

- SUBJECT:** Establishing a bill of rights for property owners subject to eminent domain
- COMMITTEE:** Land and Resource Management — committee substitute recommended
- VOTE:** 7 ayes — Mowery, Orr, Zerwas, Callegari, R. Cook, Geren, Pickett
0 nays
2 absent — Y. Davis, Ritter
- WITNESSES:** For — Regan Beck, Texas Farm Bureau; John Colyandro, Texas Conservative Coalition, Kinnan R. Golemon, Devon Energy; James Mann, Texas Pipeline Association. (*Registered, but did not testify:* Steve Bresnen, North Harris County Regional Water Authority; Daniel Gonzalez, Texas Association of REALTORS; Patrick Nugent, Texas Pipeline Association)

Against — Jennifer Brown, City of San Antonio

On — Michelle Hundley, Port of Houston Authority
- BACKGROUND:** The Fifth Amendment to the U.S. Constitution prohibits the taking of private property for public use without just compensation, commonly referred to as the “takings clause.” Texas Constitution, Art. 1, sec. 17 prohibits a person’s property from being taken, damaged, or destroyed without consent for public use without adequate compensation.

In June 2005, the U.S. Supreme Court ruled in *Kelo v. City of New London*, 545 U.S. 469, that the proposed use of property by the city of New London, Conn. for a development project qualified as a “public use” within the meaning of the U.S. Constitution’s takings clause. The Supreme Court said that the city’s plan unquestionably served a public purpose and therefore ruled that it did not violate the takings clause. The court ruled that promoting economic development is a traditional and long accepted government function and embraced the broader interpretation of public use as “public purpose” in upholding the city’s actions.

The court also emphasized that nothing in its opinion precluded a state from placing further restrictions on the exercise of the takings power. It

said that many states already impose “public use” requirements that are stricter than the basic federal standards.

Following the *Kelo* decision, the 79th Legislature, in its second called session in 2005, enacted SB 7 by Janek, which prohibits governmental or private entities from using eminent domain to take private property if the taking:

- confers a private benefit on a particular private party through the use of the property;
- is for a public use that merely is a pretext to confer a private benefit on a particular private party; or
- is for economic development purposes, unless economic development is a secondary purpose that results from municipal community development or municipal urban renewal activities to eliminate an existing affirmative harm on society from slum or blighted areas.

A determination by a governmental or private entity that a proposed taking of property does not involve one of these prohibited reasons is not sufficient to create a presumption to that effect.

Property Code ch. 21 regulates acquisition and appeal procedures associated with the use of eminent domain. It entitles property owners subject to eminent domain to a hearing with special commissioners appointed by an assigned court, notice of hearing, and a right to appeal a judgment. Sec. 21.0111 requires a governmental entity exercising eminent domain authority to disclose to the subject property owner at the time an offer to purchase is made any and all existing appraisal reports produced or acquired by the governmental entity relating specifically to the owner’s property and used in determining the final valuation offer in a specified timeframe. Sec. 21.012 requires a condemning authority to begin a condemnation proceeding by filing in court a petition containing basic information about the property to be acquired.

DIGEST:

CSHB 1495 would establish the Landowner’s Bill of Rights Act in Government Code, sec. 402.031. The bill would charge the attorney general with preparing a written bill of rights for an owner whose property could be acquired by a governmental or private entity through eminent domain. The bill of rights would inform property owners of their rights to:

- notice of the proposed property acquisition;
- a good faith effort to negotiate on the part of the entity proposing the use of eminent domain;
- an assessment of damages to the owner that would result from the acquisition; and
- a hearing, including damage assessment, as provided in Property Code ch. 21, and the right to appeal any consequent judgment.

The attorney general would write this “Landowners Bill of Rights” in plain language and provide descriptions of eminent domain procedures, the condemning authority’s obligations, and the property owner’s options during a condemnation. The Attorney General’s Office also would be required to make the statement available on its web site.

Entities with eminent domain power would be required to send or provide the bill of rights document to the person listed as the most recent owner prior to commencing negotiations for the acquisition of a property. The statement would have to be printed in an easily readable manner and, if possible, posted on the web, if the condemning authority were a governmental entity. When filing a petition to commence eminent domain proceedings, the condemning authority would state that it supplied the subject property owner with a bill of rights statement as provided in the bill.

The attorney general would have to prepare the statement no later than August 31, 2007. The bill would take effect September 1, 2007.

**SUPPORTERS
SAY:**

CSHB 1495 is necessary for the protection of property owners affected by eminent domain proceedings. Property owners subject to takings often have little knowledge of the eminent domain process and the statutory rights to which they are entitled. Such owners may be subject to intimidation and deception by large condemning organizations with substantial legal resources.

CSHB 1495 would implement a change to eminent domain law recommended by the Texas Conservative Coalition aimed at informing landowners of their rights and options when confronted with a condemnation. The bill would establish a very simple requirement that condemning authorities supply landowners with a bill of rights informing them of the process of eminent domain and what recourse was available to them throughout the condemnation proceedings. The bill of rights would

be drafted by the attorney general in simple language and would present basic information about the process in a readable and accessible format.

Property owners would receive the bill of rights prior to the negotiations regarding the proposed acquisition. This would give the owner enough time to become familiar with the content of the bill of rights prior to meeting with the condemning authority. The bill of rights would be provided before negotiations for acquisition, which may or may not result in condemnation. At a minimum, the owner would have enough information to determine whether further legal assistance was required and if initial offers should be accepted or appeals processes further pursued. The bill would present a fair compromise between giving an owner sufficient time to review the bill of rights and providing for a condemner's needs to expedite an acquisition to the extent possible.

**OPPONENTS
SAY:**

CSHB 1495 would not necessarily give property owners sufficient time to review the bill of rights. The bill would require a condemning authority to provide the statement only before initiating negotiations, which could be very shortly before they ensued. The bill of rights should be issued far enough in advance to ensure property owners ample opportunity to thoroughly review and understand the complex proceedings associated with eminent domain.

NOTES:

HB 1495 as introduced would have excluded private entities from supplying property owners with a bill of rights prior to condemnation. The committee substitute deleted provisions requiring a condemning entity to distribute the bill of rights four weeks prior to the date the entity intended to begin negotiations.

Three other measures related to the use of eminent domain authority have been set on today's House calendar for second reading consideration. HB 3057 by Callegari would require a municipality to determine that each property in an area possessed characteristics of blight prior to clearing improvements in the area by means of condemnation. HB 2006 by Woolley would modify the processes governing eminent domain proceedings, obligations placed upon condemning entities, the rights of previous owners to repurchase taken property, and standards of evidence that could be considered by a court in the course of making decisions regarding damages. HJR 30 by Jackson would amend the Texas Constitution to allow governmental entities to sell property acquired

through eminent domain back to the previous owners at the price the entities paid to acquire the property.