

## **BILL ANALYSIS**

Senate Research Center

C.S.S.B. 1023  
By: Ogden  
State Affairs  
5/5/2009  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Currently, a property owner whose property is taken by condemnation might be able to recover the costs of the proceeding.

This bill allows the property owner to recover attorneys fees and expert witness fees under the same circumstances as they may recover costs now. It also makes the condemnor provide an initial showing of right, necessity and the use of least intrusive means (if less than fee simple title is to be taken).

C.S.S.B. 1023 amends current law relating to the exercise of eminent domain authority.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subchapter B, Chapter 21, Property Code, by adding Section 21.0122, as follows:

Sec. 21.0122. PROOF OF NECESSITY. (a) Requires that in addition to the contents prescribed by Section 21.012(b) (relating to certain requirements of the condemnation petition), a condemnation petition state that the facts to be proven are that:

- (1) the petitioner is authorized to condemn property for the purpose for which the property that is the subject of the petition is sought;
- (2) the use for which the property is sought is a public use that is not prohibited by Section 2206.001 (Limitation on Eminent Domain For Private Parties or Economic Development Purposes), Government Code; and
- (3) the property sought is necessary to accomplish that public use.

(b) Requires the court, if a condemning entity fails to prove any of the facts under Subsection (a), to deny the condemnation and award to the property owner the owner's court costs and reasonable attorney's fees and expert witness fees incurred in relation to the condemnation proceeding.

SECTION 2. Amends Section 21.047(a), Property Code, to require the condemnor, if the commissioners award greater damages than the condemnor offered to pay before the proceedings began or if the decision of the commissioners is appealed and a court awards greater damages than the commissioners awarded, to pay all costs and the property owner's reasonable attorney's fees and expert witness fees.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: upon passage or September 1, 2009.