

By: Burns

H.B. No. 2684

A BILL TO BE ENTITLED

AN ACT

relating to the acquisition of property by an entity with eminent domain authority; waiving certain sovereign and governmental immunity.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 21.0111, Property Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) After making an offer to which Subsection (a) applies, the entity shall 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. A disclosure required by this subsection must be made not later than the earlier of:

(1) the 10th day after the date the entity receives the appraisal report; or

(2) the third business day before the date of a special commissioner's hearing if the appraisal report is to be used at the hearing.

SECTION 2. Section 21.0113, Property Code, is amended by adding Subsection (c) to read as follows:

(c) For purposes of this section, the deed, easement, or other instrument provided under Subsection (b)(6)(B) must include:

(1) for a pipeline right-of-way easement:

(A) the maximum number of pipelines that may be

1 installed in the right-of-way;

2 (B) the outside diameter of each pipeline to be
3 installed in the right-of-way;

4 (C) the type or category of each petroleum
5 product to be transported through the pipelines to be installed in
6 the right-of-way;

7 (D) a reasonable description of any use of the
8 surface of the right-of-way that the entity intends to acquire;

9 (E) a metes and bounds or center line description
10 of the location of the easement;

11 (F) the width of the easement;

12 (G) the depth of the pipeline and amount of
13 cover;

14 (H) a requirement to use the double-ditch method
15 for installation of the pipeline when not bore-drilled;

16 (I) a prohibition from transferring the easement
17 to any other entity, subsidiary, or company that does not have
18 eminent domain authority;

19 (J) a reservation of the property owner's right
20 to grant additional compatible easements in the easement area to
21 other parties;

22 (K) a limit on third-party access to the easement
23 area;

24 (L) a right to damages arising from construction,
25 maintenance, repair, replacement, or future removal of the pipeline
26 in the easement, including any damages to growing crops or
27 livestock;

1 (M) a covenant to lock and close all gates and
2 fences as necessary to prevent damage to or destruction of
3 livestock;

4 (N) a covenant to maintain the right-of-way; and

5 (O) a covenant to repair and restore areas used
6 or damaged outside the easement area to their original condition or
7 better;

8 (2) for an electrical transmission right-of-way
9 easement:

10 (A) the maximum number and spacing of the poles,
11 towers, or other support apparatus to carry electrical lines over
12 the easement;

13 (B) the maximum number and electrical carrying
14 capacity of the lines to be installed in the easement;

15 (C) a reasonable description of any use of the
16 surface of the right-of-way that the entity intends to acquire;

17 (D) a metes and bounds or center line description
18 of the location of the easement;

19 (E) the width of the easement;

20 (F) a reservation of the property owner's right
21 to grant additional compatible easements in the easement area to
22 other parties;

23 (G) a limit on third-party access to the easement
24 area;

25 (H) a right to damages arising from construction,
26 maintenance, repair, replacement, or future removal of lines and
27 support apparatus in the easement, including any damages to growing

1 crops or livestock;

2 (I) a covenant to lock and close all gates and
3 fences as necessary to prevent damage to or destruction of
4 livestock;

5 (J) a covenant to maintain the right-of-way; and

6 (K) a covenant to repair and restore areas used
7 or damaged outside the easement area to their original condition or
8 better;

9 (3) a prohibition against any use of the property
10 being conveyed, other than a use stated in the instrument, without
11 the express written consent of the property owner;

12 (4) a covenant that the entity will indemnify and hold
13 the property owner harmless against any claim brought against the
14 property owner arising out of or relating to the use of condemned
15 property by the entity or the entity's agents or contractors; and

16 (5) a covenant that the entity will secure and keep in
17 full force and effect at all times while the entity continues to use
18 the condemned property a policy or policies of liability insurance:

19 (A) issued by an insurer authorized to issue such
20 policies in this state;

21 (B) insuring the property owner against
22 liability for personal injuries and property damage sustained by
23 any person that arises from or is related to the use of the property
24 by the entity or the entity's agents or contractors;

25 (C) naming the property owner or the owner's
26 successor in title as an insured; and

27 (D) providing limits of liability as specified in

1 the instrument.

2 SECTION 3. Section 21.041, Property Code, is amended to
3 read as follows:

4 Sec. 21.041. EVIDENCE. (a) As the basis for assessing
5 actual damages to a property owner from a condemnation, the special
6 commissioners shall admit evidence on:

7 (1) the value of the property being condemned;

8 (2) the injury to the property owner;

9 (3) the benefit to the property owner's remaining
10 property; and

11 (4) the use of the property for the purpose of the
12 condemnation.

13 (b) The special commissioners may admit evidence on the
14 price paid for pipeline or power line rights-of-way in privately
15 negotiated transactions made in the absence of a potential, actual,
16 or threatened condemnation.

17 SECTION 4. Section 21.047, Property Code, is amended by
18 adding Subsection (a-1) to read as follows:

19 (a-1) If the amount of damages awarded by the special
20 commissioners is at least 20 percent greater than the amount of the
21 condemnor's final offer made in accordance with Section 21.0113 or
22 if the commissioners' award is appealed and a court awards damages
23 in an amount that is at least 20 percent greater than the amount of
24 the condemnor's final offer made in accordance with Section
25 21.0113, the condemnor shall pay:

26 (1) all costs as provided by Subsection (a); and

27 (2) any reasonable attorney's fees and other

1 professional fees incurred by the property owner in connection with
2 the eminent domain proceeding.

3 SECTION 5. Section 21.063, Property Code, is amended by
4 adding Subsections (c) and (d) to read as follows:

5 (c) As a condition of appealing the decision of a trial
6 court in a condemnation proceeding, a nongovernmental condemnor
7 shall:

8 (1) pay to the property owner the amount of just
9 compensation awarded by the trial court;

10 (2) deposit that same amount with the court subject to
11 the order of the property owner; or

12 (3) post a surety bond in the same amount issued by a
13 surety company authorized to engage in business in this state,
14 conditioned to secure the payment of the trial court's award of just
15 compensation.

16 (d) If the property owner moves to enforce Subsection (c)
17 and the nongovernmental condemnor fails to comply with that
18 subsection before the 30th day after the date the property owner's
19 motion is filed:

20 (1) the court of appeals shall dismiss the appeal with
21 prejudice and order enforcement of the final judgment;

22 (2) the nongovernmental condemnor and its assigns
23 shall lose the right to remain on the property owner's property, and
24 any interest of the nongovernmental condemnor or its assigns in the
25 property reverts to the property owner; and

26 (3) the property owner is entitled to:

27 (A) any damages attributable to the

nongovernmental condemnor's occupation of the property;

(B) all reasonable expenses incurred to
remediate the property; and

(C) all reasonable and necessary fees for
attorneys, appraisers, photographers, and other experts hired in
relation to the condemnation.

SECTION 6. Chapter 21, Property Code, is amended by adding
Subchapter F to read as follows:

SUBCHAPTER F. AGREEMENTS MADE IN CONNECTION WITH CONDEMNATION

Sec. 21.151. AGREEMENTS ENFORCEABLE; WAIVER OF SOVEREIGN
IMMUNITY. A written agreement entered into by a governmental
entity with eminent domain authority and a property owner in
connection with a proceeding initiated by the entity to condemn the
owner's property or under a threat of condemnation by the entity of
the owner's property is enforceable by the property owner. Entry
into the agreement waives the entity's sovereign or governmental
immunity from suit and from liability to the extent necessary to
enforce the agreement.

SECTION 7. Section 26.11(a), Tax Code, is amended to read as
follows:

(a) 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 as provided by Section 26.09 of this code 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 8. (a) Sections 21.0111 and 21.0113, Property Code, as amended by this Act, apply only to the acquisition of real property in connection with an initial offer made under Section 21.0113, Property Code, on or after the effective date of this Act. An acquisition of real property in connection with an initial offer made under Section 21.0113, Property Code, before the effective date of this Act is governed by the law applicable to the acquisition immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(b) Sections 21.041 and 21.047, Property Code, as amended by this Act, apply only to an eminent domain proceeding commenced on or after the effective date of this Act. An eminent domain proceeding commenced before the effective date of this Act is governed by the law applicable to the proceeding immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(c) Section 21.063, Property Code, as amended by this Act, applies only to an appeal commenced on or after the effective date of this Act. An appeal commenced before the effective date of this Act is governed by the law applicable to the appeal immediately

1 before the effective date of this Act, and that law is continued in
2 effect for that purpose.

3 (d) Section 26.11, Tax Code, as amended by this Act, applies
4 only to an agreement entered into on or after the effective date of
5 this Act. An agreement entered into before the effective date of
6 this Act is governed by the law applicable to the agreement
7 immediately before the effective date of this Act, and that law is
8 continued in effect for that purpose.

9 SECTION 9. This Act takes effect September 1, 2017.