

The Texas Constitution

Article 1 - BILL OF RIGHTS

Section 17 - TAKING, DAMAGING, OR DESTROYING PROPERTY FOR PUBLIC USE; SPECIAL PRIVILEGES AND IMMUNITIES; CONTROL OF PRIVILEGES AND FRANCHISES

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



The Texas Constitution

Article 10 - RAILROADS

Section 2 - PUBLIC HIGHWAYS; COMMON CARRIERS; REGULATION OF TARIFFS, CORRECTION OF ABUSES, AND PREVENTION OF DISCRIMINATION AND EXTORTION; MEANS AND AGENCIES

Railroads heretofore constructed or which may hereafter be constructed in this state are hereby declared public highways, and railroad companies, common carriers. The Legislature shall pass laws to regulate railroad, freight and passenger tariffs, to correct abuses and prevent unjust discrimination and extortion in the rates of freight and passenger tariffs on the different railroads in this state, and enforce the same by adequate penalties; and to the further accomplishment of these objects and purposes, may provide and establish all requisite means and agencies invested with such powers as may be deemed adequate and advisable. (Amended Nov. 4, 1890.)



GOVERNMENT CODE

CHAPTER 2206. LIMITATIONS ON USE OF EMINENT DOMAIN

Sec. 2206.001. LIMITATION ON EMINENT DOMAIN FOR PRIVATE PARTIES OR ECONOMIC DEVELOPMENT PURPOSES. (a) This section applies to the use of eminent domain under the laws of this state, including a local or special law, by any governmental or private entity, including:

(1) a state agency, including an institution of higher education as defined by Section 61.003, Education Code;

(2) a political subdivision of this state; or

(3) a corporation created by a governmental entity to act on behalf of the entity.

(b) A governmental or private entity may not take private property through the use of eminent domain if the taking:

(1) confers a private benefit on a particular private party through the use of the property;

(2) is for a public use that is merely a pretext to confer a private benefit on a particular private party; or

(3) is for economic development purposes, unless the economic development is a secondary purpose resulting from municipal community development or municipal urban renewal activities to eliminate an existing affirmative harm on society from slum or blighted areas under:

(A) Chapter 373 or 374, Local Government Code, other than an activity described by Section 373.002(b)(5), Local Government Code; or

(B) Section 311.005(a)(1)(I), Tax Code.

(c) This section does not affect the authority of an entity authorized by law to take private property through the use of eminent domain for:

(1) transportation projects, including, but not limited to, railroads, airports, or public roads or highways;

(2) entities authorized under Section 59, Article XVI, Texas Constitution, including:

(A) port authorities;

(B) navigation districts; and

(C) any other conservation or reclamation districts that act as ports;

(3) water supply, wastewater, flood control, and drainage projects;

(4) public buildings, hospitals, and parks;

(5) the provision of utility services;

(6) a sports and community venue project approved by voters at an election held on or before December 1, 2005, under Chapter 334 or 335, Local Government Code;

(7) the operations of:

(A) a common carrier subject to Chapter 111, Natural Resources Code, and Section B(3)(b), Article 2.01, Texas Business Corporation Act; or

(B) an energy transporter, as that term is defined by Section 186.051, Utilities Code;

(8) a purpose authorized by Chapter 181, Utilities Code;

(9) underground storage operations subject to Chapter 91, Natural Resources Code;

(10) a waste disposal project; or

(11) a library, museum, or related facility and any infrastructure related to the facility.

(d) This section does not affect the authority of a governmental entity to condemn a leasehold estate on property owned by the governmental entity.

(e) The determination by the governmental or private entity proposing to take the property that the taking does not involve an act or circumstance prohibited by Subsection (b) does not create a presumption with respect to whether the taking involves that act or circumstance.

Added by Acts 2005, 79th Leg., 2nd C.S., ch. 1, Sec. 1, eff. Nov. 18, 2005.

VERNON'S TEXAS CIVIL STATUTES

CHAPTER 6. RIGHT OF WAY

Art. 6316. [6481] [4422] [4166] RIGHT TO CONSTRUCT. Any railroad corporation shall have the right to construct and operate a railroad between any points within this State, and to connect at the State line with railroads of other States.
Const. art. 10, sec. 1.

Art. 6316a. RIGHT TO CONSTRUCT SPUR TRACKS. Every railroad company owning, leasing or operating a line of railroad in this State shall have authority and power to construct and operate spur or industrial tracks designed to reach or serve industries or industrial enterprises, such as mills, mines, rock quarries, rock deposits, gravel pits, gravel deposits, smelters, warehouses and other manufacturing or industrial enterprises, over which regular scheduled passenger or freight service will not be performed and for transportation over which only a switching charge, if any, will be made, together with all necessary side tracks and subsidiary or accessory spur tracks, and shall have power and authority under the General Laws of this State relating to railroads to condemn property for rights of way for any and all such tracks hereby authorized.

Inserted by compiler from Acts 1925, 39th Leg., ch. 73, p. 230, Sec. 1.

Art. 6317. [6482] [4423] [4167] RIGHT OF WAY OVER PUBLIC LANDS. Every such corporation shall have the right of way for its line of road through and over any lands belonging to this State, and to use any earth, timber, stone or other material upon any such land necessary to the construction and operation of its road through or over said land.

Art. 6318. [6483] [4424] [4168] LINEAL SURVEY. Every railroad corporation shall have the right to cause such examination and survey for its proposed railway to be made as may be necessary to the selection of the most advantageous route, and for such purpose may enter upon the lands or waters of any person or corporation, but subject to responsibility for all damages that may be occasioned thereby.

Acts 1876, p. 147; G.L. vol. 8, p. 983.

Art. 6319. WIDTH OF ROAD. Such corporation shall have the right to lay out its road not exceeding two hundred feet in width, and to construct the same; and for the purpose of cuttings and embankments to take as much more land as may be necessary for the proper construction and security of its railway, and to cut down any standing trees that may be in danger of falling upon or obstructing the railway, making compensation as provided by law.

Acts 1876, p. 147; G.L. vol. 8, p. 983.

Art. 6320. STREAMS OF WATER. Such corporation shall have the right to construct its road across, along, or upon any stream of water, water course, street, highway, plank road, turnpike, or canal when the route of said railway shall intersect or touch; but such corporation shall restore the stream, water course, street, highway, plank road, turnpike, or canal thus intersected or touched, to its former state, or to such state as not to unnecessarily impair its usefulness, and shall keep such crossing in repair.

Art. 6321. CROSSINGS. All railway corporations in this State, which have or may fence their right of way, may be required to make openings or crossings through their fence and over their roadbed along their right of way every one and one-half miles thereof. If such fence shall divide any inclosure, at least one opening shall be made in said fence within such inclosure. Such crossings shall not be less than thirty feet in width, and shall be made and kept in such condition as to admit of the free and easy passage of vehicles and domesticated animals.

Acts 1887, p. 39; G.L. vol. 9, p. 837.

Art. 6322. WHERE MADE. Such crossings shall be made at such times and places as may be demanded by any two or more citizens of the State who either live or own land within five miles of the place where such crossings may be demanded. Such demand shall be made in writing, of the nearest local agent of such railway company to the place where such crossing or crossings are demanded, and shall state when and where such crossing is desired.

Acts 1887, p. 39; G.L. vol. 9, p. 837.

Art. 6323. THIRTY DAYS FOR COMPLETION. No railway company shall be required to complete such crossing as may be demanded under this chapter in a shorter time than thirty days from the day on

which such demand is first made, nor shall they be required to make any crossings, where they have already left such crossings, in each one and one-half miles of their road, except inside of inclosures, as provided in Article 6321.

Acts 1887, p. 39; G.L. vol. 9, p. 837.

Art. 6324. DISTANCE FROM PLACE. Any railway company, upon such demand, shall be deemed to have complied therewith upon making such crossings within four hundred yards of the place where they are demanded, within the time herein allowed.

Acts 1887, p. 39; G.L. vol. 9, p. 837.

Art. 6325. FAILURE, ETC. Whenever any railroad company shall fail or refuse to comply with the requirements of this chapter, after demand is made in accordance therewith, such railway company shall pay to each person who made such demand the sum of five hundred dollars for each month they shall so fail or refuse to comply with such demand, the same to be recovered by suit.

Acts 1887, p. 39; G.L. vol. 9, p. 837.

Art. 6326. INTERSECTIONS. Nothing in this chapter shall be construed to affect the law requiring railroad companies to provide proper crossings at intersection of all roads and streets.

Acts 1887, p. 39; G.L. vol. 9, p. 837.

Art. 6327. CROSSINGS OF PUBLIC ROADS. Every railroad company in this State shall place and keep that portion of its roadbed and right of way, over or across which any public county road may run, in proper condition for the use of the traveling public, and in case of its failure to do so for thirty days after written notice given to the section boss of the section where such work or repairs are needed by the overseer of such public road, it shall be liable to a penalty of ten dollars for each week such railroad company may fail or neglect to comply with the requirements of this article. Such penalty shall go to the road and bridge fund of the county in which the suit is brought; and the county attorney, upon the making of an affidavit of the facts by any person, shall at once institute against the company violating any provision of this article suit in the proper court to recover such penalty or penalties, and his wilful failure or refusal to do so shall be sufficient cause for his removal from office, unless it is evident that such suit could not have been maintained. The proceedings under this article shall be conducted in the same manner as civil suits. The county attorney attending to such suits shall be entitled to a fee in each case of ten dollars, to be taxed as costs; provided, that when two or more penalties are sought to be recovered in the same suit, but one such fee shall be allowed. Such suits shall be conducted in the name of the county, and if the county be cast in the suit no costs shall be charged against it.

Acts 1885, p. 45; G.L. vol. 9, p. 665.

Art. 6328. CULVERTS OR SLUICES. In no case shall any railroad company construct a roadbed without first constructing the necessary culverts or sluices as the natural lay of the land requires, for the necessary draining thereof.

Acts 1876, p. 147; G.L. vol. 8, p. 983.

Art. 6329. NAVIGABLE WATERS. This chapter shall not be construed to authorize the erection of any bridge or any other obstruction across or over any stream or water navigable by steamboats or sail vessels at the place where any bridge or other obstruction may be proposed to be placed so as to prevent the navigation of such stream or water.

Acts 1876, p. 147; G.L. vol. 8, p. 983.

Art. 6330. STREETS, ETC. This chapter shall not be construed to authorize the construction of any railroad upon or across any street, alley, square or highway of any incorporated city or town without assent of the governing body of said city or town.

Acts 1876, p. 147; G.L. vol. 8, p. 983.

Art. 6331. OTHER CASES. In case of the construction of any railway along the highways, plank roads, turnpikes, or canals, such railroad corporation shall either first obtain the consent of the lawful authorities having control or jurisdiction of the same or condemn the same under the provisions of law.

Acts 1876, p. 147; G.L. vol. 8, p. 983.

Art. 6332. MAY CROSS OTHER RAILWAYS. Such corporation shall have the right to cross, intersect, join and unite its railway with any other railway before constructed at any point on its route and upon the grounds of such other railway corporation, with the necessary turnouts, sidings and switches, and other conveniences in

furtherance of the objects of its connection.
Acts 1876, p. 147; G.L. vol. 8, p. 983.

Art. 6333. INTERSECTIONS. Every corporation whose railway is or shall be intersected by any new railway shall unite with the corporation owning such railway in forming intersections and connections and grant to such new railway facilities therefor. If the corporations cannot agree upon the amount of compensation for any such crossings, intersection or connection, or the points and manner of the same, their differences shall be adjusted in the manner provided by law.

Acts 1876, p. 147; G.L. vol. 8, p. 983.

Art. 6334. MAY TAKE MATERIAL. Any railroad corporation may enter upon and take from any land adjacent to its road, earth, gravel, stone or other materials, except fuel and wood, necessary for the construction of its railway, paying, if the owner of such land and the corporation can agree thereto, the value of such material taken and the amount of damages occasioned to any such land or appurtenances, and, if such owner and corporation cannot agree, then the value of such material and the damages occasioned to such real estate may be ascertained, determined and paid in the manner provided by law.

Acts 1876, p. 147; G.L. vol. 8, p. 983.

Art. 6335. VALUE AND DAMAGES TO BE PAID. The value of such material and the damages to such real estate shall in all cases be ascertained, determined and paid before such corporation can enter upon and take such material.

Acts 1876, p. 147; G.L. vol. 8, p. 983.

Art. 6336. WHEN CORPORATION AND OWNER DISAGREE. If any railroad corporation shall at any time be unable to agree with the owner for the purchase of any real estate, or material thereon, required for the purpose of its incorporation or the transaction of its business, for its depots, station buildings, machine and repair shops, for the construction of reservoirs for the water supply, or for the right of way, or for a new or additional right of way, for change, or relocation or road bed, to shorten the line, or any part thereof, or to reduce its grades, or any of them, or for double tracking its railroad or constructing and operating its tracks, which is hereby authorized and permitted, or for any other lawful purpose connected with or necessary to the building, operating or running its road, such corporation may acquire such property by condemnation thereof. The limitation in width prescribed by Article 6319 shall not apply to real estate or any interest therein, required for the purposes herein mentioned, other than right of way, and shall not apply to right of way when necessary for double tracking or constructing or adding additional railroad tracks, and real estate, or any interest therein, to be acquired for such other purposes, or any of them, need not adjoin or abut on the right way, and no change of the line through any city or town, or which shall result in the abandonment of any station or depot, shall be made, except upon written order of the Railroad Commission of Texas, authorizing such change. No railroad corporation shall have the right under this law to condemn any land for the purposes mentioned in this article situated more than two miles from the right of way of such railroad corporation.

Acts 1876, p. 147; G.L. vol. 8, p. 983. Acts 1901, p. 46; Acts 1919, p. 280.

Art. 6336a. LOCAL REGULATIONS FOR RESIDENTIAL PROPERTY. (a) This article applies only to the condemnation of property for a terminal switching railroad handling fewer than 10,000 but more than 3,000 carloads a year that operates in a single county with a population of 110,000 or more that is not adjacent to the Texas border and does not contain a portion of a national forest.

(b) The power to condemn property given to a railroad company under this title, including Articles 6316a, 6336, and 6351, does not apply to any property used for or designated under local zoning regulations for residential use unless the use of the condemned property is authorized under or in conformity with local zoning or development regulations.

Added by Acts 2005, 79th Leg., ch. 647, Sec. 1, eff. June 17, 2005.

Art. 6337. [6505] [4446] [4181] ENTRY ONLY FOR SURVEY. No railroad company shall enter upon, except for a lineal survey, any real estate whatever, the same being private property, for the purpose of taking and condemning the same, or any material thereon, for any purpose whatever, until the said company shall agree with and pay the owner thereof all damages that may be caused to the

lands and property of said owner by the condemnation of said real estate and property, and by the construction of such road.
P.D. 4922.

Art. 6338. [6531] [4472] PRACTICE IN CASE SPECIFIED. When any railroad company is sued for any property occupied by it for railroad purposes, or for damages thereto, the court in which such suit is pending may determine all matters in dispute between the parties, including the condemnation of the property, upon petition or cross bill, asking such remedy by defendant, but the plea for condemnation shall be an admission of the plaintiff's title to such property.

Acts 1889, p. 18; G.L. vol. 9, p. 1046.

Art. 6339. [6532] [4473] [4206] RIGHT OF WAY CONSTRUED. The right of way secured by condemnation to any railway company in this State shall not be construed to include the fee simple estate in lands, either public or private, nor shall the same be lost by forfeiture or expiration of the charter, but shall remain subject to an extension of the charter or the grant of a new charter over the same way without a new condemnation.

Acts 1861, p. 12; G.L. vol. 5, p. 348.

Art. 6340. [6533] [4474] [4207] RIGHT OF WAY RESERVED. The right of way is hereby reserved to any railroad company incorporated by the laws of this State, to the extent of one hundred feet on each side of said road, or roads that cross over or extend through any lands granted, or that may be granted to any railroad company by the Legislature, with the right to take from the lands so granted such stone, timber and earth as such road may need in the construction of its line of road.