

1-1 By: Kolkhorst, et al. S.B. No. 740
 1-2 (In the Senate - Filed February 3, 2017; February 21, 2017,
 1-3 read first time and referred to Committee on State Affairs;
 1-4 April 27, 2017, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 8, Nays 1; April 27, 2017,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13		X		
1-14	X			
1-15	X			
1-16	X			
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 740 By: Hughes

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to the acquisition of property by an entity with eminent
 1-22 domain authority.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Section 402.031(b), Government Code, is amended
 1-25 to read as follows:

1-26 (b) The landowner's bill of rights must notify each property
 1-27 owner that the property owner has the right to:

1-28 (1) receive notice of the proposed acquisition of the
 1-29 owner's property;

1-30 (2) contact and speak directly with an employee of the
 1-31 entity proposing to acquire the property who is qualified to
 1-32 discuss the acquisition of the property;

1-33 (3) receive a bona fide offer from, make a
 1-34 counteroffer to, and seek to negotiate terms and conditions with
 1-35 [good faith effort to negotiate by] the entity proposing to acquire
 1-36 the property;

1-37 (4) consult with a licensed real estate broker or
 1-38 sales agent, an attorney, an appraiser, or any other person
 1-39 regarding the proposed acquisition, offer of compensation, or other
 1-40 related matters at any time;

1-41 (5) have [(3)] an assessment made of damages to the
 1-42 owner that will result from the taking of the property;

1-43 (6) be provided [(4)] a hearing under Chapter 21,
 1-44 Property Code, including a hearing on the assessment of damages;
 1-45 [and]

1-46 (7) [(5) an] appeal [of] a judgment in a condemnation
 1-47 proceeding, including to [an] appeal [of] an assessment of damages;
 1-48 and

1-49 (8) contact the office of the attorney general for
 1-50 more information regarding a property owner's rights with respect
 1-51 to the condemnation process.

1-52 SECTION 2. Section 1101.501, Occupations Code, is amended
 1-53 to read as follows:

1-54 Sec. 1101.501. CERTIFICATE REQUIRED. (a) Except as
 1-55 provided by Subsection (b), a [A] person may not sell, buy, lease,
 1-56 or transfer an easement or right-of-way [for another], for
 1-57 compensation or with the expectation of receiving compensation, on
 1-58 behalf of an entity with eminent domain authority [for use in
 1-59 connection with telecommunication, utility, railroad, or pipeline
 1-60 service] unless the person:

2-1 (1) holds a license issued under this chapter; and
2-2 [~~or~~]
2-3 (2) holds a certificate of registration issued under
2-4 this subchapter.

2-5 (b) Subsection (a) does not apply to:
2-6 (1) an entity with eminent domain authority or the
2-7 entity's employee; or
2-8 (2) an attorney licensed in this state.

2-9 SECTION 3. Section 1101.502(a), Occupations Code, is
2-10 amended to read as follows:

2-11 (a) To be eligible to receive a certificate of registration
2-12 [~~or a renewal certificate~~] under this subchapter, a person must:

2-13 (1) hold a license issued under this chapter [~~be-~~
2-14 (1) at least 18 years of age]; and

2-15 (2) complete a right-of-way agent responsibility
2-16 course approved by the commission under Section 1101.5021 [a
2-17 citizen of the United States or a lawfully admitted alien].

2-18 SECTION 4. Subchapter K, Chapter 1101, Occupations Code, is
2-19 amended by adding Sections 1101.5021, 1101.5042, and 1101.5043 to
2-20 read as follows:

2-21 Sec. 1101.5021. RIGHT-OF-WAY AGENT RESPONSIBILITY COURSE.

2-22 (a) The commission by rule shall approve a right-of-way agent
2-23 responsibility course.

2-24 (b) A course approved by the commission under this section
2-25 must include at least 15 hours of classroom instruction related to:

2-26 (1) the law of eminent domain, including the rights of
2-27 property owners;

2-28 (2) appropriate standards of professionalism in
2-29 contacting and conducting negotiations with property owners; and

2-30 (3) ethical considerations in the performance of
2-31 easement and right-of-way acquisition services.

2-32 Sec. 1101.5042. ELIGIBILITY REQUIREMENTS FOR RENEWAL
2-33 CERTIFICATE. To be eligible to receive a renewal certificate under
2-34 this subchapter, a person must:

2-35 (1) hold a license issued under this chapter; and

2-36 (2) satisfy the continuing education requirements
2-37 under Section 1101.5043.

2-38 Sec. 1101.5043. CONTINUING EDUCATION. (a) The commission
2-39 by rule shall approve a continuing education course for certificate
2-40 holders.

2-41 (b) A continuing education course approved under Subsection
2-42 (a) by the commission must include at least six hours of classroom
2-43 instruction related to the acquisition of easements and
2-44 rights-of-way under eminent domain authority.

2-45 SECTION 5. Section 21.0111, Property Code, is amended by
2-46 adding Subsections (a-1) and (a-2) to read as follows:

2-47 (a-1) After an offer to which Subsection (a) applies is
2-48 made, the entity or the property owner shall disclose to the other
2-49 party any new, amended, or updated appraisal report that is
2-50 produced or acquired by or on behalf of the entity or property owner
2-51 after the offer is made and that is used in determining the entity's
2-52 or the property owner's opinion of value. A disclosure required by
2-53 this subsection must be made not later than the earlier of:

2-54 (1) the 10th day after the date the entity or property
2-55 owner receives the appraisal report; or

2-56 (2) the third business day before the date of a special
2-57 commissioner's hearing if the appraisal report is to be used at the
2-58 hearing.

2-59 (a-2) A new, amended, or updated appraisal report that is
2-60 not disclosed as required by Subsection (a-1), and any testimony or
2-61 other evidence based on the report, may not be presented in a
2-62 hearing under Section 21.015.

2-63 SECTION 6. Section 21.0113(b), Property Code, is amended to
2-64 read as follows:

2-65 (b) An entity with eminent domain authority has made a bona
2-66 fide offer if:

2-67 (1) an initial offer is made in writing to a property
2-68 owner that includes:

2-69 (A) a monetary offer in an amount:

3-1 (i) equal to or greater than 150 percent of
3-2 the market value of the property sought to be acquired, as
3-3 determined on a per acre or per square foot proportionate valuation
3-4 of raw land as reflected in the appraisal of the county taxing
3-5 authority as of the date of the initial offer; or
3-6 (ii) if an appraisal of the property sought
3-7 to be acquired and any damages to any remaining property has been
3-8 completed by a certified appraiser, equal to or greater than the
3-9 amount provided by the appraisal report;
3-10 (B) a statement that the entity will not contact
3-11 the property owner sooner than the fourth business day after the
3-12 date of the first personal contact made by the entity after the
3-13 entity sends the initial offer, except to respond to an inquiry from
3-14 the property owner;
3-15 (C) the name and telephone number of an employee
3-16 of the entity that the property owner may contact with questions
3-17 regarding the initial offer; and
3-18 (D) a copy of the appraisal report on which the
3-19 offer is based, if applicable;
3-20 (2) a final offer is made in writing to the property
3-21 owner;
3-22 (3) the final offer is made on or after the 30th day
3-23 after the date on which the entity makes a written initial offer to
3-24 the property owner;
3-25 (4) before making a final offer, the entity obtains an
3-26 [a written] appraisal report from a certified appraiser of the
3-27 value of the property being acquired and the damages, if any, to any
3-28 of the property owner's remaining property;
3-29 (5) the final offer is equal to or greater than the
3-30 amount provided by [of] the [written] appraisal report [obtained by
3-31 the entity];
3-32 (6) the following items are included with the final
3-33 offer or have been previously provided to the owner by the entity:
3-34 (A) a copy of the [written] appraisal report;
3-35 (B) a copy of the deed, easement, or other
3-36 instrument conveying the property sought to be acquired; [and]
3-37 (C) the landowner's bill of rights statement
3-38 prescribed by Section 21.0112; and
3-39 (D) a notice, as appropriate, as described by
3-40 Section 21.0114; and
3-41 (7) the entity provides the property owner with at
3-42 least 14 days to respond to the final offer and the property owner
3-43 does not agree to the terms of the final offer within that period.
3-44 SECTION 7. Subchapter B, Chapter 21, Property Code, is
3-45 amended by adding Sections 21.0114 and 21.0115 to read as follows:
3-46 Sec. 21.0114. NOTICE REGARDING PIPELINE AND ELECTRIC
3-47 TRANSMISSION RIGHTS-OF-WAY. (a) Unless otherwise addressed by
3-48 the easement, the condemning entity shall provide a list of items
3-49 that the landowner may consider when reviewing the offer of the
3-50 condemning entity.
3-51 (b) If the property is to be acquired for purposes of a
3-52 pipeline right-of-way, the notice must include:
3-53 (1) the approximate number of pipelines that may be
3-54 installed in the right-of-way;
3-55 (2) the type or category of each product to be
3-56 transported through the pipelines to be installed in the
3-57 right-of-way;
3-58 (3) the depth of the pipeline and the amount of cover;
3-59 (4) a reasonable description of any use the entity
3-60 intends to make of the surface of the right-of-way;
3-61 (5) a metes and bounds or center line description of
3-62 the location of the right-of-way;
3-63 (6) the width of the right-of-way;
3-64 (7) whether the proposed easement is exclusive,
3-65 nonexclusive, or otherwise limited and the terms and conditions of
3-66 any proposed limitation on the property owner's right to use or
3-67 grant additional easements to other parties;
3-68 (8) the manner in which the entity will access the
3-69 right-of-way, other than in case of an emergency;

4-1 (9) a statement:
4-2 (A) regarding the property owner's right to
4-3 recover actual damages arising from the construction, maintenance,
4-4 repair, replacement, or future removal of a pipeline in the
4-5 right-of-way, including any actual damages to growing crops or
4-6 livestock; or
4-7 (B) if applicable, that the initial offer
4-8 includes damages described by Paragraph (A);
4-9 (10) a statement that the entity will agree to
4-10 coordinate with the property owner regarding the treatment of all
4-11 gates and fences; and
4-12 (11) a statement that the entity will agree to:
4-13 (A) restore to original or better condition any
4-14 areas outside the right-of-way that are used or damaged by the
4-15 entity, to the extent reasonably practicable; or
4-16 (B) pay actual damages for any of those areas the
4-17 entity does not restore.
4-18 (c) If the property is to be acquired for purposes of an
4-19 electric transmission right-of-way, the notice must include:
4-20 (1) a copy of any Public Utility Commission of Texas
4-21 order or other regulatory order relevant with respect to initial
4-22 construction;
4-23 (2) a reasonable description of any use the entity
4-24 intends to make of the surface of the right-of-way;
4-25 (3) a metes and bounds or center line description of
4-26 the location of the right-of-way;
4-27 (4) the width of the right-of-way;
4-28 (5) the type, spacing, and maximum number of poles,
4-29 towers, or other support apparatus that will be used to carry
4-30 electrical lines over the easement;
4-31 (6) whether the proposed easement is exclusive,
4-32 nonexclusive, or otherwise limited and the terms and conditions of
4-33 any proposed limitation on the property owner's right to use or
4-34 grant additional easements to other parties;
4-35 (7) the manner in which the entity will access the
4-36 right-of-way, other than in the case of emergency;
4-37 (8) a statement:
4-38 (A) regarding the property owner's right to
4-39 recover actual damages arising from the construction, maintenance,
4-40 repair, replacement, or future removal of lines and support
4-41 apparatus in the right-of-way, including any actual damages to
4-42 growing crops or livestock; or
4-43 (B) if applicable, that the initial offer
4-44 includes damages described by Paragraph (A);
4-45 (9) a statement that the entity will agree to
4-46 coordinate with the property owner regarding the treatment of all
4-47 gates and fences; and
4-48 (10) a statement that the entity will agree to:
4-49 (A) restore to original or better condition any
4-50 areas outside the right-of-way that are used or damaged by the
4-51 entity, to the extent reasonably practicable; or
4-52 (B) pay actual damages for any of those areas the
4-53 entity does not restore.
4-54 (d) A property owner and the entity may agree to terms other
4-55 than those required to be included in the notice required under this
4-56 section.
4-57 (e) If an entity does not have sufficient information to
4-58 include in a notice required under this section an item listed in
4-59 Subsection (c) or (d), as applicable, the entity shall:
4-60 (1) in the notice:
4-61 (A) indicate the item that is not included; and
4-62 (B) state that information regarding the item
4-63 will be provided to the property owner in an amended notice when
4-64 known; and
4-65 (2) as soon as practicable after the entity obtains
4-66 the information, provide the information to the property owner in
4-67 an amended notice.
4-68 Sec. 21.0115. LIMITATION OF PROPERTY OWNER LIABILITY. A
4-69 property owner is not liable to a condemning entity, the entity's

5-1 agents, employees, or contractors, including the contractor's
5-2 subcontractors of any tier, or a third party for personal injury,
5-3 death, or property damage:

5-4 (1) arising from the use by a person other than the
5-5 property owner of property, including for a right-of-way, acquired
5-6 from the property owner by condemnation; and

5-7 (2) not caused by the property owner's negligence or
5-8 intentional conduct.

5-9 SECTION 8. Section 21.041, Property Code, is amended to
5-10 read as follows:

5-11 Sec. 21.041. EVIDENCE. (a) As the basis for assessing
5-12 actual damages to a property owner from a condemnation, the special
5-13 commissioners shall admit evidence on:

5-14 (1) the value of the property being condemned;

5-15 (2) the injury to the property owner;

5-16 (3) the benefit to the property owner's remaining
5-17 property; and

5-18 (4) the use of the property for the purpose of the
5-19 condemnation.

5-20 (b) The special commissioners may admit evidence on the
5-21 price paid for pipeline or electrical line rights-of-way in
5-22 privately negotiated transactions made in the absence of a
5-23 potential, actual, or threatened condemnation.

5-24 SECTION 9. Section 21.063, Property Code, is amended by
5-25 adding Subsections (c) and (d) to read as follows:

5-26 (c) As a condition of appealing the final judgment of a
5-27 trial court in a condemnation proceeding, a nongovernmental
5-28 condemnor shall:

5-29 (1) deposit with the trial court the amount of the
5-30 final judgment, less the amount of any monetary deposit made and any
5-31 bonds posted by the condemnor under Sections 21.021(a)(2) and (3),
5-32 subject to the order of the court of appeals; or

5-33 (2) post a surety bond, issued by a surety company
5-34 authorized to engage in business in this state and conditioned to
5-35 secure the payment of the final judgment, in the amount of the final
5-36 judgment, less the amount of any monetary deposit made and any bonds
5-37 posted by the condemnor under Sections 21.021(a)(2) and (3).

5-38 (d) If the property owner moves to enforce Subsection (c)
5-39 and the nongovernmental condemnor fails to comply with that
5-40 subsection before the 30th day after the date the trial court grants
5-41 the motion:

5-42 (1) the court of appeals shall dismiss the appeal with
5-43 prejudice and order enforcement of the final judgment; and

5-44 (2) the property owner is entitled to all reasonable
5-45 and necessary fees for attorneys hired in relation to the
5-46 condemnation.

5-47 SECTION 10. Section 26.11(a), Tax Code, is amended to read
5-48 as follows:

5-49 (a) If the federal government, the state, or a political
5-50 subdivision of the state acquires the right to possession of
5-51 taxable property under a court order issued in condemnation
5-52 proceedings, assumes possession of taxable property under a
5-53 possession and use agreement, or a similar agreement, that is
5-54 entered into under threat of condemnation, or acquires title to
5-55 taxable property, the amount of the tax due on the property is
5-56 calculated by multiplying the amount of taxes imposed on the
5-57 property for the entire year as determined as provided by Section
5-58 26.09 of this code by a fraction, the denominator of which is 365
5-59 and the numerator of which is the number of days that elapsed prior
5-60 to the date of the conveyance, the effective date of the agreement,
5-61 or the date of the order granting the right of possession, as
5-62 applicable.

5-63 SECTION 11. The office of the attorney general shall make
5-64 the landowner's bill of rights statement required by Section
5-65 402.031, Government Code, as amended by this Act, available on the
5-66 attorney general's Internet website not later than January 1, 2018.

5-67 SECTION 12. Not later than January 1, 2018, the Texas Real
5-68 Estate Commission shall adopt rules to implement Subchapter K,
5-69 Chapter 1101, Occupations Code, as amended by this Act.

6-1 SECTION 13. (a) Sections 21.0111 and 21.0113, Property
6-2 Code, as amended by this Act, and Sections 21.0114 and 21.0115,
6-3 Property Code, as added by this Act, apply only to the acquisition
6-4 of real property in connection with an initial offer made under
6-5 Section 21.0113, Property Code, on or after the effective date of
6-6 this Act. An acquisition of real property in connection with an
6-7 initial offer made under Section 21.0113, Property Code, before the
6-8 effective date of this Act is governed by the law applicable to the
6-9 acquisition immediately before the effective date of this Act, and
6-10 that law is continued in effect for that purpose.

6-11 (b) Section 21.041, Property Code, as amended by this Act,
6-12 applies only to an eminent domain proceeding commenced on or after
6-13 the effective date of this Act. An eminent domain proceeding
6-14 commenced before the effective date of this Act is governed by the
6-15 law applicable to the proceeding immediately before the effective
6-16 date of this Act, and that law is continued in effect for that
6-17 purpose.

6-18 (c) Section 21.063, Property Code, as amended by this Act,
6-19 applies only to an appeal commenced on or after the effective date
6-20 of this Act. An appeal commenced before the effective date of this
6-21 Act is governed by the law applicable to the appeal immediately
6-22 before the effective date of this Act, and that law is continued in
6-23 effect for that purpose.

6-24 (d) Section 26.11, Tax Code, as amended by this Act, applies
6-25 only to an agreement entered into on or after the effective date of
6-26 this Act. An agreement entered into before the effective date of
6-27 this Act is governed by the law applicable to the agreement
6-28 immediately before the effective date of this Act, and that law is
6-29 continued in effect for that purpose.

6-30 SECTION 14. (a) Except as provided by Subsection (b) of
6-31 this section, this Act takes effect September 1, 2017.

6-32 (b) Sections 1101.501 and 1101.502, Occupations Code, as
6-33 amended by this Act, and Section 1101.5042, Occupations Code, as
6-34 added by this Act, take effect March 1, 2018.

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