

BILL ANALYSIS

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S.B. 723
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Many private landowners are unfamiliar with the full scope of their property rights, and are unsure of what to do when approached about their property. Misunderstandings about rights can lead to suboptimal outcomes for landowners. To help landowners make informed decisions, current law requires the attorney general to publish a document called the "Landowner's Bill of Rights." While the document is useful, it does not contain information concerning the ability of a person or entity to enter the land to conduct a survey.

S.B. 723 places information in the landowner's bill of rights concerning existing rights and obligations of both the condemning entity and the landowner.

Survey rights added in the landowner's bill of rights (written by the attorney general):

- a condemning entity's responsibility for any actual damages arising from an examination or survey of the property;
- a property owner's right to negotiate the terms of the examination or survey of the property (e.g., time of day); and
- the condemning entity's ability to sue to obtain a court order authorizing the examination or survey if the landowner refuses access to his/her property.
 - Requires a survey permission form, if given to a landowner, to conspicuously include the same information.

Two clear offers required:

- adds in the landowner bill of rights that a condemnor is required to make a separate offer for land that the condemnor wishes to purchase, but cannot condemn because the additional land is not strictly needed for the condemnor's public purpose.

Provides that the landowner must receive the landowner bill of rights with the initial offer instead of the final offer.

- currently, Section 21.0112, Property Code, states that the entity with the power of eminent domain must send/provide the landowner bill of rights seven days before the final offer is made.
- this provision makes it clear that the landowner bill of rights must be delivered with the initial offer.
 - this is in addition to the requirement that the condemnor provide the landowner bill of rights "at the same time as the entity represents...to the landowner that the entity possesses eminent domain authority."

As proposed, S.B. 723 amends current law relating to certain requirements in connection with the acquisition of real property for public use by an entity with eminent domain authority.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

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

(c) Requires that the statement prepared by the attorney general that includes a bill of rights for certain property owners affected by eminent domain include:

(1) makes no changes to this subdivision;

(2) a description of:

(A) makes no changes to this paragraph;

(B) the condemning entity's obligations to the property owner, including the responsibility for any damages arising from an examination or survey of the property;

(C) the property owner's options during a condemnation, including the property owner's right to take certain actions, including the right to refuse to grant permission to the condemning entity to enter the property and conduct an examination or survey of the property, and the right to negotiate the terms of the examination or survey of the property; and

(D) the condemning entity's right to sue for a court order authorizing the examination or survey if the property owner refuses to grant permission for the examination or survey.

Makes nonsubstantive changes.

(c-1) Requires that the statement disclose that a condemning entity, other than an entity acquiring property as authorized under Subchapter D (Acquisition of Property), Chapter 203 (Modernization of State Highways; Controlled Access Highways), Transportation Code, that makes an initial offer under Section 21.0113 (Bona Fide Offer Required), Property Code, that includes real property that the entity does not seek to acquire by condemnation is required to, in the initial offer:

(1) separately identify the real property that the entity does not seek to acquire by condemnation; and

(2) make an offer for the real property that the entity does not seek to acquire by condemnation separate from the offer made for the real property sought to be acquired by condemnation.

SECTION 2. Amends Subchapter B, Chapter 21, Property Code, by adding Section 21.01101, as follows:

Sec. 21.01101. SURVEY PERMISSION FORM. Requires that the form, if an entity with eminent domain authority provides a form to an owner of real property requesting the owner's permission to enter the property to examine the property or conduct a survey of the property in connection with the potential acquisition of the property for a public use, conspicuously state that:

(1) the owner has a right to refuse to grant permission to the entity to enter the property and conduct the examination or survey;

(2) the entity has a right to sue for a court order authorizing the entity to enter the property and conduct the examination or survey if the owner refuses to grant the permission;

(3) the owner has a right to negotiate the terms of the examination or survey of the property; and

(4) the entity has the responsibility for any damages arising from an examination or survey of the property.

SECTION 3. Amends Section 21.0112(a), Property Code, as follows:

(a) Requires the entity, at the time a governmental or private entity with eminent domain authority makes an initial offer, rather than not later before the seventh day before the date a governmental or private entity with eminent domain authority makes a final offer, to a property owner to acquire real property, to send by first-class mail or otherwise provide a landowner's bill of rights statement provided by Section 402.031 (Preparation of Landowner's Bill of Rights Statement), Government Code, to the last known address of the person in whose name the property is listed on the most recent tax roll of any appropriate taxing unit authorized by law to levy property taxes against the property.

SECTION 4. Amends Section 21.0113(b), Property Code, to provide that an entity with eminent domain authority has made a bona fide offer if certain conditions are met, including a landowner's bill of rights statement is provided to the property owner in accordance with Section 21.0112(a). Makes conforming and nonsubstantive changes.

SECTION 5. Amends Subchapter B, Chapter 21, Property Code, by adding Section 21.0114, as follows:

Sec. 21.0114. OFFER TO ACQUIRE ADDITIONAL PROPERTY; EXCEPTION. (a) Requires a condemning entity that makes an initial offer under Section 21.0113 that includes real property that the entity does not seek to acquire by condemnation, except as provided by Subsection (b), to in the initial offer:

(1) separately identify the real property that the entity does not seek to acquire by condemnation; and

(2) make an offer for the real property that the entity does not seek to acquire by condemnation separate from the offer made for the real property sought to be acquired by condemnation.

(b) Provides that Subsection (a) does not apply to an acquisition of real property under Subchapter D, Chapter 203, Transportation Code.

SECTION 6. Requires the Office of the Attorney General to make the landowner's bill of rights statement required by Section 402.031, Government Code, as amended by this Act, available on the attorney general's Internet website not later than January 1, 2022.

SECTION 7. Makes application of Sections 21.0112 and 21.0113, Property Code, as amended by this Act, prospective.

SECTION 8. Effective date: January 1, 2022.