

BILL ANALYSIS

C.S.S.B. 421
By: Kolkhorst
Land & Resource Management
Committee Report (Substituted)

BACKGROUND AND PURPOSE

It has been suggested that additional protections and increased transparency are needed for property owners who are forced to undergo the condemnation process with respect to the acquisition of property by certain private entities. C.S.S.B. 421 seeks to address this issue by setting out provisions relating to the acquisition of real property by an entity with eminent domain authority.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.S.B. 421 amends the Property Code to set out provisions relating to the acquisition of property by certain private entities. The bill defines "private entity" as the following:

- a for-profit entity, as defined by the Business Organizations Code, however organized, including an affiliate or subsidiary, authorized to exercise the power of eminent domain to acquire private property for public use or a group or combination of two or more such entities; or
- a corporation organized under Water Code provisions providing for nonprofit water supply or sewer service corporations that has a for-profit entity, however organized, as the sole or majority member.

The bill excludes from the term "private entity" a railroad operating in Texas and an interstate pipeline governed by the federal Natural Gas Act that does not seek to acquire property under eminent domain provisions. The bill applies its provisions relating to the acquisition of property by certain private entities only to a private entity that seeks to acquire for a project for public use 25 or more tracts of real property that are classified as residential, agricultural, or commercial property by the taxing authority that assesses property taxes on the tracts and that are owned by at least 25 separate and unaffiliated property owners. The bill exempts from such provisions, except as otherwise provided, a private entity that operates or proposes to construct an electric transmission line and is subject to the jurisdiction of the Public Utility Commission of Texas (PUC) under Utilities Code provisions relating to certificates of convenience and necessity.

C.S.S.B. 421 requires a private entity, not later than the time that the entity makes an initial bona fide offer to a property owner, to provide to the property owner a written notice of the

property owner's right to request a meeting, subject to certain bill provisions, to discuss the proposed project, including certain required contents, and sets out provisions relating to the sending of such notice. The bill authorizes a private entity to include in the notice a requirement that an applicable property owner, not later than five days before the date of the meeting, notify the private entity of the property owner's intention to attend the meeting and identify certain specified individuals associated with or representing the property owner who intend to attend the meeting.

C.S.S.B. 421 requires a private entity to hold a property owner information meeting for a segment or section of a proposed project route only if at least 25 percent of property owners of property in the segment or section who are entitled to notice submit a written request for the meeting. The request must be received by the private entity not later than the 14th day after the date of the notice of the property owner's right to request such a meeting is provided to the property owner. The bill sets out provisions relating to such a request and such a notice of the meeting. The bill requires a private entity required to hold a property owner information meeting to hold the following:

- for a proposed project that is equal to or less than 100 miles in length, at least one meeting for each contiguous linear section of the project, as designated by the private entity; and
- for a proposed project that is more than 100 miles in length, at least one meeting for each segment of the project, as designated by the private entity and not to exceed 100 miles in length.

C.S.S.B. 421 requires the private entity to hold a property owner information meeting in a centrally located public location that is appropriate to the size and nature of the meeting and that is as convenient as practicable to the majority of the tracts of real property affected by the project section or segment for which the meeting is held. The bill, among other related provisions:

- authorizes specified individuals to attend a meeting in addition to the property owner and the private entity representatives;
- requires one or more representatives designated by the private entity to attend and participate in a meeting;
- requires a private entity to present an agenda at a meeting; and
- authorizes attendees to ask questions of and make comments to a representative of the private entity regarding certain topics as specified by the bill.

C.S.S.B. 421 sets out provisions requiring the presentation of an agenda at a property owner information meeting and authorizing attendees of the meeting to ask questions of and make comments to a representative of the private entity regarding certain topics as specified by the bill, applicable to a meeting with a private entity that:

- proposes to exercise the power of eminent domain to construct an electric transmission line;
- is subject to the authority of the PUC under Utilities Code provisions relating to certificates of convenience and necessity; and
- is required by the PUC to conduct the meeting in connection with the electric transmission line project.

C.S.S.B. 421 prohibits a condemnation proceeding from being abated, dismissed, or delayed because a private entity does not comply with the applicable meeting provisions of the bill.

C.S.S.B. 421 sets out the conditions under which a private entity with eminent domain authority

that wants to acquire real property for a public use through the exercise of the power of eminent domain has made a bona fide offer and sets out related provisions, including provisions relating to the requirements for the initial offer of compensation. The bill prohibits such a private entity from directly or indirectly offering or paying to an agent or employee of the private entity a financial incentive to make an initial offer for the acquisition of real property for a public use that the agent or employee knows or should know is lower than the lowest initial offer required under the bill. The bill requires a deed, easement, agreement, or other instrument of conveyance provided to a property owner by a private entity with eminent domain authority for the acquisition of the property interest to be conveyed for a public use and that seeks to acquire the property interest through the exercise of the power of eminent domain to include certain terms, depending on whether the instrument conveys a pipeline right-of-way easement or conveys an electric transmission right-of-way easement.

C.S.S.B. 421, with respect to its provisions relating to required terms for instruments of conveyance by certain private entities:

- establishes that the provisions do not prohibit a private entity or the property owner from proposing or agreeing to add to, change, or omit any applicable required term at any time after the private entity first provides a deed, easement, agreement, or other instrument containing the term to the property owner, whether provided before or at the same time as the entity's initial offer to the property owner;
- requires a private entity that adds to, changes, or omits a term to provide a copy of the amended deed, easement, agreement, or other instrument of conveyance to the property owner before the date the private entity files a condemnation petition relating to the property; and
- establishes that a private entity that changes a deed, easement, agreement, or other instrument of conveyance to which such provisions apply after the initial or final offer is not required to satisfy again any bona fide offer requirement that the private entity has previously satisfied.

C.S.S.B. 421 establishes that, notwithstanding eminent domain provisions and regardless of whether an acquisition is for a public use, a property owner and a private entity are not prohibited from agreeing to acquisition by the private entity of an interest in the property owner's property without complying with certain specified bill provisions at any time after the private entity provides the landowner's bill of rights statement to the property owner.

C.S.S.B. 421 sets the 15th calendar day after the date a condemnation petition is filed as the deadline by which the judge of a court in which the condemnation petition is filed or to which an eminent domain case is assigned must appoint the special commissioners. The bill, in additional provisions regarding special commissioners:

- requires the judge to also appoint two disinterested real property owners who reside in the county as alternate special commissioners;
- revises a provision regarding the preference given by the judge in appointing special commissioners and specifies the period in which each party has to strike an appointed special commissioner as the period consisting of the seven calendar days after the date of the appointment of the special commissioners;
- replaces the requirement that the judge appoint a replacement if a person fails to serve as a special commissioner or is struck by a party to the suit with a requirement that, in such event, an alternate special commissioner serve as a replacement for the special commissioner based on the order that the alternate special commissioners are listed in the initial order of appointment;
- revises provisions relating to the scheduling of a hearing by the special commissioners to require the hearing to occur not earlier than the 20th day or later than the 45th day

after the date the commissioners were appointed unless otherwise agreed by the parties;

- revises provisions relating to the serving of the hearing notice to authorize service in a manner provided by the Texas Rules of Civil Procedure for service of citation; and
- requires the special commissioners to file their findings with the court not later than the third calendar day after the date of the special commissioners hearing.

C.S.S.B. 421 specifies that the abatement of an eminent domain suit in which the court determines that a condemnor did not make a bona fide offer to acquire the property from the property owner voluntarily continues only until the condemnor makes a bona fide offer.

C.S.S.B. 421 establishes that the temporary removal of land from timber, agriculture, or open space usage due to construction in a right of way or easement under threat of eminent domain is not a change of use as that term is used for purposes of property taxation.

C.S.S.B. 421, in provisions set to expire December 31, 2030, establishes that the legislature will not add a provision to or amend or repeal a provision of the Property Code eminent domain chapter during the period beginning January 1, 2020, and ending December 31, 2030, or enact, amend, or repeal other laws during that period concerning procedures for, prerequisites to, or damages available in connection with the acquisition of property for a public use by an entity with eminent domain authority and provides that these provisions do not apply to:

- a provision regarding high-speed rail, as defined by the Transportation Code;
- an amendment stakeholders agree is necessary to give effect to or correct an existing provision;
- an amendment in response to a final and unappealable judgment or order of a state or federal court; or
- a nonsubstantive addition to, revision of, or correction in an enacted code or other law.

C.S.S.B. 421 makes the entire bill invalid if any provision of the bill or its application to any person or circumstance is finally held to be unconstitutional and declares that, to this end, the bill's provisions are nonseverable. The bill sets out procedural provisions relating to the applicability of its provisions.

EFFECTIVE DATE

January 1, 2020.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 421 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.

The substitute replaces provisions that provide for conditions under which a private entity with eminent domain authority that wants to acquire real property for a pipeline or electric transmission project has made a bona fide offer with provisions that provide for conditions under which a private entity with eminent domain authority that wants to acquire real property for a public use through the exercise of the power of eminent domain has made a bona fide offer.

The substitute revises provisions relating to required terms for instruments of conveyance by certain private entities. The substitute includes a provision establishing that a property owner and a private entity are not prohibited from agreeing to acquisition by the private entity of an interest in the property owner's property without complying with specified bill provisions at any

time after the private entity provides the landowner's bill of rights statement to the property owner.

The substitute does not include a provision requiring a condemnation petition filed by a private entity for the acquisition of property for a pipeline or electric transmission project to state, in addition to the applicable prescribed contents, the terms to be included in the instrument of conveyance under the bill's provisions relating to required terms for instruments of conveyance by certain private entities.

The substitute includes provisions relating to special commissioners that do the following:

- set a deadline by which an applicable judge is required to appoint the special commissioners;
- require the judge to also appoint two disinterested real property owners who reside in the county as alternate special commissioners;
- revise a provision regarding the preference given by the judge in appointing special commissioners;
- specify the period for the striking of an appointed special commissioner by a party;
- replace the requirement that the judge appoint a replacement if a person fails to serve as a special commissioner or is struck by a party to the suit with a requirement that, in such event, an alternate special commissioner serve as a replacement for the special commissioner based on the order that the alternate special commissioners are listed in the initial order of appointment;
- revise provisions relating to the scheduling of a hearing by the special commissioners and the serving of the hearing notice; and
- require the special commissioners to file their findings with the court not later than the third calendar day after the date of the special commissioners' hearing.

The substitute, with respect to the bill's provisions relating to the acquisition of property by certain private entities, does the following:

- revises the definition of "private entity";
- revises the applicability of the provisions;
- revises property owner information meeting provisions, including by doing the following:
 - providing for a meeting prerequisite; and
 - not including provisions relating to contact after a meeting or relating to procedures after a project reroute;
- revises provisions relating to procedures for certain private entities subject to PUC jurisdiction; and
- changes private entity noncompliance provisions.

The substitute does not include a provision requiring the special commissioners, in estimating certain injury or benefit in a condemnation proceeding relating to the acquisition of real property by a private entity for a pipeline or electric transmission project, to consider, in addition to other applicable required considerations, an injury or benefit to the remaining property as a result of certain specified factors.

The substitute includes a provision specifying that the abatement of an eminent domain suit in which the court determines that a condemnor did not make a bona fide offer to acquire the property from the property owner voluntarily continues only until the condemnor makes a bona fide offer.

The substitute includes a provision establishing that the temporary removal of land from timber, agriculture, or open space usage due to construction in a right of way or easement under threat of eminent domain is not a change of use as that term is used for purposes of property taxation.

The substitute includes provisions establishing a temporary moratorium on certain legislative acts.

The substitute includes a provision making the entire bill invalid if any provision of the bill or its application to any person or circumstance is finally held to be unconstitutional and declaring that to this end the bill's provisions are nonseverable.

The substitute differs with respect to certain procedural applicability provisions.

The substitute changes the bill's effective date.