

BILL ANALYSIS

C.S.H.B. 1250
By: Frank
Land & Resource Management
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Under current law, a governmental entity is prohibited from taking private property through eminent domain if the taking is not for a public use. Interested parties contend, however, that there have been cases in which private landowners have been stripped of their property in the interest of a public use only to have such use later amended and said property being initially used for a purpose different than the purpose for which it was originally acquired. C.S.H.B. 1250 seeks to remedy this situation by establishing provisions relating to the initial use of certain property acquired for a public use.

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.H.B. 1250 amends the Government Code to require a real property interest acquired through eminent domain to initially be used for the public use for which the property was acquired, with certain exceptions, and to establish for such purpose that a real property interest is acquired through eminent domain if the property is purchased by an entity with eminent domain authority in connection with a bona fide offer. The bill authorizes a real property interest acquired through eminent domain to be initially used for a use other than the use for which the property was acquired under the following conditions: the entity that acquired the property through eminent domain offers to sell the property to the original owner or the owner's heirs, successors, or assigns at the price for which the property was acquired, and the original owner or the owner's heirs, successors, or assigns do not purchase the property on or before the 180th day after the date notice of the offer is given; the entity makes a good faith effort to locate and provide notice to the original owner or the owner's heirs, successors, or assigns, and the owner or the owner's heirs, successors, or assigns cannot be located after one year; or the entity obtains a release from the original owner or the owner's heirs, successors, or assigns declining the offer to sell the property and allowing the property to be used for a use other than the use for which the property was acquired. The bill authorizes the entity to pay compensation to obtain such a release and establishes requirements for giving notice of an offer. These provisions do not apply to a real property interest acquired for the production, gathering, treating, processing, transportation, or distribution of oil, gas, or other petroleum products.

C.S.H.B. 1250 amends the Property Code to require an entity with eminent domain authority that makes a bona fide offer to state with specificity in the initial and final offers the public use for which the entity intends to acquire the property. This bill requirement does not apply to an offer made for a real property interest intended to be acquired for the production, gathering, treating, processing, transportation, or distribution of oil, gas, or other petroleum products.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1250 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Amend Sec. Sec. 2206.001, Government Code, by adding Subsection (f) to read as follows:

(f) Private property acquired through eminent domain or through purchase in connection with an initial offer under Section 21.0113, Property Code, must initially be used for the public use for which it was acquired.

No equivalent provision.

No equivalent provision.

No equivalent provision.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subchapter A, Chapter 2206, Government Code, is amended by adding Section 2206.003 to read as follows:

Sec. 2206.003. INITIAL USE OF ACQUIRED PROPERTY. (a) Except as provided by this section, a real property interest acquired through eminent domain must initially be used for the public use for which the property was acquired.

(b) For purposes of this section, a real property interest is acquired through eminent domain if the property is purchased by an entity with eminent domain authority in connection with an offer under Section 21.0113, Property Code.

(c) This section does not apply to a real property interest acquired for the production, gathering, treating, processing, transportation, or distribution of oil, gas, or other petroleum products.

(d) A real property interest acquired through eminent domain may be initially used for a use other than the use for which the property was acquired if:

(1) the entity that acquired the property through eminent domain offers to sell the property to the original owner or the owner's heirs, successors, or assigns at the price for which the property was acquired, and the original owner or the owner's heirs, successors, or assigns do not purchase the property on or before the 180th day after the date notice of the offer is given as prescribed by Subsection (f);

(2) the entity makes a good faith effort to locate and provide notice to the original owner or the owner's heirs, successors, or assigns as prescribed by Subsection (f), and the owner or the owner's heirs, successors, or assigns cannot be located after one year; or

No equivalent provision.

(3) the entity obtains a release from the original owner or the owner's heirs, successors, or assigns declining the offer to sell the property and allowing the property to be used for a use other than the use for which the property was acquired.

No equivalent provision.

(e) The entity may pay compensation to obtain a release described by Subsection (d)(3).

(f) For purposes of giving notice of an offer under Subsection (d), the entity shall send by certified mail, return receipt requested, to the original owner or the owner's heirs, successors, or assigns a notice containing:

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

(2) an identification of the public use for which the property had been acquired and a statement that the entity wishes to initially use the property for a use other than the one for which the property was acquired;

(3) a description of the rights of the original owner or the owner's heirs, successors, or assigns under this section to repurchase the property or be paid for a release;

(4) the amount for which the original owner or the owner's heirs, successors, or assigns may repurchase the property; and

(5) if applicable, the terms of the release the entity is seeking from the original owner or the owner's heirs, successors, or assigns.

No equivalent provision.

SECTION 2. Subchapter B, Chapter 21, Property Code, is amended by adding Section 21.0114 to read as follows:

Sec. 21.0114. PUBLIC USE DISCLOSURE IN OFFER. (a) Except as provided by this section, an entity with eminent domain authority that makes an offer under Section 21.0113 must state with specificity in the initial and final offers the public use for which the entity intends to acquire the property.

(b) This section does not apply to an offer made for a real property interest intended to be acquired for the production, gathering, treating, processing, transportation, or distribution of oil, gas, or other petroleum products.

No equivalent provision.

SECTION 3. (a) Section 2206.003, Government Code, as added by this Act, applies only to a repurchase of a real property interest acquired through eminent domain with respect to which the initial offer under Section 21.0113, Property Code, is made on or after the effective date of this Act.

(b) Section 21.0114, Property Code, as added by this Act, applies only to an offer under Section 21.0113, Property Code, with respect to which the initial offer is made on or after the effective date of this Act.

SECTION 2. EFFECTIVE DATE. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2013.

SECTION 4. Substantially the same as introduced version.