

AN ACT

relating to limits on the use of the power of eminent domain.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle E, Title 10, Government Code, is amended by adding Chapter 2206 to read as follows:

CHAPTER 2206. LIMITATIONS ON USE OF EMINENT DOMAIN

Sec. 2206.001. LIMITATION ON EMINENT DOMAIN FOR PRIVATE PARTIES OR ECONOMIC DEVELOPMENT PURPOSES. (a) 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, 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) A governmental or private entity may not take private property through the use of eminent domain if the taking:

(1) confers a private benefit on a particular private party through the use of the property;

(2) is for a public use that is merely a pretext to confer a private benefit on a particular private party; or

(3) is for economic development purposes, unless the economic development is a secondary purpose resulting from

1 municipal community development or municipal urban renewal  
2 activities to eliminate an existing affirmative harm on society  
3 from slum or blighted areas under:

4 (A) Chapter 373 or 374, Local Government Code,  
5 other than an activity described by Section 373.002(b)(5), Local  
6 Government Code; or

7 (B) Section 311.005(a)(1)(I), Tax Code.

8 (c) This section does not affect the authority of an entity  
9 authorized by law to take private property through the use of  
10 eminent domain for:

11 (1) transportation projects, including, but not  
12 limited to, railroads, airports, or public roads or highways;

13 (2) entities authorized under Section 59, Article XVI,  
14 Texas Constitution, including:

15 (A) port authorities;

16 (B) navigation districts; and

17 (C) any other conservation or reclamation  
18 districts that act as ports;

19 (3) water supply, wastewater, flood control, and  
20 drainage projects;

21 (4) public buildings, hospitals, and parks;

22 (5) the provision of utility services;

23 (6) a sports and community venue project approved by  
24 voters at an election held on or before December 1, 2005, under  
25 Chapter 334 or 335, Local Government Code;

26 (7) the operations of:

27 (A) a common carrier subject to Chapter 111,

1 Natural Resources Code, and Section B(3)(b), Article 2.01, Texas  
2 Business Corporation Act; or

3 (B) an energy transporter, as that term is  
4 defined by Section 186.051, Utilities Code;

5 (8) a purpose authorized by Chapter 181, Utilities  
6 Code;

7 (9) underground storage operations subject to Chapter  
8 91, Natural Resources Code;

9 (10) a waste disposal project; or

10 (11) a library, museum, or related facility and any  
11 infrastructure related to the facility.

12 (d) This section does not affect the authority of a  
13 governmental entity to condemn a leasehold estate on property owned  
14 by the governmental entity.

15 (e) The determination by the governmental or private entity  
16 proposing to take the property that the taking does not involve an  
17 act or circumstance prohibited by Subsection (b) does not create a  
18 presumption with respect to whether the taking involves that act or  
19 circumstance.

20 SECTION 2. Subchapter A, Chapter 552, Government Code, is  
21 amended by adding Section 552.0037 to read as follows:

22 Sec. 552.0037. CERTAIN ENTITIES AUTHORIZED TO TAKE PROPERTY  
23 THROUGH EMINENT DOMAIN. Notwithstanding any other law, information  
24 collected, assembled, or maintained by an entity that is not a  
25 governmental body but is authorized by law to take private property  
26 through the use of eminent domain is subject to this chapter in the  
27 same manner as information collected, assembled, or maintained by a

1 governmental body, but only if the information is related to the  
2 taking of private property by the entity through the use of eminent  
3 domain.

4 SECTION 3. Section 203.052, Transportation Code, as amended  
5 by H.B. No. 2702, Acts of the 79th Legislature, Regular Session,  
6 2005, is amended by amending Subsection (b) and adding Subsection  
7 (c) to read as follows:

8 (b) Property necessary or convenient to a state highway for  
9 purposes of Subsection (a) includes an interest in real property, a  
10 property right, or a material that the commission determines is  
11 necessary or convenient to:

12 (1) protect a state highway;  
13 (2) drain a state highway;  
14 (3) divert a stream, river, or other watercourse from  
15 the right-of-way of a state highway;

16 (4) store materials or equipment for use or used in the  
17 construction or maintenance of a state highway;

18 (5) construct or operate a warehouse or other facility  
19 used in connection with the construction, maintenance, or operation  
20 of a state highway;

21 (6) lay out, construct, or maintain a roadside park;

22 (7) lay out, construct, or maintain a parking lot that  
23 will contribute to maximum use of a state highway with the least  
24 possible congestion;

25 (8) mitigate an adverse environmental effect that  
26 directly results from construction or maintenance of a state  
27 highway;

1           (9) subject to Subsection (c), provide a location for  
2 an ancillary facility that is anticipated to generate revenue for  
3 use in the design, development, financing, construction,  
4 maintenance, or operation of a toll project, including a gas  
5 station, garage, store, hotel, restaurant, or other commercial  
6 facility;

7           (10) construct or operate a toll booth, toll plaza,  
8 service center, or other facility used in connection with the  
9 construction, maintenance, or operation of a toll project; or

10           (11) accomplish any other purpose related to the  
11 location, construction, improvement, maintenance, beautification,  
12 preservation, or operation of a state highway.

13           (c) The commission may not acquire property for an ancillary  
14 facility through the exercise of eminent domain, unless the  
15 acquisition of the property is for one of multiple ancillary  
16 facilities included in a comprehensive development plan approved by  
17 the county commissioners court of each county in which the property  
18 is located.

19           SECTION 4. Subsection (b), Section 227.041, Transportation  
20 Code, as amended by H.B. No. 2702, Acts of the 79th Legislature,  
21 Regular Session, 2005, is amended to read as follows:

22           (b) An interest in real property or a property right is  
23 necessary or convenient for the construction or operation of a  
24 facility if it is located in or contiguous to an existing or planned  
25 segment of the Trans-Texas Corridor or is needed for mitigation of  
26 adverse environmental effects, and if its acquisition will further  
27 the primary purposes of the Trans-Texas Corridor. Primary purposes

1 include:

2 (1) providing right-of-way or a location for a  
3 facility;

4 (2) providing land for mitigation of adverse  
5 environmental effects;

6 (3) providing buffer zones for scenic or safety  
7 purposes;

8 (4) allowing for possible future expansion of any  
9 facility; and

10 (5) subject to Section 203.052(c), providing a  
11 location for a gas station, convenience store, or similar ancillary  
12 facility.

13 SECTION 5. Subchapter 2, Chapter 51, Education Code, is  
14 amended by adding Section 51.9045 to read as follows:

15 Sec. 51.9045. LIMITATION ON USE OF EMINENT DOMAIN. (a) In  
16 this section:

17 (1) "Institution of higher education" has the meaning  
18 assigned by Section 61.003.

19 (2) "Lodging facility" does not include a dormitory or  
20 other student housing facility.

21 (b) The governing board of an institution of higher  
22 education may not use the power of eminent domain to acquire land to  
23 be used for a lodging facility or for parking or a parking structure  
24 intended to be used in connection with the use of a lodging  
25 facility.

26 SECTION 6. Section 6, Chapter 178, Acts of the 56th  
27 Legislature, Regular Session, 1959 (Article 3183b-1, Vernon's

1 Texas Civil Statutes), is amended to read as follows:

2       Sec. 6. (a) Except as provided by Subsection (b) of this  
3 section, the [The] power of eminent domain granted by this Act shall  
4 be exercised in accordance with Chapter 21, Property Code [the  
5 procedure, conditions, and provisions as prescribed in Title 52,  
6 Revised Civil Statutes of Texas, 1925, as amended].

7       (b) If a charitable corporation to which this Act applies  
8 seeks to acquire any real property by condemnation or seeks to  
9 purchase any real property that the corporation intends to use in a  
10 manner that would not comply with any deed restriction that applies  
11 to the property immediately before the purchase, before the  
12 charitable corporation initiates condemnation proceedings or  
13 records the deed conveying title to the property the charitable  
14 corporation shall, in addition to providing any other notice  
15 required by law, provide written notice by certified mail to the  
16 owner of record, as recorded in the real property records of the  
17 county, of each unit of real property:

18               (1) that the charitable corporation seeks to acquire  
19 or purchase; or

20               (2) that is not more than 200 feet from any boundary of  
21 any unit of real property the charitable corporation seeks to  
22 acquire or purchase.

23       SECTION 7. Subsection (e), Section 227.041, Transportation  
24 Code, as added by H.B. No. 2702, Acts of the 79th Legislature,  
25 Regular Session, 2005, is repealed.

26       SECTION 8. (a) An interim committee is created to study  
27 the use of the power of eminent domain.

1 (b) The interim committee consists of:

2 (1) five members of the senate appointed by the  
3 lieutenant governor; and

4 (2) five members of the house of representatives  
5 appointed by the speaker of the house of representatives.

6 (c) The speaker of the house of representatives shall  
7 designate one member of the house of representatives appointed to  
8 the committee to act as co-chair. The lieutenant governor shall  
9 designate one senator appointed to the committee to act as  
10 co-chair.

11 (d) The interim committee shall:

12 (1) study the use of the power of eminent domain,  
13 including the use of the power of eminent domain for economic  
14 development purposes and the issue of what constitutes adequate  
15 compensation for property taken through the use of eminent domain;  
16 and

17 (2) prepare a report of the committee's study for the  
18 80th Legislature.

19 (e) The report required by Subdivision (2), Subsection (d)  
20 of this section, must be filed with the lieutenant governor and  
21 speaker of the house of representatives not later than December 1,  
22 2006.

23 SECTION 9. The changes in law made by this Act to Chapter  
24 178, Acts of the 56th Legislature, Regular Session, 1959 (Article  
25 3183b-1, Vernon's Texas Civil Statutes), apply to the acquisition  
26 of real property by eminent domain or the purchase of real property  
27 on or after the effective date of this Act unless condemnation



1 proceedings are initiated or a deed conveying title to the property  
2 is filed before the effective date of this Act, in which event the  
3 acquisition or purchase is governed by the law in effect at the time  
4 the proceedings are initiated or the deed is filed, and the former  
5 law is continued in effect for that purpose. The changes in law  
6 made by this Act to Chapter 178, Acts of the 56th Legislature,  
7 Regular Session, 1959 (Article 3183b-1, Vernon's Texas Civil  
8 Statutes), do not apply to acquisition of real property by eminent  
9 domain or the purchase of real property before the effective date of  
10 this Act.

11 SECTION 10. This Act takes effect immediately if it  
12 receives a vote of two-thirds of all the members elected to each  
13 house, as provided by Section 39, Article III, Texas Constitution.  
14 If this Act does not receive the vote necessary for immediate  
15 effect, this Act takes effect on the 91st day after the last day of  
16 the legislative session.

David Newkirk  
President of the Senate

Tom Caddell  
Speaker of the House

I hereby certify that S.B. No. 7 passed the Senate on August 9, 2005, by the following vote: Yeas 25, Nays 4; and that the Senate concurred in House amendments on August 16, 2005, by the following vote: Yeas 19, Nays 5. \_\_\_\_\_

Letsy Spaw  
Secretary of the Senate

I hereby certify that S.B. No. 7 passed the House, with amendments, on August 10, 2005, by the following vote: Yeas 140, Nays 1, three present not voting. \_\_\_\_\_

Robert Haney  
Chief Clerk of the House

Approved:

31 AUG '05  
Date

Rick Perry  
Governor

FILED IN THE OFFICE OF THE  
SECRETARY OF STATE  
11:59am O'CLOCK  
SEP 01 2005  
Roger Williams  
Secretary of State