

## Revised standards for eminent domain authority

HB 2006 by Woolley (Janek)

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**DIGEST:** HB 2006 would have modified the processes governing eminent domain proceedings, standards of evidence that may be considered by a court in the course of making decisions regarding compensation, obligations placed upon condemning entities, and the rights of previous owners to repurchase taken property.

As a basis for assessing actual damages to a property owner from a condemnation, HB 2006 would have allowed special commissioners to take into account evidence relating to the change in value of the property, including any injury or benefit to the property owner. If property was condemned for purposes related to the state highway system or a county toll project eligible for designation as part of the state highway system, special commissioners would have been required to consider diminished access to highways for any remaining property to the extent that it affected the present value of the property, including factors considered when determining market value for property tax purposes.

The bill would have defined “public use” as a use of property that allowed the state, a political subdivision, or the general public to possess, occupy, and enjoy the property. Governmental and private entities would not have been able to take property except for a public use and would have had to provide relocation services for displaced persons.

The bill would have allowed a previous owner to repurchase condemned property on which a public use was cancelled within 10 years of the acquisition at the price paid to the owner by the governmental entity at the time the property originally was acquired, rather than the fair market value of the property at the time the public use was canceled.

HB 2006 would have added the “Truth in Condemnation Procedures Act” to require a governmental entity, for each property or group of jointly owned contiguous properties to be condemned, to formally authorize by motion the initiation of condemnation proceedings at a public hearing by a record vote. The bill would have required entities that intended to acquire property for a public use to make a bona fide offer to acquire the property by voluntary purpose or lease.

In response to a request by the property owner under the Public Information Act, condemning entities would have had to furnish only documents relating to the condemnation of the specific property. Any condemning authority not subject to public information requirements would have had to serve property owners with notice prior to initiating proceedings.

**GOVERNOR'S  
REASON FOR  
VETO:**

“House Bill No. 2006 contains two provisions that would vastly expand the cost to Texas taxpayers of public projects to the point where they grossly outweigh the bill’s benefits.

“It is important to balance the rights of Texas landowners whose land is acquired through eminent domain against the needs of the greater taxpaying public. However, two amendments were added in the 11th hour to House Bill No. 2006 that would send the cost of public projects spiraling beyond the amount Texas taxpayers should reasonably be required to pay. Estimates indicate the price tag would easily exceed \$1 billion above and beyond what is reasonable for state and local taxpayers.

“In essence, the state and local government would be over-paying to acquire land through eminent domain in order to enrich a finite number of condemnation lawyers at the expense of Texas taxpayers.

“I am greatly concerned that taxpayers will suffer and needed public projects will be dramatically delayed if we promote increased litigation by creating a new category of damages after a property has been condemned and property owners have already been paid fair market value for the land taken. Virtually every major city, county and high-growth area of the state asked me to veto this legislation because of the prohibitively high costs for future road construction and safety improvements and new schools that would be caused by these amendments.

“Specifically, I find extremely problematic the provision that would expand damages a landowner can recover to include any diminished access to the roadway from remaining property when a portion of a landowner’s property is condemned. Currently, a landowner is appropriately entitled to have reasonable access to their property maintained when a portion of their property is condemned. However, the provision contained in this bill would require large payments of taxpayer dollars for properties that continue to have reasonable access to the road but where that access has been only altered in some fashion. This is an unreasonable burden to place on taxpayers.

“The second problematic provision would greatly increase the cost taxpayers would pay to compensate an owner for the land which is left after some of the property is acquired through eminent domain. It would allow the recovery of damages for factors such as changes in traffic patterns and visibility of the property from the road. Texas courts have long disallowed this practice because it would make public projects that benefit the greater population prohibitively expensive to build.

“With plenty of time left in the legislative session, I asked the bill author in the House of Representatives and the bill sponsor in the Senate to work with my office to address these concerns and find a compromise. The Senate sponsor agreed while the House author did not.

“While I am firmly committed to ensuring increased fairness for Texas landowners, amendments added to an otherwise good bill very late in the process were done to enrich condemnation lawyers and place a disproportionate burden on Texas taxpayers who pay the bill in condemnation cases. Taxpayers should not have to bear the burden of legislation designed so that condemnation lawyers can exploit a new category of damages for their own personal gain. I encourage the legislature to continue to work

to strike a balance that allows Texas landowners to be treated with fairness and respect for their property rights while simultaneously asking their neighbors to pay only so much in taxes as is reasonable and necessary. I pledge to work with the legislature toward this goal.”

**RESPONSE:**

Rep. Beverly Woolley, the bill’s author, said: “Gov. Rick Perry’s veto of HB 2006, eminent domain legislation, is a grave injustice to every private property owner in Texas. The governor’s statement that the bill would slow down and shut down needed construction projects at the expense of taxpayers is simply disingenuous. To the contrary, HB 2006 sought not to forestall the march of progress but to protect the rights of innocent private property owners from being trampled by predatory entities seeking to build roads or other public-use projects without fairly compensating landowners.

“The genesis of HB 2006 was the U.S. Supreme Court’s unconscionable ruling in a lawsuit challenging eminent domain abuse in New London, Connecticut. In *Kelo v. City of New London*, the court upheld a private development corporation’s right to exercise the power of eminent domain by taking an entire neighborhood for private development. In her dissent, Supreme Court Justice Sandra Day O’Connor said, ‘The specter of condemnation [now] hangs over all property. Nothing is to prevent the State from replacing any Motel 6 with a Ritz-Carlton, any home with a shopping mall, or any farm with a factory.’

“In 2005, I co-authored eminent domain legislation to protect Texans’ private property rights in response to the U.S. Supreme Court’s unconscionable ruling in *Kelo*. That same year, I co-chaired the Joint Interim Committee on the Power of Eminent Domain. The work of this joint interim committee formed the basis for HB 2006.

“For many years, the courts have been chipping away at private property rights. HB 2006 would have restored many of those rights, providing important protections for private property owners faced with the threat of having their land taken through the power of eminent domain. The bill narrowed the definition of ‘public use’ to ensure that a taking of private property is only for traditional public uses – not for building a condo project or a shopping mall, as was the case in New London. It required a condemning entity to make a bona fide offer to a property owner and required good-faith dealings and fair compensation and treatment of property owners in eminent domain negotiations.

“HB 2006 made it mandatory for a governmental entity to take a public vote authorizing the exercise of the power of eminent domain, thereby shining the light of public scrutiny on such momentous decisions. Contrary to the governor’s declaration, it would not have provided a financial windfall for condemnation lawyers at taxpayers’ expense. Indeed, the protections contained in the bill would preclude the necessity of any lawyers at all because landowners would be treated fairly from the outset, allowing for a fair, negotiated price for land at no known cost according to the comptroller of public accounts, the attorney general, and the Legislative Budget Board.

“The breadth of support for HB 2006 was varied and stunning. Nearly three dozen public interest groups endorsed the bill, including the Conservative Coalition, the Texas Public Policy Foundation, the Houston Association of Realtors, the Texas Farm Bureau, the Association of Texas Soil and Water Conservation Districts, the Independent Cattlemen’s Association, and many other agricultural and ranching consortiums too numerous to mention here.

“As the citizens of New London found out, when the government or private entities representing it are allowed to brandish the far-reaching power of eminent domain – and can justify taking private property for the vague purpose of ‘economic development’ – all private property owners are in trouble. As a long-time supporter of private property rights, I authored and shepherded HB 2006 through the Legislature to save Texas property owners from suffering at the hands of unscrupulous entities in the name of questionable progress. An overwhelming majority of members of the Texas House and Senate agreed with the bill’s merits. It’s regrettable that Gov. Perry cast aside two years’ hard work and the will of the people with a single stroke of his veto pen.”

Sen. Kyle Janek, the Senate sponsor, had no comment on the veto.

NOTES: HB 2006 was analyzed in Part One of the *May 7 Daily Floor Report*.