

By: Kolkhorst

S.B. No. 740

A BILL TO BE ENTITLED

AN ACT

relating to the acquisition of property by an entity with eminent domain authority.

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 installed in the right-of-way;

1 (B) a reasonable description of any use of the
2 surface of the right-of-way that the entity intends to acquire;

3 (C) a metes and bounds or center line description
4 of the location of the easement;

5 (D) the width of the easement;

6 (E) a reservation of the property owner's right
7 to grant additional compatible easements in the easement area to
8 other parties;

9 (F) a requirement that the entity access the
10 easement area in a manner specified in the instrument;

11 (G) a right to damages arising from construction,
12 maintenance, repair, replacement, or future removal of the pipeline
13 in the easement, including any damages to growing crops or
14 livestock;

15 (H) a covenant to lock and close all gates and
16 fences as necessary to prevent damage to or destruction of
17 livestock; and

18 (I) a covenant to repair and restore areas used
19 or damaged outside the easement area to their original condition or
20 better;

21 (2) for an electrical transmission right-of-way
22 easement:

23 (A) the type, spacing, and maximum number of the
24 poles, towers, or other support apparatus to carry electrical lines
25 over the easement;

26 (B) a reasonable description of any use of the
27 surface of the right-of-way that the entity intends to acquire;

1 (C) a metes and bounds or center line description
2 of the location of the easement;

3 (D) the width of the easement;

4 (E) a requirement that the entity access the
5 easement area in a manner specified in the instrument;

6 (F) a right to damages arising from construction,
7 maintenance, repair, replacement, or future removal of lines and
8 support apparatus in the easement, including any damages to growing
9 crops or livestock;

10 (G) a covenant to lock and close all gates and
11 fences as necessary to prevent damage to or destruction of
12 livestock; and

13 (H) a covenant to repair and restore areas used
14 or damaged outside the easement area to their original condition or
15 better;

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

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

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

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

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

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

7 (D) providing limits of liability as specified in
8 the instrument.

9 SECTION 3. Section [21.047](#), Property Code, is amended by
10 adding Subsection (a-1) to read as follows:

11 (a-1) If the amount of damages awarded by the special
12 commissioners is at least 20 percent greater than the amount of the
13 condemnor's final offer made in accordance with Section [21.0113](#) or
14 if the commissioners' award is appealed and a court awards damages
15 in an amount that is at least 20 percent greater than the amount of
16 the condemnor's final offer made in accordance with Section
17 [21.0113](#), the condemnor shall pay:

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

19 (2) any reasonable attorney's fees and other
20 professional fees incurred by the property owner in connection with
21 the eminent domain proceeding.

22 SECTION 4. Section [21.063](#), Property Code, is amended by
23 adding Subsections (c) and (d) to read as follows:

24 (c) As a condition of appealing the decision of a trial
25 court in a condemnation proceeding, a nongovernmental condemnor
26 shall:

27 (1) pay to the property owner the amount of just

1 compensation awarded by the trial court;

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

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

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

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

14 (2) the nongovernmental condemnor and its assigns
15 shall lose the right to remain on the property owner's property, and
16 any interest of the nongovernmental condemnor or its assigns in the
17 property reverts to the property owner; and

18 (3) the property owner is entitled to:

19 (A) any damages attributable to the
20 nongovernmental condemnor's occupation of the property;

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

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

26 SECTION 5. Section 26.11(a), Tax Code, is amended to read as
27 follows:

1 (a) If the federal government, the state, or a political
2 subdivision of the state acquires the right to possession of
3 taxable property under a court order issued in condemnation
4 proceedings, assumes possession of taxable property under a
5 possession and use agreement, or a similar agreement, that is
6 entered into under threat of condemnation, or acquires title to
7 taxable property, the amount of the tax due on the property is
8 calculated by multiplying the amount of taxes imposed on the
9 property for the entire year as determined as provided by Section
10 26.09 of this code by a fraction, the denominator of which is 365
11 and the numerator of which is the number of days that elapsed prior
12 to the date of the conveyance, the effective date of the agreement,
13 or the date of the order granting the right of possession, as
14 applicable.

15 SECTION 6. (a) Sections 21.0111 and 21.0113, Property
16 Code, as amended by this Act, apply only to the acquisition of real
17 property in connection with an initial offer made under Section
18 21.0113, Property Code, on or after the effective date of this Act.
19 An acquisition of real property in connection with an initial offer
20 made under Section 21.0113, Property Code, before the effective
21 date of this Act is governed by the law applicable to the
22 acquisition immediately before the effective date of this Act, and
23 that law is continued in effect for that purpose.

24 (b) Section 21.047, Property Code, as amended by this Act,
25 applies only to an eminent domain proceeding commenced on or after
26 the effective date of this Act. An eminent domain proceeding
27 commenced before the effective date of this Act is governed by the

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

4 (c) Section 21.063, Property Code, as amended by this Act,
5 applies only to an appeal commenced on or after the effective date
6 of this Act. An appeal commenced before the effective date of this
7 Act is governed by the law applicable to the appeal immediately
8 before the effective date of this Act, and that law is continued in
9 effect for that purpose.

10 (d) Section 26.11, Tax Code, as amended by this Act, applies
11 only to an agreement entered into on or after the effective date of
12 this Act. An agreement entered into before the effective date of
13 this Act is governed by the law applicable to the agreement
14 immediately before the effective date of this Act, and that law is
15 continued in effect for that purpose.

16 SECTION 7. This Act takes effect September 1, 2017.