

By: Woolley

H.B. No. 2006

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. Section 552.0037, Government Code, is amended to read as follows:

Sec. 552.0037. CERTAIN ENTITIES AUTHORIZED TO TAKE PROPERTY THROUGH EMINENT DOMAIN. (a) Notwithstanding any other law, 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 required to produce documentation as provided by this section if the information is requested by a person who owns property that is the subject of a proposed or existing eminent domain proceeding ~~[is subject to this chapter in the same manner as information collected, assembled, or maintained by a governmental body]~~, but only if the information is related to the taking of the person's private property by the entity through the use of eminent domain.

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

(c) The entity shall respond to a request in accordance with

1 the Texas Rules of Civil Procedure as if the request was made in a
2 matter pending before a state district court.

3 (d) Exceptions to disclosure provided by this chapter and
4 the Texas Rules of Civil Procedure apply to the disclosure of
5 information under this section.

6 (e) Jurisdiction to enforce the provisions of this section
7 resides in a state district court in the county in which the entity
8 has its principal place of business.

9 SECTION 2. Chapter 2206, Government Code, is amended by
10 adding Sections 2206.0011, 2206.002, and 2206.003 to read as
11 follows:

12 Sec. 2206.0011. DEFINITION OF PUBLIC USE. Public use, with
13 respect to the use of eminent domain authority, means a use of
14 property that allows the state, a political subdivision of the
15 state, or the general public of the state to exclusively possess,
16 occupy, and enjoy the property.

17 Sec. 2206.002. DETERMINATION OF PUBLIC USE AND NECESSITY.

18 (a) If a governmental or private entity attempts to take, damage, or
19 destroy property through the entity's eminent domain authority for
20 a public use, the entity must prove by clear and convincing evidence
21 that:

22 (1) the entity's proposed use for the property is a
23 public use; and

24 (2) the taking, damage, or destruction of the property
25 is necessary for the proposed use.

26 (b) The determination of whether the proposed use is a
27 public use and whether the taking, damage, or destruction of

1 property for that use is necessary shall be determined without
2 regard to any legislative assertion by a governmental or private
3 entity that the use is public or that the taking, damage, or
4 destruction is necessary.

5 Sec. 2206.003. APPROVAL BY COMMISSIONERS COURT REQUIRED.

6 (a) Except as provided by Subsection (b), a local political
7 subdivision of the state with eminent domain authority may not
8 take, damage, or destroy private property unless the political
9 subdivision is governed by an elected official of this state.

10 (b) A political subdivision that is not governed by an
11 elected official of this state may take, damage, or destroy private
12 property through the use of eminent domain authority only if the
13 entity obtains and submits in addition to the condemnation petition
14 required by Section 21.012, Property Code, written approval from
15 the commissioners court of the county containing the property to be
16 acquired through eminent domain.

17 SECTION 3. Section 373.006, Local Government Code, is
18 amended to read as follows:

19 Sec. 373.006. REQUIRED PROCEDURES BEFORE ADOPTION OF
20 COMMUNITY DEVELOPMENT PROGRAM. Before exercising powers under
21 Section 373.005, the governing body of the municipality must:

22 (1) identify areas of the municipality in which
23 predominantly low and moderate income persons reside, each unit of
24 real property in the municipality that has the characteristics of
25 blight [~~are blighted~~] or a slum, and each [~~areas or that are~~]
26 federally assisted new community in the municipality
27 [~~communities~~];

1 (2) establish community development program areas in
2 which community development activities, building rehabilitation,
3 or the acquisition of privately owned buildings or land is
4 proposed;

5 (3) adopt, by resolution or ordinance, a plan under
6 which citizens may publicly comment on the proposed community
7 development program;

8 (4) conduct public hearings on the proposed program
9 before the 15th day before the date of its final adoption by the
10 governing body; and

11 (5) adopt the community development program by
12 resolution or ordinance.

13 SECTION 4. Sections 374.003(3) and (19), Local Government
14 Code, are amended to read as follows:

15 (3) "Blight" [~~"Blighted area"~~] means a condition of
16 property [~~an area~~] that is not considered a characteristic of a slum
17 [~~area~~], but that, because of deteriorating buildings, structures,
18 or other improvements; defective or inadequate streets, street
19 layout, or accessibility; unsanitary conditions; or other
20 hazardous conditions, adversely affects the public health, safety,
21 morals, or welfare of the municipality and its residents,
22 substantially retards the provision of a sound and healthful
23 housing environment, or results in an economic or social liability
24 to the municipality. The term includes property in an area
25 certified as a disaster area as provided by Section 374.903.

26 (19) "Slum [~~area~~]" means an area within a municipality
27 that is detrimental to the public health, safety, morals, and

1 welfare of the municipality because of [~~the area~~]:

2 (A) [~~has~~] a predominance of buildings or other
3 improvements that are dilapidated, deteriorated, or obsolete due to
4 age or other reasons;

5 (B) [~~is prone to~~] high population densities and
6 overcrowding due to inadequate provision for open space;

7 (C) [~~is composed of~~] open land that, because of
8 its location within municipal limits, is necessary for sound
9 community growth through replatting, planning, and development for
10 predominantly residential uses; or

11 (D) [~~has~~] conditions that exist due to any of the
12 causes enumerated in Paragraphs (A)-(C) or any combination of those
13 causes that:

14 (i) endanger life or property by fire or
15 other causes; or

16 (ii) are conducive to:

17 (a) the ill health of the residents;

18 (b) disease transmission;

19 (c) abnormally high rates of infant
20 mortality;

21 (d) abnormally high rates of juvenile
22 delinquency and crime; or

23 (e) disorderly development because of
24 inadequate or improper platting for adequate residential
25 development of lots, streets, and public utilities.

26 SECTION 5. Section 374.011, Local Government Code, is
27 amended by adding Subsection (d) to read as follows:

1 (d) The governing body of the municipality must determine
2 that each unit of real property included in a resolution under
3 Subsection (a) has the characteristics of blight or a slum.

4 SECTION 6. Section 374.012(c), Local Government Code, is
5 amended to read as follows:

6 (c) The resolution ordering the election and the notice of
7 the election must contain:

8 (1) a complete legal description of each unit of
9 property [~~the area~~] included in the proposed project;

10 (2) a statement of the nature of the proposed project;
11 [~~and~~]

12 (3) a statement of the total amount of local funds to
13 be spent on the proposed project; and

14 (4) a statement that each unit of property has the
15 characteristics of blight or a slum.

16 SECTION 7. Subchapter B, Chapter 374, Local Government
17 Code, is amended by adding Section 374.018 to read as follows:

18 Sec. 374.018. LIMITATION ON BLIGHT OR SLUM DESIGNATION.

19 (a) A determination by a municipality that a unit of real property
20 has the characteristics of blight or a slum is valid for five years.

21 (b) After the five-year period prescribed by Subsection
22 (a), a municipality may make a new determination that the unit of
23 real property has the characteristics of blight or a slum and
24 redesignate the unit of real property as blight or a slum for
25 another five-year period.

26 SECTION 8. Subchapter B, Chapter 21, Property Code, is
27 amended by adding Section 21.0112 to read as follows:

1 Sec. 21.0112. GOOD FAITH STANDARD. An entity with eminent
2 domain authority that wants to acquire real property for a public
3 use must make a bona fide good faith effort to acquire the property
4 by voluntary purchase or lease.

5 SECTION 9. Section 21.012(b), Property Code, is amended to
6 read as follows:

7 (b) The petition must:

8 (1) describe the property to be condemned;

9 (2) state the purpose for which the entity intends to
10 use the property;

11 (3) state the name of the owner of the property if the
12 owner is known; ~~and~~

13 (4) state that the entity and the property owner are
14 unable to agree on the damages; and

15 (5) state that the entity made a bona fide good faith
16 effort to acquire the property by voluntary purchase or lease.

17 SECTION 10. (a) Section 21.023, Property Code, is amended
18 to read as follows:

19 Sec. 21.023. DISCLOSURE OF INFORMATION REQUIRED AT TIME OF
20 ACQUISITION. A governmental entity shall disclose in writing to
21 the property owner, at the time of acquisition of the property
22 through eminent domain, that:

23 (1) the owner or the owner's heirs, successors, or
24 assigns may be ~~are~~ entitled to repurchase the property under
25 Subchapter E ~~[if the public use for which the property was acquired~~
26 ~~through eminent domain is canceled before the 10th anniversary of~~
27 ~~the date of acquisition]~~; and

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

5 (b) Section 21.023, Property Code, is amended to read as
6 follows:

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

11 (1) the owner or the owner's heirs, successors, or
12 assigns may be [~~are~~] entitled to repurchase the property under
13 Subchapter E [~~if the public use for which the property was acquired~~
14 ~~through eminent domain is canceled before the 10th anniversary of~~
15 ~~the date of acquisition~~]; and

16 (2) the repurchase price is the fair market value of
17 the property at the time the property becomes eligible for
18 repurchase under Section 21.101 [~~public use was canceled~~].

19 SECTION 11. Section 21.041, Property Code, is amended to
20 read as follows:

21 Sec. 21.041. EVIDENCE. As the basis for assessing actual
22 damages to a property owner from a condemnation, the special
23 commissioners shall admit evidence on:

24 (1) the value of the property being condemned,
25 including any evidence that a property owner would consider in a
26 negotiated transaction that is not subject to this chapter;

27 (2) the injury to the property owner;

1 (3) the benefit to the property owner's remaining
2 property; and

3 (4) the use of the property for the purpose of the
4 condemnation.

5 SECTION 12. Section 21.101(a), Property Code, is amended to
6 read as follows:

7 (a) Except as provided in Subsection (b), this subchapter
8 applies only to a real property interest acquired by a governmental
9 entity through eminent domain for a public use. A person from whom
10 the property interest is acquired or that person's heirs,
11 successors, or assigns are entitled to repurchase the property as
12 provided by this subchapter if:

13 (1) that public use was canceled before the 10th
14 anniversary of the date of acquisition; or

15 (2) the property is not used by the governmental
16 entity for that public use before the fifth anniversary of the date
17 of acquisition.

18 SECTION 13. (a) Section 21.103, Property Code, is amended
19 to read as follows:

20 Sec. 21.103. RESALE OF PROPERTY; PRICE. (a) Not later than
21 the 180th day after the date of the postmark on the notice sent
22 under Section 21.102 or 21.104, the property owner or the owner's
23 heirs, successors, or assigns must notify the governmental entity
24 of the person's intent to repurchase the property interest under
25 this subchapter.

26 (b) As soon as practicable after receipt of a [~~the~~]
27 notification under Subsection (a), the governmental entity shall

1 offer to sell the property interest to the person for the price paid
2 to the owner by the governmental entity at the time the governmental
3 entity acquired the property through eminent domain [~~fair market~~
4 ~~value of the property at the time the public use was canceled~~]. The
5 person's right to repurchase the property expires on the 90th day
6 after the date on which the governmental entity makes the offer.

7 (b) Section 21.103, Property Code, is amended to read as
8 follows:

9 Sec. 21.103. RESALE OF PROPERTY; PRICE. (a) Not later
10 than the 180th day after the date of the postmark on the notice sent
11 under Section 21.102 or 21.104, the property owner or the owner's
12 heirs, successors, or assigns must notify the governmental entity
13 of the person's intent to repurchase the property interest under
14 this subchapter.

15 (b) As soon as practicable after receipt of a a [~~the~~]
16 notification under Subsection (a), the governmental entity shall
17 offer to sell the property interest to the person for the fair
18 market value of the property at the time the property becomes
19 eligible for repurchase under Section 21.101 [~~public use was~~
20 ~~canceled~~]. The person's right to repurchase the property expires
21 on the 90th day after the date on which the governmental entity
22 makes the offer.

23 SECTION 14. Subchapter E, Chapter 21, Property Code, is
24 amended by adding Section 21.104 to read as follows:

25 Sec. 21.104. NOTICE TO PREVIOUS PROPERTY OWNER REGARDING
26 NONUSE. If, before the fifth anniversary of the date real property
27 was acquired through eminent domain, the property is not used by the

1 governmental entity for the public use for which the property was
2 acquired, the governmental entity shall, not later than the 180th
3 day after the date of the fifth anniversary of the date the property
4 was acquired, send by certified mail, return receipt requested, to
5 the property owner or the owner's heirs, successors, or assigns, a
6 notice containing:

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

9 (2) an identification of the public use for which the
10 property had been acquired;

11 (3) a statement that the property has not been used by
12 the governmental entity for the public use for which the property
13 was acquired; and

14 (4) a description of the person's right under this
15 subchapter to repurchase the property.

16 SECTION 15. (a) The change in law made by Section 552.0037,
17 Government Code, as amended by this Act, applies only to a request
18 for disclosure made on or after the effective date of this Act. A
19 request for disclosure made before the effective date of this Act is
20 governed by the law in effect immediately before the effective date
21 of this Act, and that law is continued in effect for that purpose.

22 (b) The changes in law made by Chapter 2206, Government
23 Code, Chapters 373 and 374, Local Government Code, and Chapter 21,
24 Property Code, as amended by this Act, apply only to a condemnation
25 proceeding in which the petition is filed on or after the effective
26 date of this Act and to any property condemned through the
27 proceeding. A condemnation proceeding in which the petition is

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

5 SECTION 16. (a) Except as provided by Subsection (b) of
6 this section, this Act takes effect September 1, 2007.

7 (b) Sections 10(a) and 13(a) of this Act, amending Sections
8 21.023 and 21.103, Property Code, take effect on the date on which
9 the constitutional amendment proposed by the 80th Legislature,
10 Regular Session, 2007, allowing a governmental entity to sell
11 property acquired through eminent domain back to the previous
12 owners at the price the entity paid to acquire the property takes
13 effect. If that amendment is not approved by the voters, Sections
14 10(a) and 13(a) of this Act have no effect. Sections 10(b) and
15 13(b) of this Act, amending Sections 21.023 and 21.103, Property
16 Code, take effect only if the proposed constitutional amendment
17 described by this subsection does not take effect, and the
18 effective date of Sections 10(b) and 13(b) is January 1, 2008.