

By: Kolkhorst, et al.  
(Craddick, Burns, Burrows, Phelan, et al.)

S.B. No. 421

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

1 applicable, and based on:

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

6 (b) a broker price opinion prepared by  
7 a third party who is a real estate broker licensed under Chapter  
8 1101, Occupations Code; or

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

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

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

26 (C) a deed, easement, agreement, or other  
27 instrument of conveyance for the property rights sought that

1 complies with Section 21.0114(a) unless previously provided to the  
2 property owner; and

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

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

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

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

24 (f) Notwithstanding any other law, a private entity, as  
25 defined by Section 21.031, with eminent domain authority that wants  
26 to acquire real property for a public use may not, directly or  
27 indirectly, offer or pay to an agent or employee of the private

1 entity a financial incentive that would tend to encourage the agent  
2 or employee to make an initial offer that the agent or employee  
3 knows or should know is lower than the lowest initial offer required  
4 under Subsection (c)(2)(A).

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

7 Sec. 21.0114. REQUIRED TERMS FOR INSTRUMENTS OF CONVEYANCE  
8 BY CERTAIN PRIVATE ENTITIES. (a) Except as provided by Subsection  
9 (b), a deed, easement, agreement, or other instrument of conveyance  
10 provided to a property owner by a private entity, as defined by  
11 Section 21.031, with eminent domain authority to acquire the  
12 property interest to be conveyed for a public use and that seeks to  
13 acquire the property interest through the exercise of the power of  
14 eminent domain must include the following terms, as applicable:

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

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

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

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

26 (D) a general description or illustration of the  
27 location of the easement on the property in the form of a plat map,

1 aerial sketch, or other type of description or illustration;

2 (E) the maximum width of the easement; and

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

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

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

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

12 (C) the maximum width of the easement.

13 (b) Except as provided by this subsection, this section does  
14 not prohibit a private entity or the property owner from proposing  
15 or agreeing to add to, change, or omit any term required by  
16 Subsection (a) at any time after the private entity first provides a  
17 deed, easement, agreement, or other instrument containing the term  
18 to the property owner, whether provided before or at the same time  
19 as the entity's initial offer to the property owner. A private  
20 entity that adds to, changes, or omits any term required by  
21 Subsection (a) must provide a copy of the amended deed, easement,  
22 agreement, or other instrument of conveyance to the property owner  
23 before the date the private entity files a condemnation petition  
24 relating to the property.

25 (c) A private entity that changes a deed, easement,  
26 agreement, or other instrument of conveyance to which this section  
27 applies after the initial offer or final offer is not required to

1 satisfy again any requirement of Section 21.0113 that the private  
2 entity has previously satisfied.

3 Sec. 21.0115. MUTUAL AGREEMENT. Notwithstanding any other  
4 provision of this chapter and regardless of whether an acquisition  
5 is for a public use, a property owner and a private entity, as  
6 defined by Section 21.031, are not prohibited from agreeing to  
7 acquisition by the private entity of an interest in the property  
8 owner's property without complying with the provisions of Section  
9 21.0113(c) or 21.0114 at any time after the private entity provides  
10 the landowner's bill of rights statement to the property owner in  
11 accordance with Section 21.0112.

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

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

1 commissioner or is struck by a party to the suit in accordance with  
2 this subsection, an alternate special commissioner shall serve as a  
3 replacement for the special commissioner based on the order that  
4 the alternate special commissioners are listed in the initial order  
5 of appointment [~~, the judge shall appoint a replacement~~].

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

8 (a) Unless otherwise agreed by the parties, the [The]  
9 special commissioners in an eminent domain proceeding shall  
10 [~~promptly~~] schedule a hearing to occur not earlier than [~~for the~~  
11 ~~parties at the earliest practical time but may not schedule a~~  
12 ~~hearing to assess damages before~~] the 20th day or later than the  
13 45th day after the date the special commissioners were appointed.  
14 The special commissioners shall schedule a hearing for the parties  
15 at a place that is as near as practical to the property being  
16 condemned or at the county seat of the county in which the  
17 proceeding is being held.

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

20 (d) Notice may be served[+  
21 [~~(1)~~] by delivering a copy of the notice to the party  
22 or to the party's agent or attorney or in another manner provided by  
23 the Texas Rules of Civil Procedure for service of citation[+]

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





1 sole or majority member; and

2 (2) does not include:

3 (A) a railroad operating in this state; or

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

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

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

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

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

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

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

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

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

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

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

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

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

15           Sec. 21.0331. PREREQUISITE FOR PROPERTY OWNER MEETING. (a)  
16 A private entity is required to hold a property owner information  
17 meeting under Section 21.034 for a segment or section of a proposed  
18 project route, as described by Section 21.034(a), only if at least  
19 25 percent of property owners of property in the segment or section  
20 who are entitled to notice under Section 21.033 submit a request for  
21 the meeting as provided by Subsection (b).

22           (b) A property owner request for a meeting under Section  
23 21.034 must be:

24           (1) in writing; and

25           (2) received by the private entity not later than the  
26 14th day after the date of the notice provided to the property owner  
27 under Section 21.033.

1 Sec. 21.0332. NOTICE OF PROPERTY OWNER INFORMATION MEETING.

2 A private entity required under Section 21.0331 to hold a property  
3 owner information meeting for a segment or section of a proposed  
4 project route, as described by Section 21.034(a), shall send notice  
5 to each property owner of property in the segment or section of the  
6 date, time, and location of the meeting.

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

9 (1) for a proposed project that is equal to or less  
10 than 100 miles in length, at least one meeting for each contiguous  
11 linear section of the project, as designated by the private entity;  
12 and

13 (2) for a proposed project that is more than 100 miles  
14 in length, at least one meeting for each segment of the project, as  
15 designated by the private entity and not to exceed 100 miles in  
16 length.

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

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

21 (2) as convenient as practicable to the majority of  
22 the tracts of real property affected by the project section or  
23 segment for which the meeting is held.

24 Sec. 21.035. PERSONS AUTHORIZED TO ATTEND PROPERTY OWNER  
25 INFORMATION MEETING. (a) In addition to the property owner and

26 the private entity representatives, the following individuals may  
27 attend a meeting held under Section 21.034:

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

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

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

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

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

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

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

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

21           (d) The private entity may:

22           (1) require attendees to:

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

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

27           (2) exclude from the meeting:

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

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

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

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

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

18                   (1) attend each meeting held under Section 21.034; and  
19                   (2) participate in those meetings as described by  
20 Section 21.037.

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

23                   (1) the private entity shall present an agenda; and  
24                   (2) attendees of the meeting may ask questions of and  
25 make comments to a representative of the private entity regarding:

26                           (A) the rights of the property owners;  
27                           (B) the proposed public use for which the real

1 property is to be acquired; and

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

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

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

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

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

17 (A) the rights of the property owners;

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

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

23 Sec. 21.039. PRIVATE ENTITY NONCOMPLIANCE. A condemnation  
24 proceeding may not be abated, dismissed, or delayed because a  
25 private entity does not comply with Section 21.0331, 21.0332,  
26 21.034, 21.035, 21.036, 21.037, or 21.038.

27 SECTION 8. Section 21.047, Property Code, is amended by

1 adding Subsection (e) to read as follows:

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

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

6 SUBCHAPTER F. EFFECTS OF CERTAIN CHANGES TO PROPERTY USE

7 Sec. 21.151. CHANGE OF USE. The temporary removal of land  
8 from timber, agriculture, or open space usage due to construction  
9 in a right of way or easement under threat of eminent domain is not a  
10 change of use as that term is used for purposes of property  
11 taxation.

12 SUBCHAPTER G. MORATORIUM ON CERTAIN LEGISLATIVE ACTS

13 Sec. 21.201. MORATORIUM. (a) Except as provided by  
14 Subsection (b), the legislature will not add a provision to or amend  
15 or repeal a provision of this chapter during the period beginning  
16 January 1, 2020, and ending December 31, 2030, or enact, amend, or  
17 repeal other laws during that period concerning procedures for,  
18 prerequisites to, or damages available in connection with the  
19 acquisition of property for a public use by an entity with eminent  
20 domain authority.

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

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

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

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

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

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

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

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

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

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

25           (2) a pipeline for which an application for a permit to  
26 operate the pipeline is filed with the Railroad Commission of Texas  
27 before the effective date of this Act is governed by the law



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

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

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

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

17 (2) an electric transmission project for which an  
18 initial offer is made before the effective date of this Act is  
19 governed by the law applicable to the acquisition immediately  
20 before the effective date of this Act, and that law is continued in  
21 effect for that purpose.

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