity's eminent domain authority.

C.S.S.B. 18 contains a provision not included in the original requiring a private entity with eminent domain authority to provide the commissioners court of a county notice of a proposed route for a pipeline in that county before negotiating to acquire property for that purpose.

C.S.S.B. 18 contains a provision not included in the original requiring the special commissioners or a court awarding damages in a condemnation proceeding, under certain circumstances, to award reasonable attorney's fees and other professional fees to a property owner in addition to the award of certain other costs.

C.S.S.B. 18 contains a provision not included in the original establishing a limitations period for the right to repurchase real property if an entity meets certain specified conditions.

C.S.S.B. 18 contains a provision not included in the original prohibiting certain charitable corporations from exercising the power of eminent domain and condemnation to acquire a detached, single-family residential property or a multifamily residential property that contains eight or fewer dwelling units.