

BILL ANALYSIS

Senate Research Center
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S.B. 178
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State Affairs
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 178 is intended to prohibit governmental entities from exercising eminent domain for recreational purposes. It is generally accepted that eminent domain should only be used in instances of "public necessity," including for roads and utilities. However, parks do not meet this commonly understood definition of public necessity.

In several instances, individuals have lost their homes and private land because governmental entities saw "better use" for the property as parks, greenbelts, and trails. S.B. 178 prevents future instances of homeowners losing their property so that others have a place to play by defining "recreational purposes" and prohibiting governmental entities from exercising eminent domain authority for those purposes.

As proposed, S.B. 178 amends current law relating to the use of eminent domain to take private property for recreational purposes.

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 Section 2206.001(c), Government Code, as follows:

(c) Deletes existing text providing that this section does not affect the authority of an entity authorized by law to take private property through the use of eminent domain for parks. Makes a nonsubstantive change.

SECTION 2. Amends Subchapter A, Chapter 2206, Government Code, by adding Section 2206.003, as follows:

Sec. 2206.003. PROHIBITION OF EMINENT DOMAIN FOR RECREATIONAL PURPOSES. (a) Provides that this section applies to the use of eminent domain under the laws of this state, including a local or special law, by any governmental or private entity, including:

- (1) a state agency, including an institution of higher education as defined by Section 61.003 (Definitions), Education Code;
- (2) a political subdivision of this state; or
- (3) a corporation created by a governmental entity to act on behalf of the entity.

(b) Prohibits a governmental or private entity from taking private property through the use of eminent domain if the taking is for a recreational purpose, notwithstanding any other law and except as provided by Subsection (e).

(c) Provides that this section does not affect the authority of an entity authorized by law to take private property through the use of eminent domain for a purpose listed in Section 2206.001(c) unless the purpose is considered a recreational purpose under Subsection (d).

(d) Provides that, for the purposes of this section, "recreational purpose" includes:

(1) a parks and recreation system, or improvements or additions to a parks and recreation system, including sidewalks, or an area or facility that is part of a parks and recreation system; and

(2) a park, greenbelt, or trail.

(e) Provides that this section does not affect the authority of a governmental entity to condemn:

(1) a leasehold estate on property owned by the governmental entity; or

(2) property to provide adequate public recreational access to suitable recreational resources as described by Section 16.1351 (Recreational Access), Water Code.

(f) Provides that the determination by the governmental or private entity proposing to take the property that the taking does not involve an act or circumstance prohibited by Subsection (b) does not create a presumption with respect to whether the taking involves that act or circumstance.

SECTION 3. Amends Section 21.103(a), Parks and Wildlife Code, to authorize the Texas Parks and Wildlife Department (TPWD), except as provided in Subsection (b) (prohibiting real property of the state or a political subdivision of the state from being acquired without its consent, except as provided in Subchapter O of Chapter 22 of this code) of this section, to acquire park sites, including property already devoted to public use, by purchase or any other manner permitted by law, rather than by purchase, condemnation, or other manner.

SECTION 4. Repealer: Section 13.305 (Condemnation Proceedings), Parks and Wildlife Code.

Repealer: Section 21.103(c) (requiring that TPWD exercise the power of eminent domain in the manner prescribed by general law, including provisions of Section 13.305 of this code), Parks and Wildlife Code.

SECTION 5. Makes application of this Act prospective.

SECTION 6. Effective date: September 1, 2015.