The Tennessee Advisory Commission on Intergovernmental Relations

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MEMORANDUM

TO: Commission Members

FROM: Lynnisse Roehrich-Patrick
Executive Director

DATE: 29 November 2012

SUBJECT: Eminent Domain Legislation—Draft Report for Review and Comment

The attached report, prepared in response to two bills concerning eminent domain that were referred to the Commission for study by the 107th General Assembly, is submitted for your review and comment. A final report will be presented at the next commission meeting.

Senate Bill 1566 (Ketron) [**House Bill 1576 (Carr)**] was referred by the General Subcommittee of the Senate Finance, Ways and Means Committee. This bill would have allowed a property owner to require the local government to submit to binding arbitration in order to determine the price of property to be taken by condemnation. Local governments would not be able to object to the use of binding arbitration.

House Bill 2877 (Gotto) [Senate Bill 2745 (Johnson)] was referred by the House State and Local Government Subcommittee. This bill would have eliminated the power of housing authorities to exercise eminent domain and would instead require local elected bodies to institute eminent domain proceedings on behalf of them.

Discussion of Senate Bill 0548 (McNally), House Bill 0952 (Dunn), which was not referred for study, is also included in the report. This bill would have given a right of first refusal to property owners whose property was condemned by a local government or by a state agency.

Eminent Domain in Tennessee

Draft for Commission Review and Comment

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Eminent Domain in Tennessee

In 2006, prompted by the US Supreme Court's decision in *Kelo v. City of New London*,[1] the Tennessee General Assembly enacted Public Chapter 863, which made significant changes to the state's eminent domain law, including clarifying the definition of public use. These reforms greatly improved protections for property owners in Tennessee. But concerns remain about the time and expense of determining property value; the authority of housing development agencies, which are arms of the local government, to condemn property; and the ability of former property owners to repurchase condemned property that is not used by government and later sold.

To help address these specific concerns, additional legislation was introduced in the 107th General Assembly. Two bills related to eminent domain were referred to the Tennessee Advisory Commission on Intergovernmental Relations (TACIR) for study: Senate Bill 1566 (Ketron) [House Bill 1576 (Carr)] and House Bill 2877 (Gotto) [Senate Bill 2745 (Johnson)].

Determining Value

Senate Bill 1566 was referred by the Senate Finance, Ways and Means Committee. This bill would have allowed a property owner to require the local government to submit to binding arbitration in order to determine the price of property to be taken by condemnation. Local governments would not be able to object to the use of binding arbitration. The goal of the bill was to avoid the time and expense of litigation.

While binding arbitration generally reduces the time required to resolve a dispute, it has many of the disadvantages of litigation. Binding arbitration is less time consuming than litigation, mainly because the result cannot be appealed simply because the parties don't like the result, but it is potentially as expensive because the parties still hire lawyers, appraisers, and other experts when arbitrating disputes. Decisions made through binding arbitration can be vacated, modified, or appealed only in very limited circumstances, such as when there is evidence of fraud or improper conduct by the arbitrator. It is more final than the outcome of a trial. As with litigation, binding arbitration decisions are made by someone else, rather than by the parties themselves.

One concern raised by local governments about Senate Bill 1566 was being forced into a dispute resolution process that can be appealed in only very limited circumstances. The only other state with a similar provision is Oregon, which allows a condemnee to force a condemner into binding arbitration only when the value placed on the property by the parties is $20,000 or

[1] 545 U.S. 469 (2005).

less.[2] Concerns about the finality of binding arbitration might be mitigated to some extent by adopting such a limit.

Tennessee offers a number of alternatives to litigation for resolving valuation disputes, including negotiation, mediation, judicial settlement conferences, non-binding arbitration, case evaluations, mini-trials, and summary jury trials. Several of these alternatives can serve as less expensive ways to test the parties' positions on the issues in order to determine whether the time and expense of litigation or binding arbitration would make sense. All of them are available to parties involved in property value disputes related to condemnation. A review of methods available in other states turned up similar methods, but none with significant advantages over those already in use here.

Mediation, which is already widely used in Tennessee, should always be considered before arbitration and could be made a requirement of Senate Bill 1566 as a precondition to binding arbitration. Mediation is generally much quicker and much less costly than either litigation or arbitration. Moreover, the determination of value is left to the parties. If successful, mediation would make the overall process less costly and less time-consuming and allow the parties to decide the price for themselves.

Condemnation by Housing Authorities

House Bill 2877 was referred by the House General Subcommittee of State and Local Government. This bill would have eliminated the power of housing agencies to condemn property and would instead require local elected bodies to institute condemnation proceedings on behalf of them. In practice, local governments already have oversight of housing authorities' use of eminent domain through approval of the redevelopment plans that the authorities operate under.[3] Under Tennessee's redevelopment law, however, a governing body may delegate authority to approve redevelopment plans to another agency, including a housing authority, which then could both approve a redevelopment plan and use it as a basis for condemnation. To our knowledge, no local government has delegated this authority. Removing the language that allows delegation of authority to approve a redevelopment plan to housing authorities would ensure that they could not approve the plan themselves and then use it as a basis for condemnation without the oversight of the local governing body.

Right of First Refusal

TACIR staff also reviewed a related bill not referred to the Commission for study, Senate Bill 548 (McNally), House Bill 952 (Dunn). This bill would have given a right of first refusal to property owners whose property was condemned by a local government or a state agency. Currently, a right of first refusal exists only in the case of condemnations by the Tennessee

[2] Oregon Revised Statute § 35.346 (6).
[3] Tennessee Code Annotated § 13-20-203.

Department of Transportation (TDOT).[4] A right of first refusal gives the condemnee the right to repurchase condemned property if the condemner decides to sell it. The provisions of Senate Bill 548 would have required the property to be offered to the former property owner or his heirs or assigns at the price paid by the condemner. In the case of condemnations by TDOT, the property has to be offered at fair market value and the right of first refusal does not extend to the former owner's heirs or assigns.

Many stakeholders interviewed for the report supported the idea of giving property owners a right of first refusal in all condemnation cases. Eight other states already provide a similar right. Senate Bill 548, as written, could cost condemning agencies money in an appreciating market, when fair market value exceeds the price paid. Otherwise, there would be little cost to the state and local governments, and only a modest increase in the amount of time required to sell the property, the additional time required to notify the former property owners. Making the sale at fair market value would leave the government in the same position it would be in without a right of first refusal on the part of the former owner.

Helping Property Owners Understand Their Rights

Finally, several interviewees, as well as a number of the panelists asked to speak on eminent domain issues at the September 2012 Commission meeting, said that, because condemnation is something that doesn't happen very often, efforts should be made to better inform property owners about their rights. This could be done either by creating an office of ombudsman, similar to the Office of Open Records Counsel within the Tennessee Comptroller's Office, to assist individuals with their condemnation questions or by having condemners include a statement of rights along with a notice of condemnation before initiating condemnation proceedings.

Determining Value

Balancing the legitimate interest of property owners in receiving a fair price and the legitimate interest of governments in acquiring the property they need to provide necessary services without spending too much of the public's money is a difficult task. Usually, when public entities need to acquire land, they do so through voluntary sales rather than through condemnation. Most state agencies, for example, acquire nearly all of their property by negotiating voluntary sales. Even TDOT acquires most of its property by negotiating directly with property owners.[5] Comparable data on land acquisitions by local governments is not

[4] Tennessee Code Annotated § 12-2-112.

[5] The department acquired 6,362 tracts of land for various purposes during FY 2007-2011. Approximately 5,261 of those tracts (83%) were the result of completed sales, while 1,101 (17%) were the result of condemnations. Between January 2007 and September 2011, other state agencies acquired roughly 99% of the property they needed by negotiating an agreement directly with property owners. This percentage is based on information

available, but anecdotal information indicates that condemnation is relatively rare in general. And when it occurs, the issue is generally what the purchase price should be, not the right to take.

The Fifth and Fourteenth Amendments of the US Constitution[6] and Article 1, Section 21, of the Tennessee Constitution specify that no private property shall be taken without just compensation. Courts have interpreted this requirement to mean that property owners must be paid fair market value, which is "the price that a reasonable buyer would give if he were willing to, but did not have to, purchase and that a willing seller would take if he were willing to, but did not have to, sell."[7]

Why Property is Condemned

Generally, property is condemned because owners either do not want to sell it or are not willing to accept the price offered. Property is sometimes condemned at the request of owners who want to sell a property within a redevelopment or urban renewal area and have a willing buyer but do not have clear title to the property. For example, the Knoxville Community Development Corporation (KCDC) estimates that only 25% of its acquisitions in the last six years were by condemnation, and 90% of those were to settle title claims.[8]

How Disputes Over Value are Resolved When Negotiation Fails

Negotiation is always preferred and for several important reasons: Through negotiation, parties confer with one another to set the terms of the sale. Negotiation remains an option even after the parties have filed a lawsuit, but by resolving matters outside the courtroom, the parties avoid filing fees, court costs, and other litigation expenses. Although many matters can be resolved through negotiation, sometimes the parties' best efforts fail, and other measures must be taken.

If the governmental entity chooses to pursue the purchase despite the failure of negotiation, the parties may still be able to avoid the expense of litigation by resolving their differences through mediation or arbitration. If that fails, condemnation is the government's only option for purchasing the property. In order to condemn property, a condemner must first file a lawsuit. At that point, the parties still have two options: litigation or some form of alternative dispute resolution, including mediation or arbitration.

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provided by Tennessee's Department of General Services. This percentage excludes property acquired for easements.

[6] See *Chicago, Burlington and Quincy Railroad Co. v. City of Chicago,* 166 U.S. 226 (1897), holding that the takings clause of the Fifth Amendment applies to the states through the due process clause of the Fourteenth Amendment.

[7] *Nashville Housing Authority v. Cohen*, 541 S.W.2d 947 (Tenn. 1976). See also *Alloway v. Nashville*, 13 S.W.123 (Tenn. 1889).

[8] Alvin Nance, President and CEO, Knoxville Community Development Corporation, September 12, 2012.

Alternative Dispute Resolution

A number of methods for settling disputes outside the courtroom, commonly referred to as alternative dispute resolution (ADR), are available in Tennessee. ADR is a means of settling disputes without litigation. A number of these ADR methods can be used before or after a court case has been filed. Any of these could be used to help resolve value disputes involving land acquisitions by public entities.

Mediation

Mediation is essentially a form of assisted negotiation that is less time consuming and less costly than other methods of resolving disputes. Through an informal process, a neutral third party, the mediator, helps the parties reach agreement. Control over the price remains with the parties. Decisions reached during mediation are not binding. Therefore, either party could choose to litigate the dispute despite the outcome achieved in mediation. But doing so would increase the time and cost required to resolve the dispute.

Empirical evidence suggests that mediation can help resolve disputes more quickly than arbitration or litigation. A study of 449 civil court cases administered by four major providers of ADR services showed that mediation was capable of settling 78% of cases, regardless of whether the parties had been sent to mediation by a court or had selected the process voluntarily. The study found that mediation also cost far less than arbitration, took less time, and was judged a more satisfactory process than arbitration.[9]

Another study of mediation in civil cases showed that most parties and lawyers saw mediation as a procedurally just process that generally involved party participation and lacked settlement coercion. Almost half of mediated cases settled, and a substantial number of additional cases made progress toward settlement. The study noted that overall, mediation did not reduce the time to disposition, but cases that settled in mediation were resolved more quickly and attorneys reported greater cost savings.[10]

Many experts interviewed for this study said that mediation is effective at resolving property value disputes in eminent domain cases. One attorney who also serves as a mediator estimated that roughly 80% of the eminent domain cases that he mediates are settled on the day of mediation or shortly thereafter.[11] He noted that this was also true in cases where he represented a party to the mediation and someone else served as mediator. Moreover, mediation has the potential to be cheaper than arbitration or litigation if the parties are able to reach a settlement quickly.

[9] Goldberg 1996.
[10] Wissler 2002.
[11] Doug Berry, Attorney, testimony before TACIR, September 12, 2012. According to Berry, a typical fee for an experienced mediator would be around $2,500-$3,000 for a day's work and the necessary preparation.

Judges also recognize the effectiveness of mediation in civil cases. It is required by local rule in most civil cases by the 3rd Judicial District of Tennessee. In the 21st Judicial District, judges require the parties to submit to mediation before a case can be set for trial. Mediation may occur after the filing of a lawsuit either at the request of one of the parties or by order of the court on its own initiative. Tennessee Supreme Court Rule 31 governs alternative dispute resolution when it occurs by court order. When that happens, mediation must be conducted by a Rule 31 mediator. A Rule 31 mediator must have completed at least 40 hours of mediation training.

Judicial Settlement Conferences

Judicial settlement conferences are mediations by judicial officers pursuant to Rule 31. While trial courts are authorized to conduct judicial settlement conferences, a judge who participates in a judicial settlement conference is precluded from presiding over the trial or any other contested issues in that matter. The court, on its own initiative, may order a settlement conference, or either party may request one.

Case Evaluations, Mini-Trials, and Summary Jury Trials

Case evaluations, mini-trials, and summary jury trials are all methods by which parties can assess the strengths and weaknesses of their case under Rule 31. A case evaluation is a process in which a neutral evaluator or three-person evaluation panel, after brief presentations by the parties summarizing their positions, identifies the central issues in dispute, as well as areas of agreement, provides the parties with an assessment of the relative strengths and weaknesses of their case, and may offer an evaluation of the case. The neutral evaluator serving in case evaluations is subject to standards of conduct set out in Rule 31. Trial courts, with the consent of the parties, are allowed to order a case evaluation.

Mini-trials are settlement processes in which each side presents an abbreviated summary of its case to the parties or representatives of the parties who are authorized to settle the case. Mini-trials may be ordered only with the consent of the parties. A neutral person, subject to standards of conduct in Rule 31, must preside over the proceeding. Following the presentation, the parties or their representatives seek a negotiated settlement of the dispute.

Summary jury trials are abbreviated trials with juries in which litigants present their evidence in an expedited fashion. The litigants and the jury are guided by a presiding neutral person. After an advisory verdict from the jury, the presiding neutral person may assist the litigants in a negotiated settlement of their controversy. Summary jury trials may be ordered only with the consent of the parties.

Arbitration

Arbitration, like litigation, is a process for dispute resolution in which a neutral third party renders a decision after a hearing at which both parties have an opportunity to be heard. It is a consensual proceeding, and parties select decision makers of their own choice. Tennessee law sets out arbitration procedures that, if followed, result in an enforceable agreement.[12] Parties may choose to arbitrate any disagreement or may agree in advance by contract to arbitrate. Form contracts often have binding arbitration clauses. With binding arbitration, the parties are legally obligated to comply with the arbitrator's decision. Nonbinding arbitration is not as common.

Non-binding Arbitration

In non-binding arbitration, an arbitrator renders an advisory opinion that the parties can decide whether to adopt. Because the parties make the decision, there is nothing to appeal, thus it is less costly, less time consuming, and less frustrating than binding arbitration. But the primary advantage of non-binding arbitration is that it can serve as a springboard for discussion and indicate how a knowledgeable fact finder might decide the case. As noted by Steven C. Bennett in an article for the *Dispute Resolution Journal*, "a party who is unhappy with a non-binding award and chooses not to settle may litigate the dispute in court (or binding arbitration, if the parties agree). But because this is a costly decision, the disappointed party is likely to think hard about it and try to find a more businesslike solution." Trial courts are authorized by Rule 31, with the consent of the parties, to order non-binding arbitration. The parties may select any lawyer in good standing to act as an arbitrator, who will be subject to the standards of conduct in Rule 31.

Binding Arbitration

Unlike non-binding arbitration, the arbitrator's decision in binding arbitration is enforceable in court. It is in many ways similar to litigation, though potentially less time consuming, largely because the arbitrator's decision cannot be appealed except in extremely limited circumstances. One study found that employment discrimination cases in federal district court take on average two years to resolve through litigation, while a similar case can be resolved in less than nine months using arbitration.[13] Another study of employment discrimination cases found that the median time from filing to judgment was 16.5 months for arbitrated claims and 25 months for litigated claims.[14] Since neither of these studies discussed eminent domain cases, their findings may not be directly applicable.

One reason binding arbitration may be quicker than litigation is that the result cannot be appealed simply because the parties don't like the result. There are limited grounds on which a

[12] Tennessee Code Annotated Title 29, Chapter 5, Parts 1 and 3.
[13] Maltby 1998.
[14] Delikat 2004.

court can modify or vacate an arbitrator's decision. Tennessee's Uniform Arbitration Act provides that a court may *modify* a decision only when

- there was an evident miscalculation of figures or an evident mistake in the description of any person, thing, or property referred to in the award;
- the arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or
- the award is imperfect in a matter of form, not affecting the merits of the controversy.[15]

A court may *vacate* a decision only when

- the award was procured by corruption, fraud, or other undue means;
- there was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party;
- the arbitrators exceeded their powers;
- the arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to § 29-5-306, as to prejudice substantially the rights of a party; or
- there was no arbitration agreement and the issue was not adversely determined in proceedings under § 29-5-303 and the party did not participate in the arbitration hearing without raising the objection.[16]

Either party can appeal a court's decision to modify or vacate the arbitrator's decision, adding time to the process. While binding arbitration's limited appeals makes it quicker, the fact that the arbitrating parties give up control of the final decision can also be seen as a drawback.

Another drawback is that arbitration could potentially end up being just as expensive for the property owner as litigation. Arbitration fees vary, with the American Arbitration Association (AAA) fee schedule showing fees beginning at $975 for claims of $10,000 or less and rising from there based on the amount of the claim. The Mediation Group of Tennessee LLC charges an administrative fee of $300 for non-complex arbitrations, with the administrative fee for complex arbitrations determined on a case-by-case basis. Along with the administrative fee, the arbitrator's charge may be anywhere from $250 to $500 per hour.[17] In addition to the arbitrator's fees, there may be rental fees for the hearing rooms.

[15] Tennessee Code Annotated § 29-5-314.
[16] Tennessee Code Annotated § 29-5-313.
[17] "Fees." Mediation Group of Tennessee, LLC. http://themediationgrouptenn.com/pg27.cfm (accessed November 1, 2012).

Because of the expense and complexity of arbitration, owners generally hire attorneys to represent them. Government agencies are routinely represented by attorneys, so without one, an owner would be at a disadvantage. The cost can be comparable to litigation at the trial level. One attorney said that, if the case is complicated, the attorneys are going to spend the same amount of time preparing for a binding arbitration hearing as they would for court because the arbitrator's decision is binding.[18] There are also likely to be costs associated with hiring appraisers to prepare appraisals for the hearing or hiring expert witnesses to testify.

Litigation

The two main litigation methods for condemnation are the jury of view method, which is available to any entity with the power to condemn, and the "supplementary" method, which is restricted to counties, cities, certain special districts, and the state. There are other statutory methods, but they are restricted to certain types of property acquisitions and are not widely used.

Supplementary Condemnation Method

The most widely used condemnation method is the supplementary method, which may be used by counties and cities, by utility, levee, and drainage districts, and by the state to acquire rights-of-way, land, material, easements, and rights as are necessary, suitable, or desirable for the construction, reconstruction, maintenance, repair, drainage, or protection of any street, road, freeway, or parkway.[19] It requires the condemner to file a petition for condemnation in circuit court and deposit with the court the amount the condemner believes the property owner is entitled to.

If the property owner is satisfied with the amount deposited, she may accept the deposit in full settlement for the property. The court will then enter an order divesting the property owner of title and vesting it in the condemner. The condemner must give the former owner 30 days' notice before taking possession of the property. If the property owner is dissatisfied with the deposit, she may file an exception to the amount and proceed to trial. The property owner may request payment of the amount deposited but must agree to refund the difference if the award is less. If the award is more, the condemner must pay court costs; if not, the property owner contesting the value must pay court costs. Other costs actually incurred, including attorney, appraisal, and engineering fees, may be awarded to the owner if the condemner abandons the proceeding or if the condemner is determined not to have a right to take the property. And interest must be paid on any judgments against the condemner from the time of the deposit until the funds are withdrawn.

[18] William Farmer, Attorney, testimony before TACIR, September 12, 2012.
[19] Tennessee Code Annotated Title 29, Chapter 17, Part 9.

Jury of View Condemnation Method

As with the supplementary method, the jury of view method of condemnation requires the condemner to file a petition in the circuit court and give the property owner 30 days' notice before proceeding further.[20] A writ of inquiry is directed to the sheriff, commanding him to summon a panel of jurors. The jury of view consists of five persons, unless the parties agree to a different number, who determine the price to be paid for the property. Doug Berry, an attorney, said that in Williamson County, when this method is used the parties agree on a panel. The court clerk keeps a list of people such as real estate agents and appraisers who are willing to serve on the jury. The jury's decision is useful for the local government since it gives the local government's attorney a number they can go back to their board with. The jury's decision is usually a compromise verdict; it is usually something between the local government's appraisal and the property owner's appraisal. The parties can appeal if they object to the amount awarded by the jury.

Other Methods of Resolving Disputes Over Value

Concern that, despite all of these options, the process of challenging the government's valuation is too costly and time-consuming led to the introduction of Senate Bill 1566, which would allow property owners to force local governments to submit the value question to binding arbitration. A review of valuation methods in other states suggests two additional approaches to determining a fair price: a board of property assessors and a special master or referee.

Forced Binding Arbitration (Senate Bill 1566)

Senate Bill 1566, the goal of which was to avoid the time and expense of litigation, would have allowed a property owner to require the local government to submit the question of value to binding arbitration. Several issues related to the original bill were resolved before the final amendment to the bill, which completely replaced the original bill, was sent to TACIR by the Senate Finance, Ways and Means Committee:

- The bill would not have applied to condemnations for utility service.
- The condemner would have to notify the property owner within 60 days of taking possession of it.
- The definition of property owner would include anyone with an ownership interest in it, including mortgagees and lessors.

While arbitration, in general, is already potentially quicker than litigation, the bill made further provisions to speed the process. It would have required that binding arbitration begin within 60 days of the appointment of an arbitrator when the owner chooses to use an American

[20] Tennessee Code Annotated § 29-16-104. See also Tennessee Code Annotated § 29-17-104.

Arbitration Association (AAA) arbitrator. Senate Bill 1566 would have allowed the parties to agree on the selection of a non-AAA arbitrator or for the property owner to request a court-appointed arbitrator not affiliated with the AAA. In these instances, the bill did not require that the arbitration begin within 60 days.

Local governments are concerned about being forced into a dispute resolution process that can be appealed in only very limited circumstances as described above. Only one state, Oregon, allows a condemnee to force a condemner into binding arbitration and only then, if the value placed on the property by the parties is $20,000 or less.[21] The concern of local governments could be mitigated either by adopting a provision similar to Oregon's or by incorporating mediation into the bill as a first step toward settlement before the right to force the local government into binding arbitration is invoked.

Board of Property Appraisers

In Georgia, three property assessors are appointed to determine the value of condemned property.[22] One is selected by the property owner, the second is appointed by the condemner, and the third is chosen by the first two assessors.[23] The condemner pays the cost of its appraiser, and the condemnee pays the cost of his or her appraiser. The cost of the third appraiser is split equally between the parties. This board is similar to the jury of view in Tennessee as used in Williamson County, and as with the jury of view, the decision of the board of appraisers can be appealed.[24]

One advantage of Georgia's board of appraisers is that it is potentially cheaper than either mediation or arbitration. Georgia law limits compensation for the panel to $500 per day.[25] Mediation and arbitration fees, by comparison, can run almost $250 to $500 per hour. In fact, as noted earlier, the minimum arbitration fee charged by the AAA is $975. A Georgia attorney stated that the board is effective for determining value if one has a good panel. She estimates an appeal rate of only 20%.[26] The main disadvantage of this method of determining value is that the board's decision may be appealed and so would not necessarily lead to a quicker or less costly resolution than binding arbitration would.

[21] Oregon Revised Statute § 35.346 (6).
[22] In the Georgia Code, the proceedings are referred to as Proceedings before Assessors. However, it is a panel of property assessors who determine value. These assessors must be real estate appraisers with an appraiser classification of certified general appraiser granted under Georgia law.
[23] Official Code of Georgia Annotated Title 22, Chapter 2, Article 1.
[24] Official Code of Georgia Annotated § 22-2-80.
[25] Official Code of Georgia Annotated § 22-2-40.
[26] Anne Sapp, Special Assistant Attorney General, State of Georgia, interview with Kale Driemeier, August 23, 2012.

Special Master or Referee

A special master or referee is a third party, usually an attorney, who determines the value of property in eminent domain cases. In the two states where this method is used, Alaska and Georgia, the cost of the special master or referee could potentially be less than the fees charged by mediators or arbitrators.[27] Courts in both states may set compensation for the special master at a level less than mediation or arbitration. In Alaska, the parties pay the master's compensation.[28] In Georgia, compensation paid by the condemner.[29] However, because the decision of the master or referee can be appealed,[30] this method is not necessarily cheaper or less time consuming than binding arbitration.

Condemnation by Housing Authorities

Housing authorities can use condemnation to acquire land for housing for low-income families[31] and for urban renewal or redevelopment projects, such as efforts to improve blighted or other areas that present a threat to the health, safety, or welfare of the community.[32] In determining whether an area poses such harm, several factors may be considered, including overcrowding, sanitary facilities, or deleterious land uses.[33] Housing agencies in Tennessee are arms of local governments. Their boards are appointed by elected mayors,[34] who may remove them from office for inefficiency, neglect of duty, or misconduct after notice and a hearing.[35] Elected officials have considerable control over housing agencies exercise of eminent domain through their authority to approve housing and redevelopment plans. No housing authority can initiate a public housing project until the governing body of each city in which the project is located has approved the project plan.[36] Tennessee law also provides that an authority shall not exercise eminent domain in a redevelopment zone until the governing body of each city or town where the project is located has approved a plan establishing a boundary within which the authority has the power to acquire property.[37] However, the law states that the governing body of each city "or agency designated by it" must approve a redevelopment plan.[38] This language allows a governing body to delegate authority to approve a

[27] See Alaska Statute § 9.55.300, and Official Code of Georgia Annotated Title 22, Chapter 2, Article 2.
[28] Alaska Rules of Civil Procedure Rule 53.
[29] Official Code of Georgia Annotated § 22-2-103.
[30] Alaska Statute § 9.55.300 and Official Code of Georgia Annotated § 22-2-80.
[31] Tennessee Code Annotated §§ 13-20-101 et seq.
[32] Tennessee Code Annotated Title 13, Chapter 20, Part 2.
[33] Tennessee Code Annotated §§ 13-20-201 et seq.
[34] Tennessee Code Annotated §§ 13-20-408 and 13-20-501. The legislative bodies of the member counties appoint the commissioners to a regional housing authority's board pursuant to TCA § 13-20-507.
[35] Tennessee Code Annotated §§ 13-20-411 and 13-20-501. In the case of a regional housing authority, a commissioner may be removed by the officer or officers or their successors who appointed the commissioner pursuant to Tennessee Code Annotated §§ 13-20-507.
[36] Tennessee Code Annotated § 13-20-104.
[37] Tennessee Code Annotated § 13-20-203. See also Tennessee Code Annotated §§ 13-20-501 and 13-20-508.
[38] Tennessee Code Annotated § 13-20-203. See also Tennessee Code Annotated §§ 13-20-501 and 13-20-508.

redevelopment plan to a housing agency. [39] TACIR staff could not find a city that had made this delegation, but staff of the General Assembly's Office of Legal Services agreed that it could be done.

Well-publicized cases, such as the Joy Ford and Tower Investments condemnations in Nashville, have fostered the perception that housing authorities, as unelected bodies, are wielding great power over the property rights of owners without political accountability. In the Joy Ford case, the Metropolitan Development and Housing Agency (MDHA), which serves Nashville and Davidson County, sought to condemn Joy Ford's property so that it could be transferred to a developer to build an office, retail, and residential complex.[40] Joy Ford contested the condemnation alleging that it violated state and federal laws on taking private land for redevelopment.[41] The MDHA maintained that the property was blighted and was properly designated in a redevelopment plan adopted by the metro council.[42] The parties were ultimately able to settle the dispute through a land swap involving the exchange of part of Ms. Ford's property for an adjacent parcel.[43,44] In the Tower Investments case, MDHA attempted to condemn property owned by Tower for the new Nashville convention center. Tower Investments did not contest the right to take but did reject the amount of money it was offered for the property. A jury ultimately awarded Tower more than twice the amount offered by MDHA.[45] MDHA has appealed the decision, and the parties are currently awaiting a decision from the Tennessee Middle District Court of Appeals.[46]

Citing these examples and concerns about similar cases in other parts of the state, the sponsors of House Bill 2877 and its companion, Senate Bill 2745, sought to increase political accountability in eminent domain cases by removing the condemnation authority of all housing agencies in Tennessee even when a city had adopted a redevelopment plan giving the housing agency authority to acquire property through condemnation. Under the bill, only the legislative body that established a housing, redevelopment, or urban renewal project could condemn the property identified in it. Properties that could not be acquired through negotiation by the housing authority responsible for the plan would have to be condemned parcel by parcel by the legislative body that approved the plan. Not surprisingly, local governments and housing agencies opposed this change, arguing that the plans themselves are a sufficient constraint on the housing agencies' power to condemn. However, the power of legislative bodies to delegate authority to approve housing and redevelopment plans to the housing agencies themselves, if exercised, would nullify this constraint.

[39] Katie Atkins, Attorney, Tennessee General Assembly, email to Dianna Y. L. Miller, September 10, 2012.
[40] Sisk 2008a.
[41] Sisk 2008b.
[42] Sisk 2008c.
[43] Sisk 2009.
[44] Nashville Business Journal 2008.
[45] Allyn 2011.
[46] Rau 2012. TACIR staff also contacted MDHA in October 2012 to verify the status of the case.

Right of First Refusal

The right of first refusal gives the condemnee the right to repurchase condemned property if the condemner decides to sell it. This is not a new or unusual concept. Eight other states have granted the right of first refusal to former property owners in condemnation cases, and property owners in Tennessee already have it in the case of condemnations by TDOT.[47] Under current law, there is no right of first refusal when property is condemned by local governments or state agencies other than TDOT.

Senate Bill 548 would have given a right of first refusal to property owners whose property was condemned by a local government or any state agency. The bill would have required that the property be offered to the former property owners or their heirs or assigns at the price paid by the condemner.

Seven other states have right of first refusal statutes: Alabama, Connecticut, Florida, Kentucky, Oregon, Texas, and Utah. In all but Connecticut, the right of first refusal applies to condemnations by both state and local governments.[48] In Connecticut, the right applies only to local government condemnations.[49] The right of first refusal in Louisiana is in its constitution.[50] These states are split over the price that should be paid by the condemnee. Connecticut and Louisiana require that the property be offered at fair market value. Alabama, Florida, Kentucky, Oregon, Texas, and Utah all require that the former property owners be offered the property at the price paid by the condemner.

Helping Property Owners Understand Their Rights

Interviewees and panelists testifying before the Commission suggested that measures be taken to educate property owners about their rights with respect to eminent domain. Very few individuals will ever experience the condemnation of their property and would not likely understand eminent domain law. Few would be aware of the remedies available to them. Having access to information early in the condemnation process would help property owners better understand their rights and what they will go through. Providing this information should facilitate a more efficient resolution of disputes. Several states provide information and guidance to property owners through an ombudsman office or written notice.

[47] Tennessee Code Annotated § 12-2-112.
[48] Code of Alabama § 18-iB-2(b), Fla. Stat. § 73.013, KRS § 416.670, ORS § 35.390, Tex. Prop. Code § 21.101, and Utah Code Ann. § 78B-6-521.
[49] Conn. Gen. Stat. § 8-127a. In Connecticut, the provisions apply only to local condemnations that are for redevelopment projects.
[50] Louisiana Constitution Art. 1 § 4.

Property Rights Ombudsmen

In Utah, property owners can contact the Office of Property Rights Ombudsman for assistance. Created in 1997, the office helps property owners, citizens, and government officials understand and protect their rights by answering their questions, discussing the law, and advising them of the options that are available to resolve eminent domain disputes.[51] The office started with only one attorney, but there are currently three attorneys and one administrator on staff. This office has successfully helped reduce eminent domain litigation. One Utah Department of Transportation (UDOT) official was quoted as saying that the percentage of its negotiations to acquire property that result in litigation dropped by more than 75% because of the ombudsman office's assistance.[52] According to ombudsman staff, UDOT currently has the lowest condemnation litigation rate of any state department of transportation in the nation.[53]

Missouri has a similar office, the Office of the Ombudsman for Property Rights. Established in 2007, the ombudsman provides guidance to individuals seeking information regarding the condemnation process.[54] It also documents the use of eminent domain within the state and any issues associated with its use. Currently, staff consists of only the ombudsman; there are no additional employees.

Tennessee has an Office of Open Records Counsel within the Comptroller's Office that could serve as a model for an ombudsman office to assist property owners with eminent domain matters. The Office of Open Records Counsel serves as the contact for concerns related to accessing local government public records.[55] The responsibilities of the office include answering questions and providing information to public officials and the public about public records, collecting data on open meetings law inquiries and problems, providing educational outreach, issuing informal advisory opinions on open records issues, and informally mediating and assisting with the resolution of issues concerning records. An attorney and an administrative assistant staff the office. According to information provided by the Comptroller's staff, approximately $250,000 would be needed to start a similar office for eminent domain purposes.[56] This would cover basic office space, salaries, and related costs.

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[51] For additional information about the Utah Office of Property Rights Ombudsman functions, see http://propertyrights.utah.gov/.
[52] Call 2007.
[53] Brent Bateman, Lead Attorney, Utah Office of Property Rights Ombudsman, interview with Kale Driemeier, August 16, 2012.
[54] For additional information about the Missouri Office of the Ombudsman for Property Rights, see http://www.eminentdomain.mo.gov/index.htm.
[55] Tennessee Code Annotated §§ 10-7-501 et seq.
[56] Ann Butterworth, Assistant to the Comptroller for Public Finance, e-mail message to Dianna Y. Miller, September 9, 2012.

The Tennessee Attorney General's Office does not specifically assist or advocate on behalf of property owners in eminent domain disputes; however, its staff does respond to eminent domain questions that these individuals pose.[57] Attorneys also negotiate directly with property owners in state eminent domain cases.

Landowner Notice of Rights

In order to ensure that property owners are better informed about the eminent domain process, a document could be sent, along with the notice of condemnation, explaining the law in a manner that property owners will easily understand. Three states already require that written notice be sent to property owners apprising them of their rights before condemnation.

Missouri law requires condemners to send notice to property owners at least 60 days before filing a condemnation petition.[58] The notice must include a statement outlining the property owner's rights. These include the right to seek legal counsel at the owner's expense, make a counter-offer and engage in further negotiations, obtain his or her own property appraisal, seek assistance from the office of the ombudsman for property rights, and have just compensation determined by a jury.

Similarly, in Texas, a condemner must provide a landowner's bill of rights statement to the property owner before initiating condemnation proceedings.[59] The statement describes the condemnation process, the condemner's obligations to the property owner, and the owner's options during a condemnation, including the right to object to and appeal an amount of damages awarded. See appendix C for a copy of the Texas notice.

In addition, under Georgia law, condemning entities must send property owners a written, pre-condemnation notice informing them that the entity is interested in acquiring their property through eminent domain.[60] This notice must be sent at least 15 days before any meeting in which the condemner considers or votes to exercise eminent domain and must be accompanied by a statement of the landowner's rights, including an explanation of the right to receive notice, damages, a hearing, and the right to appeal a decision.

[57] Larry Teague, Deputy Attorney General, e-mail message to Kale Driemeier, September 25, 2012.
[58] Missouri Annotated Statutes § 523.250.
[59] Texas Property Code § 21.0112.
[60] Official Code of Georgia § 22-1-10.

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Persons Interviewed

Jane Alvis, Lobbyist
Metropolitan-Nashville Government

Katie Atkins, Attorney
TN General Assembly, Office of Legal Services

Brent Bateman, Lead Attorney
Utah Office of Property Rights Ombudsman

Donna Baumgartner, Executive Director
TN Association of Housing and Redevelopment Authorities

Douglas Berry, Attorney/Rule 31 Listed Mediator
Hubbard, Berry & Harris, PLLC

Laura Bohling, Clerk
Rutherford County Circuit Court

G. Sumner Bouldin, Jr., Attorney
Bouldin & Bouldin

J.A. Bucy, Lobbyist
(former Director of Governmental Affairs, TN Association of Realtors)

Scott Bullock, Senior Attorney
Institute for Justice

Ann Butterworth, Assistant to the Comptroller for Public Finance
TN Comptroller of the Treasury

Joseph Cain, Director of Urban Development
Metropolitan Development and Housing Agency (MDHA)

Anne Carr, Lobbyist
Tennessee Association of Housing and Redevelopment Authorities

Joe Carr, State Representative
Rutherford County

Phyllis Childs, Senior Counsel
Office of the Attorney General, Real Property and Transportation Division

Jamie Clariday, Attorney
Tennessee General Assembly, Office of Legal Services

Fred Congdon, Executive Director
Association of County Mayors

David Connor, Executive Director
TN County Commissioners Association

Jim Cope, County Attorney
Rutherford County

William "Bill" Farmer, Attorney
Jones Hawkins & Farmer, PLC

James "Jim" Fisher, Attorney
Law Office of James W. Fisher

Jim Gotto, Retired
Davidson County
(former State Representative and Metropolitan Council Member)

Norman Hall, Real Estate Appraiser
Norman Hall and Associates and the Appraisal Institute

John R. Hamilton, Attorney
Hamilton, Laughlin, Barker, Johnson & Watson
Kansas

Jeff Hoge, Right-of-Way Director
Tennessee Department of Transportation

Paul de Holczer, Attorney
Moses & Brackett
South Carolina

Roger Horner, City Attorney
City of Brentwood

Dennis Huffer, Legal Counsel
Greater Nashville Regional Council

Chad Jenkins, Deputy Director
Tennessee Municipal League

Bill Ketron, State Senator
Rutherford County

Sharon Lee, Justice
TN Supreme Court

Claudia Lewis, Programs Manager, Rule 31 Mediation Program
TN Administrative Office of the Courts

Betsy McCright, Executive Director
Chattanooga Housing Authority

Randy McNally, State Senator/Commissioner, TACIR
Anderson and Loudon counties

Alvin Nance, Executive Director/CEO
Knoxville's Community Development Corporation

Jordana Nelson, General Counsel/ VP Development
Knoxville's Community Development Corporation

S. Pierre Paret, VP for Government Relations
American Arbitration Association

Nathan Ridley, Lobbyist/Attorney
Bradley Arant Boult Cummings (BABC)

Rhedona Rose, Executive Vice-President
TN Farm Bureau Federation

Mark Rudisill, Retired
Chattanooga Housing Authority
(former Manager of Development)

Phil Ryan, Executive Director
Metropolitan Development and Housing Agency (MDHA)

Anne Sapp, Special Assistant Attorney General
Georgia

Donald L. Scholes, General Counsel
TN Association of Utility Districts (TAUD)

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D. Bruce Shine, Attorney/Chair
Law Office of D. Bruce Shine/TN Alternative Dispute Resolution Commission

Gary R. Standifer, Appraiser/ Consultant (MAI, CCIM)
Standifer & Associates, Inc.

Larry Teague, Deputy
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Real Property and Transportation Division

Clark Tidwell, Attorney
Lassiter Tidwell & Davis

Christian Torgrimson, Attorney
Pursley, Lowery, Meeks, LLP, Georgia

Hawthorne Welcher, Manager
Aiken Housing Authority

Delores Williams, Assistant Deputy Clerk
Rutherford County Circuit Court

Rick Womick, State Representative
Rutherford County

Appendix A

Amendment No._____

_____
Signature of Sponsor

FILED
Date _____
Time _____
Clerk _____
Comm. Amdt. _____
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AMEND Senate Bill No. 1566 **House Bill No. 1576***

by deleting the language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, 29-17-103, is amended by designating the existing language as subsection (a), and is further amended by adding the following language as a new subsection (b):

(b) Notwithstanding subsection (a), this part shall not preempt procedures to determine valuation of property under part 11 of this chapter.

SECTION 2. Tennessee Code Annotated, Section 29-17-105, is amended by adding the language "or damages may be determined pursuant to additional options available under part 11 of this title," after the language "petit jury," and before the language "as other civil actions are tried".

SECTION 3. Tennessee Code Annotated, Title 29, Chapter 17, is amended by adding the following as a new part thereto:

29-17-1101.

As used in this part:

(1) "AAA" means the American Arbitration Association;

(2) "Eminent domain" is as defined under § 29-17-102;

(3) "Person" means a natural person, a corporation, firm, company, association, or other legal entity;

(4) "Property" means real property whether leasehold or in fee simple, any buildings, improvements or structures on real property, any easements, rights, and appurtenances belonging to real property, or any combination of the aforementioned;

(5) "Public use" is as defined under § 29-17-102; and

(6) "Send", "notice" or "notify" means mailed by certified mail or hand delivered with a receipt obtained at the time the delivery is made.

29-17-1102.

Notwithstanding § 29-17-1101:

(1) Nothing in this part shall be construed to apply to the acquisition of an interest in property to be used to provide a utility service.

(2) Nothing in this part shall be construed to apply to the acquisition of an interest in property to be used for state highway improvement.

29-17-1103.

(a)

(1) In addition to any other notice required by law, at least sixty (60) days prior to a trial on damages in a condemnation action by a county or municipality, the county or municipality shall send notification to the property owner that includes, at a minimum:

(A) A statement of value which lists the amount that the county or municipality offers to the property owner as damages;

(B) An options form, created by the county or municipality, that describes the following options available to the property owner, and which the property owner shall complete and return to the county or municipality within sixty (60) days, in order to adjudicate the issue of damages:

(i) The property owner may accept the amount listed in the statement of value and demand immediate payment of the amount from the county or municipality;

(ii) The property owner may reject the amount listed in the statement of value and negotiate the value of property with the county or municipality;

(iii) The property owner may reject the amount listed in the statement of value and, notwithstanding § 29-5-101, proceed to the arbitration process described in § 29-17-1106; and

(iv) The property owner may reject the amount listed in the statement of value and contest the issue in court; provided, that by selecting this option, the property owner waives the arbitration process described in § 29-17-1106;

(C) The name, address and contact information for the entity to whom the property owner shall give notice; and

(D) An arbitration initiation form.

(2) Nothing in subdivision (a)(1) shall prevent a county or municipality from issuing notice of valuation at the same time the county or municipality issues notice pursuant to § 29-17-104.

(3) If the property owner is unknown, is a nonresident of this state, or cannot be found, notice shall be given by publication, which shall be made in the same manner as provided by law for similar situations in chancery court.

(b)

(1) The property owner shall send the completed options form described in subsection (a), to the county or municipality within sixty (60) days of receiving notice under § 29-17-1103. If the property owner fails to send the completed options form within that time, the property owner is not eligible to participate in arbitration to determine the value of the property under § 29-17-1106, but is entitled to accept the amount listed in the statement of value or to contest the value in court.

(2) If the property owner elects to negotiate the value of the property, the property owner shall also send a counter offer to the county or municipality within those sixty (60) days.

(3) If the property owner elects to proceed to arbitration on the issue of value, the property owner shall also send a completed arbitration form, provided to the property owner under subdivision (b)(1), to the county or municipality within those sixty (60) days.

29-17-1104.

This part shall not affect procedures conducted pursuant to §§ 29-16-105, 29-16-107, 29-17-104, or 29-17-105.

29-17-1105.

(a) If a property owner sends a completed options form within the time required under § 29-17-1103, and elects to negotiate the value of the property, all parties shall proceed to negotiations in good faith.

(b) If negotiations are unsuccessful, or if the property owner is unwilling to accept the county or municipality's best and final offer, the property owner may subsequently proceed to arbitration under § 29-17-1106, or to court, to determine value.

(c) If a county or municipality negotiates the value of property under this part, the county or municipality shall notify the property owner when an offer is the county or municipality's best and final offer.

29-17-1106.

(a) This section shall apply if a property owner elects to arbitrate the issue of the value of the property after sending a completed arbitration initiation form in compliance with § 29-17-1103(b), or if a property owner elects to arbitrate the issue of the value of the property after attempting negotiations with a county or municipality.

(b)

(1) The parties may agree upon selection of an arbitrator;

(2) If the parties cannot agree upon selection of an arbitrator, the property owner may elect to proceed to arbitration with the AAA, in which case the following shall apply:

(A) The county or municipality shall, within fifteen (15) days of receipt of a completed arbitration initiation form, notify the AAA of such circumstances, and an arbitrator shall be appointed by the AAA within fifteen business (15) days of receipt of the county or municipality's notice by AAA.

(B) Not less than ten (10) days prior to commencement of arbitration, the property owner shall submit an appraisal of the property to the county or municipality. The appraisal shall be conducted by an appraiser so required under § 29-17-1004 at the property owner's sole expense.

(C) Arbitration shall commence within sixty (60) days after the appointment of the arbitrator to determine the value of the property; and

(D) The arbitrator shall appoint a time and place for the hearing and cause notification to the parties to be served personally or by registered mail not less than ten (10) days before the hearing; and

(3) If the parties cannot agree upon selection of an arbitrator and the property owner does not elect to proceed to arbitration with the AAA, then the property owner shall request that the court in which the proceeding is pending appoint an arbitrator, in accordance with the Tennessee Uniform Arbitration Act, to hear the case and make the determination of value.

(c) The arbitration costs shall be split equally between the property owner and the county or municipality. If multiple property owners are parties to the arbitration, each property owner shall be responsible for an equal share of fifty percent (50%) of the arbitration costs. Each party shall be responsible for the party's own discretionary costs.

(d) Arbitration conducted pursuant to this part shall be binding under the Uniform Arbitration Act, compiled in chapter 5, part 3 of this title. As such, either party may request that the court enter judgment confirming, modifying or vacating the decision and

award of the arbitrator, and the judgment of the court shall be subject to appeal as provided in that act.

SECTION 4. Tennessee Code Annotated, 29-17-801(b), is amended by adding the following language to the beginning of the subsection: "Notwithstanding any law to the contrary."

SECTION 5. This act shall take effect July 1, 2012, the public welfare requiring it, and shall apply to any petition for condemnation filed by a county or municipality on or after the effective date of this act.

Senate Finance, Ways & Means Comm. Am. #1 to1

Amendment No._____

FILED
Date _____
Time _____
Clerk _____
Comm. Amdt. _____

_____
Signature of Sponsor

AMEND Senate Bill No. 1566 House Bill No. 1576*

by deleting in its entirety subsection (c) of § 29-17-1106 from the amendatory language of Section 3 of the bill as amended and by substituting instead the following language:

(c) The arbitration costs shall be divided between the property owner and the county or municipality pursuant to § 29-5-311.

Senate Finance, Ways & Means Comm. Am. #2 to 1

FILED
Date _____
Time _____
Clerk _____
Comm. Amdt. _____

Amendment No._____

_____

Signature of Sponsor

AMEND Senate Bill No. 1566 House Bill No. 1576*

by adding the language "no more than sixty (60) days after taking possession of the property and" to § 29-17-1103(a)(1) between the language "In addition to any other notice required by law," and "at least sixty (60) days prior to a trial on damages";

Senate Finance, Ways & Means Comm. Am. #3 to 1

Amendment No._____

Signature of Sponsor

FILED
Date
Time
Clerk
Comm. Amdt.

AMEND Senate Bill No. 1566 House Bill No. 1576*

By adding the following to SECTION 3 as a new appropriately designated subdivision under § 29-17-1101, and by redesignating the subsequent subdivisions accordingly:

( ) "Property owner" means all persons with an ownership interest in the property, including, but not limited to, holders of life estates, mortgages, leases, easements and other interests.

AND FURTHER AMEND by adding the following language to SECTION 3 as a new appropriately designated subsection under § 29-17-1106:

( ) In the event there are multiple property owners of a property, and one or more of the property owners elects to arbitrate, then all the property owners shall be parties to the arbitration. The property owner who elects to proceed to arbitration after attempting negotiations shall send a completed arbitration form to the country within thirty (30) days after rejecting the best and final offer, and send a copy of the complete arbitration form to any other property owner within thirty (30) days.

AND FURTHER AMEND by adding the following language to SECTION 3 at the end of § 29-17-1103(b)(3):

In the event there are multiple property owners of a property, the property owner who elects to proceed to arbitration shall also send a copy of the completed arbitration form to any other property owner within those sixty (60) days.

AND FURTHER AMEND by adding the following language to SECTION 3 at the end of § 29-17-1106(d):

Notwithstanding anything to the contrary in the Uniform Arbitration Act, the court shall vacate, modify or correct any award:

(i) Where the arbitrator's findings of facts are not supported by substantial evidence; or

(ii) Where the arbitrator's conclusions of law are erroneous.

Amendment No._____

Signature of Sponsor

FILED
Date _____
Time _____
Clerk _____
Comm. Amdt. _____

AMEND Senate Bill No. 1566 House Bill No. 1576*

by deleting the language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, 29-17-103, is amended by designating the existing language as subsection (a), and is further amended by adding the following language as a new subsection (b):

(b) Notwithstanding subsection (a), this part shall not preempt procedures to determine valuation of property under part 11 of this chapter.

SECTION 2. Tennessee Code Annotated, Section 29-17-105, is amended by adding the language "or damages may be determined pursuant to additional options available under part 11 of this title," after the language "petit jury," and before the language "as other civil actions are tried".

SECTION 3. Tennessee Code Annotated, Title 29, Chapter 17, is amended by adding the following as a new part thereto:

29-17-1101.

As used in this part:

(1) "AAA" means the American Arbitration Association;

(2) "Eminent domain" is as defined under § 29-17-102;

(3) "Person" means a natural person, a corporation, firm, company, association, or other legal entity;

(4) "Property" means real property whether leasehold or in fee simple, any buildings, improvements or structures on real property, any easements, rights, and appurtenances belonging to real property, or any combination of the aforementioned;

(5) "Public use" is as defined under § 29-17-102; and

(6) "Send", "notice" or "notify" means mailed by certified mail or hand delivered with a receipt obtained at the time the delivery is made.

29-17-1102.

Notwithstanding § 29-17-1101:

(1) Nothing in this part shall be construed to apply to the acquisition of an interest in property to be used to provide a utility service.

(2) Nothing in this part shall be construed to apply to the acquisition of an interest in property to be used for state highway improvement.

29-17-1103.

(a)

(1) In addition to any other notice required by law, at least sixty (60) days prior to a trial on damages in a condemnation action by a county or municipality, the county or municipality shall send notification to the property owner that includes, at a minimum:

(A) A statement of value which lists the amount that the county or municipality offers to the property owner as damages;

(B) An options form, created by the county or municipality, that describes the following options available to the property owner, and which the property owner shall complete and return to the county or municipality within sixty (60) days, in order to adjudicate the issue of damages:

(i) The property owner may accept the amount listed in the statement of value and demand immediate payment of the amount from the county or municipality;

(ii) The property owner may reject the amount listed in the statement of value and negotiate the value of property with the county or municipality;

(iii) The property owner may reject the amount listed in the statement of value and, notwithstanding § 29-5-101, proceed to the arbitration process described in § 29-17-1106; and

(iv) The property owner may reject the amount listed in the statement of value and contest the issue in court; provided, that by selecting this option, the property owner waives the arbitration process described in § 29-17-1106;

(C) The name, address and contact information for the entity to whom the property owner shall give notice; and

(D) An arbitration initiation form.

(2) Nothing in subdivision (a)(1) shall prevent a county or municipality from issuing notice of valuation at the same time the county or municipality issues notice pursuant to § 29-17-104.

(3) If the property owner is unknown, is a nonresident of this state, or cannot be found, notice shall be given by publication, which shall be made in the same manner as provided by law for similar situations in chancery court.

(b)

(1) The property owner shall send the completed options form described in subsection (a), to the county or municipality within sixty (60) days of receiving notice under § 29-17-1103. If the property owner fails to send the completed options form within that time, the property owner is not eligible to participate in arbitration to determine the value of the property under § 29-17-1106, but is entitled to accept the amount listed in the statement of value or to contest the value in court.

(2) If the property owner elects to negotiate the value of the property, the property owner shall also send a counter offer to the county or municipality within those sixty (60) days.

(3) If the property owner elects to proceed to arbitration on the issue of value, the property owner shall also send a completed arbitration form, provided to the property owner under subdivision (b)(1), to the county or municipality within those sixty (60) days.

29-17-1104.

This part shall not affect procedures conducted pursuant to §§ 29-16-105, 29-16-107, 29-17-104, or 29-17-105.

29-17-1105.

(a) If a property owner sends a completed options form within the time required under § 29-17-1103, and elects to negotiate the value of the property, all parties shall proceed to negotiations in good faith.

(b) If negotiations are unsuccessful, or if the property owner is unwilling to accept the county or municipality's best and final offer, the property owner may subsequently proceed to arbitration under § 29-17-1106, or to court, to determine value.

(c) If a county or municipality negotiates the value of property under this part, the county or municipality shall notify the property owner when an offer is the county or municipality's best and final offer.

29-17-1106.

(a) This section shall apply if a property owner elects to arbitrate the issue of the value of the property after sending a completed arbitration initiation form in compliance with § 29-17-1103(b), or if a property owner elects to arbitrate the issue of the value of the property after attempting negotiations with a county or municipality.

(b)

(1) The parties may agree upon selection of an arbitrator;

(2) If the parties cannot agree upon selection of an arbitrator, the property owner may elect to proceed to arbitration with the AAA, in which case the following shall apply:

(A) The county or municipality shall, within fifteen (15) days of receipt of a completed arbitration initiation form, notify the AAA of such circumstances, and an arbitrator shall be appointed by the AAA within fifteen business (15) days of receipt of the county or municipality's notice by AAA.

(B) Not less than ten (10) days prior to commencement of arbitration, the property owner shall submit an appraisal of the property to the county or municipality. The appraisal shall be conducted by an appraiser so required under § 29-17-1004 at the property owner's sole expense.

(C) Arbitration shall commence within sixty (60) days after the appointment of the arbitrator to determine the value of the property; and

(D) The arbitrator shall appoint a time and place for the hearing and cause notification to the parties to be served personally or by registered mail not less than ten (10) days before the hearing; and

(3) If the parties cannot agree upon selection of an arbitrator and the property owner does not elect to proceed to arbitration with the AAA, then the property owner shall request that the court in which the proceeding is pending appoint an arbitrator, in accordance with the Tennessee Uniform Arbitration Act, to hear the case and make the determination of value.

(c) The arbitration costs shall be split equally between the property owner and the county or municipality. If multiple property owners are parties to the arbitration, each property owner shall be responsible for an equal share of fifty percent (50%) of the arbitration costs. Each party shall be responsible for the party's own discretionary costs.

(d) Arbitration conducted pursuant to this part shall be binding under the Uniform Arbitration Act, compiled in chapter 5, part 3 of this title. As such, either party may request that the court enter judgment confirming, modifying or vacating the decision and

award of the arbitrator, and the judgment of the court shall be subject to appeal as provided in that act.

SECTION 4. Tennessee Code Annotated, 29-17-801(b), is amended by adding the following language to the beginning of the subsection: "Notwithstanding any law to the contrary."

SECTION 5. This act shall take effect July 1, 2012, the public welfare requiring it, and shall apply to any petition for condemnation filed by a county or municipality on or after the effective date of this act.

HOUSE BILL 2877

By Gotto

AN ACT to amend Tennessee Code Annotated, Title 12; Title 13 and Title 29, relative to relative to eminent domain.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 13-20-104(a), is amended in subdivision (17) by adding the following language to the end of the subdivision:

provided, however, this subdivision shall not apply to those housing development projects, redevelopment projects, or urban renewal projects that are approved by a governing body on or after July 1, 2012;

SECTION 2. Tennessee Code Annotated, Section 13-20-106, is amended by designating the current language as subsection (a) and by adding the following as a new subsection (b):

(b) For projects pending approval by a governing body on or after July 1, 2012, where a housing authority undertakes a study or conducts research under subsection (a), the authority shall present the results of such study or research as the authority deems relevant to assist the governing body in taking appropriate actions necessary to acquire property by eminent domain for the project.

SECTION 3. Tennessee Code Annotated, Section 13-20-108, is amended by adding the following as a new subsection (e):

(e) This section shall not apply to those projects approved by the governing body under § 13-20-104(e) on or after July 1, 2012.

SECTION 4. Tennessee Code Annotated, Section 13-20-109, is amended by designating the current language as subsection (a) and by adding the following as a new subsection (b):

(b) This section shall not apply to the exercise of eminent domain for those housing projects approved by the governing body on or after July 1, 2012.

SECTION 5. Tennessee Code Annotated, Section 13-20-203, is amended by adding the following as a new subsection:

(c) Pursuant to § 13-20-702, for any redevelopment project approved by the governing body under this section on or after July 1, 2012, the governing body shall have the power of eminent domain to acquire real property, including improvements and fixtures thereon, which the governing body deems necessary for an approved redevelopment project. For purposes of notice under subdivisions (a)(3) and (b)(3), the application of those provisions remains unchanged except that failure to give notice required may be raised only by an owner or occupant having an interest in property as a defense on the trial of the issue of the right of the governing body, on behalf of the housing authority, to acquire the property by eminent domain.

SECTION 6. Tennessee Code Annotated, Section 13-20-212, is amended by adding the following as a new subsection:

(d) As provided in § 13-20-702, for any urban renewal project approved by the governing body on or after July 1, 2012, the governing body shall have the power of eminent domain, on behalf of the housing authority, to acquire real property, including improvements and fixtures thereon, which the governing body deems necessary for an urban development project.

SECTION 7. Tennessee Code Annotated, Title 13, Chapter 20, is amended by adding the following as a new part thereto:

13-20-701.

For purposes of this chapter, unless the context otherwise requires:

(1) "Developer" means any private enterprise or public agency developing or redeveloping residential property as provided in this part;

(2) "Governing body" means the governing body of a city or county, or a city or county with a metropolitan form of government;

(3) "Owner occupant" means the person having title to and residing at the residential property at the time it was acquired by eminent domain; and

(4) "Residential units" includes one-family and two-family dwellings and dwelling units as defined in this chapter.

13-20-702.

(a) Notwithstanding any provision of law to the contrary in title 13, chapters 20 and 21, or title 29, chapters 16 and 17, beginning July 1, 2012 and thereafter, if the municipal or county governing body approves a housing project, redevelopment project or urban renewal project proposed by a housing authority located within the jurisdictional boundaries of such governing body, that governing body shall have the power of eminent domain to acquire real property to vest in the housing authority pursuant to § 13-20-703(b), including improvements and fixtures thereon, which the governing body deems necessary for the approved housing project, redevelopment project, or urban renewal project.

(b) Property already devoted to a public use may be acquired for such projects; provided, that such property shall only be acquired in the same manner and to the same extent as property devoted to a public use may be acquired in accordance with § 13-20-108(c).

(c) This section shall not be construed to limit the power of a housing authority to purchase property without exercising the power of eminent domain.

(d) This section shall not be construed as granting authority to the governing body to declare that an area is "blighted" or a "slum".

13-20-703.

(a)

(1) No sooner than thirty (30) days after the filing of a petition by a governing body for condemnation of property for those projects authorized by the governing body pursuant to § 13-20-702(a), and before the entry of final judgment, a governing body may file with the clerk of the court in which the petition is filed a declaration of taking signed by the duly authorized officer or agent of the governing body, declaring that all or any part of the property described in the petition is being taken for the use of a designated housing authority.

(2) The declaration of taking shall be sufficient if it sets forth:

(A) A description of the property, sufficient for the identification thereof, to which there may be attached a plat or map thereof;

(B) A statement of the estate or interest in such property being taken; and

(C) A statement of the sum of money estimated by the housing authority to be just compensation for the property taken, which sum shall be not less than the last assessed valuation for tax purposes of the estate or interest in the property to be taken.

(b) From the filing of the declaration of taking by the governing body and the deposit in court to the use of the persons entitled thereto of the amount of the estimated compensation stated in the declaration, title to the property described as being taken by the declaration shall vest in the housing authority, free from the right, title, interest or lien of all parties to the cause, and such property shall be deemed to be condemned and taken for the use of the housing authority, and the right to just compensation for the same shall vest in the persons entitled thereto.

(c) At any time prior to the vesting of title to property in the housing authority, the governing body may withdraw or dismiss its petition with respect to any or all of the property therein described.

13-20-704.

(a) Upon the filing of a declaration of taking under § 13-20-703, the court shall designate a day, not exceeding twenty (20) days after such filing, except upon good cause shown, on which the persons in possession shall be required to surrender possession to the authority.

(b) In the event a governing body files a declaration of taking and pays into court an amount estimated to be fair compensation for such property as provided in this section, the property owner shall have the right to make written request to the clerk of the court wherein such funds have been deposited, to pay to such property owner without prejudice to any of the property owner's rights, the sum so deposited with the clerk, and the clerk shall pay to the owner the sum so deposited; provided the owner agrees to refund the difference between such sum and the final award in the case if the final award is less than the sum so paid into court or that a judgment may be entered against the owner in such case for the difference. Payment to the property owner or into court shall in no way limit

or fix the amount to be allowed under subsequent proceedings in such case, and any further or additional sum that may be finally awarded in any subsequent proceedings shall bear interest from the date of taking possession of the property or property rights condemned by the condemner; provided, that no interest shall be allowed on the amount deposited with the clerk.

(c) The clerk shall be authorized to disburse the deficiency to the defendants as their interests may appear.

(d) For purposes of this part, whenever the power of eminent domain as herein conferred is exercised, in estimating the damages, the jury or jury of view, as the case may be, shall give the value of the land or rights taken without deduction, together with incidental damages, if any. Where the removal of furniture, household belongings, fixtures, merchandise, stock in trade, inventories, equipment or machinery is made necessary by the taking, the reasonable expense of such removal shall be considered in assessing incidental damages. The reasonable expense of the removal of such chattels shall be construed as including the cost of any necessary disconnection, dismantling or disassembling, the loading, and drayage to another location not more than ten (10) miles distant, and the reassembling, reconnecting, and installing in such new location.

13-20-705.

(a) For redevelopment projects approved on or after July 1, 2012, the governing body shall provide the opportunity for owner occupants of residential property so acquired for a redevelopment project to relocate within the project area if or at such time as residential units are constructed and offered for sale to the general public as a part of the project. The governmental body shall direct

the developer to publish a notice in a newspaper of general circulation within the county where the project area is located. Such notice shall provide to each owner occupant of residential property acquired by eminent domain for a redevelopment project an offer to relocate within the project area. The notice shall contain a description of the property to be redeveloped. The notice shall contain a name and address to whom the owner occupant may respond to accept the offer. The governmental body shall direct the developer to record the notice in the registrar's office. Each owner occupant shall have ninety (90) days from the date of publication to accept the offer contained in the notice. Any acceptance shall be in writing. Any owner occupant who has not responded to the notice before the expiration of the ninety (90) days from publication shall be deemed to have rejected such offer, and any interest therein shall be deemed to be terminated.

(b) This section shall apply only if the initial redevelopment project for which such property is acquired is for residential purposes.

(c) No provision of this section shall be construed to vest any interest or rights in the heirs or estate of any deceased owner occupant.

(d) This section shall not apply to residential units or dwelling units developed under programs limiting income of purchasers to a certain maximum income or other requirements for which the original owner occupant is not eligible.

13-20-706.

No governing body shall have the power to take by eminent domain private property in an urban renewal area for the purpose of resale, if the owner of such property desires to develop such owner's own property and if the

designated reuse of the property in the urban renewal plan is such that the owner's parcel can be redeveloped by itself without affecting the objectives of the urban renewal plan as to the owner's parcel or adjoining or adjacent properties thereto, and the owner signs an agreement with the taking entity to abide by the urban renewal plan, in any development thereof.

13-20-707.

Whenever the acquisition of any real property in a designated blighted area is proposed and is predicated solely upon the findings that the structure or structures involved are dilapidated and are in violation of the applicable building and housing codes, the owner of the property shall be notified of the planned acquisition by certified mail to the owner's latest address of record, and the owner shall be accorded a reasonable time, in no case less than ninety (90) days from the date of the notice, to bring the substandard structure into compliance with such codes.

SECTION 8. Tennessee Code Annotated, Section 29-17-102, is amended in subdivision (2)(C) by deleting the language "by a housing authority or community development agency" and by substituting instead the language "for the benefit of a housing authority or community development agency on or after July 1, 2012".

SECTION 9. Tennessee Code Annotated, Section 29-17-501, is amended by adding the following as a new subsection thereto:

(c) This section shall apply to the exercise of eminent domain by a housing authority for projects approved by a governing body before July 1, 2012.

SECTION 10. This act shall take effect July 1, 2012, the public welfare requiring it.

HOUSE BILL 952
By Dunn

SENATE BILL 548

By McNally

AN ACT to amend Tennessee Code Annotated, Title 29, Chapter 17, Part 10, relative to the power and use of eminent domain and property acquired by eminent domain.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 29, Chapter 17, Part 10, is amended by adding the following as a new, appropriately designated section:

29-17-10__. In any case in which the state, its counties or municipalities exercise the power of eminent domain under this chapter and chapter 16 of this title or any other law, and the condemning entity determines the property condemned or taken by eminent domain is not used for the purpose or purposes for which it was condemned or for some other authorized public use, or if the condemning entity subsequently decides to sell it within ten (10) years of being condemned or taken, the property shall be first offered for sale to the person or persons from whom the property was condemned or taken. The person from whom the property was condemned or taken shall have sixty (60) days in which to sign an agreement to purchase the property. If the person is deceased, the property next shall be offered for sale to the person's ascertainable heirs or assigns who were living at the time the property was taken. The original condemnee or the condemnee's heirs or assigns may purchase the property for the same amount of compensation paid to them by the condemning entity. If the property is not purchased by the heirs and assigns within sixty (60) days the property shall be offered for sale in any commercially reasonable manner to the general public. The property shall be sold for an amount not less than the fair market value, together with costs. The good faith

effort by the condemning entity to locate and contact the original condemnee or heirs or assigns satisfies the requirements of this section and the sale shall be valid.

SECTION 2. This act shall take effect July 1, 2011, the public welfare requiring it.

Appendix B

Entities with the power to condemn in Tennessee

Airport authorities
(T.C.A. §§ 42-3-108–42-3-109; 42-3-204)
Beech River Watershed Development Authority (T.C.A. § 64-1-102)
Bridge companies (T.C.A. § 54-13-208)
Carrol County Watershed Authority
(T.C.A. § 64-1-805)
Coast and geodetic surveys (T.C.A. § 29-17-501)
Counties—Airports (T.C.A. § 42-5-103)
Counties—Electric plants (T.C.A. § 7-52-105)
Counties—Controlled access highways
(T.C.A. § 54-16-104)
Counties—Industrial parks (T.C.A. § 13-16-203)
Counties—Levees (T.C.A. § 69-5-105)
Counties—Public transportation systems
(T.C.A. § 7-56-106)
Counties—Public works projects
(T.C.A. § 9-21-107)
Counties—Railroad systems (T.C.A. § 7-56-207)
Counties—Recreational land (T.C.A. § 11-24-102)
Counties—Roads
(T.C.A. §§ 29-17-801 *et seq*.; 54-10-205)
Counties—Schools (T.C.A. §§ 49-6-2001 *et seq*.)
Counties—Solid waste sites (T.C.A. § 68-211-919)
Counties—for the West Tennessee River Basin Authority (T.C.A. § 64-1-1103(14))
Drainage and levee districts
(T.C.A. §§ 29-17-801 *et seq*.; 69-6-201 *et seq*.)
Electric power districts
(T.C.A. §§ 7-83-303; 7-83-305)
Hospitals (T.C.A. § 29-16-126)
(T.C.A. in certain counties)
Housing authorities (T.C.A. §§ 13-20-104;
13-20-108–13-20-109; 13-20-212;
29-17-401 *et seq*.)
Light, power, and heat companies
(T.C.A. § 65-22-101)
Metropolitan governments—Energy production facilities (T.C.A. § 7-54-103)
Metropolitan governments—Port authorities (T.C.A. § 7-5-108)
Metropolitan hospital authorities
(T.C.A. § 7-57-305)
Mill Creek Flood Control Authority
(T.C.A. § 64-3-104)
Municipalities—Airports (T.C.A. § 42-5-103)
Municipalities—City Manager - Commission
(T.C.A. § 6-19-101)
Municipalities—Controlled access highways (T.C.A. § 54-16-104)
Municipalities—Drainage ditches

(T.C.A. § 7-35-101)
Municipalities—Electric plants
(T.C.A. § 7-52-105)
Municipalities—Gas systems
(T.C.A. § 7-39-303)
Municipalities—Industrial parks
(T.C.A. § 13-16-203)
Municipalities—Mayor - Aldermanic
(T.C.A. § 6-2-201)
Municipalities—Modified City Manager
(T.C.A. § 6-33-101)
Municipalities—Parks (T.C.A. §§ 7-31-107 *et seq*.)
Municipalities—Public transportation systems (T.C.A. § 7-56-106)
Municipalities—Public works projects
(T.C.A. § 9-21-107)
Municipalities—Railroad systems
(T.C.A. § 7-56-207)
Municipalities—Recreational systems
(T.C.A. § 11-24-102)
Municipalities—Schools
(T.C.A. §§ 49-6-2001 *et seq*.)
Municipalities—Sewers (T.C.A. § 7-35-101)
Municipalities—Slum clearance
(T.C.A. §§ 13-21-204; 13-21-206)
(T.C.A. in certain counties)
Municipalities—Solid waste sites
(T.C.A. § 68-211-919)
Municipalities—Streets
(T.C.A. §§ 7-31-107 *et seq*.)
Municipalities—Utilities (T.C.A. § 7-34-101)
Municipalities—Water systems (T.C.A. § 7-35-101)
Municipalities—For the West Tennessee River Basin Authority (T.C.A. § 64-1-1103(14))
North Central Tennessee Railroad Authority
(T.C.A. § 64-2-507)
Pipeline companies (T.C.A. § 65-28-101)
Private roads (T.C.A. § 54-14-101 *et seq*.)
Railroads (T.C.A. §§ 65-6-109; 65-6-123)
Railroads—Branch lines
(T.C.A. § 65-6-126 *et seq*.)
Railroads—Interurban railroads
(T.C.A. § 65-16-119)
Road improvement districts (T.C.A. § 54-12-152)
Solid waste authorities (T.C.A. § 68-211-908)
State Department of Environment and Conservation (T.C.A. §§ 11-1-105; 11-3-105; 11-14-110; 59-8-215)
State Department of Transportation
(T.C.A. §§ 29-17-801 *et seq*.; 54-5-104;
54-5-208; 54-16-104)
State military affairs (T.C.A. §§ 58-1-501 *et seq*.)

State water and sewer facilities
(T.C.A. § 12-1-109)
Telegraph companies (T.C.A. § 65-21-204)
Telephone companies (T.C.A. § 65-21-204)
Telephone cooperatives (T.C.A. §§ 65-29-104;
65-29-125)
Tri-County Railroad Authority (T.C.A. § 64-2-307)
University of Tennessee (T.C.A. § 29-17-301)
Utility districts (T.C.A. § 7-82-305)
Water companies (T.C.A. §§ 65-27-101 *et seq*.)
Water and wastewater authorities (T.C.A. § 68-221-610)

Appendix C

THE STATE OF TEXAS

LANDOWNER'S BILL OF RIGHTS

PREPARED BY THE

OFFICE OF THE
ATTORNEY GENERAL OF TEXAS

STATE OF TEXAS LANDOWNER'S BILL OF RIGHTS

This Landowner's Bill of Rights applies to any attempt by the government or a private entity to take your property. The contents of this Bill of Rights are prescribed by the Texas Legislature in Texas Government Code Sec. 402.031 and Chapter 21 of the Texas Property Code.

1. You are entitled to receive adequate compensation if your property is taken for a public use.
2. Your property can only be taken for a public use.
3. Your property can only be taken by a governmental entity or private entity authorized by law to do so.
4. The entity that wants to take your property must notify you that it wants to take your property.
5. The entity proposing to take your property must provide you with a written appraisal from a certified appraiser detailing the adequate compensation you are owed for your property.
6. The entity proposing to take your property must make a bona fide offer to buy the property before it files a lawsuit to condemn the property – which means the condemning entity must make a good faith offer that conforms with Chapter 21 of the Texas Property Code.
7. You may hire an appraiser or other professional to determine the value of your property or to assist you in any condemnation proceeding.
8. You may hire an attorney to negotiate with the condemning entity and to represent you in any legal proceedings involving the condemnation.
9. Before your property is condemned, you are entitled to a hearing before a court appointed panel that includes three special commissioners. The special commissioners must determine the amount of compensation the condemning entity owes for the taking of your property. The commissioners must also determine what compensation, if any, you are entitled to receive for any reduction in value of your remaining property.
10. If you are unsatisfied with the compensation awarded by the special commissioners, or if you question whether the taking of your property was proper, you have the right to a trial by a judge or jury. If you are dissatisfied with the trial court's judgment, you may appeal that decision.

CONDEMNATION PROCEDURE

Eminent domain is the legal authority that certain entities are granted that allows those entities to take private property for a public use. Private property can include land and certain improvements that are on that property.

Private property may only be taken by a governmental entity or private entity that is authorized by law to do so. Your property may be taken only for a public purpose. That means it can only be taken for a purpose or use that serves the general public. Texas law prohibits condemnation authorities from taking your property to enhance tax revenues or foster economic development.

Your property cannot be taken without adequate compensation. Adequate compensation includes the market value of the property being taken. It may also include certain damages if your remaining property's market value is diminished by the acquisition itself or by the way the condemning entity will use the property.

HOW THE TAKING PROCESS BEGINS

The taking of private property by eminent domain must follow certain procedures. First, the entity that wants to condemn your property must provide you a copy of this Landowner's Bill of Rights before - or at the same time - the entity first represents to you that it possesses eminent domain authority.

Second, if it has not been previously provided, the condemning entity must send this Landowner's Bill of Rights to the last known address of the person who is listed as the property owner on the most recent tax roll. This requirement stipulates that the Landowner's Bill of Rights must be provided to the property owner at least seven days before the entity makes a final offer to acquire the property.

Third, the condemning entity must make a bona fide offer to purchase the property. The requirements for a bona fide offer are contained in Chapter 21 of the Texas Property Code. At the time a purchase offer is made, the condemning entity must disclose any appraisal reports it produced or acquired that relate specifically to the property and were prepared in the ten years preceding the date of the purchase offer. You have the right to discuss the offer with others and to either accept or reject the offer made by the condemning entity.

CONDEMNATION PROCEEDINGS

If you and the condemning entity do not agree on the value of your property, the entity may begin condemnation proceedings. Condemnation is the legal process that eligible entities utilize to take private property. It begins with a condemning entity filing a claim for your property in court. If you live in a county where part of the property being condemned is located, the claim must be filed in that county. Otherwise, the condemnation claim can be filed in any county where at least part of the property being condemned is located. The claim must describe the property being condemned, state with specificity the public use, state the name of the landowner, state that the landowner and the condemning entity were unable to agree on the value of the property, state that the condemning entity provided the landowner with the Landowner's Bill of Rights, and state that the condemning entity made a bona fide offer to acquire the property from the property owner voluntarily.

SPECIAL COMMISSIONERS' HEARING

After the condemning entity files a condemnation claim in court, the judge will appoint three local landowners to serve as special commissioners. The judge will give you a reasonable period to strike one of the special commissioners. If a commissioner is struck, the judge will appoint a replacement. These special commissioners must live in the county where the condemnation proceeding is filed, and they must take an oath to assess the amount of adequate compensation fairly, impartially, and according to the law. The special commissioners are not legally authorized to decide whether the condemnation is necessary or if the public use is proper. Their role is limited to assessing adequate compensation for you. After being appointed, the special commissioners must schedule a hearing at the earliest practical time and place. The special commissioners are also required to give you written notice of the condemnation hearing.

You are required to provide the condemning entity any appraisal reports that were used to determine your claim about adequate compensation for the condemned property. Under a new law enacted in 2011, landowners' appraisal reports must be provided to the condemning entity either ten days after the landowner receives the report or three business days before the special commissioners' hearing - whichever is earlier. You may hire an appraiser or real estate professional to help you determine the value of your private property. Additionally, you can hire an attorney to represent you during condemnation proceedings.

At the condemnation hearing, the special commissioners will consider your evidence on the value of your condemned property, the damages to remaining property, any value added to the remaining property as a result of the condemnation, and the condemning entity's proposed use of your condemned property.

SPECIAL COMMISSIONERS' AWARD

After hearing evidence from all interested parties, the special commissioners will determine the amount of money that you should be awarded to adequately compensate you for your property. The special commissioners' decision is significant to you not only because it determines the amount that qualifies as adequate compensation, but also because it impacts who pays for the cost of the condemnation proceedings. Under the Texas Property Code, if the special commissioners' award is less than or equal to the amount the condemning entity offered to pay before the proceedings began, then you may be financially responsible for the cost of the condemnation proceedings. However, if the special commissioners' award is more than the condemning entity offered to pay before the proceedings began, then the condemning entity will be responsible for the costs associated with the proceedings.

The special commissioners are required to provide the court that appointed them a written decision. That decision is called the "Award." The Award must be filed with the court and the court must send written notice of the Award to all parties. After the Award is filed, the condemning entity may take possession of the property being condemned, even if either party appeals the Award of the special commissioners. To take possession of the property, the condemning entity must either pay the amount of the Award or deposit the amount of the Award into the court's registry. You have the right to withdraw funds that are deposited into the registry of the court.

OBJECTION TO THE SPECIAL COMMISSIONERS' AWARD

If either the landowner or the condemning entity is dissatisfied with the amount of the Award, either party can formally object to the Award. In order to successfully make this valuation objection, it must be filed in writing with the court. If neither party timely objects to the special commissioners' Award, the court will adopt the Award as the final judgment of the court.

If a party timely objects to the special commissioners' Award, the court will hear the case in the same manner that other civil cases are heard. Landowners who object to the Award and ask the court to hear the matter have the right to a trial and can elect whether to have the case decided by a judge or jury. The allocation of any trial costs is decided in the same manner that costs are allocated with the special commissioners' Award. After trial, either party may appeal any judgment entered by the court.

DISMISSAL OF THE CONDEMNATION ACTION

A condemning entity may file a motion to dismiss the condemnation proceeding if it decides it no longer needs your condemned property. If the court grants the motion to dismiss, the case is over and you are entitled to recover reasonable and necessary fees for attorneys, appraisers, photographers, and for other expenses incurred to the date of the hearing on the motion to dismiss.

If you wish to challenge the condemning entity's authority to take your property, you can lodge that challenge by filing a motion to dismiss the condemnation proceeding. Such a motion to dismiss would allege that the condemning entity did not have the right to condemn your property. For example, a landowner could challenge the condemning entity's claim that it seeks to take the property for a public use. If the court grants the landowner's motion, the court may award the landowner reasonable and necessary fees for attorneys, appraisers, photographers, and for other expenses incurred to the date of the hearing or judgment.

RELOCATION COSTS

If you are displaced from your residence or place of business, you may be entitled to reimbursement for reasonable expenses incurred while moving personal property from the residence or relocating the business to a new site. However, during condemnation proceedings, reimbursement for relocation costs may not be available if those costs are separately recoverable under another law. Texas law limits the total amount of available relocation costs to the market value of the property being moved. Further, the law provides that moving costs are limited to the amount that a move would cost if it were within 50 miles.

RECLAMATION OPTIONS

If private property was condemned by a governmental entity, and the public use for which the property was acquired is canceled before that property is used for that public purpose, no actual progress is made toward the public use within ten years or the property becomes unnecessary for public use within ten years, landowners may have the right to repurchase the property for the price paid to the owner by the entity at the time the entity acquired the property through eminent domain.

DISCLAIMER

The information in this statement is intended to be a summary of the applicable portions of Texas state law as required by HB 1495, enacted by the 80th Texas Legislature, Regular Session. This statement is not legal advice and is not a substitute for legal counsel.

ADDITIONAL RESOURCES

Further information regarding the procedures, timelines and requirements outlined in this document can be found in Chapter 21 of the Texas Property Code.