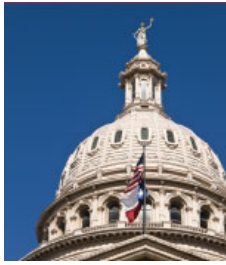


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AUSTIN NEWSLETTER

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Eminent Domain Bill Updates

[Committee Substitute SB 626](#), by Senator Charles Schwertner (R-Georgetown), was passed as a committee substitute favorably out of the Senate State Affairs Committee. Senator Craig Estes (R-Wichita Falls) was the only vote against the bill in committee. This bill was reported on in the Feb. 2, 2017 edition of the *Austin Newsletter*.

SB 626 requires a condemning entity that makes initial offer to acquire property from a property owner to make a separate offer if the entity wants to acquire other property, but does not seek to acquire it by condemnation.

Occasionally, when negotiating to purchase property for public use under eminent domain, an entity will offer to purchase additional property from a property owner that may not be a part of the same project subject to condemnation. It is often not made clear to the property owner that the entity does not have condemnation authority to force the owner to sell the additional property.

SB 626 adds into the Landowner Bill of Rights a statement that if a condemning entity makes an initial offer to acquire property that the entity does not seek to acquire through condemnation, that property will be separately identified and a separate offer will be made.

The bill adds a section to the property code requiring a condemning entity that makes an initial offer to acquire property that the entity does not seek to acquire through condemnation, that property will be separately identified and a separate offer will be made.

The committee substitute changed the identifier language from "property that is not reasonably necessary to complete the public use" to "property that the entity does not seek to acquire by condemnation." This is not near as strong as previous language, but is an improvement from current law in favor of the property owner.

TFB **supports** SB 626. (TFB Policy 2017: "Eminent Domain 149," page 55, lines 9-13.)

Notice of Property Owner's Rights Relating to Surveys by Condemning Entities

[Committee Substitute SB 627](#), by Senator Charles Schwertner (R-Georgetown), was passed as a committee substitute favorably out of the Senate State Affairs Committee. This bill was reported on in the Feb. 17, 2017 edition of the *Austin Newsletter*.

SB 627 provides a property owner, via the Landowner's Bill of Rights and a Survey Consent Form, information of their rights relating to the examination or survey of property by an entity with eminent domain authority.

The bill requires the following provisions to be incorporated into the Landowner's Bill of Rights:

1. the condemning entity's responsibility for any "actual" damages arising from a survey of the property;
2. a property owner's option to "seek to negotiate" terms of the survey; and
3. the condemning entity's right to sue for a court order authorizing the survey if the property owner refuses to consent.

SB 627 also provides similar requirements in a Survey Consent Form if an entity with eminent domain authority provides a form to a property owner requesting their consent to enter the property to conduct a survey. The form must clearly state that:

- the property owner has a right to "seek to negotiate" the terms of the survey;
- the condemning entity may sue the property owner for a court order authorizing the entity to enter the property to survey if the owner refuses to consent; and
- the condemning entity has responsibility for any "actual" damages arising from the survey of the property.

The committee substitute deleted from the Landowner's Bill of Rights and Survey Consent Form language which informs property owners of their right to refuse permission to allow the condemning entity to enter the property to conduct the survey. While the new language in the committee substitute dilutes the strength of the original bill, this is an improvement from current law in favor of the property owner.

TFB **supports** SB 627. (TFB Policy 2017: "Eminent Domain 149," page 55, lines 9-11.)

Right to Repurchase Condemned Property

[SB 628](#), by Senator Charles Schwertner (R-Georgetown), was considered and reported favorably from Senate State Affairs Committee. Senator Craig Estes (R-Wichita Falls) was the only vote against SB 628 in committee. The bill was reported on in the Feb. 17, 2017 edition of the *Austin Newsletter*.

SB 628 amends current statute relating to the right to repurchase property from a condemning entity. The legislation increases the number of requirements that an entity must comply with in order to prove "actual progress" towards the stated public use of an eminent domain taking.

Currently, Chapter 21 of the Texas Property Code allows a person whose property was acquired through eminent domain the right to repurchase their property if the condemning entity fails to make "actual progress" toward the public use for which the property was

taken within 10 years. Current law defines "actual progress" as completing two of the following seven development actions specified in statute:

1. Perform significant labor on the property;
2. Purchase materials for development;
3. Procure the service of an architect, engineer or surveyor in preparation for development;
4. Apply for state or federal funds for development;
5. Apply for a state or federal permit needed for development;
6. Acquire a portion of adjacent property for the same public use;
7. Adoption of a development plan by a governing body.

SB 628 requires the condemning entity to complete three development actions to determine "actual progress," rather than two. Further, it narrows the list of development actions down to five-removing (6) acquiring adjacent property and (7) adopting a development plan as proof of an entity's "actual progress."

Additionally, the bill allows separate rules for navigation districts or port authorities. For them, "actual progress" means the completion of only one of the above listed development actions, except for (6) acquiring adjacent property. Adoption of a development plan by a governing body (7) becomes a development action exclusive to navigation districts or port authorities.

TFB **supports** SB 628. (TFB Policy 2017: "Eminent Domain 149," page 56, lines 55-61.)

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