

House Bill 2831
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

No equivalent provision.

SENATE VERSION (IE)

CONFERENCE

SECTION __. 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 21.0114, with eminent domain authority that wants to acquire real property for a public use 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; or

(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 fee simple interest in property, including an estimate of damages to the property owner's remaining property, if any, 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

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Code, or a certified general appraiser licensed under Chapter 1103, Occupations Code;

(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, 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;

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

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

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

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

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

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

(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.

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

(f) 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(b) and the notice required by Section 21.0114(c) is considered to have complied with Section 21.0114 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 Sections 21.0114(d) and (e). [FA1(2)]

No equivalent provision.

SECTION __. 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) In this section, "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
(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 on or before September 1, 2019; or

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(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.

(b) Except as provided by Subsections (c), (d), and (e), a deed, easement, agreement, or other instrument of conveyance provided to a property owner by a private entity with eminent domain authority to acquire the property interest to be conveyed 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 installed in the easement;

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

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

(F) the maximum width of the easement;

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

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(H) a provision identifying whether the private entity intends to double-ditch areas of the easement that are not installed by boring or horizontal directional drilling;

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

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

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

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

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

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

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

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

(N) a provision:

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

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

(O) a provision:

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

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

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

(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 description or illustration of the location of the easement, including a metes and bounds or centerline

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

(C) the maximum width of the easement;

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

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

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

(G) a provision:

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

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

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

(i) a provision regarding the entity's obligation to restore the easement area and the property owner's remaining property following any future damages directly attributed to the use of the easement by the private entity, to the extent practicable; or

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

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

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

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

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

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

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

(1) a provision regarding the property owner's right to negotiate to recover damages, or a statement that the consideration for the easement includes damages, for:

(A) damage to vegetation; and

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

(2) a provision:

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

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

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

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

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

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

(2) agree to a deed, easement, agreement, or other instrument of conveyance that does not include or includes terms that differ from the terms required by Subsection (b).

(e) Except as provided by this subsection, this section does not prohibit a private entity or the property owner from

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agreeing to amend, alter, or omit the terms required by Subsection (b) at any time after the private entity first provides a deed, easement, agreement, or other instrument containing those terms to the property owner, whether before or at the same time that the entity makes an initial offer to the property owner. A private entity that changes the terms required by Subsection (b) must provide a copy of the amended deed, easement, agreement, or other instrument of conveyance to the property owner not later than the seventh day before the date the private entity files a condemnation petition relating to the property.

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

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

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

(2) specify the public use; and

(3) identify the proposed route, including the tracts of real property, identified by the tract number assigned by the county assessor-collector, that the private entity intends to acquire. [FA1(2)]

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No equivalent provision.

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

(b-1) In addition to the contents prescribed by Subsection (b), a petition filed by a private entity as defined by Section 21.0114 to acquire property for a public use must state the terms to be included in the instrument of conveyance under Section 21.0114(b). [FA1(2)]

SECTION __. 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 day after the date the property owner received notice that the petition has been filed under Section 21.012, 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 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

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commissioners are listed in the initial order of appointment
~~[- the judge shall appoint a replacement].~~ [FA1(2)]

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].~~

No equivalent provision.

SECTION 1. Same as House version.

SECTION __. (a) Except as provided by Subsection (b) of this section, the changes in law made by this Act apply to the acquisition of real property in connection with an initial offer made under Chapter 21, Property Code, on or after the effective date of this Act. An acquisition of real property in connection with an initial offer made under Chapter 21, Property Code, 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.

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(b) The changes in law made by this Act do not apply to an electric transmission project for which the Public Utility Commission of Texas has issued a final and appealable order that amends a certificate of convenience and necessity before January 1, 2020. [FA1(2)]

No equivalent provision. [Deleted by FA1(1)]

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 Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2019.