

BILL ANALYSIS

C.S.S.B. 1812
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Land & Resource Management
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties note that previous legislation required certain public and private entities with eminent domain authority to register with the comptroller of public accounts by a specified deadline in order to retain such authority. The one-time requirement, which did not apply to any entity created or that acquired the power of eminent domain after that registration deadline, captured a snapshot of such entities in Texas at a particular point in time. The parties assert, however, that without requirements for continuous registration the state has only a limited view of the extent to which such local powers of eminent domain apply. C.S.S.B. 1812 seeks to address this limitation.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the comptroller of public accounts in SECTION 1 of this bill.

ANALYSIS

C.S.S.B. 1812 amends the Government Code to require the comptroller of public accounts to create and make accessible on a website maintained by the comptroller, not later than September 1, 2016, an eminent domain database with information regarding public and private entities, including common carriers, authorized by the state by a general or special law to exercise the power of eminent domain. The bill requires the eminent domain database to include, with respect to each such entity, the name of the entity and the name of the appropriate officer or other person representing the entity; certain contact information for the entity and its representative, including the entity's website address if applicable; the type of entity; each provision of law that grants the entity eminent domain authority; the focus or scope of that authority; the earliest date on which the entity had the authority to exercise the power of eminent domain; the entity's taxpayer identification number, if any; and whether the entity exercised eminent domain authority in the preceding calendar year by the filing of a condemnation petition.

C.S.S.B. 1812 authorizes the comptroller to consult with the appropriate officer of, or other person representing, each entity to obtain the information necessary to maintain the eminent domain database. The bill authorizes the comptroller, to the extent information required in the eminent domain database is otherwise collected or maintained by a state agency or political subdivision, to request that information and any update to the information as necessary for inclusion in the eminent domain database and requires the agency or political subdivision to provide the information and updates. The bill requires the comptroller, at least annually, to

update information in the eminent domain database for each entity, as appropriate. The bill requires the comptroller, to the extent possible, to present information in the eminent domain database in a manner that is searchable and intuitive to users and authorizes the comptroller to enhance and organize the presentation of the information through the use of graphical representations as the comptroller considers appropriate. The bill prohibits the comptroller from charging a fee to the public to access the eminent domain database.

C.S.S.B. 1812 requires a public or private entity, including common carriers, authorized by the state by a general or special law to exercise the power of eminent domain, not later than February 1 of each year, to submit to the comptroller a report containing records and other information specified by the bill's provisions for the purpose of providing the comptroller with information to maintain the eminent domain database. The bill requires the entity to submit the report in a form and in the manner prescribed by the comptroller. The bill, in a temporary provision set to expire December 1, 2016, requires an applicable entity created before and in existence for at least 180 days on September 1, 2015, to submit the entity's initial report not later than February 1, 2016, and requires an applicable entity created before and in existence for less than 180 days on September 1, 2015, to submit the entity's initial report not later than the later of the 180th day after the date of the entity's creation or February 1, 2016. The bill specifies that an applicable entity created on or after September 1, 2015, is not required to submit the entity's initial report before the 180th day after the date of the entity's creation. The bill specifies that, for purposes of the bill's provisions, an entity is considered to have been created on the earliest date on which the entity existed if the entity was authorized to exercise the power of eminent domain on that date or the earliest date on which the entity was authorized to exercise the power of eminent domain if the entity did not have that authority on the earliest date on which the entity existed. The bill requires an applicable entity, in addition to submitting the required annual report, to report to the comptroller any changes to the eminent domain authority information reported by the entity not later than the 90th day after the date on which the change occurred.

C.S.S.B. 1812 requires the comptroller to provide certain written notice to an entity that does not timely submit a report required under the bill's provisions, requires an entity that is provided such notice to report the required information not later than the 30th day after the date the notice is provided, and makes an entity that does not report the required information by that date liable to the state for a civil penalty of \$1,000. The bill requires the comptroller to provide certain written notice to an entity that does not report the required information by the 30th day after the date the comptroller provides the initial notice of noncompliance and requires an entity that is provided this second notice to report the required information by the 30th day after the date the second notice is provided. The bill makes an entity that is provided this second notice and does not report the required information by the prescribed deadline liable to the state for an additional civil penalty of \$1,000, requires the comptroller to reflect the entity's noncompliance in the eminent domain database by including the entity on a separately maintained list of noncomplying entities and in any other manner determined appropriate by the comptroller until the entity reports all required information, and requires the comptroller to provide written notice to the entity that the entity's noncompliance will be reflected in the database until the entity reports the required information. The bill authorizes the attorney general to sue to collect a civil penalty assessed under the bill's provisions.

C.S.S.B. 1812 establishes that the reporting, failure to report, or late submission of a report by an entity under the bill's provisions does not affect the entity's authority to exercise the power of eminent domain. The bill authorizes the comptroller to adopt rules and establish policies and procedures to implement the bill's provisions.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2015.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 1812 may differ from the engrossed in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

SENATE ENGROSSED

SECTION 1. Chapter 2206, Government Code, is amended by adding Subchapter D to read as follows:
SUBCHAPTER D. EMINENT DOMAIN AUTHORITY REPORTING; PUBLIC AVAILABILITY

Sec. 2206.151. APPLICABILITY.

Sec. 2206.152. CREATION DATE.

Sec. 2206.153. EMINENT DOMAIN DATABASE. (a) The comptroller shall create and make accessible on an Internet website maintained by the comptroller an eminent domain database as provided by this section.

(b) The eminent domain database must include with respect to each entity described by Section 2206.151:

- (1) the name of the entity;
- (2) the entity's address and public contact information;
- (3) the name of the appropriate officer or other person representing the entity and that person's contact information;
- (4) the type of entity;
- (5) each provision of law that grants the entity eminent domain authority;
- (6) the focus or scope of the eminent domain authority granted to the entity;
- (7) the location subject to the entity's eminent domain authority;
- (8) the earliest date on which the entity had the authority to exercise the power of eminent domain;
- (9) the entity's taxpayer identification number, if any;
- (10) whether the entity exercised the entity's eminent domain authority in the preceding calendar year by the filing of a condemnation petition under Section 21.012, Property Code; and
- (11) the entity's Internet website address

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Chapter 2206, Government Code, is amended by adding Subchapter D to read as follows:
SUBCHAPTER D. EMINENT DOMAIN AUTHORITY REPORTING; PUBLIC AVAILABILITY

Sec. 2206.151. APPLICABILITY.

Sec. 2206.152. CREATION DATE.

Sec. 2206.153. EMINENT DOMAIN DATABASE. (a) The comptroller shall create and make accessible on an Internet website maintained by the comptroller an eminent domain database as provided by this section.

(b) The eminent domain database must include with respect to each entity described by Section 2206.151:

- (1) the name of the entity;
- (2) the entity's address and public contact information;
- (3) the name of the appropriate officer or other person representing the entity and that person's contact information;
- (4) the type of entity;
- (5) each provision of law that grants the entity eminent domain authority;
- (6) the focus or scope of the eminent domain authority granted to the entity;
- (7) the earliest date on which the entity had the authority to exercise the power of eminent domain;
- (8) the entity's taxpayer identification number, if any;
- (9) whether the entity exercised the entity's eminent domain authority in the preceding calendar year by the filing of a condemnation petition under Section 21.012, Property Code; and
- (10) the entity's Internet website address

or, if the entity does not operate an Internet website, contact information to enable a member of the public to obtain information from the entity.

(c) The comptroller may consult with the appropriate officer of, or other person representing, each entity to obtain the information necessary to maintain the eminent domain database.

(d) To the extent information required in the eminent domain database is otherwise collected or maintained by a state agency or political subdivision, the comptroller may request and the state agency or political subdivision shall provide that information and any update to the information as necessary for inclusion in the eminent domain database.

(e) At least annually, the comptroller shall update information in the eminent domain database for each entity, as appropriate.

(f) To the extent possible, the comptroller shall present information in the eminent domain database in a manner that is searchable and intuitive to users. The comptroller may enhance and organize the presentation of the information through the use of graphical representations as the comptroller considers appropriate.

(g) The comptroller may not charge a fee to the public to access the eminent domain database.

Sec. 2206.154. REPORTING OF INFORMATION TO THE COMPTROLLER.

Sec. 2206.155. PENALTIES FOR NONCOMPLIANCE; EXPIRATION OF EMINENT DOMAIN AUTHORITY.

(a) An entity described by Section 2206.151 may not attempt to exercise the power of eminent domain by making an offer under Section 21.0113, Property Code, or filing a condemnation petition under Section 21.012, Property Code, at a time when the entity has not reported information to the comptroller as

or, if the entity does not operate an Internet website, contact information to enable a member of the public to obtain information from the entity.

(c) The comptroller may consult with the appropriate officer of, or other person representing, each entity to obtain the information necessary to maintain the eminent domain database.

(d) To the extent information required in the eminent domain database is otherwise collected or maintained by a state agency or political subdivision, the comptroller may request and the state agency or political subdivision shall provide that information and any update to the information as necessary for inclusion in the eminent domain database.

(e) At least annually, the comptroller shall update information in the eminent domain database for each entity, as appropriate.

(f) To the extent possible, the comptroller shall present information in the eminent domain database in a manner that is searchable and intuitive to users. The comptroller may enhance and organize the presentation of the information through the use of graphical representations as the comptroller considers appropriate.

(g) The comptroller may not charge a fee to the public to access the eminent domain database.

Sec. 2206.154. REPORTING OF INFORMATION TO COMPTROLLER.

Sec. 2206.155. PENALTIES FOR NONCOMPLIANCE.

No equivalent provision.

required by this subchapter.

(b) An entity that violates Subsection (a) and, as certified by the comptroller under Subsection (d), does not make the report required by Subsection (d) is liable to the state for a civil penalty not to exceed \$1,000. The attorney general may sue to collect the penalty.

(c) The comptroller shall provide notice to an entity that violates Subsection (a) informing the entity that:

(1) the entity has violated Subsection (a); and

(2) the entity will be subject to the penalty imposed by this section and the entity's authority to exercise the power of eminent domain will expire if the entity does not report the information required by this subchapter on or before the 30th day after the date the notice is provided.

(d) Not later than the 30th day after the date the comptroller provides notice under Subsection (c) to an entity that violated Subsection (a), the entity must report the required information. If the comptroller certifies that the entity did not make the report as required by this subsection, the entity's authority to exercise the power of eminent domain expires on the day after the date the comptroller makes the certification.

(e) The comptroller shall promptly make a certification described by Subsection (d) when appropriate and post information regarding the expiration of an entity's eminent domain authority under this section in the eminent domain database maintained under Section 2206.153.

No equivalent provision. (But see *Subsection (c) above.*)

No equivalent provision. (But see *Subsections (c)(1), (e)(1), and (f) below.*)

No equivalent provision. (But see *Subsections (a) and (c)(2) below.*)

No equivalent provision. (But see *Subsections (b) and (d) below.*)

No equivalent provision.

(a) If an entity does not timely submit a report that complies with Section 2206.154, the comptroller shall provide written notice to the entity:

(1) informing the entity of the entity's violation of that section; and

(2) notifying the entity that the entity will be subject to a penalty of \$1,000 if the entity does not report the required information on or before the 30th day

No equivalent provision. (But see Subsection (d) above.)

No equivalent provision.

(See Subsection (b) above.)

(See Subsection (c) above.)

No equivalent provision. (But see Subsection (d) above.)

No equivalent provision.

(See Subsection (b) above.)

(See Subsection (b) above.)

after the date the notice is provided.

(b) Not later than the 30th day after the date the comptroller provides notice to an entity under Subsection (a), the entity must report the required information.

(c) If an entity does not report the required information as prescribed by Subsection (b):

(1) the entity is liable to the state for a civil penalty of \$1,000; and

(2) the comptroller shall provide written notice to the entity:

(A) informing the entity of the entity's liability for the penalty; and

(B) notifying the entity that if the entity does not report the required information on or before the 30th day after the date the notice is provided:

(i) the entity will be subject to an additional penalty of \$1,000; and

(ii) the entity's noncompliance will be reflected in the eminent domain database maintained by the comptroller.

(d) Not later than the 30th day after the date the comptroller provides notice to an entity under Subsection (c), the entity must report the required information.

(e) If an entity does not report the required information as prescribed by Subsection (d):

(1) the entity is liable to the state for a civil penalty of \$1,000; and

(2) the comptroller shall:

(A) reflect the entity's noncompliance in the database required by this subchapter by including the entity on a separately maintained list of noncomplying entities and in any other manner determined appropriate by the comptroller until the entity reports all information required under Section 2206.154; and

(B) provide written notice to the entity that the entity's noncompliance will be reflected in the database until the entity reports the required information.

(f) The attorney general may sue to collect a civil penalty imposed by this section.

No equivalent provision.

Sec. 2206.156. EMINENT DOMAIN AUTHORITY NOT AFFECTED. The reporting, failure to report, or late submission of a report by a public or private entity, including a common carrier, under this subchapter does not affect the entity's authority to exercise the power of eminent domain.

Sec. 2206.156. RULES.

Sec. 2206.157. RULES.

SECTION 2. The comptroller of public accounts shall create and post on an Internet website maintained by the comptroller the eminent domain database required by Section 2206.153, Government Code, as added by this Act, not later than September 1, 2016.

SECTION 2. Same as engrossed version.

SECTION 3. 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, 2015.

SECTION 3. Same as engrossed version.