

BILL ANALYSIS

Senate Research Center
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H.B. 2730
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Jurisprudence
5/19/2021
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Statement of Purpose

To change the eminent domain process to make the process more transparent, accountable, and fair for landowners.

Background

For the past several sessions, Coalition for Critical Infrastructure has collectively worked to reach a resolution on eminent domain reform. After years of intense negotiations, they have reached consensus on language that makes significant improvements to the process for property owners while also ensuring the building of critical infrastructure continues to keep pace with our state's growing population and needs. H.B. 2730 represents a delicate compromise among numerous stakeholders.

A public or private entity with eminent domain authority that wants to acquire property for a public use must meet certain requirements. Over the past several legislative sessions, the Texas Legislature has been asked by various landowner groups to change those requirements to make the process more transparent, accountable, and fair for landowners. H.B. 2730 seeks to address this issue by making changes relating to the acquisition of real property by an entity with eminent domain authority and the regulation of easement or right-of-way agents.

Key Provisions

- Landowner's Bill of Rights (LOBR) remains at the Office of the Attorney General with public comment.
- LOBR will include the right to file a complaint against a registered easement or right-of-way agent.
- In dealing with private entities, landowners are given required easement terms, unless a waiver is signed or the landowner provides his or her own form.
- Addendum will be added to the LOBR with the easement terms attached.
- Right-of-way agent education at the Texas Real Estate Commission.
- Special commissioner's front-end process (timeline, alternate appointments, and strike period).

H.B. 2730 amends current law relating to the acquisition of real property by an entity with eminent domain authority and the regulation of easement or right-of-way agents.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Real Estate Commission in SECTION 3 (Sections 1101.508 and 1101.509, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 402.031, Government Code, by amending Subsection (b) and adding Subsections (c-1), (e), and (f), as follows:

(b) Requires that the landowner's bill of rights notify each property owner that the property owner has certain rights, including the right to file a written complaint with the Texas Real Estate Commission (TREC) under Section 1101.205 (Complaint Investigation of Certificate Holder), Occupations Code, regarding alleged misconduct by a registered easement or right-of-way agent acting on behalf of the entity exercising eminent domain authority. Makes nonsubstantive changes.

(c-1) Requires that the statement also include an addendum of the terms required for an instrument of conveyance under Section 21.0114(c), Property Code, and the terms a property owner is authorized to negotiate under Section 21.0114(d), Property Code.

(e) Requires the attorney general, at least once every two years, to evaluate the landowner's bill of rights statement, including the addendum required by Subsection (c-1), for compliance with the requirements of Section 402.031 (Preparation of Landowner's Bill of Rights Statement), including the requirement under Subsection (d) that the statement be written in plain language designed to be easily understood by the average property owner and, subject to Subsection (f), to make any change to the landowner's bill of rights statement and addendum that the attorney general determines necessary to comply with the requirements of this section, including making a change to the writing style of the statement or addendum necessary to improve compliance with Subsection (d).

(f) Requires the Office of the Attorney General, before making any changes to the landowner's bill of rights statement under Subsection (e), to:

(1) publish the proposed changes in the Texas Register; and

(2) accept public comment regarding the proposed statement for a reasonable period after the date the proposed statement is published under Subdivision (1).

SECTION 2. Amends Section 1101.502(a), Occupations Code, as follows:

(a) Requires a person, to be eligible to receive a certificate of registration or a renewal certificate under Subchapter K (Certificate Requirements), to:

(1) be, at the time of application:

(A) and (B) creates these paragraphs from existing text and makes a nonsubstantive change; and

(2) successfully complete the required courses of study prescribed by this subchapter, including qualifying or continuing education requirements.

SECTION 3. Amends Subchapter K, Chapter 1101, Occupations Code, by adding Sections 1101.508 and 1101.509, as follows:

Sec. 1101.508. PROBATIONARY CERTIFICATE. (a) Authorizes TREC to issue a probationary certificate of registration under Subchapter K.

(b) Requires TREC by rule to adopt reasonable requirements for the issuance of a probationary certificate.

Sec. 1101.509. QUALIFYING AND CONTINUING EDUCATION REQUIREMENTS.

(a) Requires TREC by rule to approve coursework that an applicant is required to successfully complete to be eligible for the issuance or renewal of a certificate of registration under Subchapter K.

(b) Requires an applicant for the issuance of an original certificate of registration to submit evidence satisfactory to TREC that the applicant has completed at least 16 classroom hours of coursework approved by TREC in the law of eminent domain, including the rights of property owners, in appropriate standards of

professionalism in contacting and conducting negotiations with property owners, and in ethical considerations in the performance of right-of-way acquisition services.

(c) Requires an applicant for the renewal of a certificate of registration to submit evidence satisfactory to TREC that the applicant has, during the renewal period, completed at least 16 classroom hours of coursework approved by TREC that provides current information regarding the subjects specified in Subsection (b) and other relevant subjects as prescribed by TREC rule.

SECTION 4. Amends Section 1101.653, Occupations Code, as follows:

Sec. 1101.653. GROUND FOR SUSPENSION OR REVOCATION OF CERTIFICATE. Authorizes TREC to suspend or revoke a certificate of registration issued under this chapter if the certificate holder commits certain actions, including if the certificate holder directly or indirectly accepts a financial incentive to make an initial offer that the certificate holder knows or should know is lower than the adequate compensation required under the Texas Constitution. Makes nonsubstantive changes.

SECTION 5. Amends Subchapter B, Chapter 21, Property Code, by adding Section 21.0101, as follows:

Sec. 21.0101. EFFECT OF CHAPTER ON SURVEY ACCESS RIGHTS. Provides that nothing in Chapter 21 (Eminent Domain) prevents an entity from seeking survey access rights as provided by law.

SECTION 6. Amends Section 21.0113(b), Property Code, as follows:

(b) Provides that an entity with eminent domain authority has made a bona fide offer if:

(1) an initial offer is made in writing to a property owner that includes:

(A) a copy of the landowner's bill of rights statement prescribed by Section 402.031, Government Code, including the addendum prescribed by Section 402.031(c-1), Government Code, if applicable;

(B) a statement, in bold print and a larger font than the other portions of the offer, indicating whether the compensation being offered includes:

(i) damages to the remainder, if any, of the property owner's remaining property; or

(ii) an appraisal of the property, including damages to the remainder, if any, prepared by a certified appraiser certified to practice as a certified general appraiser under Chapter 1103 (Real Estate Appraisers), Occupations Code;

(C) an instrument of conveyance, provided that if the entity is a private entity as defined by Section 21.0114(a), the instrument is required to comply with Section 21.0114, as applicable, unless:

(i) the entity has previously provided an instrument complying with Section 21.0114;

(ii) the property owner desires to use an instrument different than one complying with Section 21.0114 and consents in writing to use a different instrument; or

(iii) the property owner provided the entity with the instrument prior to the issuance of the initial offer; and

(D) the name and telephone number of a representative of the entity who is:

- (i) an employee of the entity;
- (ii) an employee of an affiliate providing services on behalf of the entity;
- (iii) a legal representative of the entity; or
- (iv) if the entity does not have employees, an individual designated to represent the day-to-day operations of the entity;

(2)-(7) makes no changes to these subdivisions.

SECTION 7. Amends Subchapter B, Chapter 21, Property Code, by adding Section 21.0114, as follows:

Sec. 21.0114. REQUIRED TERMS FOR INSTRUMENTS OF CONVEYANCE OF CERTAIN EASEMENTS. (a) Defines "private entity."

(b) Provides that this section:

(1) applies only to a deed, agreement, or other instrument of conveyance for a pipeline right-of-way easement or an electric transmission line right-of-way easement that is included with an offer made under Chapter 21 to acquire a property interest for a public use; and

(2) does not apply in relation to:

(A) a pipeline or appurtenance that is:

(i) downstream of the point where natural gas is measured and custody is transferred from a transmission pipeline to a gas local distribution company for distribution to end-use customers; or

(ii) at a location where a gas utility taps a transmission pipeline to a city gate, provided that the pipeline does not exceed 100 feet; or

(B) an electric power line that operates below 60 kilovolts.

(c) Requires that a deed, 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, except as provided by Subsections (d), (e), and (f), address the following general terms, as applicable:

(1) if the instrument conveys a pipeline right-of-way easement or an easement related to pipeline appurtenances:

(A) the maximum number of pipelines that may be installed under the instrument for a pipeline right-of-way;

(B) a description of the types of pipeline appurtenances that are authorized to be installed under the instrument for pipeline-related appurtenances, such as pipes, valves, compressors, pumps, meters, pigging stations, dehydration facilities, electric facilities,

communication facilities, and any other appurtenances that may be necessary or desirable in connection with a pipeline;

(C) the maximum diameter, excluding any protective coating or wrapping, of each pipeline to be initially installed under the instrument for a pipeline right-of-way;

(D) the type or category of substances permitted to be transported through each pipeline to be installed under the instrument;

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

(F) 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;

(G) the maximum width of the easement under the instrument;

(H) the minimum depth at which each pipeline to be installed under the instrument for a pipeline right-of-way will initially be installed;

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

(J) a provision requiring the private entity to provide 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 if and when the private entity assigns the interest under the instrument to another entity, provided that the provision does not require notice by the private entity for assignment to an affiliate or to a successor through merger, consolidation, or other sale or transfer of all or substantially all of its assets and businesses;

(K) a provision describing whether the easement rights are exclusive or nonexclusive;

(L) a provision limiting the private entity's right to grant to 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 under the instrument and of pipeline appurtenances to be installed under the instrument;

(M) 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 under the instrument, or a statement that the consideration for the instrument includes any monetary damages arising from the construction and installation of each pipeline to be installed under the instrument;

(N) a provision regarding the property owner's right after initial construction and installation of each pipeline to be installed under the instrument to actual monetary damages arising from the repair, maintenance, inspection, replacement, operation, or removal of

each pipeline to be installed under the instrument, or a statement that consideration for the instrument includes any monetary damages arising from the repair, maintenance, inspection, replacement, operation, or removal of each pipeline to be installed under the instrument;

(O) 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 under the instrument; or

(ii) providing for the payment for any damage caused by the private entity to gates and fences described by Subparagraph (i), if any, to the extent that the gates or fences are not restored or paid for as part of the consideration paid for the instrument;

(P) a provision:

(i) regarding the private entity's obligation to restore the pipeline 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 in a manner consistent with the purposes for which the easement will be used by the private entity under the instrument; 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 pipeline easement area or the property owner's remaining property, if any, to the extent caused by the private entity and not restored or paid for as part of the consideration for the instrument; and

(Q) a provision describing the private entity's rights of ingress, egress, entry, and access on, to, over, and across the property owner's property under the instrument;

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

(A) a general description of the uses of the surface of the property to be encumbered by 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 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 under the instrument;

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

(E) a provision limiting the private entity's right to grant to 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 the electric and appurtenant facilities installed under the instrument;

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

(ii) providing for the payment for any damage caused by the private entity to gates and fences described by Subparagraph (i), if any, to the extent that the gates or fences are not restored or paid for as part of the consideration for the instrument;

(H) a provision regarding the private 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 reasonably practicable, unless the safety or operational needs of the private entity and the electric facilities would be impaired, 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 reasonably practicable, unless the safety or operational needs of the private entity and the electric facilities would be impaired; or

(ii) a provision that the consideration for the easement instrument includes damages as described by Subparagraph (i) 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 under the terms of the instrument; 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 (PUC) 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 by the private entity of the property rights being conveyed by the instrument, other than a use stated in the instrument, without the express written consent of the property owner; and

(4) a provision that the terms of the instrument will bind the successors and assigns of the property owner and private entity.

(d) Requires a private entity to notify the property owner that the property owner is authorized to negotiate for the following general terms to be included in a deed, agreement, or other instrument of conveyance described by Subsection (c):

(1) a provision regarding the property owner's right to negotiate to recover damages, or a statement that the consideration for the instrument includes damages, for damage to certain vegetation and 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, commercial liability insurance or self-insurance:

(i) issued by an insurer authorized to issue liability insurance in this state, if maintaining commercial liability insurance; 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 electric transmission cost-of-service rate jurisdiction of the PUC or has a net worth of at least \$25 million, requiring the private entity to maintain self-insurance or commercial liability insurance at levels approved by the PUC in the entity's most recent transmission cost-of-service base rate proceeding.

(e) Authorizes a private entity or the property owner to, after the entity provides an instrument in compliance with Section 21.0113(b)(1)(C):

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

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

(f) Provides that except as provided by this subsection, this section does not prohibit a private entity or the property owner from negotiating for or agreeing to amend, alter, or omit the terms required by Subsection (c) at any time after the private entity first provides a deed, agreement, or other instrument containing the required general terms to the property owner, whether before or at the same time that the entity makes an initial offer to the property owner. Requires a private entity that changes the terms required by Subsection (c) to provide a copy of the amended deed, 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 unless the parties agree in writing to waive the notice.

(g) Provides that a private entity that changes or amends a deed, agreement, or other instrument has satisfied the requirements of Section 21.0113 (Bona Fide Offer Required) if the requirements were previously satisfied as part of the initial offer made in accordance with Section 21.0113(b)(1)(C).

SECTION 8. Amends Section 21.012(c), Property Code, as follows:

(c) Requires an entity that files a petition under Section 21.012 (Condemnation Petition) to concurrently provide a copy of the petition to the property owner by certified mail, return receipt requested, and first class mail, rather than to provide a copy of the petition to the property owner by certified mail, return receipt requested. Requires the entity, if the entity has received written notice that the property owner is represented by counsel, to also concurrently provide a copy of the petition to the property owner's attorney by first class mail, commercial delivery service, fax, or e-mail.

SECTION 9. Amends Section 21.014, Property Code, by amending Subsection (a) and adding Subsection (d), as follows:

(a) Requires the judge of a court in which a condemnation petition is filed or to which an eminent domain case is assigned to 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 not later than the 30th calendar day after the petition is filed, and to appoint two disinterested real property owners who reside in the county as alternate special commissioners. Requires the judge appointing the special commissioners to give preference to persons agreed on by the parties, if any, before the court appoints the special commissioners, rather than requires the judge appointing the special commissioners to give preference to persons agreed on by the parties. Requires the judge to provide the names and contact information of the special commissioners and alternate special commissioners to the parties. Requires that each party have until the later of 10 calendar days after the date of the order appointing the special commissioners or 20 days after the date the petition was filed to strike one of the three special commissioners, rather than requires the judge to provide each party a reasonable period to strike one of the three commissioners appointed by the judge. Requires that any strike of a special commissioner be filed electronically with electronic service provided concurrently to any represented party and first class mail service provided concurrently to any other party. Requires an alternate special commissioner, if a person fails to serve as a special commissioner or is struck by a party to the suit in accordance with this subsection, to serve as a replacement for the special commissioner based on the order that the alternate special commissioners are listed in the initial order of appointment. Authorizes the other party, if a party exercises a strike, to, by the later of the third day after the date of filing of the initial strike or the date of the initial strike deadline, strike a special commissioner from the resulting panel, provided the other party has not earlier exercised a strike. Makes nonsubstantive changes.

(d) Provides that each party in an eminent domain proceeding is entitled to a copy of the court's order appointing special commissioners under Subsection (a). Requires the court to promptly provide the signed order to the party initiating the condemnation proceeding and requires that party to provide a copy of the signed order to the property owner and each other party by certified mail, return receipt requested. Requires the party initiating the condemnation proceeding, if the entity has received written notice that the property owner is represented by counsel, to concurrently provide a copy of the signed order to the property owner's attorney by first class mail, commercial delivery service, fax, or e-mail.

SECTION 10. Requires TREC, not later than September 1, 2022, to adopt rules necessary to implement the changes in law made by this Act to Chapter 1101, Occupations Code.

SECTION 11. Provides that, notwithstanding Section 1101.502(a), Occupations Code, as amended by this Act, and Section 1101.509, Occupations Code, as added by this Act, a person who has submitted an application for the issuance or renewal of a certificate of registration as an

easement or right-of-way agent before January 1, 2023, is not subject to the education requirements of those provisions until the first renewal of the certificate after March 1, 2023.

SECTION 12. (a) Provides that except as provided by Subsection (b) of this section, the changes in law made by this Act to Chapter 21, Property Code, 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. Provides that 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.

(b) Provides that the changes in law made by this Act to Chapter 21, Property Code, do not apply to an electric transmission project for which the PUC has issued a final and appealable order that amends a certificate of convenience and necessity before the effective date of this Act.

SECTION 13. Effective date: January 1, 2022.