By:  Kolkhorst, et al. S.B. No. 421

(Craddick, Burns, Burrows, Phelan, et al.)

Substitute the following for S.B. No. 421:

By:  Craddick C.S.S.B. No. 421

A BILL TO BE ENTITLED

AN ACT

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

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

SECTION 1.  Section 21.0113, Property Code, is amended by adding Subsections (c), (d), (e), and (f) to read as follows:

(c)  Notwithstanding Subsection (b), a private entity, as defined by Section 21.031, 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 only if the entity:

(1)  satisfies the requirements of Subsection (b);

(2)  includes with the initial offer:

(A)  an offer of compensation in an amount equal to or greater than:

(i)  the market value of the property rights sought to be acquired, including an estimate of damages to the property owner's remaining property, if any, based on an appraisal of the property prepared by a third party who is a certified general appraiser licensed under Chapter 1103, Occupations Code;

(ii)  the estimated price or market value of the property rights sought to be acquired based on data for at least three comparable arm's-length sales of a property based on data then available to the appraiser, broker, or private entity, as applicable, and based on:

(a)  a comparative market analysis prepared by a third party who is a real estate broker licensed under Chapter 1101, Occupations Code, or a certified general appraiser licensed under Chapter 1103, Occupations Code;

(b)  a broker price opinion prepared by a third party who is a real estate broker licensed under Chapter 1101, Occupations Code; or

(c)  a market study prepared by a third party who is a real estate broker licensed under Chapter 1101, Occupations Code, or a certified general appraiser licensed under Chapter 1103, Occupations Code; or

(iii)  140 percent of the per acre value for each acre or part of an acre sought to be acquired by the private entity from the property owner, based on the total land value and improvements, if any, for the affected property as reflected in the most recent tax rolls of the central appraisal district in which the property is located;

(B)  the complete written report of the appraisal, the comparative market analysis, the broker price opinion, the market study, or a summary of the market study, as prepared by the third party, or, if applicable, a description of the method described by Paragraph (A)(iii) and the related information from the central appraisal district, that forms the basis for the amount of the offer of compensation under Paragraph (A);

(C)  a deed, easement, agreement, or other instrument of conveyance for the property rights sought that complies with Section 21.0114(a) unless previously provided to the property owner; and

(D)  the landowner's bill of rights statement prescribed by Section 21.0112, unless previously provided to the property owner; and

(3)  provides notice of the proposed project to the constitutional county judge of each county that the project is proposed to traverse not later than the time that an initial offer is made to acquire property in the county in connection with the project.

(d)  For purposes of Subsection (c)(2)(A)(ii), a real estate broker licensed under Chapter 1101, Occupations Code, is authorized to prepare an estimated price based on a comparative market analysis, a broker price opinion, a market study, or a summary of the market study.

(e)  A private entity that provides to a property owner an easement form that is generally consistent with the language or provisions required by Section 21.0114(a) is considered to have complied with Section 21.0114(a) for purposes of Subsection (c)(2)(C), regardless of whether the private entity subsequently provides to the property owner a different deed, easement, agreement, or other instrument of conveyance as authorized under Section 21.0114.

(f)  Notwithstanding any other law, a private entity, as defined by Section 21.031, with eminent domain authority that wants to acquire real property for a public use may not, directly or indirectly, offer or pay to an agent or employee of the private entity a financial incentive that would tend to encourage the agent or employee to make an initial offer that the agent or employee knows or should know is lower than the lowest initial offer required under Subsection (c)(2)(A).

SECTION 2.  Subchapter B, Chapter 21, Property Code, is amended by adding Sections 21.0114 and 21.0115 to read as follows:

Sec. 21.0114.  REQUIRED TERMS FOR INSTRUMENTS OF CONVEYANCE BY CERTAIN PRIVATE ENTITIES. (a) Except as provided by Subsection (b), a deed, easement, agreement, or other instrument of conveyance provided to a property owner by a private entity, as defined by Section 21.031, with eminent domain authority to acquire 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 must include the following terms, as applicable:

(1)  if the instrument conveys a pipeline right-of-way easement, the following terms with respect to the easement rights granted under the instrument:

(A)  the maximum number of pipelines that may be installed in the easement;

(B)  the maximum diameter, excluding any protective coating or wrapping, of each pipeline to be initially installed in the easement;

(C)  the type or category of substances permitted to be transported through each pipeline to be initially installed in the easement;

(D)  a general description or illustration of the location of the easement on the property in the form of a plat map, aerial sketch, or other type of description or illustration;

(E)  the maximum width of the easement; and

(F)  the minimum depth at which each pipeline to be installed in the easement will initially be installed; and

(2)  if the instrument conveys an electric transmission right-of-way easement:

(A)  a general description of any use of the surface of the easement the entity intends to acquire;

(B)  a general description or illustration of the location of the easement on the property in the form of a plat map, aerial sketch, or other type of description or illustration; and

(C)  the maximum width of the easement.

(b)  Except as provided by this subsection, this section does not prohibit a private entity or the property owner from proposing or agreeing to add to, change, or omit any term required by Subsection (a) 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. A private entity that adds to, changes, or omits any term required by Subsection (a) must 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.

(c)  A private entity that changes a deed, easement, agreement, or other instrument of conveyance to which this section applies after the initial offer or final offer is not required to satisfy again any requirement of Section 21.0113 that the private entity has previously satisfied.

Sec. 21.0115.  MUTUAL AGREEMENT. Notwithstanding any other provision of this chapter and regardless of whether an acquisition is for a public use, a property owner and a private entity, as defined by Section 21.031, are not prohibited from agreeing to acquisition by the private entity of an interest in the property owner's property without complying with the provisions of Section 21.0113(c) or 21.0114 at any time after the private entity provides the landowner's bill of rights statement to the property owner in accordance with Section 21.0112.

SECTION 3.  Section 21.014(a), Property Code, is amended to read as follows:

(a)  The judge of a court in which a condemnation petition is filed or to which an eminent domain case is assigned shall, not later than the 15th calendar day after the date the petition is filed, appoint three disinterested real property owners who reside in the county as special commissioners to assess the damages of the owner of the property being condemned and two disinterested real property owners who reside in the county as alternate special commissioners. The judge appointing the special commissioners shall give preference to any persons agreed on by the parties before the court appoints the special commissioners. Each party shall have seven calendar days after the date of the appointment of the special commissioners [~~The judge shall provide each party a reasonable period~~] to strike one of the three special commissioners [~~appointed by the judge~~]. If a person fails to serve as a special commissioner or is struck by a party to the suit in accordance with this subsection, an alternate special commissioner shall 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 [~~, the judge shall appoint a replacement~~].

SECTION 4.  Section 21.015(a), Property Code, is amended to read as follows:

(a)  Unless otherwise agreed by the parties, the [~~The~~] special commissioners in an eminent domain proceeding shall [~~promptly~~] schedule a hearing to occur not earlier than [~~for the parties at the earliest practical time but may not schedule a hearing to assess damages before~~] the 20th day or later than the 45th day after the date the special commissioners were appointed. The special commissioners shall schedule a hearing for the parties at a place that is as near as practical to the property being condemned or at the county seat of the county in which the proceeding is being held.

SECTION 5.  Section 21.016(d), Property Code, is amended to read as follows:

(d)  Notice may be served[~~:~~

[~~(1)~~]  by delivering a copy of the notice to the party or to the party's agent or attorney or in another manner provided by the Texas Rules of Civil Procedure for service of citation[~~;~~

[~~(2)  if the property being condemned belongs to a deceased's estate or to a minor or other legally disabled person and the person or estate has a legal representative, by delivering a copy of the notice to the legal representative; or~~

[~~(3)  if the property being condemned belongs to a nonresident of this state and there has been no personal service on the owner, if the identity or the residence of the property owner is unknown, or if the property owner avoids service of notice by hiding, by publication in the same manner as service of citation by publication in other civil cases in the district courts or county courts at law~~].

SECTION 6.  Subchapter B, Chapter 21, Property Code, is amended by adding Section 21.0161 to read as follows:

Sec. 21.0161.  FILING OF COMMISSIONERS' FINDINGS. The special commissioners shall file their findings with the court not later than the third calendar day after the date of the special commissioners' hearing.

SECTION 7.  Chapter 21, Property Code, is amended by adding Subchapter B-1 to read as follows:

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

Sec. 21.031.  DEFINITION. In this subchapter, "private entity":

(1)  means:

(A)  a for-profit entity, as defined by Section 1.002, 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

(B)  a corporation organized under Chapter 67, Water Code, that has a for-profit entity, however organized, as the sole or majority member; and

(2)  does not include:

(A)  a railroad operating in this state; or

(B)  an interstate pipeline governed by the Natural Gas Act (15 U.S.C. Section 717 et seq.) that does not seek to acquire property under this chapter.

Sec. 21.032.  APPLICABILITY OF SUBCHAPTER. (a) This subchapter applies only to a private entity that seeks to acquire for a project for public use 25 or more tracts of real property that are:

(1)  classified as residential, agricultural, or commercial property by the taxing authority that assesses ad valorem taxes on the tracts; and

(2)  owned by at least 25 separate and unaffiliated property owners.

(b)  Except as expressly provided by Section 21.038, this subchapter does not apply to a private entity that:

(1)  operates or proposes to construct an electric transmission line; and

(2)  is subject to the jurisdiction of the Public Utility Commission of Texas under Chapter 37, Utilities Code.

Sec. 21.033.  NOTICE OF RIGHT TO REQUEST MEETING. (a) Not later than the time that a private entity makes an initial offer to a property owner under Section 21.0113, the private entity shall provide to the property owner a written notice of the property owner's right to request a meeting, subject to Section 21.0331, to discuss the proposed project, including:

(1)  if the project is a pipeline, the substances, products, materials, installations, and structures the private entity intends to transport through, use for, or build as part of the project; and

(2)  any regulatory filings for the project existing at that time, if any, as to the regulatory classification of the project.

(b)  The private entity shall send the notice to:

(1)  the property owner listed for the property on the most recent tax roll for a taxing unit with authority to levy an ad valorem tax on the property at the address for the property owner listed on the tax roll; or

(2)  the address for the property listed on the tax roll described by Subdivision (1).

Sec. 21.0331.  PREREQUISITE FOR PROPERTY OWNER MEETING. (a) A private entity is required to hold a property owner information meeting under Section 21.034 for a segment or section of a proposed project route, as described by Section 21.034(a), only if at least 25 percent of property owners of property in the segment or section who are entitled to notice under Section 21.033 submit a request for the meeting as provided by Subsection (b).

(b)  A property owner request for a meeting under Section 21.034 must be:

(1)  in writing; and

(2)  received by the private entity not later than the 14th day after the date of the notice provided to the property owner under Section 21.033.

Sec. 21.0332.  NOTICE OF PROPERTY OWNER INFORMATION MEETING. A private entity required under Section 21.0331 to hold a property owner information meeting for a segment or section of a proposed project route, as described by Section 21.034(a), shall send notice to each property owner of property in the segment or section of the date, time, and location of the meeting.

Sec. 21.034.  PROPERTY OWNER INFORMATION MEETING. (a) If required under Section 21.0331(a), a private entity shall hold:

(1)  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

(2)  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.

(b)  The private entity shall hold a meeting under Subsection (a) in a centrally located public location:

(1)  appropriate to the size and nature of the meeting; and

(2)  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.

Sec. 21.035.  PERSONS AUTHORIZED TO ATTEND PROPERTY OWNER INFORMATION MEETING. (a)  In addition to the property owner and the private entity representatives, the following individuals may attend a meeting held under Section 21.034:

(1)  an invited relative of the property owner who is related to the property owner within the third degree by consanguinity or affinity, as determined under Chapter 573, Government Code;

(2)  an attorney or licensed appraiser representing the property owner;

(3)  an employee or a lessee of the property owner that has direct knowledge of the property; or

(4)  an employee of an entity with whom the property owner has contracted for services to manage the property.

(b)  A private entity may include in the notice required by Section 21.0332 a requirement that the property owner, not later than five days before the date of the meeting:

(1)  notify the private entity that the property owner intends to attend the meeting; and

(2)  identify persons described by Subsections (a)(1)-(4) who intend to attend the meeting.

(c)  The number of attendees under Subsections (a)(1)-(4) may not exceed five individuals for each separate tract of property.

(d)  The private entity may:

(1)  require attendees to:

(A)  provide one form of government-issued photo identification; and

(B)  complete a registration form that includes contact information; and

(2)  exclude from the meeting:

(A)  any person who does not provide at least one form of government-issued photo identification or complete a registration form, if required by the private entity as provided under Subdivision (1); and

(B)  any person described by Subsections (a)(1)-(4) who is not timely identified to the private entity, if required by the private entity as provided under Subsection (b).

(e)  The private entity may take reasonable steps to maintain safety and decorum at the meeting, including expelling attendees who do not meet the requirements of this subchapter or who disrupt the meeting.

(f)  Notwithstanding Subsection (b)(1), the private entity may not deny entry to a property owner who provides proper identification and completes a registration form, if required by the private entity as provided under Subsection (d)(1).

Sec. 21.036.  PARTICIPATION BY PRIVATE ENTITY REQUIRED. One or more representatives designated by the private entity shall:

(1)  attend each meeting held under Section 21.034; and

(2)  participate in those meetings as described by Section 21.037.

Sec. 21.037.  PROPERTY OWNER INFORMATION MEETING AGENDA. At a meeting held under Section 21.034:

(1)  the private entity shall present an agenda; and

(2)  attendees of the meeting may ask questions of and make comments to a representative of the private entity regarding:

(A)  the rights of the property owners;

(B)  the proposed public use for which the real property is to be acquired; and

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

Sec. 21.038.  PROCEDURES FOR CERTAIN PRIVATE ENTITIES SUBJECT TO JURISDICTION OF PUBLIC UTILITY COMMISSION. (a) This section applies only to a private entity that proposes to exercise the power of eminent domain to construct an electric transmission line and is subject to the authority of the Public Utility Commission of Texas under Chapter 37, Utilities Code.

(b)  At a meeting required by the Public Utility Commission of Texas to be conducted by a private entity to which this section applies in connection with an electric transmission line project:

(1)  the private entity shall present an agenda; and

(2)  attendees of the meeting may ask questions of and make comments to a representative of the private entity regarding:

(A)  the rights of the property owners;

(B)  the proposed public use for which the real property is to be acquired; and

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

Sec. 21.039.  PRIVATE ENTITY NONCOMPLIANCE. A condemnation proceeding may not be abated, dismissed, or delayed because a private entity does not comply with Section 21.0331, 21.0332, 21.034, 21.035, 21.036, 21.037, or 21.038.

SECTION 8.  Section 21.047, Property Code, is amended by adding Subsection (e) to read as follows:

(e)  An abatement under Subsection (d) continues only until the condemnor makes a bona fide offer under Section 21.0113.

SECTION 9.  Chapter 21, Property Code, is amended by adding Subchapters F and G to read as follows:

SUBCHAPTER F. EFFECTS OF CERTAIN CHANGES TO PROPERTY USE

Sec. 21.151.  CHANGE OF USE. 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.

SUBCHAPTER G. MORATORIUM ON CERTAIN LEGISLATIVE ACTS

Sec. 21.201.  MORATORIUM. (a) Except as provided by Subsection (b), the legislature will not add a provision to or amend or repeal a provision of this 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.

(b)  Subsection (a) does not apply to:

(1)  a provision regarding high-speed rail, as defined by Section 112.201, Transportation Code;

(2)  an amendment stakeholders agree is necessary to give effect to or correct an existing provision;

(3)  an amendment in response to a final and unappealable judgment or order of a state or federal court; or

(4)  a nonsubstantive addition to, revision of, or correction in an enacted code or other law.

Sec. 21.202.  EXPIRATION OF SUBCHAPTER. This subchapter expires December 31, 2030.

SECTION 10.  If any provision of this Act or its application to any person or circumstance is finally held to be unconstitutional, the entire Act is invalid, and to this end the provisions of this Act are declared to be nonseverable.

SECTION 11.  (a) Notwithstanding Subsections (b), (c), and (d) of this section, Sections 21.014(a), 21.015(a), and 21.016(d), Property Code, as amended by this Act, and Section 21.0161, Property Code, as added by this Act, apply to a condemnation proceeding commenced on or after the effective date of this Act. A condemnation proceeding commenced before the effective date of this Act is governed by the law applicable to the condemnation proceeding immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(b)  Except as provided by Subsections (a) and (c) of this section, with respect to the acquisition of real property under Chapter 21, Property Code, for a pipeline project:

(1)  the changes in law made by this Act apply to a pipeline for which an application for a permit to operate the pipeline is filed with the Railroad Commission of Texas or a successor agency on or after the effective date of this Act; and

(2)  a pipeline for which an application for a permit to operate the pipeline is filed with the Railroad Commission of Texas 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.

(c)  Notwithstanding Subsection (b) of this section, the changes in law made by this Act apply to a pipeline project for which an application for a permit to operate the pipeline is filed with the Railroad Commission of Texas on or after September 1, 2019, and before the effective date of this Act, unless a written survey request is provided to a property owner on the proposed route of the project not later than the 90th day after the date the application is filed.

(d)  Except as provided by Subsection (a) of this section, with respect to the acquisition of real property under Chapter 21, Property Code, for an electric transmission project:

(1)  the changes in law made by this Act apply to an electric transmission project for which an initial offer is made on or after the effective date of this Act; and

(2)  an electric transmission project for which an initial offer is made 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.

SECTION 12.  This Act takes effect January 1, 2020.