

## RIGHT OF WAY ISSUES IN THE 80TH REGULAR SESSION (2007)

JAMES MANN<sup>1</sup>

I.BACKGROUND.....	53
II. THE TEXAS CONDEMNATION PROCESS.....	55
III.LEGISLATION PASSED.....	56
A. The Landowners' Bill of Rights .....	56
IV.LEGISLATION VETOED .....	58
A. The Omnibus Eminent Domain Bill – H.B. 2006 .....	58
B. Kelo.....	59
C. Schmidt .....	60
D. Hubenak .....	61
E. Other Proposals.....	62
F. Procedures for Common Carriers.....	63
V.CONCLUSION.....	65

### I. BACKGROUND

It is not unusual for right-of-way issues to be the subject of one or two bills every legislative session. It is unusual for right-of-way issues to generate thirty seven pieces of legislation spread out over a number of different committees. Most of the legislation would have affected the ability to obtain right of way through the use of eminent domain.

The right of way issue affects all sectors of the oil and gas industry. The gathering lines which move oil and gas from the wellhead to processing and treating plants or to crude oil facilities often cannot be built without the use of eminent domain. The larger pipelines which carry gas or natural gas liquids to a market cannot be built without the use of eminent domain. The products lines which carry refined products such as gasoline or chemicals are seldom built without the use of eminent domain.

The number of bills hostile to condemning authorities started to increase after the U.S. Supreme Court's decision in the *Kelo* case, which

---

1. James Mann is a shareholder with the law firm of Clark, Thomas & Winters, P.C., in Austin, Texas. This paper is an overview of his presentation given at the Texas Utility Lawyers Conference on October 18, 2007.

held that the U.S. Constitution allows a city to condemn private land and give the land to private developers to build shopping centers or other types of construction in order to promote economic development.<sup>2</sup> The Court seems to hold that the constitutional doctrine that property can be taken for a “public use” is satisfied if the taking creates a “public benefit.”<sup>3</sup>

The Texas legislature in the second special session of 2005 passed what is commonly known as Senate Bill 7 to address, primarily, the *Kelo* case.<sup>4</sup> S.B. 7 added Chapter 2206 to the Texas Government Code in order to limit the use of eminent domain for private parties or economic development purposes.<sup>5</sup> It provides, in general, that neither a public nor a private entity may take private property through the use of eminent domain if the taking (1) confers a private benefit on a private party, (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.<sup>6</sup> There was some concern that the bill would inadvertently take away the power of eminent domain from traditional uses such as the construction of utility or common carrier facilities. Accordingly, a list of uses was included in the bill that specifically provided that prohibition did not apply to the purposes set out in that list.<sup>7</sup> However, S.B. 7 did not resolve all the condemnation issues which had been raised, and the Texas legislature heard numerous complaints about condemnation during the 80th regular session.<sup>8</sup>

One of the primary sources of legislative unhappiness with condemnation is the massive oil and gas development in the Barnett Shale area, which includes the Dallas/Fort Worth Metroplex. Drilling rigs are being located in established subdivisions. The pipelines, compressor stations, and related facilities also have to be built in those residential areas in order to connect the wells. Gathering lines are being built down city streets and in backyards.

Some subdivisions have as many as 100 salt water disposal trucks per day driving down their residential streets. A large oil and gas producer has obtained a lease to develop DFW Airport.<sup>9</sup> The situation may

---

2. *Kelo v. City of New London*, 345 U.S. 469 (2005).

3. *See id.* at 482-85.

4. Act of Aug. 19, 2005, 79th Leg., 2d C.S., S.B. 7 (codified at Tex. Gov't Code Ann. § 2206 (Vernon Supp. 2007)).

5. *Id.* § 1.

6. Tex. Gov't Code Ann. § 2206.001 (Vernon Supp. 2007).

7. Tex. Gov't Code Ann. § 2206.001(c) (Vernon Supp. 2007).

8. *See generally* HOUSE COMM. ON LAND & RES. MAN. MINUTES 2, 80th Leg., R.S. (Mar. 21, 2007).

9. Press Release, Chesapeake Energy, Chesapeake Energy Corporation Taps First Natural Gas Well at DFW International Airport (May 22, 2007) (available at <http://phx.corporateir.net/phoenix.zhtml?c=104617&p=irol-newsArticle&ID=1005584>) (last visited January 19, 2008).

actually get worse as the productive area appears to underlay much of the City of Fort Worth and perhaps Dallas. While the *Kelo* case generated a lot of concern about the use of condemnation by cities, the Barnett Shale controversies were almost exclusively directed at the pipelines carrying the production out of the area.<sup>10</sup>

A number of well-organized groups proposed various changes to the eminent domain statutes. The Texas Conservative Coalition Research Institute (TCCRI),<sup>11</sup> for example, convened a conference on land rights in Austin in November prior to the January start of the session. The TCCRI issued a report entitled *Protecting Private Property Rights: Reforming Eminent Domain in Texas*.<sup>12</sup> Numerous legislative proposals put forth by the TCCRI and others were included in H.B. 2006 (which passed the Texas house and Senate but was ultimately vetoed).<sup>13</sup>

Pipelines and cities are not the only source of outrage about condemnation. Toll roads and the Trans-Texas Corridor project prompted much of the landowners' rights movement, which has coalesced into an organized political force supported by many members of the Texas legislature. Whatever the origin, most of the more onerous legislation was directed toward the use of eminent domain and therefore rained on the guilty and innocent alike.

## II. THE TEXAS CONDEMNATION PROCESS

The condemnation process in Texas is designed to be quick and allow the condemning authority to take the property before the conclusion of all proceedings. A condemning authority is required to try to obtain the property through negotiations prior to filing a condemnation petition.<sup>14</sup> The statutes allow condemnation when the condemning authority and the owner of the property are "unable to agree" on the amount of damages to be paid, and the petition must specifically state that there has been a failure to agree.<sup>15</sup> The judge of the

---

10. See, e.g., Dan Piller, Cross Country: New Pipeline Will Link Area With Markets in Eastern U.S., FORT WORTH STAR-TELEGRAM, Mar. 26, 2006, at C1.

11. Texas Conservative Coalition Research Institute Homepage, <http://www.txccri.org> (last visited Dec. 4, 2007).

12. TEXAS CONSERVATIVE COALITION RESEARCH INSTITUTE, PROPERTY RIGHTS AND LAND USE TASK FORCE REPORT, PROTECTING PRIVATE PROPERTY RIGHTS: REFORMING EMINENT DOMAIN IN TEXAS (2006) [hereinafter PROPERTY RIGHTS AND LAND USE TASK FORCE REPORT], available at [http://www.txccri.org/publications/Protecting\\_Property\\_Rights.pdf](http://www.txccri.org/publications/Protecting_Property_Rights.pdf).

13. Act of May 28, 2007, 80th Leg., R.S., H.B. 2006.

14. The Texas Property code section 21 contains most of the procedural provisions regarding condemnation, but the power of different types of entities to condemn is spread throughout the Texas statutes. See Tex. Prop. Code Ann. § 21 (Vernon Supp. 2007).

15. *Id.* § 21.102. As noted in the discussion of the *Hubenak* case below, the issue of good faith negotiations attracted a number of legislative proposals.

court where the condemnation petition is filed appoints three special commissioners to assess the damages to be paid the landowner.<sup>16</sup> The commissioners are supposed to “promptly” schedule a hearing at the “earliest practical time.”<sup>17</sup> The condemnor can take possession of the property if it deposits the commissioners’ award and posts a bond to cover any additional court costs.<sup>18</sup> If either party objects to the damages, the court tries the case just like any other civil case.<sup>19</sup>

Almost every part of the process generated one or more legislative proposals to change it.

### III. LEGISLATION PASSED

#### *A. The Landowners’ Bill of Rights*

A landowners’ rights bill did pass the legislature and was not vetoed.<sup>20</sup> Before an entity with eminent domain authority begins negotiating with a landowner, the entity must send the landowner a copy of the Landowner’s Bill of Rights.<sup>21</sup> The Bill of Rights has been drafted by the Attorney General, and condemnors must furnish it on and after February 1, 2008.<sup>22</sup> The bill by State Representative Calligari provides:

SECTION 2. Subchapter B, Chapter 402, Government Code, is amended by adding Section 402.031 to read as follows:

Sec. 402.031. PREPARATION OF LANDOWNER’S BILL OF RIGHTS STATEMENT. (a) The attorney general shall prepare a written statement that includes a bill of rights for a property owner whose real property may be acquired by a governmental or private entity through the use of the entity’s eminent domain authority under Chapter 21, Property Code.

(b) The landowner’s bill of rights must notify each property owner that the property owner has the right to:

(1) notice of the proposed acquisition of the owner’s property;

---

16. *Id.* § 21.014(a).

17. *Id.* § 21.015(a).

18. *Id.* § 21.021.

19. *Id.* § 21.018.

20. Landowner’s Bill of Rights Act, 80th Leg. R.S., H.B. 1495 (2007) (codified at Tex. Prop. Code Ann. § 21.0112) (hereinafter Landowner’s Bill of Rights Act).

21. LANDOWNER’S BILL OF RIGHTS, (available at <http://www.oag.state.tx.us/agency/landowners.shtml>) (last visited February 28, 2008) (hereinafter LANDOWNER’S BILL OF RIGHTS)

22. Landowner’s Bill of Rights Act, *supra* note 20, at § 5.

(2) a bona fide good faith effort to negotiate by the entity proposing to acquire the property;

(3) an assessment of damages to the owner that will result from the taking of the property;

(4) a hearing under Chapter 21, Property Code, including a hearing on the assessment of damages; and

(5) an appeal of a judgment in a condemnation proceeding, including an appeal of an assessment of damages.

(c) The statement must include:

(1) the title, "Landowner's Bill of Rights"; and

(2) a description of:

(A) the condemnation procedure provided by Chapter 21, Property Code;

(B) the condemning entity's obligations to the property owner; and

(C) the property owner's options during a condemnation, including the property owner's right to object to and appeal an amount of damages awarded.

(d) The office of the attorney general shall:

(1) write the statement in plain language designed to be easily understood by the average property owner; and

(2) make the statement available on the attorney general's Internet website.

SECTION 3. Subchapter B, Chapter 21, Property Code, is amended by adding Section 21.0112 to read as follows:

Sec. 21.0112. PROVISION OF LANDOWNER'S BILL OF RIGHTS STATEMENT REQUIRED. (a) Before a governmental or private entity with eminent domain authority begins negotiating with a property owner to acquire real property, the entity must send by first-class mail or otherwise provide a landowner's bill of rights statement provided by Section 402.031, Government Code, to the last known address of the person in whose name the property is listed on the most recent tax roll of any appropriate taxing unit authorized by law to levy property taxes against the property.

(b) The statement must be:

(1) printed in an easily readable font and type size; and

(2) if the entity is a governmental entity, made available on the Internet website of the entity if technologically feasible.

SECTION 4. Section 21.012(b), Property Code, is amended to read as follows:

(b) The petition must:

.....

(5) if applicable, state that the entity provided the property owner with the landowner's bill of rights statement in accordance with Section 21.0112.

SECTION 5. The office of the attorney general shall prepare the landowner's bill of rights statement required by Section 402.031, Government Code, as added by this Act, not later than January 31, 2008.

The Landowner's Bill of Rights is designed to put landowners on a more level playing field with condemning authorities. Rather than relying on representations by right of way agents or others, landowners will now have the benefit of an explanation of their rights which has been prepared by a neutral party, the Attorney General.<sup>23</sup>

Much of the property used for pipeline construction is acquired through independent right of way agents who are under contract to the pipeline companies. Implementation of the Bill of Rights provision will depend, in many cases, on those right of way agents. If implementation turns out to be unsatisfactory, additional legislation will no doubt appear in the next session.

#### IV. LEGISLATION VETOED

##### A. *The Omnibus Eminent Domain Bill – H.B. 2006*

Three cases generated a number of legislative proposals designed to repeal or limit the opinions in those cases. Those cases are *Kelo*,<sup>24</sup> *Schmidt*,<sup>25</sup> and *Hubenak*.<sup>26</sup> In one way or another, most of the legislative proposals involved issues arising from those cases.

The *Kelo*, *Schmidt*, and *Hubenak* cases are discussed below with examples of how H.B. 2006 addressed those issues. Most of the legislative proposals which made it out of the committee process were combined into the Omnibus Eminent Domain Bill, H.B. 2006.<sup>27</sup> Negotiations by various interested parties continued throughout the session and resulted in a bill which had been agreed upon by most, if not all, of the condemning authorities. The bill was passed by large majorities in both the House and the Senate. However, a floor

---

23. LANDOWNER'S BILL OF RIGHTS, *supra* note 21.

24. *Kelo*, 345 U.S. at 469.

25. *State v. Schmidt*, 867 S. W. 2d 769 (Tex. 1993).

26. *Hubenak v. San Jacinto Gas Transmission Co.*, 141 S.W. 3d 172 (Tex. 2004).

27. Act of May 28, 2007, 80th Leg., R.S., H.B. 2006.

amendment which was added in the Senate late in the process caused the bill to be vetoed by the Governor because of the perceived cost to the highway building program.<sup>28</sup> It is expected that H.B. 2006 will be introduced again in the next session, but is likely to be the starting point, instead of the finish line, in the process.

### *B. Kelo*

The TCCRI report advocates that the Texas constitution be amended to prohibit the taking of private property for economic development as allowed by *Kelo*.<sup>29</sup> The distinction advocated by the TCCRI, and others, can be illustrated by two examples in the report.<sup>30</sup> The Port of Houston would be considered a public use because it has economic benefits to Houston and the state as a whole. Reliant Stadium, however, would not likely qualify as a public benefit. H.B. 2006 expanded upon the “public use” provisions of S.B. 7 as follows:

CHAPTER 2206. [~~LIMITATIONS ON USE OF~~] EMINENT DOMAIN

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2206.001. DEFINITION OF PUBLIC USE. Except as otherwise provided by this chapter, “public use,” with respect to the use of eminent domain authority, means a use of property, including a use described by Section 2206.051(c), that allows the state, a political subdivision of the state, or the general public of the state to possess, occupy, and enjoy the property.

SUBCHAPTER B. LIMITATIONS ON PURPOSE AND USE OF PROPERTY

ACQUIRED THROUGH EMINENT DOMAIN

Sec. 2206.051. LIMITATION ON EMINENT DOMAIN FOR PRIVATE PARTIES OR ECONOMIC DEVELOPMENT PURPOSES. ....

(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; or

(4) is not for a public use.

(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:

---

28. See Act of May 28, 2007, 80th Leg., R.S., H.B. 2006, § 7 (proposed amendment to Tex. Prop. Code Ann. § 24.042(e)).

29. PROPERTY RIGHTS AND LAND USE TASK FORCE REPORT, *supra* note 12, at 16-17.

30. *Id.* at 12.

.....

(5) the provision of utility services;

(7) the operations of:

(A) a common carrier pipeline [~~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;

Note that traditional uses of eminent domain are still allowed. Gas pipelines, common carrier liquids lines and storage can still be built using the power.<sup>31</sup> The public use debate does not appear to threaten the use of the power to build facilities for the oil and gas industry, at least not yet. It is an issue that is expected to come back in the 81st session in 2009 and will be closely watched.

### C. *Schmidt*

Prior to the decision in *Schmidt*, the law seemed to be that evidence establishing the fair market value of property taken included all circumstances which tend to increase or decrease the present market value of the property.<sup>32</sup> Part of the property in question in *Schmidt* had been taken to expand Highway 183 through Austin and the construction resulted in Schmidt's business becoming difficult to find and difficult to access.<sup>33</sup> However, the court in *Schmidt* excluded consideration of diminution of value due to things like diversion of traffic, increased circuitry of travel to property, lessened visibility to passersby or inconvenience of construction activities.<sup>34</sup> The limitation on damages meant that the loss of business caused by the highway project was not compensable.<sup>35</sup> The landowner advocates want a return to the *Carpenter* rule which, they believe, would have compensated Schmidt for the loss of his business.<sup>36</sup> H.B. 2006 addressed the damage issues as follows:

---

31. Act of May 28, 2007, 80th Leg., R.S., H.B. 2006 § 1 (proposed amendments to § 2206.051(c)(7)-(10)).

32. *State v. Carpenter*, 89 S.W. 2d 194 (Tex. 1936).

33. 867 S.W.2d at 770.

34. *Id.* at 774-75.

35. *See id.* at 776-77.

36. *Id.* at 773.

SECTION 6. Section 21.041, Property Code, is amended to read as follows:

Sec. 21.041. EVIDENCE. (a) For the purposes of this section, market value is the price a property will bring when offered for sale by a person who desires to sell the property, but is not obliged to sell the property, and is bought by a person who desires to buy the property, but is not under a necessity to buy the property.

(b) As the basis for assessing actual damages to a property owner from a condemnation, the special commissioners shall, subject to the Texas Rules of Evidence, admit evidence on:

(1) the market value, before the condemnation, of the property being condemned;

(2) subject to Section 21.042, the net change to the market value of [the injury to the property owner;

[(3) the benefit to] the property owner's remaining property, considering both injury and benefit to the property owner; and

(3) [(4)] the use of the property for the purpose of the condemnation.

The damage provisions above were eventually agreed upon by most condemning authorities and did not, in this section, change the rule in *Schmidt*. A different provision did appear to modify the *Schmidt* rule and caused the bill to be vetoed.<sup>37</sup> The damage "valuation" issue is the one issue that most observers believe will be the subject of an interim study by the legislature.

#### *D. Hubenak*

The third case which generated numerous legislative proposals is *Hubenak v. San Jacinto Gas Transmission Company*.<sup>38</sup> There has long been a provision in Texas condemnation law which required good faith negotiations before condemnation proceedings began.<sup>39</sup> In fact, condemnation petitions were often dismissed if the court found that good faith negotiations had not occurred.<sup>40</sup> The court in *Hubenak*, however, held that while good faith negotiations were required, they were not jurisdictional and the proper remedy when such negotiations had not taken place was for the court to abate and let the parties negotiate.<sup>41</sup> Various legislative proposals were made to create penalties for the failure

37. See Act of May 28, 2007, 80th Leg., R.S., H.B. 2006 § 7 (proposed amendment to Tex. Prop. Code Ann. § 24.042(e)).

38. 141 S.W.3d 172 (Tex. 2004).

39. Tex. Prop. Code Ann. § 21.012(a) (Vernon Supp. 2007).

40. See, e.g., *Brinton v. Houston Lighting & Power Co.*, 175 S.W.2d 707, 710 (Tex. Civ. App. – Galveston 1943, writ *ref'd*).

41. *Hubenak*, at 184.

to make good faith offers prior to instituting condemnation proceedings. The most common involved requiring the condemning authority to pay the attorney's fees of the landowner or some other penalty if the court finds the good faith offer has not been made. The difficulty has been arriving at some consensus as to what constitutes a good faith offer so that condemning authorities have some guidelines as to what offer will satisfy the statute. H.B. 2006 attempted to modify the decision in *Hubenak* so that good faith negotiations would be required but the penalty for failure to make such an offer would be the payment of costs, not the dismissal of the condemnation action.<sup>42</sup> H.B. 2006 provided as follows:

Sec. 21.0112. BONA FIDE OFFER REQUIRED. An entity with eminent domain authority that wants to acquire real property for a public use must make a bona fide offer to acquire the property from the property owner voluntarily. A bona fide offer is an offer that is not arbitrary or capricious and is based on a reasonably thorough investigation and honest assessment of the amount of the just compensation due to the landowner as a result of the taking.

Sec. 21.047. ASSESSMENT OF COSTS AND FEES.

SECTION 10. Section 21.047, Property Code, is amended by adding Subsection (d) to read as follows:

(d) If a court hearing a suit under this chapter determines that a condemning entity did not make a bona fide offer to acquire the property from the property owner voluntarily as required by Section 21.0112, the court shall abate the suit and order the condemnor to make a bona fide offer. If the court finds that by filing a petition under Section 21.012 or by filing any other motion or pleading in the proceeding initiated by the filing of that petition the condemnor violated Chapter 10, Civil Practice and Remedies Code, the court shall order the condemnor to pay:

- (1) all costs as provided by Subsection (a); and
- (2) any reasonable attorney's fees incurred by the owner that are directly related to the violation.

*E. Other Proposals*

Members of the 80th Legislature offered a number of other proposals to cure the ills of *Kelo*, *Schmidt*, and *Hubenak*, as well as cure a number of other complaints that are not necessarily connected to those

---

42. Act of May 28, 2007, 80th Leg., R.S., H.B. 2006 §§ 2, 9, 10 (amending Tex. Prop. Code Ann. §§ 21.0112, 21.047).

cases. The proposals included:

1. Allowing greater landowner compensation by allowing any factor to be considered if a prudent landowner would take it into consideration during negotiations.

2. If the condemnor will generate revenues from the activity for which the property is taken, allowing those revenues to be considered in determining the value of the land. There were also proposals to award "throughput fees" to landowners whose property was taken for a revenue generating enterprise, but that provision never made it to a filed bill.

3. Use replacement costs to assess damages so that compensation would be gauged on what it will cost the landowner to acquire an identical or nearly identical property to replace that which is taken.

4. Allow the use of post taking value. If the property in an area will increase in value because of the project for which property is being condemned, the landowner would be compensated based on the future value. For example, property which was raw farmland before the taking would be valued based on what the land is worth once the new highway goes through it.

5. Require pipelines to have their proposed routes reviewed and approved by the Railroad Commission after notice and a hearing.

6. Make all pipeline routes subject to approval by each county along the route.

7. Require condemnors to provide landowners with information on the prices paid for right of way to other landowners along the route.

8. Allow the reasonableness of the route and the necessity of the taking to be litigated just like the damages issue.

9. Require the condemnor to pay a penalty, such as twice the damage award and attorney's fees if the amount eventually awarded is 20% greater than the amount offered.

Although some of these proposals were incorporated into filed legislation, most were contained in various drafts or proposed amendments which never made it into one of the major pieces of legislation. However, the proposals listed above are recurring themes at the Legislature and all condemnors, including those in the oil and gas industry, can expect to see them raised again in the next session.

#### *F. Procedures for Common Carriers*

H.B. 2006 contained a provision that would have changed condemnation procedures for common carriers in order to provide more notice and more time for landowners. While the process would have

been slowed for common carriers, the provision did not apply to gas utilities. The section provided:

Sec. 111.0195. RIGHT OF EMINENT DOMAIN: ADDITIONAL PROCEDURES. (a) This section applies only to a condemnation proceeding initiated by a common carrier, as that term is defined by Section 111.002.

(b) A common carrier that intends to exercise the power of eminent domain must serve the owner of the property to be acquired with notice that the common carrier intends to initiate condemnation proceedings on or before the date the common carrier files a condemnation petition.

(c) The special commissioners in an eminent domain proceeding to which this section applies:

(1) may not schedule a hearing to assess damages before the 30th day after the date of the special commissioners' appointment; and

(2) must serve a property owner with notice informing the property owner of the time and place of the hearing not later than the 21st day before the date set for the hearing.

(d) A court that has jurisdiction over a condemnation proceeding may appoint a replacement special commissioner if:

(1) the property owner or the common carrier objects to the appointment of a special commissioner by filing a written statement of the person's objections on the grounds of:

(A) a conflict of interest; or

(B) other good cause; and

(2) the court determines in a hearing that good cause is shown.

(e) The special commissioners may delay scheduling a hearing for a reasonable period if, by motion to the court that has jurisdiction over the condemnation proceeding, the property owner requests and is granted a delay by the court for good cause shown.

(f) A notice required under this section must be served by:

(1) regular mail; and

(2) certified mail, return receipt requested, to the property owner.

(g) A common carrier has the burden of proof to establish that notice was provided as required by Subsection (b).

Note that crude oil pipelines and other liquids lines, such as natural gas liquids or products lines, obtain the power of eminent domain by virtue of being common carriers.<sup>43</sup> The legislation would not have changed the process for natural gas gathering or transmission lines.

---

43. Tex. Nat. Res. Code Ann. § 111.002 (Vernon Supp. 2007).

No. 1]

RIGHT OF WAY ISSUES

65

#### V. CONCLUSION

Few of the major eminent domain issues were resolved during the 80th session. All of those issues will be back in the 81st legislative session.