

# Bickerstaff Heath Delgado Acosta LLP

3711 S. MoPac Expressway Building One, Suite 300 Austin, Texas 78746 (512) 472-8021 Fax (512) 320-5638 www.bickerstaff.com

November 1, 2012

Hon. Dan A. Gattis  
County Judge  
Williamson County, Texas  
Williamson County Courthouse  
710 South Main Street, Suite 101  
Georgetown, Texas 78626  
**VIA E-MAIL AND UNITED STATES MAIL**

Re: SB 18 Compliance Response

**CONFIDENTIAL COMMUNICATION -- SUBJECT TO  
ATTORNEY/CLIENT PRIVILEGE**

Dear Judge Gattis:

As requested, we are assisting Williamson County (County) regarding its Senate Bill 18 (SB 18) compliance response related to eminent domain authority. The following proposed documents are enclosed:

- (1) SB 18 Compliance Response Form; and
- (2) Exhibit A to the form, which contains the list of eminent domain authority.

The County's response is due to be filed with the Texas Comptroller on or before December 31, 2012. As you know, the County's authority to exercise the power of eminent domain expires on September 1, 2013 -- unless a response is submitted in compliance with the new statute. *See* TEX. GOV'T CODE §2206.101(a)-(c). Once the County's response is approved by the Commissioners Court, I will transmit it to the Comptroller in compliance with Section 2206.101 and provide copies for your file.

The attached Exhibit A contains seventy-four (74) numbered items or groups of cited eminent domain authority. Consistent with the September 25, 2012 position communicated by the leading county interest groups (the Texas Association of Counties, Texas Conference of Urban Counties, and County Judges and Commissioners Association of Texas) regarding SB 18 compliance, the attached Exhibit A contains certain authority not currently applicable to the County.

We concur with the stated position of the county interest groups -- there appears to be no penalty for including too much information on the list. Our Exhibit A (as requested) contains the authority appearing on the county interest group list distributed September 25, 2012, plus more items we believe should be included.

The answer proposed for Item No. 9 on the SB 18 Compliance Response Form is the result of a search performed by County staff of the public records. The earliest condemnation suit found by that search, in which the County was a Plaintiff, was filed in 1911. Copies of documents filed in that suit were provided to me by County staff and have been retained in our file.

Please review the enclosed material. If all is in order, and upon approval by the Commissioners Court, please return the fully executed form (with Exhibit A) to me for transmittal to the Comptroller. Should you have questions, please call.

Thank you for your cooperation. .

Sincerely,

  
Charles R. Kimbrough

Enclosures (2)

Copy:

Hal C. Hawes  
Williamson County, Texas  
**VIA E-MAIL**



Susan Combs Texas Comptroller of Public Accounts

## Required Documentation of Eminent Domain Authority in Texas

**What action must be taken:** Per Senate Bill 18 enacted by the 82nd Legislature, all public and private entities authorized to exercise the power of eminent domain in Texas are required to submit a letter to the Comptroller of Public Accounts detailing their legal authority to exercise this power. The letter must be sent by certified, return receipt mail not later than December 31, 2012. (Per the bill, the authority of an entity to exercise the power of eminent domain expires on September 1, 2013, unless the letter has been submitted by the deadline.)

**About this form:** This form is designed to guide entities in submitting the required information on eminent domain authority. Once the fields have been completed, the form can be printed and mailed via certified, return receipt to the address provided to meet the requirements of the bill.

### Entity Information

1. Full, legal name of entity: Williamson County, Texas
2. Alternate name of entity (if any): None
3. Primary address: Street or P.O. Box 710 South Main Street, Suite 101  
City, State, Zip Code Georgetown, Texas 78626
4. Primary phone number (with area code): 512-943-1550
5. Entity contact: First name Dan Last name Gattis (County Judge)  
Phone number (with area code): 512-943-1550 E-mail address: ctyjudge@wilco.org
6. Alternate contact: First name Hal Last name Hawes  
Phone number (with area code): 512-943-1550 E-mail address: hhawes@wilco.org

### Eminent Domain Authority

7. Does your entity have eminent domain authority in Texas? ☒ Yes ☐ No
8. If "yes" to question 7, please identify all of the applicable provisions of state law that grant eminent domain authority to this entity. Please cite as Title of Code or Article, Section Number/Name (for example, Texas Government Code, Section 43.136 or Article 7849, Auxiliary Water Laws).

Please see Exhibit A which is attached and incorporated by reference for all purposes.

9. Please indicate the first year in which this entity exercised eminent domain authority (if known): 1911 (estimated)

**DISCLAIMER:** Chapter 2206, Subchapter C, Government Code (as added by Senate Bill 18, 82nd Regular Session) requires the Comptroller of Public Accounts to collect information and report to the Legislature all entities in the state of Texas that have the authority to exercise the power of eminent domain. Entities that provide information to the Comptroller represent and warrant that the information is accurate and complete to the best of their knowledge. Entities that provide information acknowledge that it is their responsibility to submit a letter by certified mail, return receipt requested to the Comptroller's office, indicating that the Entity is authorized to exercise eminent domain authority and to identify each law that grants such authority. The Entity further acknowledges that the Comptroller's office is not responsible to submit said letter, nor is it responsible for the Entity's failure to submit said letter as required by law, and that such failure may cause the entity's power of eminent domain to expire on September 1, 2013. The Entity also acknowledges that the Comptroller of Public Accounts is a state agency subject to Chapter 552 of the Texas Gov't Code (the "Texas Public Information Act") and court interpretations thereof, and that the information submitted to this office may be subject to disclosure to the public under Section 552.101, et seq., of the Code.

Under Ch. 559, Government Code, you are entitled to review, request, and correct information we have on file about you, with limited exceptions in accordance with Ch. 552, Government Code. To request information for review or to request error correction, contact us at the address on this form or [sb18compliance@cpa.state.tx.us](mailto:sb18compliance@cpa.state.tx.us).

By signing, I agree that the information is true and correct.

Mail this form via **certified mail** to:  
COMPTROLLER OF PUBLIC ACCOUNTS  
P.O. Box 13942  
Austin, Texas 78711

sign  
here

Signature

Dan A. Gattis, Williamson County Judge

Print Name/Title

11-27-2012  
Date

512-943-1550

Phone (area code and number)

For questions or additional information, please e-mail: [sb18compliance@cpa.state.tx.us](mailto:sb18compliance@cpa.state.tx.us) or go to: [www.window.texas.gov/sb18compliance](http://www.window.texas.gov/sb18compliance)



**EXHIBIT A:**  
**TO COUNTY'S SB 18 COMPLIANCE RESPONSE FORM**

Williamson County, Texas (County) is authorized to exercise the power of eminent domain. In compliance with Section 2206.101 of the Texas Government Code, the following list identifies each provision of law that grants eminent domain authority to the County:<sup>1</sup>

- (1) Texas Agriculture Code, Sections 60.058 and 60.062 (relating to authority to acquire property for agricultural development district);
- (2) Texas Agriculture Code, Sections 94.038 and 95.035 (relating to authority to condemn, by county sheriff, of citrus fruit found unfit for consumption, constituting public nuisance, and detrimental to public health);
- (3) Texas Agriculture Code, Section 167.059 (relating to eminent domain authority to acquire property for dipping facilities for tick eradication in livestock, including property necessary for ingress/egress);
- (4) Texas Government Code, Section 1474.151 (relating to eminent domain authority to acquire property for reservoirs, dams, levees, wells, and canals, and for improvements required for proper and efficient irrigation of land);
- (5) Texas Government Code, Sections 1475.001, 1475.002, and 1475.052 (relating to eminent domain authority to acquire property for rights-of-way, easements, and necessary dumping privileges for canals or waterways, the construction of which is authorized by federal legislation, for conveyance to the United States);
- (6) Texas Government Code, Sections 1475.051 through and including 1475.054 (relating to eminent domain authority to acquire property for canal, right-of-way, easement, or dumping ground privileges);
- (7) Texas Government Code, Section 1477.071 (relating to eminent domain authority to acquire property for any power authorized by Subchapter B, Chapter 1477, Texas Government Code, pertaining to bonds for water supply for county purposes);
- (8) Texas Government Code, Sections 1477.120 and 1477.121 (relating to eminent domain authority to acquire property for any power authorized by

---

<sup>1</sup>The County's attached SB 18 Compliance Response Form is incorporated by reference. Singular nouns and pronouns shall include the plural, and the masculine gender shall include the feminine gender, where necessary for a correct interpretation of the form or this exhibit. The authority cited in this exhibit is submitted pursuant to facts presently existing or hereafter established. The descriptive phrases which parenthetically follow the authority cited in this exhibit shall not limit or impair the proper application of the authority.

Subchapter C, Chapter 1477, Texas Government Code, pertaining to natural gas systems for county buildings);

- (9) Texas Government Code, Section 2204.001 (relating to eminent domain authority, through county attorney under direction of Texas Attorney General, to acquire property for state);
- (10) Texas Government Code, Sections 2206.001 through and including 2206.101 (relating to eminent domain authority and procedure);
- (11) Texas Government Code, Sections 2267.061 through and including 2267.063 (relating to eminent domain authority to acquire property for qualifying project under statutory description);
- (12) Texas Health and Safety Code, Sections 263.016 and 263.022 (relating to eminent domain authority to acquire property and easements for hospital, medical or other health facility, and rules regarding disposition of property);
- (13) Texas Health and Safety Code, Section 264.028 (relating to eminent domain authority of county hospital authority to acquire property and easements);
- (14) Texas Health and Safety Code, Section 265.052 (relating to eminent domain authority of joint county/municipal hospital board to acquire property);
- (15) Texas Health and Safety Code, Sections 281.050 and 281.054 (relating to eminent domain authority of hospital district to acquire property or provide service required or needed by district);
- (16) Texas Health and Safety Code, Sections 282.043, 282.046, 283.050, and 286.080 (relating to eminent domain authority of hospital district to acquire property);
- (17) Texas Health and Safety Code, Section 364.014 (relating to eminent domain authority to acquire property necessary or convenient to exercise powers and purposes of Chapter 364, Texas Health and Safety Code, including collection, transportation, handling, storage, and disposal of solid waste);
- (18) Texas Human Resources Code, Sections 63.017 and 63.018 (relating to eminent domain authority to acquire property for residential facilities for delinquent children);



- (19) Texas Local Government Code, Section 241.903 (relating to eminent domain authority to acquire air right, aviation interest, or other property interest or nonconforming structure or use);
- (20) Texas Local Government Code, Sections 261.001 through and including 261.003, and Section 272.001 (relating to eminent domain authority to acquire property for easement, right-of-way, jail, courthouse, hospital, library, or other public use authorized by law, and certain notice rules regarding property disposition);
- (21) Texas Local Government Code, Section 263.201 (relating to eminent domain authority to acquire property desired by United States to enable United States, or an establishment thereof, to carry out act of United States Congress in aid of water project, navigation, irrigation, flood control, or improvement of water courses, and to accomplish purpose specified in Section 2204.101, Texas Government Code);
- (22) Texas Local Government Code, Sections 273.001 through and including 273.009 (relating to eminent domain authority to acquire property to be used with municipality or other governmental entity);
- (23) Texas Local Government Code, Sections 280.001 through and including 280.004 (relating to eminent domain authority to acquire property to be used by United States);
- (24) Texas Local Government Code, Sections 282.050 and 281.051 (relating to eminent domain authority to acquire property for civic center authority);
- (25) Texas Local Government Code, Section 293.026 (relating to eminent domain authority to acquire property for county building authority);
- (26) Texas Local Government Code, Section 324.067 (relating to eminent domain authority to acquire property for park purpose);
- (27) Texas Local Government Code, Sections 325.036 and 325.037 (relating to eminent domain authority to acquire property for sports facility district purposes);
- (28) Texas Local Government Code, Sections 331.001 and 331.003 (relating to eminent domain authority to acquire property for parks, historic sites, museums, and related buildings and structures);
- (29) Texas Local Government Code, Sections 335.071 and 335.0711 (relating to eminent domain authority to acquire property for sports and community venue district);

- (30) Texas Local Government Code, Section 351.136 (relating to eminent domain authority to acquire property for jail district);
- (31) Texas Local Government Code, Section 383.063 (relating to eminent domain authority to acquire property for county development district);
- (32) Texas Local Government Code, Section 392.061 (relating to eminent domain authority to acquire property for housing authority);
- (33) Texas Local Government Code, Sections 506.001 through and including 506.101 (relating to eminent domain authority of county alliance corporation, created by county alliance of two or more counties, to acquire property for designated public purposes only as approved by action of the authorizing counties pursuant to Chapters 501, 504, and/or 505 of the Texas Local Government Code);
- (34) Texas Local Government Code, Sections 507.001 through and including 507.003, and Sections 507.101 through 507.103 (relating to eminent domain authority of spaceport development corporation created by county or combination of one or more municipalities and one or more counties, to acquire property);
- (35) Texas Local Government Code, Sections 561.001 and 561.002 (relating to eminent domain authority to acquire property for easements and rights-of-way for purpose of building canals, drains, levees, and other improvements to provide for flood control and water outlets);
- (36) Texas Local Government Code, Section 562.016 (in conjunction with Section 16.341 of Texas Water Code and Chapter 552 of Texas Local Government Code, relating to eminent domain authority to acquire property for water and sewer utility system projects);
- (37) Texas Local Government Code, Sections 571.001 through and including 571.004 (relating to eminent domain authority to acquire property for seawall, breakwater, levee, floodway, or drainway);
- (38) Texas Local Government Code, Sections 572.001 through and including 572.013 (relating to eminent domain authority to acquire property with another public entity regarding water, sewer, economic development, or environmental protection projects);
- (39) Texas Natural Resources Code, Section 183.057 (relating to eminent domain authority to acquire property encumbered by agricultural conservation easement);

- (40) Texas Natural Resources Code, Section 221.021 (relating to eminent domain authority to acquire property for wetland mitigation bank or buffer zone);
- (41) Texas Property Code, Sections 21.001 through and including 21.103 (relating to eminent domain authority and procedure);
- (42) Texas Tax Code, Section 311.008 (relating to eminent domain authority to acquire property for authorized purpose defined by Chapter 311, Texas Tax Code, the Tax Increment Financing Act);
- (43) Texas Transportation Code, Sections 22.011 and 22.053 (relating to eminent domain authority to acquire property for airport or air navigation facility);
- (44) Texas Transportation Code, Sections 171.155 and 171.206, and Sections 172.157 through and including 172.159 (relating to eminent domain authority to acquire property for rural rail transportation district and freight rail district);
- (45) Texas Transportation Code, Sections 173.159 and 173.160 (relating to eminent domain authority to acquire property for inter-municipal commuter rail district);
- (46) Texas Transportation Code, Sections 174.158 and 174.159 (relating to eminent domain authority to acquire property for commuter rail district);
- (47) Texas Transportation Code, Section 203.065 (relating to eminent domain authority to acquire property for road or freeway);
- (48) Texas Transportation Code, Sections 224.001 through and including 224.008 (relating to eminent domain authority to acquire property for road or highway);
- (49) Texas Transportation Code, Section 251.006 (relating to eminent domain authority to acquire property and materials for public road);
- (50) Texas Transportation Code, Section 251.051 (in conjunction with other statutes, relating to eminent domain authority to acquire property for public road);
- (51) Texas Transportation Code, Section 251.101 (relating to eminent domain authority to acquire property for roads and easements to form connecting link of county road system or state highway);



- (52) Texas Transportation Code, Section 254.005 (relating to eminent domain authority to acquire property for road right-of-way, streambed diversion, and drainage channel);
- (53) Texas Transportation Code, Section 280.001 (relating to eminent domain authority to condemn railroad roadbed);
- (54) Texas Transportation Code, Section 281.002 (relating to eminent domain authority to acquire property for road or highway);
- (55) Texas Transportation Code, Section 282.011 (relating to eminent domain authority to acquire property for road, underpass, tunnel, or approach);
- (56) Texas Transportation Code, Sections 283.003 and 283.101 (relating to eminent domain authority to acquire property for causeway, bridge, tunnel, necessary approach, fixture, accessory, or equipment);
- (57) Texas Transportation Code, Sections 284.002, 284.003, 284.061, 284.0615, 284.066, and 284.067 (relating to eminent domain authority to acquire property for causeway, bridge, tunnel, turnpike, ferry, road, and highway);
- (58) Texas Transportation Code, Sections 341.002 and 341.005 (in conjunction with Chapter 33 of the Texas Natural Resources Code, relating to eminent domain authority to acquire property for causeway across arm, inlet, or saltwater bay);
- (59) Texas Transportation Code, Section 364.022 (relating to eminent domain authority to acquire property for toll bridge);
- (60) Texas Transportation Code, Sections 366.031, and Sections 366.163 through and including 366.165 (relating to eminent domain authority to acquire property for regional tollway authority);
- (61) Texas Transportation Code, Sections 370.031, 370.0315, 370.033, 370.163, and 370.192 (relating to eminent domain authority to acquire property for regional mobility authority, in conjunction with eminent domain authority of Texas Department of Transportation);
- (62) Texas Transportation Code, Sections 431.003, 431.101, 431.110 (relating to eminent domain authority to acquire property for local government corporation);
- (63) Texas Transportation Code, Sections 457.001 through and including 457.051, and Sections 457.106, 457.107, and 460.107 (relating to eminent domain authority to acquire property for county mass transit authority);

- (64) Texas Utilities Code, Sections 163.013 and 163.014 (relating to eminent domain authority to acquire property for joint power agencies and electric facilities owned by public and private entities);
- (65) Texas Revised Civil Statutes, Article 6812b (relating to eminent domain authority to acquire property for public road or highway construction and maintenance);
- (66) Texas Water Code, Section 11.033 (relating to eminent domain authority to acquire property for domestic, municipal, manufacturing and other purposes authorized by Texas Water Code, including irrigation of land for agricultural development);
- (67) Texas Water Code, Sections 11.002 and 11.035 (relating to eminent domain authority of appropriator to acquire property for right-of-way, pumping plant, intake, headgate, and storage reservoir);
- (68) Texas Water Code, Sections 49.066, 49.222, and 49.224 (relating to eminent domain authority to acquire property for general law/special districts, including land for water, sanitary sewer, drainage, and flood control);
- (69) Texas Water Code, Sections 57.001 through and including 57.019, and Section 57.269 (relating to eminent domain authority to acquire property for levee improvement district);
- (70) the Fifth Amendment of the United States Constitution and Article I, Section 17 of the Texas Constitution (relating to eminent domain authority pursuant to doctrine of inherent sovereignty, as described or limited by said constitutional provisions and the case law, including *Whittington v. City of Austin*, 174 S.W.3d 889, 896 (Tex. App. -- Austin 2005, pet. ref'd), and *McInnis v. Brown County Water Improvement Dist. No. 1*, 41 S.W.2d 741, 744 (Tex. Civ. App. -- Austin 1931, writ ref'd));
- (71) Article III, Section 52j of the Texas Constitution (relating to sale to prior owner of real property acquired by eminent domain authority);
- (72) Article IX, Section 12 of the Texas Constitution (relating to eminent domain authority to acquire property for airport authority);
- (73) Article XI, Section 7 of the Texas Constitution (relating to eminent domain authority for condemnation of right-of-way for erection and construction of sea walls, breakwaters, or sanitary purposes); and
- (74) eminent domain authority existing pursuant to the doctrine of paramount public purpose, as described in the case law, including *Canyon Regional*

*Water Authority v. Guadalupe-Blanco River Authority*, 258 S.W.3d 613, 616-17 (Tex. 2008) and *Sabine & E.T. Ry. Co. v. Gulf & I. Ry. Co. of Tex.*, 92 Tex. 162, 46 S.W. 784, 786-87 (1898).