

By: Burns

H.B. No. 901

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), (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

1 appraiser, broker, or private entity, as applicable, and based on:

2 (a) a comparative market analysis
3 prepared by a third party who is a real estate broker licensed under
4 Chapter 1101, Occupations Code, or a certified general appraiser
5 licensed under Chapter 1103, Occupations Code;

6 (b) a broker price opinion prepared by
7 a third party who is a real estate broker licensed under Chapter
8 1101, Occupations Code; or

9 (c) a market study prepared by a third
10 party who is a real estate broker licensed under Chapter 1101,
11 Occupations Code, or a certified general appraiser licensed under
12 Chapter 1103, Occupations Code;

13 (B) the complete written report of the appraisal,
14 the comparative market analysis, the broker price opinion, the
15 market study, or a summary of the market study, as prepared by the
16 third party, that forms the basis for the amount of the offer of
17 compensation under Paragraph (A);

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

21 (D) notice of the terms described by Section
22 21.0114(d) for which the property owner may negotiate to be
23 included in a deed, easement, agreement, or other instrument of
24 conveyance relating to the property; and

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

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

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

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

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

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

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

18 (f) A private entity that provides to a property owner an
19 easement form that is generally consistent with the language or
20 provisions required by Section 21.0114(c) and the notice required
21 by Section 21.0114(d) is considered to have complied with Section
22 21.0114 for purposes of Subsection (c)(2)(C) of this section,
23 regardless of whether the private entity subsequently provides to
24 the property owner a different deed, easement, agreement, or other
25 instrument of conveyance as authorized under Sections 21.0114(e)
26 and (f).

27 SECTION 2. Subchapter B, Chapter 21, Property Code, is

1 amended by adding Sections 21.0114 and 21.0115 to read as follows:

2 Sec. 21.0114. REQUIRED TERMS FOR INSTRUMENTS OF CONVEYANCE
3 OF CERTAIN EASEMENTS. (a) In this section, "private entity":

4 (1) means:

5 (A) a for-profit entity, as defined by Section
6 1.002, Business Organizations Code, however organized, including
7 an affiliate or subsidiary, authorized to exercise the power of
8 eminent domain to acquire private property for public use; or

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

12 (2) does not include an entity governed by the Natural
13 Gas Act (15 U.S.C. Section 717 et seq.) unless the entity seeks to
14 acquire property under this chapter.

15 (b) This section applies only to a deed, easement,
16 agreement, or other instrument of conveyance for a pipeline
17 right-of-way easement or an electric transmission right-of-way
18 easement.

19 (c) Except as provided by Subsections (d), (e), and (f), a
20 deed, easement, agreement, or other instrument of conveyance
21 provided to a property owner by a private entity with eminent domain
22 authority to acquire the property interest to be conveyed must
23 include the following terms, as applicable:

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

27 (A) the maximum number of pipelines that may be

1 installed in the easement;

2 (B) the maximum diameter, excluding any
3 protective coating or wrapping, of each pipeline to be initially
4 installed in the easement;

5 (C) the type or category of substances permitted
6 to be transported through each pipeline to be installed in the
7 easement;

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

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

15 (F) the maximum width of the easement;

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

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

21 (I) a provision requiring the private entity to
22 provide written notice to the property owner at the last known
23 address of the person in whose name the property is listed on the
24 most recent tax roll of any taxing unit authorized to levy property
25 taxes against the property before assigning the private entity's
26 interest under the deed, easement, agreement, or other instrument
27 of conveyance to another entity;

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

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

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

15 (M) a provision regarding the property owner's
16 right after initial construction and installation of each pipeline
17 to be installed in the easement to actual monetary damages arising
18 from the repair, maintenance, inspection, replacement, operation,
19 or removal of each pipeline to be installed in the easement;

20 (N) a provision:

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

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

27 (O) a provision:

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

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

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

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

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

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

23 (C) the maximum width of the easement;

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

26 (E) a provision limiting access to the easement
27 area by a third party that has not obtained authorization from the

1 property owner for a purpose that is not related to the transmission
2 line's construction, safety, repair, maintenance, inspection,
3 replacement, operation, or removal;

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

10 (G) a provision:

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

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

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

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

27 (ii) a provision that the consideration for

1 the easement includes future damages to the easement area and the
2 property owner's remaining property;

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

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

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

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

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

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

27 (1) a provision regarding the property owner's right

1 to negotiate to recover damages, or a statement that the
2 consideration for the easement includes damages, for:

3 (A) damage to vegetation; and

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

7 (2) a provision:

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

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

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

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

26 (e) A private entity or the property owner may:

27 (1) negotiate for and agree to terms and conditions

1 not required by Subsection (c) or provided by Subsection (d),
2 including terms and conditions that differ from or are not included
3 in a subsequent condemnation petition; and

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

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

19 (g) A private entity that amends a deed, easement,
20 agreement, or other instrument of conveyance after the initial
21 offer or final offer is not required to satisfy again any
22 requirement of Section 21.0113 that the private entity has
23 previously satisfied.

24 Sec. 21.0115. NOTICE OF INTENT. (a) A private entity as
25 defined by Section 21.0114 must send a written notice of intent to
26 the county judge of a county in which the private entity will seek
27 to acquire property for a project for public use before the first

1 time the private entity makes an initial offer to acquire real
2 property for the project in that county.

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

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

6 (2) specify the public use; and

7 (3) identify the proposed route, including the tracts
8 of real property, identified by the tract number assigned by the
9 county assessor-collector, that the private entity intends to
10 acquire.

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

13 (b-1) In addition to the contents prescribed by Subsection
14 (b), a petition filed by a private entity as defined by Section
15 21.0114 to acquire property for a public use must state the terms to
16 be included in the instrument of conveyance under Section
17 21.0114(c).

18 SECTION 4. Section 21.014(a), Property Code, is amended to
19 read as follows:

20 (a) The judge of a court in which a condemnation petition is
21 filed or to which an eminent domain case is assigned shall, not
22 later than the 30th day after the date the property owner received
23 notice that the petition has been filed under Section 21.012,
24 appoint three disinterested real property owners who reside in the
25 county as special commissioners to assess the damages of the owner
26 of the property being condemned and two disinterested real property
27 owners who reside in the county as alternate special commissioners.

1 The judge appointing the special commissioners shall give
2 preference to any persons agreed on by the parties before the court
3 appoints the special commissioners. Each party shall have 15 days
4 after the date the property owner received notice of the
5 appointment of the special commissioners [~~The judge shall provide~~
6 ~~each party a reasonable period~~] to strike one of the three special
7 commissioners [~~appointed by the judge~~]. If a person fails to serve
8 as a special commissioner or is struck by a party to the suit in
9 accordance with this subsection, an alternate special commissioner
10 shall serve as a replacement for the special commissioner based on
11 the order that the alternate special commissioners are listed in
12 the initial order of appointment [~~, the judge shall appoint a~~
13 ~~replacement~~].

14 SECTION 5. (a) Except as provided by Subsection (b) of this
15 section, the changes in law made by this Act apply to the
16 acquisition of real property in connection with an initial offer
17 made under Chapter 21, Property Code, on or after the effective date
18 of this Act. An acquisition of real property in connection with an
19 initial offer made under Chapter 21, Property Code, before the
20 effective date of this Act is governed by the law applicable to the
21 acquisition immediately before the effective date of this Act, and
22 that law is continued in effect for that purpose.

23 (b) The changes in law made by this Act do not apply to an
24 electric transmission project for which the Public Utility
25 Commission of Texas has issued a final and appealable order that
26 amends a certificate of convenience and necessity before the
27 effective date of this Act.

1 SECTION 6. This Act takes effect January 1, 2022.