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## Eminent Domain and 2009 Texas Legislature

Sparked by challenges like the Supreme Court's landmark *Kelo* decision and public outcry against projects like the now-defunct Trans-Texas Corridor, the 2009 Texas Legislature is debating issues surrounding eminent domain. Currently, legislators have proposed two constitutional amendments and five statutory changes regarding eminent domain, each seeking to limit the state's power to take private property for public use. The adoption of any of these laws will result in significant changes to the condemnation process in Texas. The proposed laws are:

### H.B. No. 402

Representative Beverly Woolley (R-Houston) has proposed the most comprehensive change to the laws regarding eminent domain this session. H.B. No. 402 closely mirrors House Bill 2006, an eminent domain statute passed by the 2007 Texas Legislature only to be vetoed by Governor Rick Perry. The bill modifies pertinent sections of the Government and Property Codes and establishes a number of new standards and procedures for the acquisition of private property.

Important components of the bill include: (1) increased notification and public vote procedures; (2) additional bona fide offer requirements; (3) evidentiary standards for market value determinations; (4) compensation for diminished access; and (5) payment of property owners' attorney fees.

### H.B. No. 4

H.B. No. 4, introduced by Representative Rob Orr (R-Burleson), also proposes sweeping changes to Texas condemnation law. It includes both procedural and substantive components limiting the state's ability to take private land for public use. It also requires each public and private entity authorized to exercise the power of eminent domain to notify the comptroller of public accounts of this power and the granting authority. The 83rd Legislature will then determine the state of the law after expiration of an entity's eminent domain authority and consider potential statutory revisions.

Other important components of the bill include: (1) increased public vote requirements; (2) good-faith negotiation requirements; (3) payment of attorneys' fees; and (4) long-term information requests by property owners.

The identical bill has also been proposed as S.B. No. 533 in the Senate.

### H.B. No. 369

More narrowly tailored than H.B. Nos. 4 and 402, H.B. No. 369, introduced by Representative Betty Brown (R-Terrell), specifically addresses damages resulting from the partial condemnation of land. Under this proposal, the special commissioners, in determining the local market value of a remaining piece of property, must consider all factors relating to the property including: (1) vehicular and pedestrian access; (2) traffic circulation; (3) visibility and appearance; (4) productivity and convenience of use; and (5) access to utilities and drainage.

**S.B. No. 219**

Introduced by Senator Robert Nichols (R-Jacksonville), S.B. No. 219 proposes to prohibit the use of eminent domain by any governmental or private entity for recreational purposes. Recreational purpose includes: (1) a parks and recreation system, or improvements or additions to a parks and recreation system, including sidewalks, or an area or facility that is part of a parks and recreation system; and (2) a park, greenbelt, or trail.

**H.J.R. No. 14**

H.J.R. No. 14, introduced by Representative Frank Corte, Jr. (R-San Antonio), would amend the state constitution to require that any taking be for the enjoyment of the property by the public at large or by the State or other political subdivision. Further, the state must show by clear and convincing evidence that the use of the property is public and necessary and it must provide adequate and just compensation.

**H.J.R. No. 31**

Finally, Representative Charles Anderson (R-Waco) has introduced constitutional amendment H.J.R. No. 31 that would prohibit the state or any political subdivision from exercising eminent domain on private property if the primary purpose of the taking is for economic development or to benefit a particular private party.

The passage of any of these proposed statutes or constitutional amendments will significantly alter condemnation procedures within the state. Each will impact public and private entities utilizing the power of eminent domain to develop public infrastructure projects.

Haynes and Boone, LLP will continue to monitor activity regarding these proposals as the 2009 legislative session progresses. If you have any questions regarding the foregoing or any other issues regarding eminent domain, please feel free to contact one of the attorneys listed below.

[Casey T. Wallace](#)

713.547.2516

[casey.wallace@haynesboone.com](mailto:casey.wallace@haynesboone.com)

[Mike Stafford](#)

713.547.2060

[mike.stafford@haynesboone.com](mailto:mike.stafford@haynesboone.com)

[Sandy D. Hellums](#)

713.547.2556

[sandy.hellums@haynesboone.com](mailto:sandy.hellums@haynesboone.com)