

SUBJECT: Revising procedures for eminent domain

COMMITTEE: Land and Resource Management — committee substitute recommended

VOTE: 7 ayes — Deshotel, Leman, Biedermann, Burrows, Rosenthal, Spiller, Thierry

1 nay — Craddick

1 absent — Romero

WITNESSES: For — Lisa Kaufman, Coalition for Critical Infrastructure; Bill Allen, Greater Beaumont Chamber of Commerce; Patricia Avery, Greater Port Arthur Chamber of Commerce; Steve Bresnen, North Harris County Regional Water Authority; Tony Bennett, Texas Association of Manufacturers; Todd Staples, Texas Oil & Gas Association; Thomas Zabel, Texas Pipeline Association; (*Registered, but did not testify*: Lauren Spreen, Apache Corporation; Ricardo Lopez-Guerra, Boardwalk Pipeline Partners, LP; CJ Tredway, Central Harris County Regional Water Authority; Price Ashley, Cheniere Energy; Kari Gibson, ConocoPhillips; Shayne Woodard, DCP Midstream, Enbridge Energy, and Freeport LNG; Teddy Carter, Devon Energy; Daniel Womack, Dow Inc.; Lindsey Miller, Enterprise Products Partners LLP; Samantha Omev, ExxonMobil; Lindsay Munoz, Greater Houston Partnership; Thamara Narvaez, Harris County Commissioners Court; Royce Poinsett, Kinder Morgan, Inc.; Bill Oswald, Koch Companies; Lavelle Edmondson, Marathon Petroleum Company, LP; Trey Lary, North Fort Bend Water Authority and West Harris County Regional Water Authority; Chris Wallace, North Texas Commission; Julie Moore, Occidental Petroleum; Anne Billingsley, ONEOK; William Stevens, Panhandle Producers and Royalty Owners Association; Ben Shepperd, Permian Basin Petroleum Association; Neftali Partida, Phillips 66; Kate Noble, Karen Rugaard, and Beth Cubriel, Plains All American Pipeline; Brian Yarbrough, Port of Corpus Christi Authority; Kinnan Golemon, Shell Oil Company; Phil Gamble, Targa Resources; Lee Christie, Tarrant Regional Water District; Jason Modglin, Texas Alliance of Energy Producers; Aurora Flores, Texas Association of Counties; Chris

Noonan, Texas Chemical Council; John Dahill, Texas Conference of Urban Counties; Ryan Paylor, Texas Independent Producers & Royalty Owners Association; Jimmy Gaines, Texas Landowners Council; Monty Wynn, Texas Municipal League; Thure Cannon, Texas Pipeline Association; Mackenna Wehmeyer, Texas Rail Advocates; Lindsay Mullins, Texas Railroad Association; Tricia Davis, Texas Royalty Council; Jessica Karlsruher, TREAD Coalition; Jay Brown, Valero Energy Corporation; Jim Rudd, West Texas Gas; Gabriel Sepulveda, Williams)

Against — Arthur Uhl, Texas and Southwestern Cattle Raisers Association; Russell Boening, Texas Farm Bureau; (*Registered, but did not testify*: Sandy Bedell, Collin County Farm Bureau; Jerry Davis, Farm Bureau Collin County; Eric Opiela, South Texans' Property Rights Association; Harold Stone, Stone Family Memorial Foundation; Brian Adamek, Si Cook, Mark Daniel, John Griffith, J Walt Hagood, Pat McDowell, Sam Snyder, and Kevin Wikerson, Texas Farm Bureau; Jennifer Bremer, Texas Land & Mineral Owners Association; and eight individuals)

On — Jaren Taylor, Association of Electric Companies of Texas; Calvin Tillman; (*Registered, but did not testify*: Esteban Soto, Office of the Attorney General; Vanessa Burgess and Tony Slagle, Texas Real Estate Commission; Isaac Sulemana)

BACKGROUND: Property Code ch. 21 governs the procedures for eminent domain. Under sec. 21.0113, an entity with eminent domain authority that wants to acquire real property for a public use must make a bona fide offer to acquire the property from the owner voluntarily. If the entity is unable to agree with the property owner on the amount of damages, the entity may begin a condemnation proceeding by filing a petition under sec. 21.012. Sec. 21.014 requires the judge of a court in which the petition is filed to appoint three disinterested real property owners as special commissioners to assess the damages of the owner of the property being condemned. Other statutes in the chapter outline the notice requirements and other procedures of eminent domain.

Government Code sec. 402.031 requires the attorney general to prepare a written statement that includes a bill of rights for a property owner whose real property may be acquired by a governmental or private entity through the use of eminent domain.

Occupations Code sec. 1101.501 requires a person to hold a license or certificate of registration to sell, buy, lease, or transfer an easement or right-of-way for another, for compensation or with the expectation of compensation, for use in connection with telecommunication, utility, railroad, or pipeline service.

DIGEST:

CSHB 2730 would revise portions of the eminent domain process, including requirements for an initial offer, terms of conveyance, the landowner's bill of rights, and the appointment of special commissioners. The bill also would establish education requirements for easement or right-of-way agents.

Initial offer. The bill would expand the requirements for an initial offer made by an entity with eminent domain authority to be considered a bona fide offer. The initial offer would have to include:

- a copy of the landowner's bill of rights;
- a statement indicating whether the compensation being offered included damages to the remainder of the property or an appraisal of the property, including damages to the remainder, prepared by a certified appraiser;
- an instrument of conveyance that complied with requirements, including those listed below, with certain exceptions; and
- the name and telephone number of a representative of the entity.

Terms of conveyance. The bill would require a deed, agreement, or other instrument of conveyance provided to a property owner by a private entity with eminent domain authority to address the following general terms, as applicable.

Applicability. A "private entity" would mean a for-profit entity, however

organized, including an affiliate or subsidiary, authorized to exercise the power of eminent domain or a water supply or sewer service corporation that had a for-profit entity as the sole or majority member. The term would not include an entity governed by the Natural Gas Act, unless the entity was seeking to acquire property by eminent domain.

These provisions would apply 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 was included with an offer made to acquire a property interest for public use.

The provisions would not apply to a specified type of pipeline or appurtenance or to an electric power line that operated below 60 kilovolts.

Required terms. The bill would provide the general terms that had to be addressed by an instrument of conveyance, including terms, as applicable, for an instrument that conveyed a pipeline right-of-way easement or an easement related to pipeline appurtenances and terms for an instrument that conveyed an electric transmission line right-of-way easement.

Any instrument of conveyance also would have to address:

- 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
- a provision that the terms of the instrument would bind the successors and assigns of the property owner and private entity.

Negotiated terms. A private entity would have to notify the property owner that the owner could negotiate for the following general terms to be included in the instrument of conveyance:

- a provision regarding the property owner's right to negotiate to recover certain damages or a statement that the consideration for the instrument included certain damages; and

- a provision requiring the private entity to maintain certain commercial liability insurance or self-insurance.

A private entity or the property owner could, after the entity provided an instrument, negotiate for and agree to other terms and conditions not listed in the bill and negotiate for and agree to an instrument that did not include the terms required by the bill.

Amended terms. Except as provided, the bill would not prohibit a private entity or the property owner from negotiating or agreeing to amend, alter, or omit the required terms at any time after the private entity first provided an instrument containing the required general terms. A private entity that changed the required terms would have to provide a copy of the amended instrument to the property owner by the seventh day before it filed a condemnation petition unless the parties agreed to waive the notice.

A private entity that changed or amended an instrument still would be considered to have satisfied the requirements of a bona fide offer if the requirements were previously satisfied as part of the initial offer.

Condemnation petition. The bill would require an entity filing a condemnation petition to provide a copy concurrently by first class mail and certified mail, and if the entity received notice that the property owner was represented by counsel, provide a copy to the property owner's attorney by first class mail, commercial delivery service, fax, or email.

Special commissioners. The bill would require the judge of a court in which a condemnation petition was filed or to which an eminent domain case was assigned to appoint special commissioners no later than 30 calendar days after the petition was filed. The judge also would have to appoint two alternate special commissioners.

Each party would have until 10 calendar days after the special commissioners were appointed or 20 days after the petition was filed, whichever was later, to strike one of the commissioners. If a person failed to serve as a special commissioner or was struck, an alternate special

commissioner would serve as a replacement.

If a party exercised a strike, the other party could strike a commissioner from the resulting panel by the third day after the initial strike or the date or the initial strike deadline, whichever was later, provided that the other party had not already exercised their strike.

The bill would require the court to promptly provide the signed order appointing the special commissioners to the condemning party, and that party would have to provide a copy to the property owner and each other party by certified mail. The condemning party also would have to provide a copy of a judge's order appointing special commissioners to a property owner's attorney.

Landowner's bill of rights. The bill would require the landowner's bill of rights to notify property owners that they had the right to file a written complaint with the Texas Real Estate Commission regarding alleged misconduct by a registered easement or right-of-way agent acting on behalf of the entity exercising eminent domain authority.

The landowner's bill of rights statement also would have to include an addendum of the terms required for an instrument of conveyance and the terms a property owner could negotiate.

At least once every two years, the attorney general would have to evaluate and make any changes to the landowner's bill of rights statement to comply with the requirements in statute, including the requirement that the statement be written in plain language designed to be easily understood by the average property owner.

Before making any changes to the landowner's bill of rights, the office of the attorney general would have to publish the proposed changes in the Texas Register and accept public comment for a reasonable period.

Easement or right-of-way agents. CSHB 2730 would require applicants to become certified as a right-of-way agent to complete a course or study,

provide for probationary certificates, and allow the suspension or revocation of a certificate in certain circumstances.

Education requirements. The bill would require a person to successfully complete a course of study, including qualifying or continuing education requirements, to be eligible to receive a certificate to sell, buy, lease, or transfer an easement or right-of-way for another.

The Texas Real Estate Commission would have to approve coursework that an applicant had to successfully complete to be eligible for issuance or renewal of a certificate. An applicant would have to submit evidence satisfactory to the commission that the applicant completed at least 16 classroom hours of approved coursework in:

- the law of eminent domain, including the rights of property owners;
- appropriate standards of professionalism in contacting and conducting negotiations with property owners; and
- ethical considerations in the performance of right-of-way services.

An applicant for renewal of a certificate also would have to submit evidence that they had completed coursework during the renewal period.

Probationary certificate. The commission could issue a probationary certificate of registration and would have to adopt reasonable requirements for the issuance of such a certificate.

Suspending or revoking license. The bill would allow the commission to suspend or revoke a certificate if the certificate holder directly or indirectly accepted a financial incentive to make an initial offer that the certificate holder knew or should have known was lower than the adequate compensation required under the Texas Constitution.

Applicability. A person who submitted an application before January 1, 2023, would not be subject to the education requirements until the first renewal of the certificate after March 1, 2023.

Other provisions. The bill would specify that nothing in the Property Code governing eminent domain would prevent an entity from seeking survey access rights as provided by law.

The bill would take effect January 1, 2022, and would apply to the acquisition of real property in connection with an initial offer made on or after that date.

**SUPPORTERS
SAY:**

CSHB 2730 would create meaningful eminent domain reform that protected property owners' rights while still allowing for the construction of critical infrastructure in the state.

The bill would provide more transparency by requiring an initial offer letter made by a condemning entity to a property owner to include an appraisal of the property, including the remainder of the property not being condemned, or a statement on whether the financial compensation offered included damages to the remainder, if any. The letter would have to include the landowner's bill of rights, which would be expanded by the bill so that property owners knew that they could file a complaint with the Texas Real Estate Commission. The letter also would make it clear which terms they could negotiate in the instrument of conveyance.

To ensure the process was fair and accountable for property owners, the bill would require instruments of conveyance to include certain minimum easement terms. This is the instrument that property owners are first provided to inform them at the beginning of the process so that they know what they could reasonably ask for or expect in the process. The bill encourages discussion and agreement among the parties, instead of litigation, by providing these terms upfront. By providing more knowledge among the parties as to the terms of initial negotiation, the bill would save property owners money on legal fees and encourage building infrastructure for public use.

CSHB 2730 would provide clarity in the process of appointing special commissioners by establishing specific deadlines for appointment. Current law does not specify the timing of this process, which can lead to

significant delays. The bill also provides for alternate special commissioners to fill in for any commissioners that were stricken by a party, making the process more efficient and better for all parties.

The bill also would require easement or right-of-way agents to take certain approved coursework to ensure they had the knowledge and ethical considerations necessary for the job.

While some may believe the condemnation petition should have to include minimal easement terms, this would eliminate the incentive for property owners and the condemning entity to settle before the petition, resulting in costly and time-consuming litigation. This bill would strike the balance between expanding landowners rights in the eminent domain process and promoting critical infrastructure to meet the growing demands of the state.

CRITICS
SAY:

CSHB 2730 would not go far enough to provide property owners with transparency, accountability, and fairness in the eminent domain process. The bill should be amended to require the document of conveyance filed with the court in a condemnation petition to contain minimal easement terms. This would prevent condemners from pressuring a property owner to accept a bad deal. The bill also should require a condemning entity to hold an open public meeting after notifying landowners in the area. This would allow the community to hear the details of the projects, which could affect both the owner's land and the county's roads, in a transparent manner and help the community exchange information.

OTHER
CRITICS
SAY:

CSHB 2730 would place condemning entities in a disadvantageous position, leaving them open to burdensome litigation that would slow down the completion of vital critical infrastructure projects.

NOTES:

According to the fiscal note, the bill could have a negative fiscal impact to local government due to provisions of the bill requiring certain terms to be added to conveyance documents and requiring additional meeting notices.