

BILL ANALYSIS

C.S.H.B. 2006
By: Woolley
Land & Resource Management
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Texas Constitution limits the use of the power of eminent domain by mandating that "No person's property shall be taken, damaged or destroyed for or applied to public use without adequate compensation being made, unless by the consent of such person . . .". The exercise of the power of eminent domain is generally recognized as a necessary tool of government; however, many have argued that over the years this power has been expanded and used in ways that are improper.

The purpose of C.S.H.B. 2006 is to make changes, additions, and deletions, to various codes and provisions in Texas law, in an attempt to reform the power, limitations, process, and various other issues surrounding the power of eminent domain and condemnation in this state.

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

This bill amends Section 552.0037, Government Code, to add to current language providing that notwithstanding any other law and except as provided by this section, information collected, assembled, or maintained by an entity that is not a governmental body, but is authorized by law to take private property through the use of eminent domain, is subject to Chapter 552, Government Code, in the same manner as information collected, assembled, or maintained by a governmental body, but only if the information is both 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. This bill provides that notwithstanding Section 552.007, Government Code, an entity described by Section 552.0037(a), Government Code, is required under this amended section only to produce documents relating to the condemnation of the specific property owned by the requestor as described in the request. This bill provides that such a request must contain sufficient details to allow the entity to identify the specific tract of land in relation to which the information is sought. Other conforming changes are also made in this section.

This bill amends the heading of Chapter 2206, Government Code, to read "EMINENT DOMAIN".

This bill amends Chapter 2206, Government Code, by adding a Subchapter A heading to read "SUBCHAPTER A. GENERAL PROVISIONS", by adding a Subchapter B heading to read "SUBCHAPTER B. LIMITATIONS ON PURPOSE AND USE OF PROPERTY ACQUIRED THROUGH EMINENT DOMAIN", and by adding a Subchapter C heading to read "SUBCHAPTER C. PROCEDURES REQUIRED TO INITIATE EMINENT DOMAIN PROCEEDINGS".

This bill amends Section 2206.001, Government Code, by locating it in the new Subchapter A, and by adding a definition of public use that states that 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. In addition, the existing language in Section 2206.001, Government Code, is moved to

the new Subchapter B, Section 2206.051, Government Code, in its entirety, except for the clarifying deletion found in Section 2206.051(c)(7)(A), Government Code, regarding the operation of a common carrier subject to only Chapter 111, Natural Resources Code, replacing a common carrier subject to both Chapter 111, Natural Resources Code, and Section B(3)(b), Article 2.01, Texas Business Corporation Act.

This bill amends Chapter 2206, Government Code, by adding new provisions in the new Subchapter C. The new Subchapter C provisions contain three new sections that provide that this new subchapter may be cited as the Truth in Condemnation Procedures Act, that the procedures in this subchapter apply only to the use of eminent domain under the laws of this state by a governmental entity, and that a governmental entity is only permitted to initiate a condemnation proceeding under Chapter 21, Property Code, by authorizing such act at a public meeting by record vote. This bill requires that before a governmental entity initiates a condemnation proceeding under Chapter 21, Property Code, the governmental entity must authorize the initiation of the condemnation proceedings at a public meeting by a record vote, and that a separate record vote must be taken for each unit of property for which condemnation proceedings are to be initiated. Section 2206.103(b) allows an exception for when a separate record vote is not required if two or more units of real property are owned by the same person, in which case the governmental entity may treat those units of property as one unit of property. This bill also provides that the motion to adopt an ordinance, resolution, or order authorizing the initiation of condemnation proceedings under Chapter 21, Property Code, must be made in a form substantially similar to the following: "I move that the [name of governmental entity] authorize the use of the power of eminent domain to acquire [describe the property] for [describe the public use]."

This bill makes numerous changes to Chapter 21, Property Code. For example, this bill creates a new Section 21.0112 to require that an entity with eminent domain authority that wants to acquire real property for a public use must make a good faith effort to acquire the property by voluntary purchase or lease. In addition, the new Section 21.0113, which applies only to a condemnation proceeding initiated by a common carrier, as that term is defined by Section 111.002, Natural Resources Code, requires a common carrier that intends to exercise the power of eminent domain to serve the owner of the property to be acquired with notice that the common carrier intends to initiate condemnation proceedings on or before the date the common carrier files a condemnation petition. This new Section 21.0113 also requires that such a notice be served to the property owner by regular mail and certified mail, return receipt requested, and provides that a common carrier has the burden of proof to establish that a property owner received this required notice.

This bill amends Section 21.012(b), Property Code, to provide that a petition filed under that section must state that the entity made a good faith effort to acquire the property by voluntary purchase or lease in addition to other pre-existing requirements, and makes other conforming changes.

This bill amends Section 21.023, Property Code, dependent upon the passage of a constitutional amendment referenced in SECTION 14 of this bill, to provide that a governmental entity shall disclose in writing to the property owner that at the time of the acquisition of the property through eminent domain, that the owner or the owner's heirs, successors or assigns are entitled to repurchase under certain circumstances at the price paid to the owner at the time the governmental entity acquired the property through eminent domain.

This bill amends Section 21.041, Property Code, to provide that, as the basis for assessing actual damages to a property owner from a condemnation, the special commissioners shall admit evidence on, among other things, the value of the property being condemned, including any evidence that a property owner would consider in a negotiated transaction that is not subject to this chapter.

This bill amends the heading to Section 21.047, Property Code to read "ASSESSMENT OF COSTS AND FEES".

This bill amends Section 21.047, Property Code, by adding a new Subsection (d) to authorize a court hearing a suit under Chapter 21, Property Code, to order the condemning entity to pay all

costs and any reasonable attorney's fees incurred by the property owner if the court finds that a condemning entity did not make a good faith effort to acquire the property by voluntary purchase or lease as required by Section 21.0112, Property Code.

This bill amends Section 21.101(a), Property Code, to provide that a person from whom the property interest is acquired or that person's heirs, successors, or assigns are entitled to repurchase the property as provided by this subchapter if that public use was canceled before the 10th anniversary of the date of acquisition.

This bill amends Section 21.103(b), Property Code, dependent upon the passage of a constitutional amendment referenced in SECTION 14 of this bill, to require a governmental entity to offer to sell the property interest to the person, at the relevant time, for the price paid to the owner by the governmental entity at the time the governmental entity acquired the property through eminent domain (instead of for the fair market value of the property at the time the public use was canceled). Makes other conforming changes.

This bill amends Sections 101.061 and 101.081, Government Code, to make conforming changes to the discretionary award of reasonable attorney fees and costs to a property owner if a condemning entity is found by a court to not have acted in good faith under certain circumstances. Makes other conforming changes.

This bill provides that the change in law made by Section 552.0037, Government Code, as amended by this Act, applies only to a request for disclosure made on or after the effective date of this Act. A request for disclosure made before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose. This bill also provides that the changes in law made by Chapter 2206, Government Code, and Chapter 21, Property Code, as amended by this Act, apply only to a condemnation proceeding in which the petition is filed on or after the effective date of this Act and to any property condemned through the proceeding. A condemnation proceeding in which the petition is filed before the effective date of this Act and any property condemned through the proceeding is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

This bill provides for an effective date of September 1, 2007 with certain exceptions that are described in the EFFECTIVE DATE section of this bill analysis.

EFFECTIVE DATE

This Act takes effect September 1, 2007, except as follows:

SECTIONS 5 and 10 of this Act, amending Sections 21.023 and 21.103, Property Code, take effect on the date on which the constitutional amendment proposed by the 80th Legislature, Regular Session, 2007, allowing a governmental entity to sell property acquired through eminent domain back to the previous owners at the price the entity paid to acquire the property takes effect. If that amendment is not approved by the voters, SECTIONS 5 and 10 of this Act have no effect.

COMPARISON OF THE ORIGINAL TO THE COMMITTEE SUBSTITUTE

C.S.H.B. 2006 retains language deleted in H.B. 2006 making entities described in Section 552.0037, Government Code, subject to Chapter 552, Government Code, in the same manner as information collected, assembled, or maintained by a governmental body. C.S.H.B. 2006 removes the requirement found in H.B. 2006 that the entity use the Texas Rules of Civil Procedure when responding to certain requests, the provision that exceptions to disclosure provided by Chapter 552, Government Code and the Texas Rules of Civil Procedure apply to the disclosure of information under Section 552.0037, Government Code, and that jurisdiction to enforce the provisions of Section 552.0037, Government Code, resides in a state district court in the county in which the entity has its principal place of business. C.S.H.B. 2006 retains certain other provisions in the amended Section 552.0037, Government Code, from H.B. 2006 such as regarding who may request information, what documents must be produced and under what

conditions. C.S.H.B. 2006 retains certain conforming changes in Section 552.0037, Government Code, found in H.B. 2006 and makes other conforming changes.

C.S.H.B. 2006 reformats Chapter 2206, Government Code, by creating subchapters, among other changes not found in H.B. 2006. In addition, the new Section 2206.0011, Government Code, found in H.B. 2006, regarding the definition of public use is amended and moved to Section 2206.001, Government Code, in C.S.H.B. 2006. C.S.H.B. 2006 deletes the requirement in H.B. 2006 in the definition of public use that the state exclusively possess, occupy or enjoy the property, and modifies the definition of public use to include reference to Section 2206.051(c), Government Code.

C.S.H.B. 2006 does not include the new Sections 2206.002 and 2206.003, Government Code, that were added by H.B. 2006. These two removed sections provided, in general, that a condemning entity must prove a public use and necessity for the public use by clear and convincing evidence, and must prove such without regard to a legislative assertion, and that a condemning entity that is not governed by an elected official of this state must only exercise eminent domain after written approval by the commissioners court for the county in which the property to be condemned is located. The existing Section 2206.001, Government Code, is moved to Section 2206.051, Government Code, in C.S.H.B. 2006, and a clarifying change regarding the operation of common carriers is made to the new 2206.051(c)(7)(A), Government Code.

C.S.H.B. 2006 adds new provisions in the new Subchapter C, Chapter 2206, Government Code, that are not found in H.B. 2006. These new Subchapter C contains three new sections that provide that this new subchapter may be cited as the Truth in Condemnation Procedures Act, that the procedures in this subchapter apply only to the use of eminent domain under the laws of this state by a governmental entity, and that a governmental entity is only permitted to initiate a condemnation proceeding under Chapter 21, Property Code, by authorizing such act at a public meeting by record vote. This new Section 2206.103 requires that before a governmental entity initiates a condemnation proceeding under Chapter 21, Property Code, the governmental entity must authorize the initiation of the condemnation proceedings at a public meeting by a record vote, and that a separate record vote must be taken for each unit of property for which condemnation proceedings are to be initiated (except a separate record vote is not required if two or more units of real property are owned by the same person, in which case the governmental entity may treat those units of property as one unit of property). This bill also provides that the motion to adopt an ordinance, resolution, or order authorizing the initiation of condemnation proceedings under Chapter 21, Property Code, must be made in a form substantially similar to the following: "I move that the [name of governmental entity] authorize the use of the power of eminent domain to acquire [describe the property] for [describe the public use]."

C.S.H.B. 2006 deletes SECTION 3 through SECTION 7 of H.B. 2006, amending Sections 373.006, 374.003, 374.011, and 374.012 Local Government Code, and by adding Section 374.018, Local Government Code, that generally require procedures before adoption of community development programs, clarified the definition of blight and slum, set the determination of each by a municipality, made changes to requirements for a resolution ordering an election, and various other conforming changes.

C.S.H.B. 2006 amends Section 21.0112, Property Code, as added by H.B. 2006 to require that an entity with eminent domain authority that wants to acquire real property for a public use must make a good faith effort to acquire the property by voluntary purchase or lease. H.B. 2006 contained this addition, but required that such an effort be a bona fide good faith effort. C.S.H.B. 2006 adds a new Section 21.0113, Property Code, not found in H.B. 2006. This new section, which applies only to a condemnation proceeding initiated by a common carrier, as that term is defined by Section 111.002, Natural Resources Code, requires a common carrier that intends to exercise the power of eminent domain to serve the owner of the property to be acquired with notice that the common carrier intends to initiate condemnation proceedings on or before the date the common carrier files a condemnation petition. This new section also requires that such a notice be served to the property owner by regular mail and certified mail, return receipt requested, and that a common carrier has the burden of proof to establish that a property owner received this required notice.

C.S.H.B. 2006 80(R)

C.S.H.B. 2006 amends Section 21.012(b), Property Code, to provide that a petition filed under that section must state that the entity made a good faith effort to acquire the property by voluntary purchase or lease in addition to other pre-existing requirements, and makes other conforming changes. H.B. 2006 contained this addition, but required that such an effort be stated to be a bona fide good faith effort.

C.S.H.B. 2006 retains the current repurchase disclosure language in Section 21.023(1), Property Code, that was amended in H.B. 2006, and retains the repurchase disclosure language in H.B. 2006 in Section 21.023(2), Property Code. C.S.H.B. 2006 removes the language found in SECTION 10(b) of H.B. 2006, that attempted to provide an alternative in the event that the relevant constitutional amendment was not passed by the voters.

C.S.H.B. 2006 amends the heading to Section 21.047, Property Code to read ASSESSMENT OF COSTS AND FEES. No such provision exists in H.B. 2006.

C.S.H.B. 2006 amends Section 21.047, Property Code, by adding a new Subsection (d) to authorize a court hearing suit under Chapter 21, Property Code, to order the condemning entity to pay all costs and any reasonable attorney's fees incurred by the property owner if the court finds that a condemning entity did not make a good faith effort to acquire the property by voluntary purchase or lease as required by Section 21.0112, Property Code. No such provision exists in H.B. 2006.

C.S.H.B. 2006 amends Section 21.101(a), Property Code, by reformatting language found in H.B. 2006, and by removing the provision found in H.B. 2006 authorizing repurchase if the property is not used by the governmental entity for that public use before the fifth anniversary of the date of acquisition.

C.S.H.B. 2006 retains the current repurchase price language in Section 21.103(b), Property Code, that was amended in H.B. 2006, and removes the language found in SECTION 13(b) of H.B. 2006, that attempted to provide an alternative in the event that the relevant constitutional amendment was not passed by the voters. Makes other conforming changes.

C.S.H.B. 2006 deletes all the language in SECTION 14 of H.B. 2006 regarding NOTICE TO PREVIOUS PROPERTY OWNER REGARDING NONUSE.

C.S.H.B. 2006 amends Sections 101.061 and 101.081, Government Code, to make conforming changes to the discretionary award of reasonable attorney fees and costs to a property owner if a condemning entity is found by a court to not have acted in good faith under certain circumstances. Makes other conforming changes. No such provisions exist in H.B. 2006.

C.S.H.B. 2006 makes conforming changes to the transition language found in SECTION 15 of H.B. 2006.

C.S.H.B. 2006 makes conforming changes to the effective date language found in SECTION 16 of H.B. 2006.