

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 421
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State Affairs
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The proposed legislation consists of three components designed to provide additional protections and transparency for landowners who are forced to undergo the condemnation process. It is largely limited to private condemners.

Defined Minimum Easement Terms: The bill requires private condemners to use standardized easement forms that contain minimum protections for landowners related to issues that they may not otherwise know to discuss. S.B. 740 from the 85th Regular Session contained similar language.

Public Meeting Requirement: The bill requires a private condemner that wishes to acquire for the same public use one or more tracts of real property located entirely in one county and owned by at least four property owners to hold a public meeting in that county to allow the public to learn more about the acquisition. This requirement adds an additional layer of transparency and provides a forum where landowners can have their questions answered.

Low Offer Protection: Private entities often offer less than fair market value. This bill contains a provision designed to prevent low-ball offers. The bill would require a court to award additional damages to a landowner if the special commissioners' award is vastly higher than the initial offer. The bill provides varying levels of damages. If the special commissioners' award to the property owner damages in an amount that exceeds the amount of the condemner's initial offer by:

at least 25 percent but less than 50 percent, the condemner pays the damages awarded and an additional 25 percent of the damages awarded;

at least 50 percent but less than 100 percent, the condemner pays the damages awarded and an additional 30 percent of the damages awarded; or

100 percent or more, the condemner pays the damages awarded and 35 percent of the damages awarded. (Original Author's/Sponsor's Statement of Intent)

C.S.S.B. 421 amends current law relating to the acquisition of real 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 21.0113, Property Code, by amending Subsection (b) and adding Subsections (c), (d), and (e), as follows:

(b) Provides that an entity with eminent domain authority has made a bona fide offer if:

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

(A) an offer of compensation in an amount equal to or greater than 145 percent of the market value of the property sought to be acquired and damages, if any, to any of the property owner's remaining property based on an appraisal report on the property by a certified appraiser or a market study of the property conducted by a certified appraiser; and

(B) the complete written appraisal report or market study that forms the basis for the amount of the offer of compensation under Paragraph (A);

(2) a final offer is made in writing to the property owner that includes an offer of compensation in an amount equal to or greater than the amount of the offer of compensation included in the initial offer;

(3) makes no changes to this subdivision;

(4) before making a final offer, the entity obtains a written appraisal report from a certified appraiser selected or approved by the property owner of the value of the property being acquired and the damages, if any, to any of the property owner's remaining property;

(5) the final offer is equal to or greater than the amount of written appraisal report, rather than is equal to or greater than the amount of the written appraisal obtained by the entity;

(6) the following items are included with the final offer or have been previously provided to the owner by the entity:

(A) a copy of the written appraisal report;

(B) a copy of the deed, easement, agreement, or other instrument conveying the property sought to be acquired; and

(C) the landowner's bill of rights statement prescribed by Section 21.0112 (Provision of Landowner's Bill of Rights Statement Required); and

(7) makes no changes to this subdivision.

(c) Provides that, notwithstanding Subsection (b), a private entity as defined by Section 21.031 has made a bona fide offer only if the entity satisfies the requirements of Subsection (b) and includes in the initial offer notice of the terms described by Section 21.0114(b) for which the property owner may negotiate to be included in a deed, easement, agreement, or other instrument of conveyance relating to the property and notice that the property owner will also receive a final offer accompanied by an appraisal.

(d) Provides that, notwithstanding Subsections (b) and (c), a private entity subject to Subchapter B-1 has made a bona fide offer only if the entity satisfies the requirements of Subsections (b) and (c), includes in the initial offer a copy of the notice of the property owner information meeting required by Section 21.036, and participates in the meeting in the manner prescribed by Section 21.038.

(e) Authorizes a court with jurisdiction of a condemnation proceeding involving property for which an entity is required to make a bona fide offer under this section to:

(1) determine whether the entity has complied with the requirements of Subsection (b), including whether the entity or the entity's certified appraiser intentionally omitted damages to the property owner's remaining property; and

(2) if the court determines that the entity has not complied with the requirements of Subsection (b) abate a pending proceeding and make an award of such relief as the court considers appropriate.

SECTION 2. Amends Subchapter B, Chapter 21, Property Code, by adding Sections 21.0114 and 21.0115, as follows:

Sec. 21.0114. REQUIRED TERMS FOR INSTRUMENTS OF CONVEYANCE BY CERTAIN PRIVATE ENTITIES. (a) Requires the deed, easement, agreement or other instrument of conveyance provided to a property owner by a private entity as defined by Section 21.031, that has or asserts the power of eminent domain to acquire the property interest to be conveyed to include, except as provided by Subsections (c) and (d), certain specified terms, as applicable.

(b) Authorizes a property owner to negotiate for the following terms to be included in a deed, easement, agreement, or other instrument of conveyance described by Subsection (a):

(1) a provision regarding the property owner's right to negotiate to recover damages for tree loss and the income loss from disruption of agricultural production or hunting;

(2) a prohibition against any use of the property being conveyed, other than a use stated in the deed, easement, agreement, or other instrument of conveyance, without the express written consent of the property owner;

(3) a provision requiring the private entity to maintain at all times while the private entity uses the easement, including during construction and operations on the easement, liability insurance issued by an insurer authorized to issue liability insurance in this state and insuring the property owner against liability for personal injuries and property damage sustained by any person caused by the use of the easement by the private entity or the private entity's agents or contractors or if the private entity is subject to the jurisdiction of the Public Utility Commission of Texas or has a net worth of at least \$25 million, requiring the private entity to indemnify the property owner against liability for personal injuries and property damage sustained by any person caused by the use of easement by the private entity or the private entity's agents or contractors; and

(4) a provision that the terms of the deed, easement, agreement, or other instrument of conveyance will bind the successors and assigns of the property owner and private entity.

(c) Authorizes a private entity, as defined by Section 21.031, or the property owner to negotiate for and agree to terms and conditions not required by Subsection (a) or provided by Subsection (b), including terms and conditions not included in a subsequent condemnation petition and agree to a deed, easement, agreement, or other instrument of conveyance that does not include the terms required by Subsection (a).

(d) Provides that, except as provided by this subsection, this section does not prohibit a private entity from amending the terms required by Subsection (a) after the private entity makes an initial offer or final offer to a property owner as required by Section 21.0113. Requires a private entity that changes the terms required by Subsection (a) to provide a copy of the amended deed, easement, agreement, or other instrument of conveyance to the property owner not later than the 14th day before the date the private entity files a condemnation petition relating to the property.

(e) Provides that a private entity that amends a deed, easement, agreement, or other instrument of conveyance after the initial offer or final offer is not required to satisfy again any requirement of that section that the private entity has previously satisfied.

(f) Authorizes a court with jurisdiction of a condemnation proceeding involving property the acquisition of which is subject to the requirements of this section to:

(1) determine whether the private entity has complied with the requirements of this section; and

(2) if the court determines that the private entity has not provided to a property owner a deed, easement, agreement, or other instrument of conveyance that complies with the requirements of this section:

(A) abate a pending proceeding;

(B) order the private entity to provide to the property owner a deed, easement, agreement, or other instrument of conveyance that complies with the requirements of this section; and

(C) order the private entity to pay to the property owner all costs related to the private entity's failure to comply with this section and any reasonable attorney's fees and other professional fees incurred by the property owner that are directly related to the private entity's failure to comply with this section.

Sec. 21.0115. EX PARTE COMMUNICATION. (a) Prohibits a private entity as defined by Section 21.031 that wants to acquire real property for a public use, the entity's representative, or the owner of the real property from engaging, without first attempting to include the property owner or the entity, as applicable, in ex parte communication concerning the merits of the condemnation with a court that has jurisdiction of a condemnation proceeding involving the property or with a special commissioner appointed in the condemnation proceeding.

(b) Requires a private entity to provide written notice to a property owner of any communication between the entity and a court or special commissioner described by Subsection (a) for which the property owner is not present.

(c) Defines "private entity" for purposes of this section.

SECTION 3. Amends Section 21.012, Property Code, by adding Subsection (b-1) to require a petition filed by a private entity as defined by Section 21.031, in addition to the contents prescribed by Subsection (b), to state the terms to be included in the instrument of conveyance under Section 21.0114.

SECTION 4. Amends Chapter 21, Property Code, by adding Subchapter B-1, as follows:

SUBCHAPTER B-1. ACQUISITION OF PROPERTY BY CERTAIN PRIVATE ENTITIES

Sec. 21.031. DEFINITION. Defines "private entity" for purposes of this subchapter.

Sec. 21.032. APPLICABILITY OF SUBCHAPTER. Provides that this subchapter applies only to a private entity that wants to acquire for the same public use one or more tracts or parcels of real property located entirely in one county and owned by at least four property owners.

Sec. 21.033. NOTICE OF INTENT. (a) Requires a private entity, not later than the 45th day before the date the entity makes an initial offer to acquire real property under this

chapter, to send a written notice of intent to a court that would have jurisdiction of a condemnation proceeding involving the property.

(b) Requires a notice sent under Subsection (a) to state the private entity's intent to acquire real property for public use, specify the public use, identify the real property the entity intends to acquire and the owners of the property, and disclose the date by which the entity will make the initial offer.

Sec. 21.034. PROPERTY OWNER INFORMATION MEETING. Requires a private entity, not later than the 30th day after the date the court receives a notice of intent required by Section 21.033, to select the date on which a public meeting regarding the proposed acquisition will be held.

(b) Provides that the meeting described by Subsection (a):

(1) is required to take place in a public location appropriate to the size and nature of the meeting in the county in which the real property is located and at a time when the property owners identified by the private entity Section 21.033 may reasonably be able to attend; and

(2) is prohibited from taking place earlier than the 14th day after the date a private entity makes an initial offer to a property owner identified in the notice of intent under Section 21.033.

Sec. 21.035. PERSONS AUTHORIZED TO ATTEND PROPERTY OWNER INFORMATION MEETING. Authorizes certain individuals, in addition to the property owner and the private entity, to attend a meeting held under Section 21.034.

Sec. 21.036. NOTICE OF PROPERTY OWNER INFORMATION MEETING IN INITIAL OFFER. Requires a private entity that gives a notice of intent under Section 21.033 to include with the entity's initial offer notice of the meeting to be held under Section 21.034, including the date, time, and location of the meeting.

Sec. 21.037. PARTICIPATION BY PRIVATE ENTITY REQUIRED. Requires a representative of the private entity that gives a notice of intent under Section 21.033 to attend the meeting and to participate in the meeting in the manner prescribed by Section 21.038.

Sec. 21.038. PROPERTY OWNER INFORMATION MEETING AGENDA. Provides that at a meeting scheduled under Section 21.034:

(1) the private entity is required to present:

(A) the information contained in the landowner's bill of rights statement required to be provided to a property owner under Section 21.0112;

(B) a description of the public use for which the entity wants to acquire the real property, including technical details;

(C) if applicable, a statement of the terms required under Section 21.0114 to be included in a deed, easement, agreement, or other instrument of conveyance provided by the entity to the property owner;

(D) the method and factors used by the entity to calculate the entity's initial offer, including how damages to remaining property were evaluated and, if the entity used a property appraisal or market value study, the name of the person that performed the appraisal or study;

(E) the entity's justification for the proposed public use, including any materials used by the entity to obtain a determination that the project is a public use;

(F) the legal and factual basis for the entity's exercise of its eminent domain authority;

(G) the name and contact information of any third-party contractor to be used by the entity to acquire the land or undertake the project; and

(H) a description of any regulatory process required for approval of the project, including any evaluation of the project's necessity, and information about how a property owner may participate in the process; and

(2) each property owner identified by the private entity under Section 21.033 or the property owner's designee is required to be given an opportunity to ask questions and make comments regarding the rights of the property owners, the proposed public use, and terms required under Section 21.0114 to be included in a deed, easement, agreement, or other instrument of conveyance provided by the entity to a property owner.

Sec. 21.039. CONTACT AFTER PROPERTY OWNER INFORMATION MEETING. Prohibits a private entity from contacting a property owner to whom the entity has made an initial offer before the seventh day after the date of the meeting held under Section 21.034.

Sec. 21.0391. CERTIFICATION OF ENTITY PARTICIPATION IN PROPERTY OWNER INFORMATION MEETING REQUIRED. (a) Requires a private entity, after the entity participates in a meeting held under Section 21.034, to submit evidence documenting its participation to the court to which the entity gave notice of intent under Section 21.033. Requires the court to review the evidence submitted by the entity and, if the court determines that the entity has satisfied the requirements of this subchapter, to certify that the entity has satisfied the requirements of this subchapter.

(b) Defines "electric utility" for purposes of this subsection.

(c) Prohibits a private entity from acquiring property to which this subchapter applies unless the entity receives a certification under Subsection (a) or (b) with respect to the property.

Sec. 21.0392. PUBLICATION AND PROVISION OF CERTAIN MATERIALS. Requires a private entity to publish on an Internet website any materials presented under Section 21.038(1)(E) and to provide to property owners identified by the entity under Section 21.033 any materials presented under Section 21.038(1)(E).

SECTION 5. Amends Section 21.042, Property Code, by adding Subsection (d-1), as follows:

(d-1) Requires the special commissioners, in estimating injury or benefit under Subsection (c) in a condemnation proceeding relating to the acquisition of real property by an entity subject to Subchapter B-1, to consider, in addition to the considerations required under Subsection (d), an injury or benefit to the remaining property as a result of:

(1) the characteristics of any infrastructure on condemned property including the size or visibility of the infrastructure or the pressure or voltage range provided by the infrastructure;

(2) any limitation of future expansion of the remaining property; and

(3) terms of the easement acquired in connection with, or the alignment of an easement in connection with, the condemnation.

SECTION 6. Makes application of this Act prospective.

SECTION 7. Effective date: September 1, 2019.