

By: Kolkhorst

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) and (d) to read as follows:

(c) Notwithstanding Subsection (b), a private entity as defined by Section 21.031 has made a bona fide offer only if the entity:

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

(2) includes in the initial offer:

(A) a copy of the provisions of Section 21.0471;

(B) a statement of the compensation being offered

for:

(i) the value of the property the entity seeks to acquire; and

(ii) the damage and loss of value to the remaining property, if applicable; and

(C) notice that the property owner will also receive a final offer accompanied by an appraisal; and

(3) includes, in the initial offer and in any subsequent offer, a certification by the entity that the offer is in an amount that will not require the entity to make a payment for a low initial offer under Section 21.0471.

1        (d) Notwithstanding Subsections (b) and (c), a private  
2 entity subject to Subchapter B-1 has made a bona fide offer only if  
3 the entity:

4            (1) satisfies the requirements of Subsections (b) and  
5 (c);

6            (2) includes in the initial offer a copy of the notice  
7 of public meeting required by Section 21.036; and

8            (3) participates in the public meeting in the manner  
9 prescribed by Section 21.038.

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

12        Sec. 21.0114. REQUIRED TERMS FOR INSTRUMENTS OF CONVEYANCE  
13 BY CERTAIN PRIVATE ENTITIES. (a) Except as provided by Subsection  
14 (b), the deed, easement, or other instrument provided to a property  
15 owner by a private entity, as defined by Section 21.031, must  
16 include the following terms, as applicable:

17            (1) if the instrument conveys a pipeline right-of-way  
18 easement:

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

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

24                    (C) the type or category of each substance to be  
25 transported through the pipelines to be installed in the easement;

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

1                   (E) a metes and bounds or centerline description  
2 of the location of the easement, plat, or other legally sufficient  
3 description of the location of the easement;

4                   (F) the maximum width of the easement;

5                   (G) the minimum depth at which the pipeline will  
6 initially be installed;

7                   (H) whether the double-ditch method will be used  
8 for installation of the pipeline in areas that are not  
9 bore-drilled;

10                   (I) a prohibition against the transfer of the  
11 property without:

12                                   (i) written notice to the property owner;

13 or

14                                   (ii) the express written consent of the  
15 property owner if the transferee, including a transferee that is an  
16 affiliate or subsidiary of or entity related to the private entity,  
17 does not have eminent domain authority;

18                   (J) whether the entity has exclusive,  
19 nonexclusive, or otherwise limited rights to the easement;

20                   (K) a provision limiting access to the easement  
21 area by a third party for a purpose that is not related to the  
22 pipeline's construction, safety, maintenance, or operation  
23 activities;

24                   (L) a provision regarding the right to recover  
25 actual monetary damages arising from construction, maintenance,  
26 repair, replacement, or future removal of the pipeline in the  
27 easement, including any actual monetary damages to growing crops or

1 livestock, or a statement that the offer includes such future  
2 damages;

3 (M) a provision regarding the property owner's  
4 right to negotiate to recover damages for:

5 (i) tree loss;

6 (ii) income loss from interference with  
7 hunting or recreational activities; or

8 (iii) income loss from disruption of  
9 agricultural production;

10 (N) a provision regarding the use and repair of  
11 any gates and fences;

12 (O) a provision regarding the entity's  
13 obligation to maintain the easement, including leveling of the  
14 easement area;

15 (P) a provision regarding the repair and  
16 restoration of areas used or damaged outside the easement area to  
17 their original condition or better, to the extent reasonably  
18 practicable, or the payment of actual monetary damages for areas  
19 not restored; and

20 (Q) the manner in which the entity will access  
21 the easement;

22 (2) if the instrument conveys an electrical  
23 transmission right-of-way easement:

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

26 (B) a depiction identifying the approximate  
27 location of the easement on the property;

1                   (C) a metes and bounds or centerline description  
2 of the location of the easement, plat, or other legally sufficient  
3 description of the location of the easement;

4                   (D) the maximum width of the easement;

5                   (E) the manner in which the entity will access  
6 the easement;

7                   (F) a provision limiting access to the easement  
8 area by a third party for a purpose that is not related to the  
9 transmission line's construction, safety, maintenance, or  
10 operation activities;

11                   (G) a provision regarding the right to recover  
12 actual monetary damages arising from construction, maintenance,  
13 repair, replacement, or future removal of lines and support  
14 facilities in the easement or a statement that the offer includes  
15 such future damages;

16                   (H) a provision regarding the property owner's  
17 right to negotiate to recover damages for:

18                               (i) tree loss;

19                               (ii) income loss from interference with  
20 hunting or recreational activities; or

21                               (iii) income loss from disruption of  
22 agricultural production;

23                   (I) a provision regarding the use and repair of  
24 any gates and fences;

25                   (J) a provision regarding the entity's  
26 obligation to maintain the easement;

27                   (K) a provision regarding the repair and

1 restoration of areas used or damaged outside the easement area to  
2 their original condition or better, to the extent reasonably  
3 practicable, or the payment of actual monetary damages for areas  
4 not restored;

5 (L) whether the entity has exclusive,  
6 nonexclusive, or otherwise limited rights to the right-of-way; and

7 (M) a prohibition against the transfer of the  
8 property without:

9 (i) written notice to the property owner;

10 or

11 (ii) the express written consent of the  
12 property owner if the transferee, including a transferee that is an  
13 affiliate or subsidiary of or entity related to the private entity,  
14 does not have eminent domain authority;

15 (3) a prohibition against any use of the property  
16 being conveyed, other than a use stated in the deed, easement, or  
17 other instrument, without the express written consent of the  
18 property owner;

19 (4) a covenant that the entity will keep in effect at  
20 all times while the entity uses the condemned property, including  
21 during construction and operations on the easement, a policy or  
22 policies of liability insurance:

23 (A) issued by an insurer authorized to issue such  
24 policies in this state; and

25 (B) insuring the property owner against  
26 liability for personal injuries and property damage sustained by  
27 any person that arises from or is related to the use of the easement

1 property by the entity or the entity's agents or contractors; and

2 (5) a statement that the terms of the deed, easement,  
3 or other instrument will bind the successors and assigns of the  
4 parties to the instrument.

5 (b) The private entity, as defined by Section 21.031, may  
6 present and include terms in addition to the terms required under  
7 Subsection (a). The property owner and the entity may consider and  
8 agree to the additional terms, including rights and uses that may  
9 not be the subject of a later condemnation proceeding, if so stated  
10 in the instrument. A property owner may negotiate a deed, easement,  
11 or other instrument that does not include all of the terms required  
12 under Subsection (a).

13 (c) The attorney general shall prepare and make generally  
14 available a standard form that contains the terms required by  
15 Subsection (a).

16 (d) The attorney general may:

17 (1) bring an action in the name of the state to enjoin  
18 a violation of this section; and

19 (2) recover reasonable attorney's fees and costs  
20 incurred in bringing an action under this subsection.

21 Sec. 21.0115. COMMUNICATION BY CERTAIN PRIVATE ENTITIES.

22 (a) A private entity, as defined by Section 21.031, that wants to  
23 acquire real property for a public use may not, without first  
24 attempting to include the owner of the real property, engage in ex  
25 parte communication with:

26 (1) a court that has jurisdiction of a condemnation  
27 proceeding involving the property; or

1           (2) a special commissioner appointed in the  
2 condemnation proceeding.

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

7           (c) For the purposes of this section, "private entity"  
8 includes:

9                   (1) the entity's attorney; and

10                   (2) any third-party contractor of the entity,  
11 including a right-of-way agent.

12           SECTION 3. Section 21.012, Property Code, is amended by  
13 adding Subsection (b-1) to read as follows:

14           (b-1) In addition to the contents prescribed by Subsection  
15 (b), a petition filed by a private entity as defined by Section  
16 21.031 must state the terms to be included in the instrument of  
17 conveyance under Section 21.0114 using the form prepared by the  
18 attorney general under Section 21.0114(c).

19           SECTION 4. Chapter 21, Property Code, is amended by adding  
20 Subchapter B-1 to read as follows:

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

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

25                   (1) a corporation, including a corporation organized  
26 under Chapter 67, Water Code, authorized to exercise the power of  
27 eminent domain to acquire private property for public use; and



1           (2) any affiliate or subsidiary of or entity related  
2 to the corporation.

3           Sec. 21.032. APPLICABILITY OF SUBCHAPTER. This subchapter  
4 applies only to a private entity that wants to acquire for the same  
5 public use one or more tracts or parcels of real property:

6           (1) located entirely in one county; and

7           (2) owned by at least four property owners.

8           Sec. 21.033. NOTICE OF INTENT. (a) Not later than the 45th  
9 day before the date a private entity makes an initial offer to  
10 acquire real property under this chapter, the entity must send a  
11 written notice of intent to a court that would have jurisdiction of  
12 a condemnation proceeding involving the property.

13           (b) A notice sent under Subsection (a) must:

14           (1) state the private entity's intent to acquire real  
15 property for public use;

16           (2) specify the public use;

17           (3) identify the real property the entity intends to  
18 acquire and the owners of the property; and

19           (4) disclose the date by which the entity will make the  
20 initial offer.

21           Sec. 21.034. PUBLIC MEETING. (a) Not later than the 30th  
22 day after the date a court receives a notice of intent required by  
23 Section 21.033, the court shall select the date on which a public  
24 meeting regarding the proposed acquisition will be held. The court  
25 shall facilitate the meeting.

26           (b) The meeting described by Subsection (a):

27           (1) must take place in a public location appropriate

1 to the size and nature of the meeting in the county in which the real  
2 property is located; and

3 (2) may not take place earlier than the 14th day after  
4 the date a private entity makes an initial offer to a property owner  
5 identified in the notice of intent under Section 21.033.

6 Sec. 21.035. NOTICE OF PUBLIC MEETING. (a) As soon as is  
7 practicable after a court selects a date for a public meeting under  
8 Section 21.034, the court shall:

9 (1) give notice of the meeting to the private entity  
10 that sent the notice of intent under Section 21.033;

11 (2) publish notice of the public meeting on the  
12 county's Internet website; and

13 (3) publish notice of the public meeting in a  
14 newspaper of general circulation in the county.

15 (b) A notice of public meeting under this section must  
16 include the date, time, and location of the meeting.

17 Sec. 21.036. NOTICE OF PUBLIC MEETING IN INITIAL OFFER. A  
18 private entity that gives a notice of intent under Section 21.033  
19 must include with the entity's initial offer notice of the public  
20 meeting to be held under Section 21.034, including the date, time,  
21 and location of the meeting.

22 Sec. 21.037. PARTICIPATION BY PRIVATE ENTITY REQUIRED. A  
23 representative of the private entity that gives a notice of intent  
24 under Section 21.033 shall:

25 (1) attend the public meeting; and

26 (2) participate in the public meeting in the manner  
27 prescribed by Section 21.038.

1       Sec. 21.038. PUBLIC MEETING AGENDA. At a public meeting  
2 scheduled under Section 21.034:

3           (1) the court shall present the information contained  
4 in the landowner's bill of rights statement required to be provided  
5 to a property owner under Section 21.0112;

6           (2) the private entity shall present:

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

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

13                   (C) the method and factors used by the entity to  
14 calculate the entity's initial offer, including:

15                           (i) how damages to remaining property were  
16 evaluated; and

17                           (ii) if the entity used a property  
18 appraisal or market value study, the name of the person that  
19 performed the appraisal or study;

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

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

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

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

5           (3) the property owners identified by the private  
6 entity under Section 21.033, the public, and public officials must  
7 be given an opportunity to ask questions and make comments  
8 regarding:

9                   (A) the rights of the property owners;

10                   (B) the proposed public use; and

11                   (C) terms required under Section 21.0114 to be  
12 included in a deed, easement, or other instrument provided by the  
13 entity to a property owner.

14           Sec. 21.039. CONTACT AFTER PUBLIC MEETING. A private  
15 entity may not contact a property owner to whom the entity has made  
16 an initial offer before the seventh day after the date of the public  
17 meeting held under Section 21.034.

18           Sec. 21.0391. CERTIFICATION OF ENTITY PARTICIPATION IN  
19 PUBLIC MEETING REQUIRED. (a) After a private entity participates  
20 in a meeting held under Section 21.034, the entity shall submit  
21 evidence documenting its participation to the court that  
22 facilitated the meeting. The court shall review the evidence  
23 submitted by the entity and, if the court determines that the entity  
24 has satisfied the requirements of this subchapter, shall certify  
25 that the entity has satisfied the requirements of this subchapter.

26           (b) A private entity may not acquire property to which this  
27 subchapter applies unless the entity receives the certification

1 under Subsection (a) with respect to the property.

2 Sec. 21.0392. PUBLICATION AND PROVISION OF CERTAIN  
3 MATERIALS. A private entity shall:

4 (1) publish on an Internet website any materials  
5 presented under Section 21.038(2)(D); and

6 (2) provide to property owners identified by the  
7 entity under Section 21.033 any materials presented under Section  
8 21.038(2)(D).

9 Sec. 21.0393. PROPERTY OWNER CHALLENGE OF EMINENT DOMAIN  
10 AUTHORITY. (a) A property owner identified by a private entity  
11 under Section 21.033 may challenge the eminent domain authority of  
12 the entity in the court that provided the certification under  
13 Section 21.0391.

14 (b) A challenge under Subsection (a) must be filed not later  
15 than the 30th day after the date of the public meeting held under  
16 Section 21.038.

17 Sec. 21.0394. INJUNCTION. (a) The attorney general may  
18 bring an action in the name of the state to enjoin a violation of  
19 this subchapter.

20 (b) The attorney general may recover reasonable attorney's  
21 fees and costs incurred in bringing an action under this section.

22 SECTION 5. Section 21.042, Property Code, is amended by  
23 amending Subsection (d) and adding Subsections (d-1) and (d-2) to  
24 read as follows:

25 (d) In estimating injury or benefit under Subsection (c),  
26 the special commissioners shall consider an injury or benefit that  
27 is peculiar to the property owner and that relates to the property

1 owner's ownership, use, or enjoyment of the particular parcel of  
2 real property, including:

3 (1) an injury or benefit to the remaining property as a  
4 result of:

5 (A) the characteristics of any infrastructure on  
6 the condemned property, including the size or visibility of the  
7 infrastructure or the pressure or voltage range provided by the  
8 infrastructure;

9 (B) any limitation of future expansion on the  
10 remaining property; and

11 (C) a provision in an easement acquired in  
12 connection with, or the alignment of an easement in connection  
13 with, the condemnation; and

14 (2) a material impairment of direct access on or off  
15 the remaining property that affects the market value of the  
16 remaining property.

17 (d-1) In estimating injury or benefit under Subsection (c),  
18 the special commissioners~~[, but they]~~ may not consider an injury or  
19 benefit that the property owner experiences in common with the  
20 general community, including circuitry of travel and diversion of  
21 traffic.

22 (d-2) In Subsection (d)(2) [this subsection], "direct  
23 access" means ingress and egress on or off a public road, street, or  
24 highway at a location where the remaining property adjoins that  
25 road, street, or highway.

26 SECTION 6. Subchapter C, Chapter 21, Property Code, is  
27 amended by adding Section 21.0471 to read as follows:

1       Sec. 21.0471. PAYMENT FOR LOW INITIAL OFFER BY PRIVATE  
2 ENTITY. (a) This section applies only to a condemnor that is a  
3 private entity as defined by Section 21.031.

4       (b) If the special commissioners award to the property owner  
5 damages in an amount that exceeds the amount of the condemnor's  
6 initial offer by:

7           (1) at least 25 percent but less than 50 percent, the  
8 condemnor shall pay to the property owner the damages awarded and an  
9 additional amount equal to 25 percent of the damages awarded;

10          (2) at least 50 percent but less than 100 percent, the  
11 condemnor shall pay to the property owner the damages awarded and an  
12 additional amount equal to 30 percent of the damages awarded; or

13          (3) 100 percent or more, the condemnor shall pay to the  
14 property owner the damages awarded and an additional amount equal  
15 to 35 percent of the damages awarded.

16       (c) A property owner is entitled to an additional amount  
17 under Subsection (b) without regard to:

18           (1) whether the condemnor objects to the findings of  
19 the special commissioners or appeals the decision of a trial court  
20 in the condemnation proceeding; or

21           (2) the amount of damages ultimately awarded to the  
22 property owner by a court.

23       SECTION 7. The changes in law made by this Act apply only to  
24 the acquisition of real property in connection with an initial  
25 offer made under Chapter 21, Property Code, on or after the  
26 effective date of this Act. An acquisition of real property in  
27 connection with an initial offer made under Chapter 21, Property

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

4 SECTION 8. This Act takes effect September 1, 2019.