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H.B. No. 2730

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the acquisition of real property by an entity with
3 eminent domain authority and the regulation of easement or
4 right-of-way agents.

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

6 SECTION 1. Section 402.031, Government Code, is amended by
7 amending Subsection (b) and adding Subsections (c-1), (e), and (f)
8 to read as follows:

9 (b) The landowner's bill of rights must notify each property
10 owner that the property owner has the right to:

11 (1) notice of the proposed acquisition of the owner's
12 property;

13 (2) a bona fide good faith effort to negotiate by the
14 entity proposing to acquire the property;

15 (3) an assessment of damages to the owner that will
16 result from the taking of the property;

17 (4) a hearing under Chapter 21, Property Code,
18 including a hearing on the assessment of damages; ~~and~~

19 (5) an appeal of a judgment in a condemnation
20 proceeding, including an appeal of an assessment of damages; and

21 (6) file a written complaint with the Texas Real
22 Estate Commission under Section 1101.205, Occupations Code,
23 regarding alleged misconduct by a registered easement or
24 right-of-way agent acting on behalf of the entity exercising

1 eminent domain authority.

2 (c-1) The statement must also include an addendum of the
3 terms required for an instrument of conveyance under Section
4 21.0114(c), Property Code, and the terms a property owner may
5 negotiate under Section 21.0114(d), Property Code.

6 (e) At least once every two years, the attorney general
7 shall:

8 (1) evaluate the landowner's bill of rights statement,
9 including the addendum required by Subsection (c-1), for compliance
10 with the requirements of this section, including the requirement
11 under Subsection (d) that the statement be written in plain
12 language designed to be easily understood by the average property
13 owner; and

14 (2) subject to Subsection (f), make any change to the
15 landowner's bill of rights statement and addendum that the attorney
16 general determines necessary to comply with the requirements of
17 this section, including making a change to the writing style of the
18 statement or addendum necessary to improve compliance with
19 Subsection (d).

20 (f) Before making any changes to the landowner's bill of
21 rights statement under Subsection (e), the office of the attorney
22 general shall:

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

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

1 SECTION 2. Section 1101.502(a), Occupations Code, is
2 amended to read as follows:

3 (a) To be eligible to receive a certificate of registration
4 or a renewal certificate under this subchapter, a person must:

5 (1) be, at the time of application:

6 (A) [~~1~~] at least 18 years of age; and

7 (B) [~~2~~] a citizen of the United States or a
8 lawfully admitted alien; and

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

12 SECTION 3. Subchapter K, Chapter 1101, Occupations Code, is
13 amended by adding Sections 1101.508 and 1101.509 to read as
14 follows:

15 Sec. 1101.508. PROBATIONARY CERTIFICATE. (a) The
16 commission may issue a probationary certificate of registration
17 under this subchapter.

18 (b) The commission by rule shall adopt reasonable
19 requirements for the issuance of a probationary certificate.

20 Sec. 1101.509. QUALIFYING AND CONTINUING EDUCATION
21 REQUIREMENTS. (a) The commission by rule shall approve coursework
22 that an applicant must successfully complete to be eligible for the
23 issuance or renewal of a certificate of registration under this
24 subchapter.

25 (b) An applicant for the issuance of an original certificate
26 of registration shall submit evidence satisfactory to the
27 commission that the applicant has completed at least 16 classroom

1 hours of coursework approved by the commission in:

2 (1) the law of eminent domain, including the rights of
3 property owners;

4 (2) appropriate standards of professionalism in
5 contacting and conducting negotiations with property owners; and

6 (3) ethical considerations in the performance of
7 right-of-way acquisition services.

8 (c) An applicant for the renewal of a certificate of
9 registration shall submit evidence satisfactory to the commission
10 that the applicant has, during the renewal period, completed at
11 least 16 classroom hours of coursework approved by the commission
12 that provides current information regarding:

13 (1) the subjects specified in Subsection (b); and

14 (2) other relevant subjects as prescribed by
15 commission rule.

16 SECTION 4. Section [1101.653](#), Occupations Code, is amended
17 to read as follows:

18 Sec. 1101.653. GROUNDS FOR SUSPENSION OR REVOCATION OF
19 CERTIFICATE. The commission may suspend or revoke a certificate of
20 registration issued under this chapter if the certificate holder:

21 (1) engages in dishonest dealing, fraud, unlawful
22 discrimination, or a deceptive act;

23 (2) makes a misrepresentation;

24 (3) acts in bad faith;

25 (4) demonstrates untrustworthiness;

26 (5) fails to honor, within a reasonable time, a check
27 issued to the commission after the commission has mailed a request

1 for payment to the certificate holder's last known address
2 according to the commission's records;

3 (6) fails to provide to a party to a transaction a
4 written notice prescribed by the commission that:

5 (A) must be given before the party is obligated
6 to sell, buy, lease, or transfer a right-of-way or easement; and

7 (B) contains:

8 (i) the name of the certificate holder;

9 (ii) the certificate number;

10 (iii) the name of the person the
11 certificate holder represents;

12 (iv) a statement advising the party that
13 the party may seek representation from a lawyer or broker in the
14 transaction; and

15 (v) a statement generally advising the
16 party that the right-of-way or easement may affect the value of the
17 property; ~~or~~

18 (7) directly or indirectly accepts a financial
19 incentive to make an initial offer that the certificate holder
20 knows or should know is lower than the adequate compensation
21 required under the Texas Constitution; or

22 (8) disregards or violates this chapter or a
23 commission rule relating to certificate holders.

24 SECTION 5. Subchapter B, Chapter 21, Property Code, is
25 amended by adding Section 21.0101 to read as follows:

26 Sec. 21.0101. EFFECT OF CHAPTER ON SURVEY ACCESS RIGHTS.

27 Nothing in this chapter prevents an entity from seeking survey

1 access rights as provided by law.

2 SECTION 6. Section 21.0113(b), Property Code, is amended to
3 read as follows:

4 (b) An entity with eminent domain authority has made a bona
5 fide offer if:

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

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

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

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

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

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

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

26 (ii) the property owner desires to use an
27 instrument different than one complying with Section 21.0114 and

1 consents in writing to use a different instrument; or

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

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

7 (i) an employee of the entity;

8 (ii) an employee of an affiliate providing
9 services on behalf of the entity;

10 (iii) a legal representative of the entity;

11 or

12 (iv) if the entity does not have employees,
13 an individual designated to represent the day-to-day operations of
14 the entity;

15 (2) a final offer is made in writing to the property
16 owner;

17 (3) the final offer is made on or after the 30th day
18 after the date on which the entity makes a written initial offer to
19 the property owner;

20 (4) before making a final offer, the entity obtains a
21 written appraisal from a certified appraiser of the value of the
22 property being acquired and the damages, if any, to any of the
23 property owner's remaining property;

24 (5) the final offer is equal to or greater than the
25 amount of the written appraisal obtained by the entity;

26 (6) the following items are included with the final
27 offer or have been previously provided to the owner by the entity:

- 1 (A) a copy of the written appraisal;
- 2 (B) a copy of the deed, easement, or other
3 instrument conveying the property sought to be acquired; and
- 4 (C) the landowner's bill of rights statement
5 prescribed by Section 21.0112; and
- 6 (7) the entity provides the property owner with at
7 least 14 days to respond to the final offer and the property owner
8 does not agree to the terms of the final offer within that period.

9 SECTION 7. Subchapter B, Chapter 21, Property Code, is
10 amended by adding Section 21.0114 to read as follows:

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

13 (1) means:

14 (A) a for-profit entity, as defined by Section
15 1.002, Business Organizations Code, however organized, including
16 an affiliate or subsidiary, authorized to exercise the power of
17 eminent domain to acquire private property for public use; or

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

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

24 (b) This section:

25 (1) applies only to a deed, agreement, or other
26 instrument of conveyance for a pipeline right-of-way easement or an
27 electric transmission line right-of-way easement that is included

1 with an offer made under this chapter to acquire a property interest
2 for a public use; and

3 (2) does not apply in relation to:

4 (A) a pipeline or appurtenance that is:

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

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

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

14 (c) Except as provided by Subsections (d), (e), and (f), a
15 deed, agreement, or other instrument of conveyance provided to a
16 property owner by a private entity with eminent domain authority to
17 acquire the property interest to be conveyed must address the
18 following general terms, as applicable:

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

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

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

1 other appurtenances that may be necessary or desirable in
2 connection with a pipeline;

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

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

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

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

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

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

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

25 (J) a provision requiring the private entity to
26 provide written notice to the property owner at the last known
27 address of the person in whose name the property is listed on the

1 most recent tax roll of any taxing unit authorized to levy property
2 taxes against the property if and when the private entity assigns
3 the interest under the instrument to another entity, provided that
4 the provision does not require notice by the private entity for
5 assignment to an affiliate or to a successor through merger,
6 consolidation, or other sale or transfer of all or substantially
7 all of its assets and businesses;

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

10 (L) a provision limiting the private entity's
11 right to grant to a third party access to the easement area for a
12 purpose that is not related to the construction, safety, repair,
13 maintenance, inspection, replacement, operation, or removal of
14 each pipeline to be installed under the instrument and of pipeline
15 appurtenances to be installed under the instrument;

16 (M) a provision regarding the property owner's
17 right to recover actual monetary damages arising from the
18 construction and installation of each pipeline to be installed
19 under the instrument, or a statement that the consideration for the
20 instrument includes any monetary damages arising from the
21 construction and installation of each pipeline to be installed
22 under the instrument;

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

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

5 (O) a provision:

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

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

14 (P) a provision:

15 (i) regarding the private entity's
16 obligation to restore the pipeline easement area and the property
17 owner's remaining property, if any, used by the private entity to as
18 near to original condition as is reasonably practicable and to
19 maintain the easement in a manner consistent with the purposes for
20 which the easement will be used by the private entity under the
21 instrument; or

22 (ii) providing for the private entity to
23 reimburse the property owner for actual monetary damages incurred
24 by the property owner that arise from damage to the pipeline
25 easement area or the property owner's remaining property, if any,
26 to the extent caused by the private entity and not restored or paid
27 for as part of the consideration for the instrument; and

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

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

6 (A) a general description of the uses of the
7 surface of the property to be encumbered by the easement the entity
8 intends to acquire;

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

13 (C) the maximum width of the easement under the
14 instrument;

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

17 (E) a provision limiting the private entity's
18 right to grant to a third party access to the easement area for a
19 purpose that is not related to the construction, safety, repair,
20 maintenance, inspection, replacement, operation, or removal of the
21 electric and appurtenant facilities installed under the
22 instrument;

23 (F) a provision regarding the property owner's
24 right to recover actual monetary damages arising from the
25 construction, operation, repair, maintenance, inspection,
26 replacement, and future removal of lines and support facilities
27 after initial construction in the easement, if any, or a statement

1 that the initial consideration for the easement instrument includes
2 such damages;

3 (G) a provision:

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

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

12 (H) a provision regarding the private entity's
13 obligation to restore the easement area and the property owner's
14 remaining property to the easement area's and the remaining
15 property's original contours and grades, to the extent reasonably
16 practicable, unless the safety or operational needs of the private
17 entity and the electric facilities would be impaired, and:

18 (i) a provision regarding the entity's
19 obligation to restore the easement area and the property owner's
20 remaining property following any future damages directly
21 attributed to the use of the easement by the private entity, to the
22 extent reasonably practicable, unless the safety or operational
23 needs of the private entity and the electric facilities would be
24 impaired; or

25 (ii) a provision that the consideration for
26 the easement instrument includes damages as described by
27 Subparagraph (i) to the easement area and the property owner's

1 remaining property;

2 (I) a provision describing whether the easement
3 rights are exclusive, nonexclusive, or otherwise limited under the
4 terms of the instrument; 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 by the private
14 entity of the property rights being conveyed by the instrument,
15 other than a use stated in the instrument, without the express
16 written consent of the property owner; and

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

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

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

27 (A) damage to certain vegetation; and

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

4 (2) a provision:

5 (A) requiring the private entity to maintain at
6 all times while the private entity uses the easement, including
7 during construction and operations on the easement, commercial
8 liability insurance or self-insurance:

9 (i) issued by an insurer authorized to
10 issue liability insurance in this state, if maintaining commercial
11 liability insurance; and

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

17 (B) if the private entity is subject to the
18 electric transmission cost-of-service rate jurisdiction of the
19 Public Utility Commission of Texas or has a net worth of at least
20 \$25 million, requiring the private entity to maintain
21 self-insurance or commercial liability insurance at levels
22 approved by the Public Utility Commission of Texas in the entity's
23 most recent transmission cost-of-service base rate proceeding.

24 (e) A private entity or the property owner may, after the
25 entity provides an instrument in compliance with Section
26 21.0113(b)(1)(C):

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

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

4 (2) negotiate for and agree to a deed, agreement, or
5 other instrument of conveyance that does not include or includes
6 terms 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
9 negotiating for or agreeing to amend, alter, or omit the terms
10 required by Subsection (c) at any time after the private entity
11 first provides a deed, agreement, or other instrument containing
12 the required general terms to the property owner, whether before or
13 at the same time that the entity makes an initial offer to the
14 property owner. A private entity that changes the terms required by
15 Subsection (c) must provide a copy of the amended deed, agreement,
16 or other instrument of conveyance to the property owner not later
17 than the seventh day before the date the private entity files a
18 condemnation petition relating to the property unless the parties
19 agree in writing to waive the notice.

20 (g) A private entity that changes or amends a deed,
21 agreement, or other instrument has satisfied the requirements of
22 Section 21.0113 if the requirements were previously satisfied as
23 part of the initial offer made in accordance with Section
24 21.0113(b)(1)(C).

25 SECTION 8. Section 21.012(c), Property Code, is amended to
26 read as follows:

27 (c) An entity that files a petition under this section must

1 concurrently provide a copy of the petition to the property owner by
2 certified mail, return receipt requested, and first class mail. If
3 the entity has received written notice that the property owner is
4 represented by counsel, the entity must also concurrently provide a
5 copy of the petition to the property owner's attorney by first class
6 mail, commercial delivery service, fax, or e-mail.

7 SECTION 9. Section 21.014, Property Code, is amended by
8 amending Subsection (a) and adding Subsection (d) to read as
9 follows:

10 (a) The judge of a court in which a condemnation petition is
11 filed or to which an eminent domain case is assigned shall, not
12 later than the 30th calendar day after the petition is filed,
13 appoint three disinterested real property owners who reside in the
14 county as special commissioners to assess the damages of the owner
15 of the property being condemned and appoint two disinterested real
16 property owners who reside in the county as alternate special
17 commissioners. The judge appointing the special commissioners
18 shall give preference to persons agreed on by the parties, if any,
19 before the court appoints the special commissioners. The judge
20 shall provide the names and contact information of the special
21 commissioners and alternate special commissioners to the parties.
22 Each [each] party shall have until the later of 10 calendar days
23 after the date of the order appointing the special commissioners or
24 20 days after the date the petition was filed [a reasonable period]
25 to strike one of the three special commissioners [appointed by the
26 judge]. Any strike of a special commissioner must be filed
27 electronically with electronic service provided concurrently to

1 any represented party and first class mail service provided
2 concurrently to any other party. If a person fails to serve as a
3 special commissioner or is struck by a party to the suit in
4 accordance with this subsection, an alternate special commissioner
5 shall serve as a replacement for the special commissioner based on
6 the order that the alternate special commissioners are listed in
7 the initial order of appointment. If a party exercises a strike,
8 the other party may, by the later of the third day after the date of
9 filing of the initial strike or the date of the initial strike
10 deadline, strike a special commissioner from the resulting panel,
11 provided the other party has not earlier exercised a strike~~[, the~~
12 ~~judge shall appoint a replacement].~~

13 (d) Each party in an eminent domain proceeding is entitled
14 to a copy of the court's order appointing special commissioners
15 under Subsection (a). The court must promptly provide the signed
16 order to the party initiating the condemnation proceeding and that
17 party must provide a copy of the signed order to the property owner
18 and each other party by certified mail, return receipt requested.
19 If the entity has received written notice that the property owner is
20 represented by counsel, the party initiating the condemnation
21 proceeding must concurrently provide a copy of the signed order to
22 the property owner's attorney by first class mail, commercial
23 delivery service, fax, or e-mail.

24 SECTION 10. Not later than September 1, 2022, the Texas Real
25 Estate Commission shall adopt rules necessary to implement the
26 changes in law made by this Act to Chapter [1101](#), Occupations Code.

27 SECTION 11. Notwithstanding Section [1101.502\(a\)](#),

1 Occupations Code, as amended by this Act, and Section 1101.509,
2 Occupations Code, as added by this Act, a person who has submitted
3 an application for the issuance or renewal of a certificate of
4 registration as an easement or right-of-way agent before January 1,
5 2023, is not subject to the education requirements of those
6 provisions until the first renewal of the certificate after March
7 1, 2023.

8 SECTION 12. (a) Except as provided by Subsection (b) of
9 this section, the changes in law made by this Act to Chapter 21,
10 Property Code, apply to the acquisition of real property in
11 connection with an initial offer made under Chapter 21, Property
12 Code, on or after the effective date of this Act. An acquisition of
13 real property in connection with an initial offer made under
14 Chapter 21, Property Code, before the effective date of this Act is
15 governed by the law applicable to the acquisition immediately
16 before the effective date of this Act, and that law is continued in
17 effect for that purpose.

18 (b) The changes in law made by this Act to Chapter 21,
19 Property Code, do not apply to an electric transmission project for
20 which the Public Utility Commission of Texas has issued a final and
21 appealable order that amends a certificate of convenience and
22 necessity before the effective date of this Act.

23 SECTION 13. This Act takes effect January 1, 2022.