A BILL TO BE ENTITLED
AN ACT
relating to the use of eminent domain authority.

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

SECTION 1. Chapter 2206, Government Code, is amended to read as follows:

CHAPTER 2206. [LIMITATIONS ON USE OF] EMINENT DOMAIN
SUBCHAPTER A. GENERAL PROVISIONS
Sec. 2206a.001. DEFINITIONS.
Except as otherwise provided by this chapter

1. Necessary Public Use - The term “Necessary Public Use,” means a use of property, including a use described by Section 2206.051(c), by the state, a political subdivision of the state, or the public of the state through the general public to use possess, occupy, and enjoy the property, with substantial benefit to the same.

(a) A necessary public use must be more than rationally related to a conceivable public benefit, but must relate directly to a substantial benefit and be cause or proximate cause.

(b) The public benefits of economic development, including an increase in tax base, tax revenues, employment, general economic health, shall not constitute a necessary public use.

2. Necessary Public Taking - The term “Necessary Public Use” means, in the relevant context, that the taking of a parcel through the powers of eminent domain must occur in order to achieve the stated public use and benefit, that without the taking the public use cannot be achieved, and that no reasonable, feasible alternative to the taking exists.
3. Parcel – the term “Parcel” refers to any piece of property, or any piece of a parcel, which is described under a single legal description and separately owned. An individual may own more than one parcel, and more than one person may own a parcel. The terms “Parcel” and “Property” are used interchangeably within this Act and shall be interpreted as having the same meaning unless the context clearly establishes otherwise.

   (a) A condemning authority shall bear the burden to prove the lawfulness of the taking, pursuant to Section (a)(5) below.

   (b) An entity which acquires ownership of a parcel through eminent domain shall remain in control of the land and use for which it was taken, until the use is cancelled, becomes unnecessary, is not realized or changes in character to any degree, at which time the parcel becomes eligible for repurchase under the provisions of this Act and Subchapter E, Sec. 21.101 of the Property Code.

4. Burden of Proof – The term “Burden of Proof” within the meaning of this Act refers to the duty that an entity asserting authority to condemn and take under the powers of eminent domain has in any judicial, quasi-judicial or administrative proceedings initiated and authorized or required by this Act. The standard of proof required of the condemning authority, in order to prove any assertion in such hearings, is clear and convincing evidence.

   (a) No taking of property through eminent domain shall occur unless the condemning entity proves with clear and convincing evidence and within the meanings and definitions of this Section,
that a proposed use satisfies the meanings and definitions of
Sections 1- public use, that it is necessary in order to achieve
the stated public use, that no feasible alternative to the
taking exists, and that the public use provides a substantial
public benefit.

(b) All actions, proceedings, determinations, appeals and
takings under this Act, including those in Subchapter B, Sec. (d),
shall occur on a parcel by parcel basis, and all assertions of fact
by a condemning entity shall be required to be proven with clear
and convincing evidence, including eminent domain authorized by
Subchapter B, Sec. (d) of this Act.

5. Economic Development--The term "economic development" means
any activity to increase tax base, tax revenue, employment, or
general economic health, when that activity does not result in (1)
the transfer of land to public use and possession, occupation, and
enjoyment; (2) the transfer of land to a private entity that is a
public utility or common carrier; or (3) the transfer of a property
or land which is condemnation-eligible within the means of
Subchapter (B) Sec.(c) of this Act.

6. Fair and Just Compensation--The term “Fair and Just
Compensation“ includes but is not limited to, payment of 125% of
the fair market value of the property at its best and highest use,
as determined by a certified appraiser. It also means relocation
expenses as provided within this Act, and all property affected by
the taking, including but not limited to real property, personal
property, present or future attainable business property and
income, and other value otherwise associated with the property that
in the absence of the condemnation would be unaffected by the
taking.

SUBCHAPTER B [2]. LIMITATIONS ON PURPOSE AND USE OF PROPERTY
ACQUIRED THROUGH 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, quasi-
governmental, quasi-public, or private entity, or private
commercial enterprise, 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;

(4) any other condemning entity using the power of
eminent domain to take property.

(b) Except as otherwise provided by this chapter, neither this
State nor any political subdivisions thereof nor any private
entity, or private commercial enterprise nor any other condemnor
shall use eminent domain to take private property without the
consent of the owner. (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 or private commercial enterprise through the ownership or use of the property, whether or not the benefit, ownership or use, in whole or part, is incidental to a lawful necessary public use;

(2) is for a necessary public use which, in whole or part, or as incident to an otherwise valid necessary public use, confers [that is merely a pretext to confer] a private benefit on a particular private party or private commercial business enterprise;

(3) is for economic development purposes, in whole or part or as incident to an otherwise valid necessary public use, unless the current condition of the parcel poses an existing threat to public health and safety and meets the definition of “condemnation-eligible” property under Section (b)6; unless the economic development is a secondary purpose resulting from municipal community development or municipal urban renewal activities to eliminate an existing affirmative harm on society from slum or blighted areas under:

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

(B) Section 311.005(a)(1)(I), Tax Code; or

(4) is not for a necessary public use.

(5) is a property located within a Tax Increment Reinvestment Zone (TIRZ) and governed by Chapter 311 of the Texas Tax Code, the current condition of the property poses an existing threat to public health and safety and meets the definition of
“condemnation-eligible” property under Section (b)(6).

(6) is a property taken to prevent an area “susceptible to blight” from becoming blighted, nor shall a taking be a pretext for preventing an area of urban blight.

(c) No taking for urban blight shall occur to prevent an area susceptible to blight unless the parcel is condemnation eligible under the definitions of this subsection. A condemnation eligible property includes:

1. Any premises which because of physical condition, use or occupancy constitutes a public nuisance or attractive nuisance.

2. Any structure which, because it is unsanitary, unsafe, or vermin-infested, has been designated by the agency responsible for enforcement of the housing, building or fire codes as unfit for human habitation or use.

3. Any structure which, in its current condition, is a fire hazard, or is otherwise dangerous to the safety of persons or property.

4. Any structure from which the utilities, plumbing, heating, sewerage or other facilities have been disconnected, destroyed, removed, or rendered ineffective so that the property is unfit for its intended use.

5. Any vacant or unimproved lot or property of ground in a predominantly built-up-neighborhood, which by reason of neglect or lack of maintenance has become a place for accumulation of trash and debris, or a haven for rodents or other vermin.

6. Any property that has tax delinquencies exceeding the
value of the property.

7. Any property with code violations affecting health and safety that has not been substantially rehabilitated within one year of the receipt of notice to rehabilitate from the appropriate code enforcement agency.

8. Any property which, by reason of environmentally hazardous conditions, solid waste pollution or contamination, poses a direct threat to public health and safety in its present condition.

9. Any abandoned property, defined as property not occupied by a person with a legal or equitable right to occupy it and for which the condemning authority is unable to identify and contact the owner despite making reasonable efforts or which has been declared abandoned by the owner, including an estate in possession of the property.

[40] This (d) Provided that an entity meets the threshold requirements of necessary public use as described in Sec. 2205.001a, this section does not affect the authority of an entity authorized by law to take private property through the use of eminent domain for:

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

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

(A) port authorities;

(B) navigation districts; and
(C) any other conservation or reclamation districts that act as ports;

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

(4) public buildings, hospitals, and parks;

(5) the provision of utility services;

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

(7) the operations of:

(A) a common carrier pipeline [subject to Chapter 111, Natural Resources Code, and Section B(3)(b), Article 2.01, Texas Business Corporation Act]; or

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

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

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

(10) a waste disposal project; or

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

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

(f) 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.

Sec. 2206.002. LIMITATIONS ON EASEMENTS. (a) This section applies only to an easement acquired by an entity for the purpose of a pipeline to be used for oil or gas exploration or production activities.

(b) A property owner whose property is acquired through the use of eminent domain under Chapter 21, Property Code, for the purpose of creating an easement through that owner's property may construct streets or roads, including gravel, asphalt, or concrete streets or roads, at any locations above the easement that the property owner chooses.

(c) The portion of a street or road constructed under this section that is within the area covered by the easement:

(1) must cross the easement at or near 90 degrees; and

(2) may not:

(A) exceed 40 feet in width;

(B) cause a violation of any applicable pipeline regulation; or

(C) interfere with the operation and maintenance of any pipeline.

(d) At least 30 days before the date on which construction of an asphalt or concrete street or road that will be located wholly or partly in an area covered by an easement used for a pipeline is scheduled to begin, the property owner must submit plans for the
SUBCHAPTER C 

PROCEDURES REQUIRED TO INITIATE EMINENT DOMAIN PROCEEDINGS

Sec. 2206.051. SHORT TITLE. This subchapter may be cited as the Truth in Condemnation Procedures Act.

Sec. 2206.052. APPLICABILITY. The procedures in this subchapter apply only to the use of eminent domain under the laws of this state by a governmental entity.

Sec. 2206.053. VOTE ON USE OF EMINENT DOMAIN. (a) Before a governmental entity initiates a condemnation proceeding by filing a petition under Section 21.012, Property Code, the governmental entity must authorize the initiation of the condemnation proceeding at a public meeting by a record vote.

(b) A single ordinance, resolution, or order may be adopted for all units of property to be condemned if:

(1) the motion required by Subsection (a) indicates that the first record vote applies to all units of property to be condemned; and

(2) the minutes of the governmental entity reflect that the first vote applies to all of those units.

(c) If more than one member of the governing body objects to adopting a single ordinance, resolution, or order by a record vote for all units of property for which condemnation proceedings are to be initiated, a separate record vote must be taken for each unit of property.

(d) For the purposes of Subsections (a) and (c), if two or
more units of real property are owned by the same person, the governmental entity may treat those units of property as one unit of property.

(b) If two or more units of property exist on separate parcels, the combining of units is not authorized and the government entity shall treat the units as separate properties requiring separate record votes, and if the vote passes, no more than one ordinance, resolution or order may be adopted for each.

(c) Minutes shall be kept of the vote and all discussion pertaining to it which occur at the public meeting. These minutes must be made available to the public upon any request made pursuant to the Texas Public Information Act, Texas Government Code, Chapter 522 et seq.

(d) The motion to adopt an ordinance, resolution, or order authorizing the initiation of condemnation proceedings under Chapter 21, Property Code, must be made in a form substantially similar to the following: "I move that the (name of governmental entity) authorize the use of the power of eminent domain to acquire (describe the property) for (describe the necessary public use). Condemnation of the property is necessary to achieve the public use, in that (explain why acquiring the property is necessary). The condemnation will provide a substantial benefit to the state or public by (explain the benefit) and no feasible alternative to achieving the necessary public use exists." The description of the property required by this subsection is sufficient if the description of the location of and interest in the property that
the governmental entity seeks to acquire is substantially similar to the description that is or could properly be used in a petition to condemn the property under Section 21.012, Property Code; provided, however, that the description in no way limits the evidence any court or commissioner may consider under the Rules of Evidence, Texas Rules of Civil Procedure, regarding any aspect of the petition in a condemnation petition hearing.

(f) If a project for a public use described by Section 2206.001(c)(3) will require a governmental entity to acquire multiple tracts or units of property to construct facilities connecting one location to another location, the governing body of the governmental entity may adopt a single ordinance, resolution, or order by a record vote that delegates the authority to initiate condemnation proceedings to the chief administrative official of the governmental entity.

(g) An ordinance, resolution, or order adopted under Subsection (f) is not required to identify specific properties that the governmental entity will acquire. The ordinance, resolution, or order must identify the general area to be covered by the project or the general route that will be used by the governmental entity for the project in a way that provides property owners in and around the area or along the route reasonable notice that the owners' properties may be subject to condemnation proceedings during the planning or construction of the project.

SUBCHAPTER D [C]. EXPIRATION OF CERTAIN EMINENT DOMAIN AUTHORITY

Sec. 2206.101. REPORT OF EMINENT DOMAIN AUTHORITY; EXPIRATION
OF AUTHORITY. (a) This section does not apply to an entity that
was created or that acquired the power of eminent domain on or
after December 31, 2012.

(b) Not later than December 31, 2012, an entity, including a
private entity, authorized by the state by a general or special law
to exercise the power of eminent domain shall submit to the
comptroller a letter stating that the entity is authorized by the
state to exercise the power of eminent domain and identifying each
provision of law that grants the entity that authority. The entity
must send the letter by certified mail, return receipt requested.

(c) The authority of an entity to exercise the power of
eminent domain expires on September 1, 2013, unless the entity
submits a letter in accordance with Subsection (b).

(d) Not later than March 1, 2013, the comptroller shall
submit to the governor, the lieutenant governor, the speaker of the
house of representatives, the presiding officers of the appropriate
standing committees of the senate and the house of representatives,
and the Texas Legislative Council a report that contains:

(1) the name of each entity that submitted a letter in
accordance with this section; and

(2) a corresponding list of the provisions granting
eminent domain authority as identified by each entity that
submitted a letter.

(e) The Texas Legislative Council shall prepare for
consideration by the 84th Legislature, Regular Session, a
nonsubstantive revision of the statutes of this state as necessary
to reflect the state of the law after the expiration of an entity's
eminent domain authority effective under Subsection (c).

Sec. 2206.102 DISCLOSURE AND RECORDING OF EMINENT DOMAIN

ACTIONS AND DISPOSITIONS. (a) An entity, including a private
tility, authorized by the state to exercise the power of eminent
domain shall submit to the comptroller of public accounts certain
documents and information about each attempt it undertakes to
acquire property using the power of eminent domain. This must be
done whether or not the entity acquires the land, or resorts to a
condemnation petition.

(b) The information shall be sent to the comptroller not later
than 10 business days following the final disposition of an eminent
domain petition, acquisition of property through acceptance, and
include a Statement of Necessary Public Use which:

(1) describes with detail and clarity the necessary
public use for which the property is being taken;

(2) how the taking is necessary in order to achieve the
described necessary public use;

(3) how the stated necessary will be beneficial to the
public; and

(4) a statement stating that no other reasonable and
feasible alternatives exist, aside from taking that parcel, to
achieve the stated necessary public use.

(c) The condemning entity shall also send:

(1) a photo copy of the offer;

(2) a statement declaring that the entity and the
property owner are unable to agree on the damages;

(3) that the entity made a bona fide offer to acquire the property from the property owner voluntarily as prescribed by Section 21.0113;

(4) a copy of all offer correspondence between the entity and property owner, including but not limited to the offer itself;

(5) a project plan or project statement describing what will be done on or to the property, and in what anticipated timeframe, in order to achieve the necessary public use.

(d) If eminent domain was authorized by record vote at a public meeting under Section 2205.053, then within three days of the vote, the condemning entity shall deliver, transmit electronically or mail to the state comptroller of public accounts copies of the following items:

(1) the ordinance, resolution or order adopted by the condemning authority;

(2) the motion presented for vote and describing the property, necessary public use and necessity;

(3) the minutes of the proceeding.

(e) The comptroller of public accounts shall maintain a database containing all of the information, and make the database accessible to the public remotely.

SECTION 2. Section 21.0111, Property Code, is amended to read as follows:

Sec. 21.0111. DISCLOSURE OF CERTAIN INFORMATION REQUIRED; INITIAL OFFER. (a) An [governmental] entity with eminent domain
authority that wants to acquire real property for a necessary public use shall, by certified mail, return receipt requested, disclose to the property owner at the time an offer to purchase or lease the property is made any and all [existing] appraisal reports produced or acquired by the [governmental] entity relating specifically to the owner's property and prepared in the 10 years preceding the date of the [used in determining the final valuation]

(b) A property owner shall disclose to the [acquiring governmental] entity seeking to acquire the property any and all current and existing appraisal reports produced or acquired by the property owner relating specifically to the owner's property and used in determining the owner's opinion of value. Such disclosure shall take place not later than the earlier of:

(1) the 10th day after the date [within 10 days] of receipt of an appraisal report; or

(2) the third business day before the date of a special commissioner's hearing if an appraisal report is to be used at the [reports but no later than 10 days prior to the special commissioner's] hearing.

(c) An entity seeking to acquire property that the entity is authorized to obtain through the use of eminent domain may not include a confidentiality provision in an offer or agreement to acquire the property. The entity shall inform the owner of the property that the owner has the right to:

(1) discuss any offer or agreement regarding the
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entity's acquisition of the property with others; or

(2) keep the offer or agreement confidential, unless the

offer or agreement is subject to Chapter 552, Government Code.

(d) A subsequent bona fide purchaser for value from the

acquiring [governmental] entity may conclusively presume that the

requirement of this section has been met. This section does not

apply to acquisitions of real property for which an [⇒

governmental] entity does not have eminent domain authority.

SECTION 3. Subchapter B, Chapter 21, Property Code, is

amended by adding Section 21.0113 to read as follows:

Sec. 21.0113. BONA FIDE OFFER REQUIRED. (a) An entity with

eminent domain authority that wants to acquire real property for a

necessary public use must make a bona fide offer to acquire the

property from the property owner voluntarily.

(b) An entity with eminent domain authority has made a bona

fide offer if:

(1) an initial offer is made in writing to a property

owner;

(2) a final offer is made in writing to the property

owner;

(3) the final offer is made on or after the 30th day

after the date on which the entity makes a written initial offer to

the property owner;

(4) before making a final offer, the entity obtains a

written appraisal from a certified appraiser of the value of the

property being acquired and the damages, if any, to any of the
property owner's remaining property, such appraisal to reflect the
fair market value of the property at its best and highest use,
taking into consideration the effect of taking the owner's
remaining real and personal property, and income lost as a result
of the taking; of the value of the property being acquired and the
damages, if any, to any of the property owner's remaining
property;

(a) All appraisers utilized by either the entity or
the property owner, shall be AQB certified, have an active license
with the TALCB, and be TALCB certified. If the property owner
requests it, the entity shall obtain the appraisal of a personal
property licensed appraiser to appraise personal property, a real
estate appraiser to appraise real estate, and a business valuation
appraiser to appraise a business. The property owner shall be
permitted to appoint a certified appraiser or appraisers of the
owner’s choosing, and the commissioner or court hearing the issue
of compensation shall admit such written appraisal(s) into
evidence, and allow live testimony, and consider either or both
when calculating the fair and just compensation award. In no
circumstance shall the entity be permitted to use the same
appraiser more than 3 times during any 12 month period, and not
more than one time on the property being taken.

(b) If the land contains minerals, oil, natural gas
or other natural resources, including farm animals or plant crops,
or any form of agriculture or aquaculture, and the owner has claim
over such resources, then the entity must also obtain a certified
business appraisal or an appraisal from a member of the American Mineral Appraisers Association, or similar association as appropriate under the circumstances, and must include the appraised value of such resources in the final offer, including whatever business value or income they are worth presently and into perpetuity.

(c) If the land owner is under contract with any private or public company, to mine, drill, harvest or raise the resources mentioned in (4)(a), the terms of that agreement must be accounted for in the final offer, and a condemnor shall not take land under eminent domain of a landowner where the general business of the condemnor is substantially similar in business or practice to any party who is a signatory to such contract.

(5) the final offer is: [equal to or greater than the amount of the written appraisal obtained by the entity;]

(a) 125% of the market value of the property at its highest and best use, as determined by either the written appraisal obtained by either the entity or the the property, owner, whichever appraisal is highest.

(6) the following items are included with the final offer or have been previously provided to the owner by the entity:

(A) a copy of the written appraisal;
(B) a copy of the deed, easement, or other instrument conveying the property sought to be acquired; and
(C) the landowner's bill of rights statement prescribed by Section 21.0112; and
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(D) Copies of all of the items required to be filed

in Section 21.012.

(7) the entity provides the property owner with at least
14 days to respond to the final offer and the property owner does
not agree to the terms of the final offer within that period.

SECTION 4. Section 21.012, Property Code, is amended to read
as follows:

Sec. 21.012. CONDEMNATION PETITION. (a) If an entity [the
United States, this state, a political subdivision of this state, a
corporation] with eminent domain authority[ or an irrigation,
water improvement, or water power control district created by law]
wants to acquire real property for a necessary public use but is
unable to agree with the owner of the property on the amount of
damages, the [condemning] entity may begin a condemnation
proceeding by filing a petition in the proper court.

(b) The petitioner shall include with the petition a
Statement of Public Use which:

(1) describes with detail and clarity the public use for
which the property is being taken;

(2) how the taking is necessary in order to achieve the
described necessary public use;

(3) how the stated necessary public use will be
beneficial to the public; and

(4) a statement stating that no other reasonable and
feasible alternatives exist, aside from taking that parcel, to
achieve the stated necessary public use.
(c) The petition shall also include:

(1) a statement declaring that the entity made a bona fide offer to acquire the property from the property owner voluntarily as prescribed by Section 21.0113, the property owner are unable to agree on the damages, and that and that the entity provided the property owner with the landowner's bill of rights statement in accordance with Section 21.0112;

(2) a photo copy of the offer;

(3) a copy of all offer correspondence between the entity and property owner, including but not limited to the offer itself;

(4) a project plan or project statement describing what will be done on or to the property, and in what anticipated timeframe, in order to achieve the necessary public use.

(d) If eminent domain was authorized by record vote at a public meeting under Section 2205.053, then within three days of the vote, the condemning entity shall deliver, transmit electronically or mail to the state comptroller of public accounts copies of the following items:

(1) the ordinance, resolution or order adopted by the condemning authority;

(2) the motion presented for vote and describing the property, necessary public use and necessity;

(3) the minutes of the proceeding.

(4b) The petition must:

(1) describe the property to be condemned;

(2) state with specificity the public use [purpose] for
which the entity intends to acquire the property;

(3) state the name of the owner of the property if the
owner is known;

(4) state that the entity and the property owner are
unable to agree on the damages; and

(5) if applicable, state that the entity provided the
property owner with the landowner’s bill of rights statement in
accordance with Section 21.0112; and

(6) state that the entity made a bona fide offer to
acquire the property from the property owner voluntarily as
provided by Section 21.0113.

An entity that files a petition under this section must
provide a copy of the petition to the property owner by certified
mail, return receipt requested.

Sec. 21.012a. CONDEMNATION: MISCELLANEOUS. (a) An entity
that files a petition under this section must provide a copy of the
petition to the property owner by certified mail, return receipt
requested.

(b) Notice of the hearing must be served on the landowner not
later than the 20th day before the day set for the hearing. A
person competent to testify may serve the notice. If the landowner
is not so served, the court shall, upon the landowner’s request

(c) The entity must, at least 20 days prior to the scheduled
hearing, provide a copy of the petition along with copies of all
items required in Sec. 21.012 of this Act, to the property owner by
certified mail, return receipt requested, and include with the
notice all other pleadings and documents filed with the petition.

(d) failure by the entity to provide to the property owner a copy of the petition and information required in this subsection shall entitle the property owner to all costs and attorneys fees required to compel the production of information.

SECTION 5. Subsection (a), Section 21.014, Property Code, is amended to read as follows:

(a) The judge of a court in which a condemnation petition is filed or to which an eminent domain case is assigned shall schedule a hearing on the petition not sooner than 30 days after the filing of the petition.

(b) Notice of the hearing must be served on a party not later than the 20th [11th] day before the day set for the hearing. A person competent to testify may serve the notice.

(c) At the hearing, the judge shall determine and assess whether the condemning entity has the burden to prove with clear and convincing evidence that the taking meets the threshold requirements surrounding necessary public use, in summary, that a taking through eminent domain be, as set forth in Section 2206a, subsection.001 of this Act, for a necessary public use, the taking necessary to achieve the stated necessary public use, with no reasonable or feasible alternative, it should provide significant public benefit.

(d) If the judge finds that the entity has failed to demonstrate, as set forth in Section 2205a.001 of this Act, the judge shall deny the motion and dismiss the case, and, if the
filing of the petition is found to be frivolous or egregious, shall
order the condemning entity to pay the property owner’s costs and
legal fees.

(e) If the entity prevails, the judge shall issue findings of
fact and conclusions of law that articulate how the facts proven
meet the threshold requirements of this Act.

(f) The judge shall appoint three disinterested real property
owners who reside in the county as special
commissioners to assess the damages of the owner of the property
being condemned. The judge appointing the special commissioners
shall give preference to persons agreed on by the parties, and
shall allow each party not more than 10 days after
receipt of notice by the property owner to strike one of the three commissioners appointed by the judge.

(g) If a person fails to serve as a commissioner or is struck
by a party to the suit, the judge shall appoint a
replacement.

SECTION 6. Subsection (a), Section 21.015, Property Code, is
amended to read as follows:

(a) The special commissioners in an eminent domain proceeding
shall promptly schedule a hearing for the parties at the earliest
practical time but may not schedule a hearing to assess damages
before the 20th day after the date the special commissioners were
appointed. The special commissioners shall schedule a hearing for
the parties at a place that is as near as practical to the
property being condemned or at the county seat of the county in
which the proceeding is being held.

SECTION 7. Subsection (b), Section 21.016, Property Code, is
amended to read as follows:

(b) Notice of the hearing must be served on a party not later
than the 20th [11th] day before the day set for the hearing. A
person competent to testify may serve the notice.

SECTION 8. Section 21.023, Property Code, is amended to read
as follows:

Sec. 21.023. DISCLOSURE OF INFORMATION REQUIRED AT TIME OF
ACQUISITION. An [A governmental] entity with eminent domain
authority shall disclose in writing to the property owner, at the
time of acquisition of the property through eminent domain, that:

(1) the owner or the owner's heirs, successors, or
assigns may be [are] entitled to:

(A) repurchase the property under Subchapter E [if
the public use for which the property was acquired through eminent
domain is canceled before the 10th anniversary of the date of
acquisition]; or

(B) request from the entity certain information
relating to the use of the property and any actual progress made
toward that use; and

(2) the repurchase price is the price paid to the owner
by the entity at the time the entity acquired the property through
eminent domain or the fair market value of the property at its
highest use, at the time the necessary public use was canceled or
became unnecessary, whichever amount is less. [fair market value of the property at the time the public use was canceled.]

(3) the repurchase price shall not be offset by any costs or other liabilities incurred by the entity or entity’s assignees during the time of possession of the property. This subsection does not limit or expand a condemnor’s rights to bring recovery claims for damages caused as a result of the property owner’s use of the land under Sec. 2206.002, during the same period.

SECTION 9. Subchapter B, Chapter 21, Property Code, is amended by adding Section 21.025 to read as follows:

Sec. 21.025. PRODUCTION OF INFORMATION BY CERTAIN ENTITIES.

(a) Notwithstanding any other law, an entity that is not subject to Chapter 552, Government Code, and is authorized by law to acquire private property through the use of eminent domain is required to produce information as provided by this section if the information is:

(1) requested by a person who owns property that is the subject of a proposed or existing eminent domain proceeding; and

(2) related to the taking of the person's private property by the entity through the use of eminent domain.

(b) An entity described by Subsection (a) is required under this section only to produce information relating to the condemnation of the specific property owned by the requestor as described in the request. A request under this section must contain sufficient details to allow the entity to identify the specific tract of land in relation to which the information is
sought.

(c) The entity shall respond to a request in accordance with
the Texas Rules of Civil Procedure as if the request was made in a
matter pending before a state district court.

(d) Exceptions to disclosure provided by this chapter and the
Texas Rules of Civil Procedure apply to the disclosure of
information under this section.

(e) Jurisdiction to enforce the provisions of this section
resides in:

(1) the court in which the condemnation was initiated;
or

(2) if the condemnation proceeding has not been
initiated:

(A) a court that would have jurisdiction over a
proceeding to condemn the requestor's property; or

(B) a court with eminent domain jurisdiction in the
county in which the entity has its principal place of business.

(f) If the entity refuses to produce information requested in
accordance with this section and the court determines that the
refusal violates this section, the court may award the requestor's
reasonable attorney's fees incurred to compel the production of the
information.

SECTION 10. Subsection (d), Section 21.042, Property Code, is
amended to read as follows:

(d) In estimating injury or benefit under Subsection (c), the
special commissioners shall consider an injury or benefit that is
peculiar to the property owner and that relates to the property owner's ownership, use, or enjoyment of the particular parcel of real property, including a material impairment of direct access on or off the remaining property that affects the market value of the remaining property, but they may not consider an injury or benefit that the property owner experiences in common with the general community, including circuity of travel and diversion of traffic.

In this subsection, "direct access" means ingress and egress on or off a public road, street, or highway at a location where the remaining property adjoins that road, street, or highway.

SECTION 11. Subsections (a) and (b), Section 21.046, Property Code, are amended to read as follows:

(a) A department, agency, instrumentality, or political subdivision of this state shall [may] provide a relocation advisory service for an individual, a family, a business concern, a farming or ranching operation, or a nonprofit organization that [if the service] is compatible with the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Advisory Program), 42 U.S.C.A. 4601 [22 U.S.C.A. 501], et seq.

(b) This state or a political subdivision of this state shall [may], as a cost of acquiring real property, pay moving expenses and rental supplements, make relocation payments, provide financial assistance to acquire replacement housing, and compensate for expenses incidental to the transfer of the property if an individual, a family, the personal property of a business, a farming or ranching operation, or a nonprofit organization is
displaced in connection with the acquisition.

SECTION 12. The heading to Section 21.047, Property Code, is amended to read as follows:

Sec. 21.047. ASSESSMENT OF COSTS AND FEES.

SECTION 13. Section 21.047, Property Code, is amended by adding Subsection (d) to read as follows:

(d) If a court hearing a suit under this chapter determines that a condemnor did not make a bona fide offer to acquire the property from the property owner voluntarily as required by Section 21.0113, the court shall abate the suit, order the condemnor to make a bona fide offer, and order the condemnor to pay:

(1) all costs as provided by Subsection (a); and

(2) any reasonable attorney's fees and other professional fees incurred by the property owner that are directly related to the violation.

SECTION 14. Subchapter E, Chapter 21, Property Code, is amended to read as follows:

SUBCHAPTER E. REPURCHASE OF REAL PROPERTY FROM CONDEMNING [GOVERNMENTAL] ENTITY

Sec. 21.101. RIGHT OF REPURCHASE [APPLICABILITY]. (a) A person from whom [Except as provided in Subsection (b), this subchapter applies only to] a real property interest is acquired by an [a governmental] entity through eminent domain for a necessary public use, or that person's heirs, successors, or assigns, is entitled to repurchase the property as provided by this subchapter if, in respect to the necessary public use for which the property
was acquired through eminent domain:

(1) the necessary public use for which the property was acquired through eminent domain is [that was] canceled or becomes unnecessary before the property is used for that necessary public use;

(2) no actual progress is made toward the necessary public use for which the property was acquired between the date of acquisition and the 5th [15th] anniversary of that date; [or]

(3) the use for which the property was acquired changes by any degree.

(b) In this section, "actual progress" means the completion of two or more of the following actions:

(1) the performance of a significant amount of labor to develop the property or other property acquired for the same necessary public use project for which the property owner's property was acquired;

(2) the provision of a significant amount of materials to develop the property or other property acquired for the same necessary public use project for which the property owner's property was acquired;

(3) the hiring of and performance of a significant amount of work by an architect, engineer, or surveyor to prepare a plan or plat that includes the property or other property acquired for the same necessary public use project for which the property owner's property was acquired;

(4) application for state or federal funds to develop
the property or other property acquired for the same necessary public use project for which the property owner's property was acquired;

(5) application for a state or federal permit to develop
the property or other property acquired for the same necessary public use project for which the property owner's property was acquired;

(6) the acquisition of a tract or parcel of real property adjacent to the property for the same necessary public use project for which the owner's property was acquired; or

(7) for a governmental entity, the adoption by a majority
of the entity's governing body at a public hearing of a development plan for a necessary public use project that indicates that the entity will not complete more than one action described by Subdivisions (1)-(6) before the 5th [10\textsuperscript{th}] anniversary of the date of acquisition of the property [This subchapter does not apply to a right-of-way under the jurisdiction of:

(1) a county;

(2) a municipality; or

(3) the Texas Department of Transportation].

(c) If at any time the necessary public use is cancelled or becomes unnecessary, and the condemning entity wishes to use the property for any other use, including substantially similar necessary public uses, the entity shall first obtain Necessary Public Use Variance Permit. Failure to do so within 10 days of the cancellation or nullification of the necessary public use shall
render the property immediately available to the landowner to
repurchase and recapture under the provisions of this Act.

(1) The variance permit must be obtained through an
Amended Condemnation Petition to obtain Variance Permit before the
original court of jurisdiction, within the same framework and
standards set forth in Section 5 and applied during the originating
condemnation petition.

(2) In addition to standards for necessary public
use required of the entity in the original condemnation petition,
the condemning entity seeking the variance permit must prove by
clear and convincing evidence, that:

(4) “special reasons” exist for the variance; and

(5) the variance can be granted without substantial
detriment to the public and will not substantially impair the
intent and purposes of eminent domain.

(3) the property becomes unnecessary for the public use
for which the property was acquired, or a substantially similar
public use, before the 10th anniversary of the date of acquisition.

(c) A district court may determine all issues in any suit
regarding the repurchase of a real property interest acquired
through eminent domain by the former property owner or the owner's
heirs, successors, or assigns.

Sec. 21.102. NOTICE TO PREVIOUS PROPERTY OWNER REQUIRED [AT
TIME OF CANCELLATION OF PUBLIC USE]. Not later than the 180th day
after the date an entity that acquired a real property interest
through eminent domain determines that the former property owner is
entitled to repurchase the property under Section 21.101 [of the
cancellation of the public use for which real property was acquired
through eminent domain from a property owner under Subchapter B],
the governmental entity shall send by certified mail, return
receipt requested, to the property owner or the owner's heirs,
successors, or assigns a notice containing:

(1) an identification, which is not required to be a
legal description, of the property that was acquired;

(2) an identification of the necessary public use for
which the property had been acquired and a statement that:

   (A) the necessary public use was [has been]
canceled or became unnecessary before the property was used for the
necessary public use;

   (B) no actual progress was made toward the
necessary public use; or

   (C) the property became unnecessary for the
necessary public use, or a substantially similar necessary public
use, before the 5th [10th] anniversary of the date of acquisition;
and

(3) a description of the person's right under this
subchapter to repurchase the property.

Sec. 21.1021. REQUESTS FOR INFORMATION REGARDING CONDEMNED
PROPERTY. (a) On or after the 5th [10th] anniversary of the date
on which real property was acquired by an entity through eminent
domain, a property owner or the owner's heirs, successors, or
assigns may request that the condemning entity make a determination
and provide a statement and other relevant information regarding:

(1) whether the necessary public use for which the property was acquired was canceled before the property was used for the necessary public use;

(2) whether any actual progress was made toward the necessary public use between the date of acquisition and the 5th [10th] anniversary of that date, including an itemized description of the progress made, if applicable; and

(3) whether the property became unnecessary for the necessary public use, or a substantially similar necessary public use, before the 5th [10th] anniversary of the date of acquisition.

(b) A request under this section must contain sufficient detail to allow the entity to identify the specific tract of land in relation to which the information is sought.

(c) Not later than the 90th day following the date of receipt of the request for information, the entity shall send a written response by certified mail, return receipt requested, to the requestor.

Sec. 21.103. RESALE OF PROPERTY; PRICE. (a) Not later than the 180th day after the date of the postmark on a notice sent under Section 21.102 or a response to a request made under Section 21.1021 that indicates that the property owner, or the owner's heirs, successors, or assigns, is entitled to repurchase the property interest in accordance with Section 21.101, the property owner or the owner's heirs, successors, or assigns must notify the governmental entity of the person's intent to repurchase the
property interest under this subchapter.

(b) As soon as practicable after receipt of a notice of intent to repurchase [the notification] under Subsection (a), the [governmental] entity shall offer to sell the property interest to the person for the price paid to the owner by the entity at the time the entity acquired the property through eminent domain or the fair market value of the property at its highest use, at the time the necessary public use was canceled or became unnecessary, whichever amount is less [fair market value of the property at the time the public use was canceled]. [The person's right to repurchase the property expires on the 90th day after the date on which the [governmental] entity makes the offer.]

(c) The repurchase price shall not be offset by any costs or other liabilities incurred by the entity or entity’s assignees during the time of possession of the property. This subsection does not limit or expand a condemnor’s rights to bring recovery claims for damages caused as a result of the property owner’s use of the land under Sec. 2206.002, during the same period.

SECTION 15. Section 202.021, Transportation Code, is amended by adding Subsection (j) to read as follows:

(j) The standard for determination of the fair value of the state's interest in access rights to a highway right-of-way is the same legal standard that is applied by the commission in the:

(1) acquisition of access rights under Subchapter D, Chapter 203; and

(2) payment of damages in the exercise of the authority,
under Subchapter C, Chapter 203, for impairment of highway access
to or from real property where the real property adjoins the
highway.

SECTION 16. Section 54.209, Water Code, is amended to read as
follows:

Sec. 54.209. LIMITATION ON USE OF EMINENT DOMAIN. A district
may not exercise the power of eminent domain outside the district
boundaries to acquire:

(1) a site for a water treatment plant, water storage
facility, wastewater treatment plant, or wastewater disposal plant;

(2) a site for a park, swimming pool, or other
recreational facility, as defined by Section 49.462 [except a
trail];

(3) [a site for a trail on real property designated as a
homestead as defined by Section 41.002, Property Code; or

(4) a site or easement for a road project.

SECTION 17. (a) Section 552.0037, Government Code, is
repealed.

(b) Section 21.024, Property Code, is repealed.

SECTION 18. Chapter 2206, Government Code, and Chapter 21,
Property Code, as amended by this Act, apply only to a condemnation
proceeding in which the petition is filed on or after the effective
date of this Act and to any property condemned through the
proceeding. A condemnation proceeding in which the petition is
filed before the effective date of this Act and any property condemned through the proceeding are governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

SECTION 19. The change in law made by this Act to Section 202.021, Transportation Code, applies only to a sale or transfer under that section that occurs on or after the effective date of this Act. A sale or transfer that occurs before the effective date of this Act is governed by the law applicable to the sale or transfer immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 20. The changes in law made by this Act to Section 54.209, Water Code, apply only to a condemnation proceeding in which the petition is filed on or after the effective date of this Act. A condemnation proceeding in which the petition is filed before the effective date of this Act is governed by the law in effect on the date the petition was filed, and that law is continued in effect for that purpose.

SECTION 21. This Act takes effect September 1, 2011.