

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

By: Canales

H.B. No. 2831

A BILL TO BE ENTITLED

AN ACT

relating to the service of notice of a special commissioners' hearing in an eminent domain proceeding.

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

SECTION 1. 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 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this

H.B. No. 2831

1 Act does not receive the vote necessary for immediate effect, this

2 Act takes effect September 1, 2019.

ADOPTED

VV  
MAY 22 2019

*Larry Spaul*  
Secretary of the Senate

BY: *L. W. Kelleher*

FLOOR AMENDMENT NO. 1

1 Amend H.B. No. 2831 (senate committee printing) as follows:  
2 (1) Strike SECTION 2 of the bill (page 1, lines 39-43).  
3 (2) Add the following appropriately numbered SECTIONS to  
4 the bill and renumber subsequent SECTIONS of the bill accordingly:  
5 SECTION \_\_\_\_\_. Section 21.0113, Property Code, is amended by  
6 adding Subsections (c), (d), (e), and (f) to read as follows:  
7 (c) Notwithstanding Subsection (b), a private entity, as  
8 defined by Section 21.0114, with eminent domain authority that  
9 wants to acquire real property for a public use has made a bona fide  
10 offer only if the entity:  
11 (1) satisfies the requirements of Subsection (b);  
12 (2) includes with the initial offer:  
13 (A) an offer of compensation in an amount equal  
14 to or greater than:  
15 (i) the market value of the property rights  
16 sought to be acquired, including an estimate of damages to the  
17 property owner's remaining property, if any, based on an appraisal  
18 of the property prepared by a third party who is a certified general  
19 appraiser licensed under Chapter 1103, Occupations Code; or  
20 (ii) the estimated price or market value of  
21 the property rights sought to be acquired based on data for at least  
22 three comparable arm's-length sales of a fee simple interest in  
23 property, including an estimate of damages to the property owner's  
24 remaining property, if any, based on data then available to the  
25 appraiser, broker, or private entity, as applicable, and based on:  
26 (a) a comparative market analysis  
27 prepared by a third party who is a real estate broker licensed under  
28 Chapter 1101, Occupations Code, or a certified general appraiser  
29 licensed under Chapter 1103, Occupations Code;

1                   (b) a broker price opinion prepared by  
2 a third party who is a real estate broker licensed under Chapter  
3 1101, Occupations Code; or

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

8                   (B) the complete written report of the appraisal,  
9 the comparative market analysis, the broker price opinion, the  
10 market study, or a summary of the market study, as prepared by the  
11 third party, that forms the basis for the amount of the offer of  
12 compensation under Paragraph (A);

13                   (C) a deed, easement, agreement, or other  
14 instrument of conveyance for the property rights sought that  
15 complies with Section 21.0114;

16                   (D) notice of the terms described by Section  
17 21.0114(c) for which the property owner may negotiate to be  
18 included in a deed, easement, agreement, or other instrument of  
19 conveyance relating to the property; and

20                   (E) the landowner's bill of rights statement  
21 prescribed by Section 21.0112, unless previously provided to the  
22 property owner;

23                   (3) provides notice of the proposed project to the  
24 county judge as required by Section 21.0115; and

25                   (4) includes in the final offer, if made:

26                   (A) a copy of the written appraisal report  
27 required by Subsection (b)(4) unless the entity has previously  
28 provided a copy of the report to the property owner; and

29                   (B) a deed, easement, agreement, or other  
30 instrument of conveyance for the property rights sought that  
31 complies with Section 21.0114.

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

6        (e) A condemnation suit may not be abated, delayed, or  
7 dismissed for noncompliance with this subchapter, except as  
8 provided under Section 21.047(d).

9        (f) A private entity that provides to a property owner an  
10 easement form that is generally consistent with the language or  
11 provisions required by Section 21.0114(b) and the notice required  
12 by Section 21.0114(c) is considered to have complied with Section  
13 21.0114 for purposes of Subsection (c)(2)(C), regardless of whether  
14 the private entity subsequently provides to the property owner a  
15 different deed, easement, agreement, or other instrument of  
16 conveyance as authorized under Sections 21.0114(d) and (e).

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

19        Sec. 21.0114. REQUIRED TERMS FOR INSTRUMENTS OF CONVEYANCE  
20 BY CERTAIN PRIVATE ENTITIES. (a) In this section, "private  
21 entity":

22                (1) means:

23                        (A) a for-profit entity, as defined by Section  
24 1.002, Business Organizations Code, however organized, including  
25 an affiliate or subsidiary, authorized to exercise the power of  
26 eminent domain to acquire private property for public use; or

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

30                (2) does not include:

31                        (A) a railroad operating in this state on or

1 before September 1, 2019; or

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

5 (b) Except as provided by Subsections (c), (d), and (e), a  
6 deed, easement, agreement, or other instrument of conveyance  
7 provided to a property owner by a private entity with eminent domain  
8 authority to acquire the property interest to be conveyed must  
9 include the following terms, as applicable:

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

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

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

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

21 (D) a general description of any aboveground  
22 equipment or facility the private entity intends to install,  
23 maintain, or operate on the surface of the easement;

24 (E) a description or illustration of the location  
25 of the easement, including a metes and bounds or centerline  
26 description, plat, or aerial or other map-based depiction of the  
27 location of the easement on the property;

28 (F) the maximum width of the easement;

29 (G) the minimum depth at which each pipeline to  
30 be installed in the easement will initially be installed;

31 (H) a provision identifying whether the private

1 entity intends to double-ditch areas of the easement that are not  
2 installed by boring or horizontal directional drilling;

3 (I) a provision limiting the private entity's  
4 right to assign the entity's interest under the deed, easement,  
5 agreement, or other instrument of conveyance without:

6 (i) written notice to the property owner at  
7 the last known address of the person in whose name the property is  
8 listed on the most recent tax roll of any taxing unit authorized to  
9 levy property taxes against the property; or

10 (ii) if the assignee, including an assignee  
11 that is an affiliate or subsidiary of or entity otherwise related to  
12 the private entity, will not operate each pipeline installed on the  
13 easement as a common carrier line or gas utility, the express  
14 written consent of the property owner, subject to other mutual  
15 agreements under Subsections (d) and (e);

16 (J) a provision describing whether the easement  
17 rights are exclusive, nonexclusive, or otherwise limited;

18 (K) a provision limiting the private entity's  
19 right to grant a third party access to the easement area for a  
20 purpose that is not related to the construction, safety, repair,  
21 maintenance, inspection, replacement, operation, or removal of  
22 each pipeline to be installed in the easement;

23 (L) a provision regarding the property owner's  
24 right to recover actual monetary damages arising from the  
25 construction and installation of each pipeline to be installed in  
26 the easement, or a statement that the consideration for the  
27 easement includes any monetary damages arising from the  
28 construction and installation of each pipeline to be installed in  
29 the easement;

30 (M) a provision regarding the property owner's  
31 right after initial construction and installation of each pipeline

1 to be installed in the easement to actual monetary damages arising  
2 from the repair, maintenance, inspection, replacement, operation,  
3 or removal of each pipeline to be installed in the easement;

4 (N) a provision:

5 (i) regarding the removal, cutting, use,  
6 repair, and replacement of gates and fences that cross the easement  
7 or that will be used by the private entity; or

8 (ii) providing for the payment for any  
9 damage that is not restored or paid for as part of the consideration  
10 for the easement;

11 (O) a provision:

12 (i) regarding the private entity's  
13 obligation to restore the easement area and the property owner's  
14 remaining property, if any, used by the private entity to as near to  
15 original condition as is reasonably practicable and to maintain the  
16 easement; or

17 (ii) providing for the private entity to  
18 reimburse the property owner for actual monetary damages incurred  
19 by the property owner that arise from damage to the easement area  
20 and the property owner's remaining property caused by the private  
21 entity and not restored or paid for as part of the consideration for  
22 the easement; and

23 (P) a provision describing the private entity's  
24 rights of ingress, egress, entry, and access on, to, over, and  
25 across the easement;

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

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

30 (B) a description or illustration of the location  
31 of the easement, including a metes and bounds or centerline



1 description, plat, or aerial or other map-based depiction of the  
2 location of the easement on the property;

3 (C) the maximum width of the easement;

4 (D) the manner in which the entity will access  
5 the easement;

6 (E) a provision limiting access to the easement  
7 area by a third party that has not obtained authorization from the  
8 property owner for a purpose that is not related to the transmission  
9 line's construction, safety, repair, maintenance, inspection,  
10 replacement, operation, or removal;

11 (F) a provision regarding the property owner's  
12 right to recover actual monetary damages arising from the  
13 construction, repair, maintenance, replacement, or future removal  
14 of lines and support facilities after initial construction in the  
15 easement, or a statement that the consideration for the easement  
16 includes such future damages;

17 (G) a provision:

18 (i) regarding the removal, cutting, use,  
19 repair, and replacement of gates and fences that cross the easement  
20 or that will be used by the private entity; or

21 (ii) providing for the payment for any  
22 damage that is not restored or paid for as part of the consideration  
23 for the easement;

24 (H) a provision regarding the entity's  
25 obligation to restore the easement area and the property owner's  
26 remaining property to the easement area's and the remaining  
27 property's original contours and grades, to the extent practicable,  
28 and:

29 (i) a provision regarding the entity's  
30 obligation to restore the easement area and the property owner's  
31 remaining property following any future damages directly

1 attributed to the use of the easement by the private entity, to the  
2 extent practicable; or

3 (ii) a provision that the consideration for  
4 the easement includes future damages to the easement area and the  
5 property owner's remaining property;

6 (I) a provision describing whether the easement  
7 rights are exclusive, nonexclusive, or otherwise limited; and

8 (J) a prohibition against the assignment of the  
9 entity's interest in the property to an assignee that will not  
10 operate as a utility subject to the jurisdiction of the Public  
11 Utility Commission of Texas or the Federal Energy Regulatory  
12 Commission without written notice to the property owner at the last  
13 known address of the person in whose name the property is listed on  
14 the most recent tax roll of any taxing unit authorized to levy  
15 property taxes against the property;

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

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

24 (5) a provision setting forth the applicable insurance  
25 or self-insurance to be provided by the private entity.

26 (c) The private entity shall notify the property owner that  
27 the property owner may negotiate for the following terms to be  
28 included in a deed, easement, agreement, or other instrument of  
29 conveyance described by Subsection (b):

30 (1) a provision regarding the property owner's right  
31 to negotiate to recover damages, or a statement that the

1 consideration for the easement includes damages, for:

2 (A) damage to vegetation; and

3 (B) the income loss from disruption of existing  
4 agricultural production or existing leases based on verifiable loss  
5 or lease payments; and

6 (2) a provision:

7 (A) requiring the private entity to maintain at  
8 all times while the private entity uses the easement, including  
9 during construction and operations on the easement, liability  
10 insurance:

11 (i) issued by an insurer authorized to  
12 issue liability insurance in this state; and

13 (ii) insuring the property owner against  
14 liability for personal injuries and property damage sustained by  
15 any person to the extent caused by the negligence of the private  
16 entity or the private entity's agents or contractors and to the  
17 extent allowed by law; or

18 (B) if the private entity is subject to the  
19 jurisdiction of the Public Utility Commission of Texas or has a net  
20 worth of at least \$25 million, requiring the private entity to  
21 indemnify the property owner against liability for personal  
22 injuries and property damage sustained by any person caused by the  
23 negligence of the private entity or the private entity's agents or  
24 contractors.

25 (d) A private entity or the property owner may:

26 (1) negotiate for and agree to terms and conditions  
27 not required by Subsection (b) or provided by Subsection (c),  
28 including terms and conditions that differ from or are not included  
29 in a subsequent condemnation petition; and

30 (2) agree to a deed, easement, agreement, or other  
31 instrument of conveyance that does not include or includes terms

1 that differ from the terms required by Subsection (b).

2 (e) Except as provided by this subsection, this section does  
3 not prohibit a private entity or the property owner from agreeing to  
4 amend, alter, or omit the terms required by Subsection (b) at any  
5 time after the private entity first provides a deed, easement,  
6 agreement, or other instrument containing those terms to the  
7 property owner, whether before or at the same time that the entity  
8 makes an initial offer to the property owner. A private entity that  
9 changes the terms required by Subsection (b) must provide a copy of  
10 the amended deed, easement, agreement, or other instrument of  
11 conveyance to the property owner not later than the seventh day  
12 before the date the private entity files a condemnation petition  
13 relating to the property.

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

19 Sec. 21.0115. NOTICE OF INTENT. (a) A private entity as  
20 defined by Section 21.0114 must send a written notice of intent to  
21 the county judge of a county in which the private entity will seek  
22 to acquire property for a project for public use before the first  
23 time the private entity makes an initial offer to acquire real  
24 property for the project in that county.

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

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

28 (2) specify the public use; and

29 (3) identify the proposed route, including the tracts  
30 of real property, identified by the tract number assigned by the  
31 county assessor-collector, that the private entity intends to

1 acquire.

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

4 (b-1) In addition to the contents prescribed by Subsection  
5 (b), a petition filed by a private entity as defined by Section  
6 21.0114 to acquire property for a public use must state the terms to  
7 be included in the instrument of conveyance under Section  
8 21.0114(b).

9 SECTION \_\_\_\_\_. Section 21.014(a), Property Code, is amended  
10 to read as follows:

11 (a) The judge of a court in which a condemnation petition is  
12 filed or to which an eminent domain case is assigned shall, not  
13 later than the 15th day after the date the property owner received  
14 notice that the petition has been filed under Section 21.012,  
15 appoint three disinterested real property owners who reside in the  
16 county as special commissioners to assess the damages of the owner  
17 of the property being condemned and two disinterested real property  
18 owners who reside in the county as alternate special commissioners.  
19 The judge appointing the special commissioners shall give  
20 preference to any persons agreed on by the parties before the court  
21 appoints the special commissioners. Each party shall have seven  
22 days after the date of the appointment of the special commissioners  
23 ~~[The judge shall provide each party a reasonable period]~~ to strike  
24 one of the three special commissioners ~~[appointed by the judge]~~. If  
25 a person fails to serve as a special commissioner or is struck by a  
26 party to the suit in accordance with this subsection, an alternate  
27 special commissioner shall serve as a replacement for the special  
28 commissioner based on the order that the alternate special  
29 commissioners are listed in the initial order of appointment ~~[, the~~  
30 ~~judge shall appoint a replacement]~~.

31 SECTION \_\_\_\_\_. (a) Except as provided by Subsection (b) of

1 this section, the changes in law made by this Act apply to the  
2 acquisition of real property in connection with an initial offer  
3 made under Chapter 21, Property Code, on or after the effective date  
4 of this Act. An acquisition of real property in connection with an  
5 initial offer made under Chapter 21, Property Code, before the  
6 effective date of this Act is governed by the law applicable to the  
7 acquisition immediately before the effective date of this Act, and  
8 that law is continued in effect for that purpose.

9 (b) The changes in law made by this Act do not apply to an  
10 electric transmission project for which the Public Utility  
11 Commission of Texas has issued a final and appealable order that  
12 amends a certificate of convenience and necessity before January 1,  
13 2020.

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION**

**May 23, 2019**

**TO:** Honorable Dennis Bonnen, Speaker of the House, House of Representatives

**FROM:** John McGeady, Assistant Director    Sarah Keyton, Assistant Director  
Legislative Budget Board

**IN RE: HB2831** by Canales (Relating to the service of notice of a special commissioners' hearing in an eminent domain proceeding.), **As Passed 2nd House**

<b>No significant fiscal implication to the State is anticipated.</b>
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The bill would amend various sections of the Property Code related to acquisition of real property by a private entity with eminent domain authority.

According to the Railroad Commission, no fiscal implication to the State is anticipated.

According to the Public Utility Commission, the bill would have no significant fiscal impact on the agency and any provisions of the bill could be accomplished within existing resources.

**Local Government Impact**

According to the Railroad Commission, no fiscal implication to units of local government is anticipated.

**Source Agencies:** 455 Railroad Commission, 473 Public Utility Commission of Texas

**LBB Staff:** WP, CMa, SD, GP, SZ

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION**

**May 16, 2019**

**TO:** Honorable Joan Huffman, Chair, Senate Committee on State Affairs

**FROM:** John McGeady, Assistant Director    Sarah Keyton, Assistant Director  
Legislative Budget Board

**IN RE: HB2831** by Canales (Relating to the service of notice of a special commissioners' hearing in an eminent domain proceeding.), **As Engrossed**

**No fiscal implication to the State is anticipated.**

The bill would amend the Property Code to modify the methods by which notice may be served in eminent domain proceedings.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:**

**LBB Staff:** WP, CMa, SZ, SD, GP



**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION**

**April 17, 2019**

**TO:** Honorable Tom Craddick, Chair, House Committee on Land & Resource Management

**FROM:** John McGeady, Assistant Director    Sarah Keyton, Assistant Director  
Legislative Budget Board

**IN RE: HB2831** by Canales (Relating to the service of notice of a special commissioners' hearing in an eminent domain proceeding.), **As Introduced**

**No fiscal implication to the State is anticipated.**

The bill would amend the Property Code to modify the methods by which notice may be served in eminent domain proceedings.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:**

**LBB Staff:** WP, SZ, SD, GP