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John Allen Chalk Sr.

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# EMINENT DOMAIN POWER GRANTED TO PRIVATE PIPELINE COMPANIES MEETS WITH GREATER RESISTANCE FROM PROPERTY OWNERS IN URBAN RATHER THAN RURAL AREAS

*John Allen Chalk Sr.*  
*Sadie Harrison-Fincher†*

## I. INTRODUCTION

Heightened drilling activity and pipeline construction in the more densely urbanized parts of the City of Fort Worth has exposed an increasing number of citizens to the condemnation process. Affected citizens have banded together to educate themselves on the eminent domain authority of private entities and have increasingly voiced their opposition to certain condemnation practices by pipeline companies. Pipeline companies have faced heightened resistance from urban citizens to acquiesce to their threats of condemnation. This paper outlines the major issues landowners face in condemnation and addresses legislation and other changes to the legal landscape of condemnation in Texas.

## II. AUTHORITY TO CONDEMN

Eminent domain is most commonly thought of as the right of the state to condemn private property for public use and to appropriate the ownership and possession of the property on paying the owner adequate compensation.<sup>1</sup> Most people associate the right of eminent domain with governmental entities. However, the power may be delegated to other types of private entities. Despite being private companies, common carriers and gas utilities have been granted the statutory right of eminent domain by the Texas Legislature.<sup>2</sup> The Texas Legislature has granted “Common Carriers” and “Gas Utilities” in Texas the

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† Whitaker, Chalk, Swindle & Sawyer, LLP, 301 Commerce Street, Suite 3500, Fort Worth, Texas 76102, [www.whitakerchalk.com](http://www.whitakerchalk.com).

1. *Fort Worth & D.C. Ry. v. Ammons*, 215 S.W.2d 407, 409 (Tex. Civ. App.—Amarillo 1948, writ ref’d n.r.e.); *Byrd Irrigation Co. v. Smythe*, 146 S.W. 1064, 1065 (Tex. Civ. App.—San Antonio 1912, no writ).

2. *See e.g. Mercier v. MidTexas Pipeline Co.*, 28 S.W.3d 712, 717–18 (Tex. App.—Corpus Christi 2000, pet. denied) (affirming a statute granting gas corporation power to transport and sell gas gave partnership of gas companies power to condemn property for construction of pipeline even though partners and not partnership owned gas to be transported and sold); *Anderson v. Teco Pipeline Co.*, 985 S.W.2d 559, 564–65 (Tex. App.—San Antonio 1998, pet. denied) (holding corporation operating gas pipeline has power of eminent domain under TEX. UTIL. CODE § 181.004 if it devotes its private property and resources to public service and allows itself to be publicly regulated).

statutory right of eminent domain pursuant to the Texas Utilities Code § 181.004; Article 2.01 of the Texas Business Corporation Act; and the Texas Natural Resources Code § 111.000 *et seq.* Texas courts have consistently held that this legislative grant of eminent domain to private entities, such as pipeline companies, reflects a legislative determination that the exercise of eminent domain power serves the public interest.<sup>3</sup> The determination of what constitutes a public use justifying the grant of the right of eminent domain is properly a political decision, and as such is for the legislature.<sup>4</sup>

### III. LIMITATIONS ON THE EXERCISE OF EMINENT DOMAIN

#### A. Constitutional Takings Limitations

There are constitutional limitations on the exercise of eminent domain. Namely, the Fifth Amendment to the U.S. Constitution and Article 17 of the Texas Constitution. The Fifth Amendment to the U.S. Constitution states that private property shall not be taken for public use, without “just compensation.”<sup>5</sup> The Texas Constitution also limits the exercise of eminent domain:

No person’s property shall be taken, damaged or destroyed for or applied to public use without adequate compensation being made, unless by the consent of such person; and, when taken, except for the use of the State, such compensation shall be first made, or secured by a deposit of money; and no irrevocable or uncontrollable grant of special privileges or immunities, shall be made; but all privileges and franchises granted by the Legislature, or created under its authority shall be subject to the control thereof.<sup>6</sup>

#### B. *Kelo v. City of New London*

The issue of public use came to the forefront in the U.S. in 2005 when the United States Supreme Court decided *Kelo v. City of New London*.<sup>7</sup> In *Kelo*, the Court was asked to decide whether a city’s decision to take property for the purposes of economic development satisfied the “public use” requirement of the Fifth Amendment.<sup>8</sup> The Court determined that the “public use” requirement of the Fifth Amendment is satisfied even when, in furtherance of a city’s compre-

3. See *Mercier*, 28 S.W.3d at 718–19. The construction of pipelines by private pipeline corporations in order to transport gas from areas of production to places of sale is a public purpose. *Id.*

4. *Coastal Indus. Water Auth. v. Celanese Corp. of America*, 592 S.W.2d 597, 600 (Tex. 1979) (“[I]n the absence of allegations that the condemnor acted arbitrarily or unjustly, the legislature’s declaration that a specific exercise of eminent domain is for public use is conclusive, and the condemnation proceedings are limited to a determination of the amount to be paid to acquire that use.”).

5. U.S. CONST. amend. V.

6. TEX. CONST. art. I, § 17.

7. *Kelo v. City of New London*, 545 U.S. 469 (2005).

8. *Id.* at 477.

hensive economic development plan for a blighted part of the city, the private property taken is later resold or leased to other private enterprises for the benefit of private parties.<sup>9</sup>

### C. *The Texas Statutory Response to Kelo*

The Court's decision in *Kelo* also made an impact in Texas. Effective September 1, 2005, the Texas Legislature responded by passing a new Texas statute that provides:

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 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.<sup>10</sup>

However, the limitations set forth in Texas Government Code § 2206.001 did not impact the authority of pipeline companies to exercise the power of eminent domain.<sup>11</sup>

### D. *Texas Landowner's Bill of Rights*

Another measure aimed at protecting Texas property owners in condemnation proceedings became effective January 1, 2008. The Texas Attorney General's Office created a Texas Landowner's Bill of Rights that the pipelines, or any condemning authority, must provide to landowners before initiating condemnation proceedings.<sup>12</sup> The Texas Landowner's Bill of Rights outlines the rights that property owners have when faced with a taking and explains the condemnation process.<sup>13</sup>

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9. *Id.* at 483–86.

10. TEX. GOV'T CODE ANN. § 2206.001(b) (Vernon 2008).

11. *Id.* § 2206.001(c) (“does not affect the authority of an entity authorized by law to take private property through the use of eminent domain for . . . (7) the operations of: (A) a common carrier 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 . . .”).

12. See TEX. GOV'T CODE ANN. § 402.031 (Vernon Supp. 2008); TEX. PROP. CODE ANN. § 21.0112 (Vernon Supp. 2008).

13. Tex. Landowner's Bill of Rights, Tex. Att'y Gen. (2008), [http://www.oag.state.tx.us/agency/Landowners\\_billofrights.pdf](http://www.oag.state.tx.us/agency/Landowners_billofrights.pdf).

Despite attempts to strengthen landowner rights, many property owners are often discouraged by the lack of power they have once a condemning authority becomes interested in their property. For example, a pipeline, or other condemning authority, may enter upon a Texas landowner's property to conduct surveys even before filing a petition in condemnation. Texas courts have expressly held that the right of a pipeline to enter your property to conduct "surveys" is ancillary to the power of eminent domain.<sup>14</sup> Property owners who challenge the entry rights of condemning authorities soon find themselves on the losing side of a court-ordered injunction allowing the condemnor entry to survey.

#### IV. GENERAL STEPS IN CONDEMNATION

Chapter 21 of the Texas Property Code governs the exercise of eminent domain authority and outlines the procedural requirements that must be followed in condemnation proceedings.<sup>15</sup> The general steps in the condemnation process are as follows:

- (A) Condemnor must negotiate and make a good faith offer to purchase the landowner's property;
- (B) Condemnor must provide the landowner with the Landowner's Bill of Rights Statement prior to instituting condemnation proceedings;
- (C) Condemnor begins condemnation proceedings by filing a Petition for Condemnation in the designated court in the county where the property is located;
- (D) Court has limited administrative authority to appoint three Commissioners;
- (E) Commissioners' hearing is held to determine fair market value of the property and damages with ten days' prior notice of the hearing to the landowner;
- (F) Commissioners render an award and assess costs;
- (G) Condemnor deposits the amount of the commissioners' award into the registry of the court and may take immediate possession of the property pending litigation;
- (H) Landowner may accept commissioners' award or file objections to the award and proceed to trial as in any other civil case;
- (I) Landowner's withdrawal of funds waives the landowner's right to contest the condemnor's "right to take the property."<sup>16</sup>

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14. *IP Farms v. Exxon Pipeline Co.*, 646 S.W.2d 544, 545 (Tex. App.—Houston [1st Dist.] 1982, no writ).

15. TEX. PROP. CODE ANN. §§ 21.001–.024 (Vernon 2004 & Supp. 2008).

16. *See State v. Jackson*, 388 S.W.2d 924, 925 (Tex. 1965).

## V. TAKINGS CHALLENGES

Eminent domain law presently allows the landowner few choices when challenging the condemnor's right to take. It is very difficult to successfully challenge a pipeline company's determination of the pipeline route or the necessity for taking your particular property. For example, unless otherwise mutually agreed during negotiations, the route that the pipeline follows is determined exclusively by the pipeline operator. Even the Texas Railroad Commission does not have authority to determine the route a pipeline takes.

When property is taken under the power of eminent domain for public use, the questions of necessity for exercising the eminent domain power and the amount of property taken are legislative, not judicial, questions, the determination of which is conclusive and not reviewable by the courts.<sup>17</sup> Courts have consistently held that the pipeline's determination of the "necessity for acquiring certain property is conclusive, absent fraud, bad faith, abuse of discretion, or arbitrary or capricious actions."<sup>18</sup> Generally, the same rules apply to the question of the *amount* and *location* of the property to be taken.<sup>19</sup>

## VI. ADEQUATE COMPENSATION

Much of the litigation in eminent domain law deals with challenges to the amount of compensation paid to the property owner for the taking. Article 1, Section 17 of the Texas Constitution provides that "no person's property shall be taken, damaged or destroyed for or applied to public use without *adequate compensation* being made . . ." <sup>20</sup> "Adequate compensation" includes the fair market value of the property taken, plus damages. "Adequate compensation" does not include an award of attorney's fees. Attorney's fees are only available

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17. *Imperial Irrigation Co. v. Jayne*, 104 Tex. 395, 416, 138 S.W. 575, 587 (Tex. 1911); *West v. Whitehead*, 238 S.W. 976, 978 (Tex. Civ. App.—San Antonio 1922, writ ref'd.).

18. *Valero Eastex Pipeline Co. v. Jarvis*, 990 S.W.2d 852, 856 (Tex. App.—Tyler 1999, pet. denied); see also *Mercier v. MidTexas Pipeline Co.*, 28 S.W.3d 712, 719–20 (Tex. App.—Corpus Christi 2000, pet. denied); *Anderson*, 985 S.W.2d at 565–66 (condemnor's general statements about route of pipeline were sufficient as finding of necessity to take owner's property although statements did not specifically state that taking was necessary).

19. See *McInnis v. Brown County Water Improvement Dist. No. 1*, 41 S.W.2d 741, 745 (Tex. Civ. App.—Austin 1931, writ ref'd) (holding that the question of the amount of property reasonably necessary for the public use is committed to the sound discretion of the condemnor); *Brazos River Conservation & Reclamation Dist. v. Harmon*, 178 S.W.2d 281, 289 (Tex. Civ. App.—Eastland 1944, ref. w.o.m.) (holding that courts will overrule the condemning authority only if there is evidence of fraud or a clear abuse of discretion); see also *Anderson v. Teco Pipeline Co.*, 985 S.W.2d 559, 565–66 (Tex. App.—San Antonio 1998, pet. denied) (holding that the courts will not disturb the condemnor's choice of route in the absence of fraud, bad faith, or gross abuse of discretion).

20. TEX. CONST. art. I, § 17.

when a condemnation proceeding is dismissed by condemnor or the court.<sup>21</sup> The fact that attorney's fees are not recoverable (except in cases of dismissal) makes it very difficult for landowners to effectively challenge takings, particularly in an urban setting where the size of the land taken is relatively small and will not result in much compensation to the landowner.

The meaning of "adequate compensation" was the subject of a joint resolution considered by the most recent legislature.<sup>22</sup> House Joint Resolution Number 65 (Yvonne Davis-Dallas) proposed to amend Article 1, Section 17 of the Texas Constitution to define "adequate compensation" when the property taken is a homestead or farm.<sup>23</sup> In eminent domain takings where relocation of a farm or homestead is necessary, "adequate compensation" would include the cost to relocate the property owner to another property that affords the owner the same standard of living as he or she enjoyed immediately before the taking.

Presently, the measure of damages for property taken in condemnation is the difference in the market value of the property immediately before and immediately after the date of taking.<sup>24</sup> Market value is defined as "the price which the property would bring when it is offered for sale by one who desires, but is not obliged to sell, and is bought by one who is under no necessity of buying it . . . ."<sup>25</sup> Only certain individuals are competent to testify to market value: (1) the landowner; (2) qualified expert (such as a certified appraiser or licensed real estate broker); (3) and a lay witness who is acquainted with subject property, owns contiguous land of the same kind or character, or shows peculiar knowledge of its qualities.<sup>26</sup> Expert witness testimony regarding property value is subject to Texas Evidence Rule 702, which requires that the expert must be qualified and that the expert's opinion must be both relevant and reliable.<sup>27</sup>

In addition to being entitled to receive the market value of the property taken, property owners are also entitled to receive damages to the remainder. Damages to the remainder are measured by the difference in market value of the remainder immediately before and after the taking,<sup>28</sup> considering the nature of any improvements and the

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21. TEX. PROP. CODE ANN. § 21.019 (Vernon 2004).

22. Tex. H.R.J. Res. 65, 81st Leg., R.S. (2009).

23. *Id.*

24. *Callejo v. Brazos Elec. Power Coop.*, 755 S.W.2d 73, 76 (Tex. 1988).

25. *City of Austin v. Cannizzo*, 153 Tex. 324, 334, 267 S.W.2d 808, 815 (1954).

26. *Tennasco Gas Gathering Co. v. Fischer*, 624 S.W.2d 301, 302-03 (Tex. App.—Corpus Christi 1981, writ ref'd n.r.e.); *Fort Worth & D.S.P.R. Co. v. Judd*, 4 S.W.2d 1032, 1036 (Tex. Civ. App.—Amarillo 1928, writ dism'd w.o.j.).

27. *See Exxon Pipeline Co. v. Zwahr*, 88 S.W.3d 623, 628-31 (Tex. 2002); *Guadalupe-Blanco River Auth. v. Kraft*, 77 S.W.3d 805, 807-09 (Tex. 2002); *City of Sugar Land v. Home & Hearth Sugarland L.P.*, 215 S.W.3d 503, 510-13 (Tex. App.—Eastland 2007, pet. denied).

28. *Id.*

use of the land taken.<sup>29</sup> In addition, the condemnor must pay for special repair and mitigation costs that would not be reflected in the lost market value.<sup>30</sup>

#### VII. RESPONSE TO INCREASED URBAN DRILLING: CITY OF FORT WORTH ORDINANCE NO. 18449-02-2009

In response to heightened drilling activity and pipeline construction in the more densely urbanized parts of the City of Fort Worth, the City has adopted a new Gas Drilling Ordinance.<sup>31</sup> City of Fort Worth Ordinance No. 18449-02-2009 amended the existing Gas Drilling Ordinance with the goal of improving the quality of life for citizens impacted by the increased drilling, production, and pipeline construction within the City. The stated purpose of the Ordinance is:

to establish reasonable and uniform limitations, safeguards and regulations for present and future operations related to the exploring, drilling, developing, producing, transporting and storing of gas and other substances produced in association with gas within the city to protect the health and general welfare of the public; minimize the potential impact to property and mineral rights owners[;] protect the quality of the environment and encourage the orderly production of available mineral resources.<sup>32</sup>

In addition to regulating drilling, the ordinance regulates pipelines within the City. With specific regard to gas pipelines, the City of Fort Worth Ordinance No. 18449-02-2009 distinguishes between General Pipelines and City Regulated Pipelines.<sup>33</sup> General Pipeline Regulations apply to all Pipelines laid within the City,<sup>34</sup> whereas certain other regulations in the ordinance apply only to City Regulated Pipelines.<sup>35</sup> The phrase “City Regulated Pipelines” means “those pipelines within the city that, under federal and state rules and regulations are not exempt from city regulations and [ordinances] regarding mapping, inventorying, locating or relocating of pipelines, including, but not limited to, pipelines over, under, along, or across a public street or

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29. *County of Bexar v. Santikos*, 144 S.W.3d 455, 459 (Tex. 2004); *Interstate Northborough P’ship v. State*, 66 S.W.3d 213, 218 (Tex. 2001) (citing *State v. Carpenter*, 126 Tex. 604, 89 S.W.2d 194 (1936)); see *Exxon Pipeline Co.*, 88 S.W.3d at 627 (“[C]ompensation is measured by the market value of the part taken plus any diminution in value to the remainder of the land.”) (citing *Westgate, Ltd. v. State*, 843 S.W.2d 448, 456 (Tex. 1992)).

30. *Santikos*, 144 S.W.3d at 459 (citing *Northborough*, 66 S.W.3d at 224).

31. FORT WORTH, TEX., REV. ORDINANCES ch. 15, art. II §§ 15-30 to 15-48.2 (2009).

32. *Id.* § 15-30.

33. Compare *id.* § 15-46.A with *id.* § 15-46.B.

34. *Id.* §§ 15-31.RR, 15-46.A.

35. *Id.* § 15-46.B. The ordinance provides separate regulations for Salt Water Pipelines. *Id.* § 15-47.



alley, pipelines from the well to the first point of custody transfer, or in private residential areas within the boundaries of the city.”<sup>36</sup>

### A. *General Pipeline Regulations*

Highlights from the General Pipeline Regulations:

- (1) Pipelines may not interfere with existing utilities (15-46.A.1);
- (2) Pipeline Operator must comply with noise regulations in section 15-42.B of the ordinance (15-46.A.2);
- (3) Ten-day written notice to owners, residents, and tenants located adjacent to proposed Pipeline is required prior to construction (15-46.A.5);
- (4) Simultaneous submission of information (plans, drawings, substance material safety data sheet, cross sections, names and addresses of property owners, residents, and tenants adjacent to Pipeline, etc. . . .) to City when Pipeline records are submitted to the Texas Railroad Commission (15-46.A.6);
- (5) Pipeline Operators transporting gas, oil, liquids, or hydrocarbons through a Pipeline located in the City shall be a member of the One Call system (15-46.A.7);
- (6) At the time of permitting and annually thereafter while the Pipeline remains active, Pipeline Operators must provide information on two primary and two alternate emergency contacts (15-46.A.8);
- (7) Concurrent filing with the City of pipeline safety, incident, and emergency reports provided to U.S. Department of Transportation or the Railroad Commission of Texas (15-46.A.9); and
- (8) File with the City an annual verified report certifying that the Pipeline has no outstanding safety violations within the City (15-46.A.10).

### B. *City Regulated Pipelines*

Highlights from the Regulations applicable to City Regulated Pipelines:

- (1) Prior to Pipeline Construction, a Pipeline Operator shall obtain a Pipeline Permit from the City (15-46.B.2);
- (2) At the time an Operator submits a Gas Well drilling permit application, the Pipeline operator is required to submit a proposed Pipeline route to the City (15-46.B.3);
- (3) The application for a Pipeline Permit must be submitted before the Pipeline Operator may make any offer or begin negotiations for easements or other property rights (15-46.B.4);
- (4) Pipeline shall be buried at a minimum depth of ten feet below the finished grade, except in public rights-of-way where mini-

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36. *Id.* § 15-31.J.

- mum cover over the top of the pipe is at the discretion of the City (15-46.B.5);
- (5) All City Regulated Pipelines must be equipped with an automated pressure monitoring system that detects leaks and automatically shuts off any line or section of line that develops a leak (15-46.B.6);
  - (6) The Gas Drilling Review Committee shall review all applications for Pipelines located in a Private Residential Area (15-46.C);
  - (7) Thirty-day notice to City if Pipeline is abandoned or a previously abandoned Pipeline is reactivated (15-46.E);
  - (8) A minimum of five days' prior notice to residents and businesses of non-emergency repairs and excavation (15-46.G);
  - (9) A permit and written agreement with the City is required before a Pipeline Operator may undertake any Pipeline Construction on, over, under, along, or across any public rights-of-way, utility easements, or other City-owned property (15-46.I); and
  - (10) Pipeline Permits expire within one year from the date of the issuance of the Permit if construction has not begun by that date, or within two years from the date of the issuance of the Permit if Construction has begun but has not been completed by that date (15-46.J).

## VIII. RECENT PROPOSED STATE LEGISLATION

### A. *Bills Introduced*

Due to the increase in the exercise of eminent domain authority by pipeline companies and other condemning authorities in Texas, there were seventeen bills relating to the exercise of eminent domain introduced in the 2009 Texas Legislature.<sup>37</sup> Some of the major concerns addressed by the proposed legislation included the measure of compensation and damages for property taken by eminent domain;<sup>38</sup> requirements that takings be solely for public purposes;<sup>39</sup> prohibitions for takings for private use;<sup>40</sup> additional requirements regarding good

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37. Tex. H.B. 4, 81st Leg., R.S. (2009); Tex. H.B. 369, 81st Leg., R.S. (2009); Tex. H.B. 402, 81st Leg., R.S. (2009); Tex. H.B. 417, 81st Leg., R.S. (2009); Tex. H.B. 1385, 81st Leg., R.S. (2009); Tex. H.B. 1389, 81st Leg., R.S. (2009); Tex. H.B. 1432, 81st Leg., R.S. (2009); Tex. H.B. 1483, 81st Leg., R.S. (2009); Tex. H.B. 1535, 81st Leg., R.S. (2009); Tex. H.B. 3709, 81st Leg., R.S. (2009); Tex. H.R.J. Res. 65, 81st Leg., R.S. (2009); Tex. S.B. 18, 81st Leg., R.S. (2009); Tex. S.B. 533, 81st Leg., R.S. (2009); Tex. S.B. 622, 81st Leg., R.S. (2009); Tex. S.B. 728, 81st Leg., R.S. (2009); Tex. S.B. 1023, 81st Leg., R.S. (2009); Tex. S.B. 2433, 81st Leg., R.S. (2009).

38. Tex. H.B. 369.

39. Tex. H.B. 1483, 402.

40. Tex. H.B. 402, 1483.

faith negotiations;<sup>41</sup> new provisions awarding landowners additional grounds for attorney's fees in condemnation;<sup>42</sup> and expanded disclosure of appraisals and value information by all condemning authorities (not just governmental agencies).<sup>43</sup>

#### B. *House Bill 4*

House Bill 4 proposed to amend Texas Property Code Chapter 21 and Texas Government Code Chapter 2206. The following are some of the major provisions of House Bill 4:

- (1) Required condemnors to disclose any and all appraisal reports relating to the subject property to property owners at the time an offer to purchase is made;
- (2) Property owners may request that an appraisal be prepared at the condemnors' expense;
- (3) Property owners have a right to request that condemnors disclose all appraisals, offers, and negotiated purchase prices paid for neighboring properties;
- (4) Good faith negotiation required;
- (5) Required condemnors to make two offers to purchase the property;
- (6) Landowners must receive twenty (20) days' prior notice of commissioners' hearing; and
- (7) A finding that the condemnor failed to negotiate in good faith results in an award of attorney's fees and costs to property owner.<sup>44</sup>

#### C. *Senate Bill 18*

Senate Bill 18 proposed to amend Texas Property Code Chapter 21, Texas Government Code Chapter 2206, and Subchapter B, Chapter 111 of the Texas Natural Resources Code. The following are some of the major provisions of Senate Bill 18:

- (1) Defined "public use";
- (2) Granted property owners the express right to construct streets or roads over any easement condemned under Texas Property Code Chapter 21;
- (3) Governmental entities must authorize the initiation of condemnation at a public meeting by a record vote;
- (4) Required condemnors to make a "bona fide offer" to purchase subject property before initiating condemnation proceedings;

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41. Tex. H.B. 4.

42. Tex. S.B. 18.

43. Tex. H.B. 4, 81st Leg., R.S. (2009); Tex. H.B. 1432, 81st Leg., R.S. (2009).

44. Tex. H.B. 1432, 81st Leg., R.S. (2009).

- (5) If the public use for a prior taking is cancelled, gave the prior landowner the right to repurchase the property, and the repurchase price paid by the landowner shall be the same price paid by condemnor at the taking (not fair market value at time public use was cancelled);
- (6) Required disclosure by condemnor of information “related to the taking” of the subject property when requested by property owner and allowed for an award of attorney’s fees for refusal to disclose; and
- (7) Landowners must receive twenty-one days’ prior notice of commissioners’ hearing in condemnations by common carriers.<sup>45</sup>

#### IX. SUMMARY

Pipeline condemnors active in the more densely urbanized parts of the City of Fort Worth should expect increased resistance to the exercise of their eminent domain authority. It is likely that more condemnation proceedings will be challenged in court as increased numbers of urban landowners are affected by the condemnation process. As is evident by the increased legislative attempts to address shortcomings in the current eminent domain laws, the law of eminent domain will continue to evolve to address the issues of safety and quality of life that impact urban landowners.

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45. Tex. S.B. 18, 81st Leg., R.S. (2009).