

SUBJECT: Time for calculating market value in condemnation proceedings

COMMITTEE: Land and Resource Management — committee substitute recommended

VOTE: 6 ayes — Bosse, B. Turner, Hamric, Howard, Krusee, Mowery
0 nays
3 absent — Crabb, Jackson, Staples

WITNESSES: For — Jimmy Gaines, Texas Landowners Council
Against — R. Ivan Bland, Texas Municipal League; Ed Snyder, City of Plano
On — Robert Cuellar, Texas Department of Transportation

BACKGROUND : Landowners are entitled to compensation for private property taken for public use. A special commissioners' hearing is convened to determine the value of the property that is taken. Current practice requires the market value to be judged at the time of the hearing.

In *Westgate, Ltd. v. State*, 843 S.W.2d (1992), the Texas Supreme Court held that a property owner could not receive compensation for any loss in market value caused by a proposed project until the date of the special commissioners' hearing. The court found that condemnation occurred at the time of the hearing and, thus, any compensation for losses occurring before that date would be purely prospective.

DIGEST: CSHB 1794 would allow property owners to choose another time for determining the market value of the property if the special hearing began more than one year after the condemnor's first offer. Property owners could specify any date after the date the offer was made so long as they gave notice at least seven days before the commissioners' hearing began.

CSHB 1794 would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. It would apply only to

assessments in condemnation proceedings for which special commissioners were appointed on or after that date.

SUPPORTERS
SAY:

CSHB 1794 would avoid common problems in valuing condemned properties. When the government takes private property for public use, it must pay the owner of the property fair market value for the property taken, and if only a portion is taken, it must also pay for any loss in fair market value caused by the taking. The problem is that fair market value is judged at a condemnation hearing that may be years after the proposed project has been finalized, and the fair market value of the property may have gone down substantially since that time. For example, when a proposed highway project plans to cut through or very near certain business or residential property, the value of that property can begin to fall. Potential owners or tenants are dissuaded by the uncertainty of whether they will be able to remain on the property as well as the potential for disruption due to construction.

By establishing the earliest date of a prior valuation as the date that the first offer is made on the first piece of property in the project, this legislation would prevent these situations. Once the first property is condemned, the project should be finalized and ready to proceed. When that first property is condemned, it also gives potential owners and tenants of other property in the area a certain sign that the project will be proceeding and that they may wish to alter their plans for moving into the area.

CSHB 1794 also would prevent the practice of delaying condemnation in order to allow property values to fall. In some cases, including the *Westgate* case, it was alleged that the condemning authority announced plans for the project well in advance of the condemnation in order to let the property values in the area fall before condemnation in order to lower the amount of compensation that the property owner would receive.

While this legislation may slightly increase the cost of condemning property, such an increase would be small compared to the overall budget for highway projects. What is important is not the amount of money needed, but the fact that these property owners should be given a chance to obtain *afair* market value for their property.

OPPONENTS
SAY:

By allowing property owners to choose from a wide range of dates for determining when market value will be judged and to give only seven days notice, CSHB 1794 would make it difficult for the condemning authority to prepare for the special commissioners' hearing. In order to determine market value, the commissioners look at the prices for sale or rental of the property as well as comparable property values in the area. If a date is chosen that is significantly in the past, it would be very difficult for the condemning authority to gather evidence to determine the market value at that time.

Because a property owner would obviously choose the date at which the market value was the highest, CSHB 1794 could drive up the cost of construction projects. The Texas Department of Transportation estimates condemnation costs would rise on average 25 percent because of this bill.

NOTES:

The committee substitute to HB 1794 added the requirement that the property owner give notice of the choice to use a different date at least seven days before the special commissioners' hearing.

Three other condemnation-related bills also have been set for floor debate:

- HB 3338 by Hilbert, which would allow for alternative pleadings in condemnation cases, was set on the House General State Calendar for May 8;
- HB 3339 by Hilbert, which would modify when a dismissal of a condemnation proceeding would be allowed, was set on the House General State Calendar for May 8; and
- HB 2740 by Uher, which would allow factors such as access, visibility, traffic circulation and construction inconvenience to be considered when determining market value, was set on the House General State Calendar for May 9.