

BILL ANALYSIS

Senate Research Center
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S.B. 740
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 740 as proposed makes several changes to the eminent domain process.

Currently, thousands of entities in the state claim eminent domain authority. As Texas continues to grow, these condemning authorities increasingly engage in hard-nosed tactics to obtain land for their projects. The current law favors for-profit companies, giving landowners few options in a fight for their property. S.B. 740 is designed to make this process more fair for the landowner.

Currently, the Property Code requires the parties to swap appraisals before they go to court. The condemnor must provide an appraisal with their initial and final offers, but often, the condemnor provides another updated appraisal at the hearing, giving the landowner no time to prepare. Landowners, on the other hand, must provide any appraisal they intend to use at the hearing three business days in advance. SECTION 1 of S.B. 740 requires the condemnor to provide any appraisal it intends to use at the special commissioners hearing at least three days prior to the hearing.

In 2011, the Texas Legislature enacted S.B. 18, which included a provision in Section 21.0111, Property Code, that 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. While S.B. 18 provided meaningful progress, many Texans continue to struggle to get the entity condemning their property to provide specifics on how their land will be used. SECTION 2 of S.B. 740 requires a condemnor to provide minimum property rights protection and delineate the uses for the condemned property. Many of these protections are specifically directed to pipelines and electrical transmission right-of-way-easements.

Property owners are often forced to accept diminished compensation for their land in eminent domain cases because they cannot afford the legal costs to challenge the offer through litigation. Condemnors are aware that property owners can rarely afford litigation and take advantage of property owners by offering excessively low compensation for property, using appraisers that are known for undervaluing property, and drawing out the litigation process to make it more expensive. Currently, the Property Code requires the loser in an eminent domain proceeding to pay court costs. SECTION 3 of S.B. 740 requires condemnors to reimburse property owners for attorney's and professional fees in eminent domain proceedings where it is determined that the condemnor's lowest offer for the property is 20 percent or more lower than the amount determined by a special commissioner or other court. This is similar to S.B. 474, 84th Legislature, Regular Session, 2015, and is included as a recommendation to Charge No. 5 from the State Affairs Committee's Interim Report.

Often, following an award by a special commissioners court, a condemnor will refuse to purchase a bond to cover the award and then claim bankruptcy or insolvency to avoid payment to the landowner for just compensation. Stakeholders argue that a condemning entity should be required to either pay the jury award or secure a bond in the amount of the jury award in order to guarantee payment to a prevailing landowner at the conclusion of the legal proceedings. SECTION 4 of S.B. 740 requires a condemnor to either pay the award to the landowner, deposit the amount with the court, or purchase a surety bond to cover the award, should the entity go bankrupt, change organization, or go insolvent.

Finally, under current law, a landowner's obligation to pay ad valorem taxes on property taken in eminent domain ends when the government acquires title or possession by order of the court, whichever occurs sooner. Increasingly, landowners give possession and use agreements which are agreements that transfer possession by agreement. No title changes hands and no court order is rendered. Despite the fact that the landowner is entirely dispossessed by virtue of agreement, taxing authorities take the position that the landowner still needs to pay taxes, even though said dispossession is the same as if an order of the court were entered. SECTION 5 of S.B. 740 shifts this obligation to the condemnor, making them responsible for the property taxes for the portion of the land that has been taken.

As proposed, S.B. 740 amends current law relating to the acquisition of property by an entity with eminent domain authority.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 21.0111, Property Code, by adding Subsection (a-1), as follows:

(a-1) Requires the entity, after making an offer to which Subsection (a) (relating to requirements for an entity with eminent domain authority that wants to acquire real property for a public use) applies, to disclose to the property owner any new, amended, or updated appraisal report produced or acquired by or on behalf of the entity after making the offer and used in determining the entity's opinion of value. Requires that a disclosure be made not later than the earlier of certain dates.

SECTION 2. Amends Section 21.0113, Property Code, by adding Subsection (c), as follows:

(c) Requires that the deed, easement, or other instrument provided under Subsection (b)(6)(B) (relating to a copy of certain instruments conveying the property sought to be acquired by an entity with eminent domain authority), for the purposes of this section, include certain information for a pipeline right-of-way easement; certain information for an electrical transmission right-of-way easement; a prohibition against any use of the property being conveyed, other than a use stated in the instrument, without the express written consent of the property owner; a covenant that the entity will indemnify and hold the property owner harmless against any claim brought against the property owner arising out of or relating to the use of condemned property by the entity or the entity's agents or contractors; and a covenant that the entity will secure and keep in full force and effect at all times while the entity continues to use the condemned property a policy or policies of liability insurance that fulfill certain requirements.

SECTION 3. Amends Section 21.047, Property Code, by adding Subsection (a-1), as follows:

(a-1) Requires the condemnor, if the amount of damages awarded by the special commissioners is at least 20 percent greater than the amount of the condemnor's final offer made in accordance with Section 21.0113 (Bona Fide Offer Required) or if the commissioners' award is appealed and a court awards damages in an amount that is at least 20 percent greater than the amount of the condemnor's final offer made in accordance with Section 21.0113, to pay certain costs and fees.

SECTION 4. Amends Section 21.063, Property Code, by adding Subsections (c) and (d), as follows:

(c) Requires a nongovernmental condemnor, as a condition of appealing the decision of a trial court in a condemnation proceeding, to pay to the property owner the amount of just compensation awarded by the trial court, deposit that same amount with the court subject to the order of the property owner, or post a surety bond in the same amount issued by a

surety company authorized to engage in business in this state, conditioned to secure the payment of the trial court's award of just compensation.

(d) Requires the court of appeals, if the property owner moves to enforce Subsection (c) and the nongovernmental condemnor fails to comply with that subsection before a certain date, to dismiss the appeal with prejudice and order enforcement of the final judgment. Provides that, if the property owner moves to enforce Subsection (c) and the nongovernmental condemnor fails to comply with that subsection before a certain date, the nongovernmental condemnor and its assigns lose the right to remain on the property owner's property, and any interest of the nongovernmental condemnor or its assigns in the property reverts to the property owner. Provides that, if the property owner moves to enforce Subsection (c) and the nongovernmental condemnor fails to comply with that subsection before a certain date, the property owner is entitled to certain damages, expenses, and fees.

SECTION 5. Amends Section 26.11(a), Tax Code, to provide that, if the federal government, the state, or a political subdivision of the state acquires the right to possession of taxable property under a court order issued in condemnation proceedings, assumes possession of taxable property under a possession and use agreement, or a similar agreement, that is entered into under threat of condemnation, or acquires title to taxable property, the amount of the tax due on the property is calculated by multiplying the amount of taxes imposed on the property for the entire year as determined by Section 26.09 (Calculation of Tax) by a fraction, the denominator of which is 365 and the numerator of which is the number of days that elapsed prior to the date of the conveyance, the effective date of the agreement, or the date of the order granting the right of possession, as applicable.

SECTION 6. (a) Makes application of Sections 21.0111 and 21.0113, Property Code, as amended by this Act, prospective.

(b) Makes application of Section 21.047, Property Code, as amended by this Act, prospective.

(c) Makes application of Section 21.063, Property Code, as amended by this Act, prospective.

(d) Makes application of Section 26.11, Tax Code, as amended by this Act, prospective.

SECTION 7. Effective date: September 1, 2017.