

BILL ANALYSIS

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C.S.H.B. 1211
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State Affairs
5/17/2019
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 1211 amends the Civil Practice and Remedies Code to establish that a covenant or promise in, in connection with, or collateral to a contract for engineering or architectural services related to an improvement to real property is void and unenforceable if the covenant or promise provides that a licensed engineer or registered architect must defend a party, including a third party. The bill authorizes a covenant or promise in, in connection with, or collateral to such a contract to provide for the reimbursement of an owner's reasonable attorney's fees in proportion to the engineer's or architect's liability. The bill makes these provisions inapplicable to a contract for design-build services in which an owner contracts with a single entity to provide both design and construction services.

H.B. 1211 authorizes an owner that is a party to such a contract to require in the contract that the engineer or architect name the owner as an additional insured under the engineer's or architect's commercial general liability insurance policy and provide any defense to the owner provided by the policy to a named insured.

H.B. 1211 prohibits such a contract from requiring a licensed engineer or registered architect to perform professional services to a level of professional skill and care beyond that which would be provided by an ordinarily prudent engineer or architect with the same professional license under the same or similar circumstances. (Original Author's/Sponsor's Statement of Intent)

C.S.H.B. 1211 amends current law relating to the acquisition of, and the construction of improvements to, real property.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

ARTICLE 1. CERTAIN AGREEMENTS BY ARCHITECTS AND ENGINEERS IN OR IN CONNECTION WITH CONSTRUCTION CONTRACTS

SECTION 1.01. Amends the heading to Chapter 130, Civil Practice and Remedies Code, to read as follows:

CHAPTER 130. LIABILITY PROVISIONS IN CERTAIN CONSTRUCTION CONTRACTS

SECTION 1.02. Amends Section 130.002, Civil Practice and Remedies Code, by adding Subsections (c), (d), and (e), as follows:

(c) Provides that, except as provided by Subsection (d), a covenant or promise in, in connection with, or collateral to a contract for engineering or architectural services related to an improvement to real property is void and unenforceable if the covenant or promise provides that a licensed engineer or registered architect must defend a party, including a third party, against a claim based wholly or partly on the negligence of, fault of, or breach of contract by a person other than the engineer or architect. Authorizes a covenant or promise in, in connection with, or collateral to a contract for engineering or architectural services related to an improvement to real property to provide for the

reimbursement of an owner's reasonable attorney's fees in proportion to the engineer's or architect's liability.

(d) Authorizes an owner that is a party to a contract for engineering or architectural services related to an improvement to real property, notwithstanding Subsection (c), to require in the contract that the engineer or architect name the owner as an additional insured under the engineer's or architect's commercial general liability insurance policy and provide any defense to the owner provided by the policy to a named insured.

(e) Provides that Subsection (c) does not apply to a contract for design-build services between an owner and a design-builder in which an owner contracts with a single entity to provide both design and construction services.

SECTION 1.03. Amends Chapter 130, Civil Practice and Remedies Code, by adding Section 130.0021, as follows:

Sec. 130.0021. ENGINEER'S OR ARCHITECT'S STANDARD OF CARE. (a) Prohibits a contract for engineering or architectural services related to an improvement to real property, or a contract for an improvement to real property that contains engineering or architectural services as a component part, from requiring a licensed engineer or registered architect to perform professional services to a level of professional skill and care beyond that which would be provided by an ordinarily prudent engineer or architect with the same professional license under the same or similar circumstances.

(b) Provides that nothing in this section prevents a party to a contract for engineering or architectural services from enforcing specific obligations in the contract that are separate from the standard of care.

SECTION 1.04. (a) Makes application of Section 130.002(c), Civil Practice and Remedies Code, as added by this article, prospective.

(b) Makes application of Sections 130.002(d) and 130.0021, Civil Practice and Remedies Code, as added by this article, prospective.

SECTION 1.05. Effective date, this article: September 1, 2019.

ARTICLE 2. ACQUISITION OF REAL PROPERTY BY ENTITY WITH EMINENT DOMAIN AUTHORITY

SECTION 2.01. Amends Section 21.0113, Property Code, by adding Subsections (c), (d), (e), and (f), as follows:

(c) Provides that, notwithstanding Subsection (b), a private entity, as defined by Section 21.031, 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 (Real Estate Appraisers), 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 appraiser, broker, or private entity, as applicable, and based on:

(a) a comparative market analysis prepared by a third party who is a real estate broker licensed under Chapter 1101 (Real Estate Brokers and Sales Agents), Occupations Code, or a certified general appraiser licensed under Chapter 1103, Occupations Code;

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

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

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

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

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

(E) a statement of the property owner's right to attend or request an information meeting required by Section 21.034 or 21.035, as applicable; and

(F) the landowner's bill of rights statement prescribed by Section 21.0112 (Provision of Landowner's Bill of Rights Statement Required), unless previously provided to the property owner;

(3) holds a property owner information meeting under Section 21.034 or 21.035, as applicable;

(4) provides notice of the proposed project to the county judge of each county that the project is proposed to traverse; and

(5) includes in the final offer, if made:

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

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

(d) Authorizes a real estate broker licensed under Chapter 1101, Occupations Code, for purposes of Subsection (c)(2)(A)(ii), to prepare an estimated price based on a

comparative market analysis, a broker price opinion, a market study, or a summary of the market study.

(e) Prohibits a condemnation suit from being abated, delayed, or dismissed for noncompliance with this subchapter, except for abatement provided under Section 21.047(d).

(f) Provides that a private entity that provides to a property owner an easement form that is generally consistent with the language or provisions required by Section 21.0114(a) and the notice required by Section 21.0114(b) is considered to have complied with Section 21.0114 for purposes of Subsection (c)(2)(C), regardless of whether the private entity subsequently provides to the property owner a different deed, easement, agreement, or other instrument of conveyance as authorized under Sections 21.0114(c) and (d).

SECTION 2.02. Amends Subchapter B, Chapter 21, Property Code, by adding Section 21.0114, as follows:

Sec. 21.0114. REQUIRED TERMS FOR INSTRUMENTS OF CONVEYANCE BY CERTAIN PRIVATE ENTITIES. (a) Requires a deed, easement, agreement, or other instrument of conveyance provided to a property owner by a private entity, as defined by Section 21.031, with eminent domain authority to acquire the property interest to be conveyed, except as provided by Subsections (b), (c), and (d), to include certain terms, as applicable.

(b) Requires the private entity to notify the property owner that the property owner may negotiate for certain terms to be included in a deed, easement, agreement, or other instrument of conveyance described by Subsection (a).

(c) Authorizes a private entity, as defined by Section 21.031, or a property owner, to negotiate for and agree to terms and conditions not required by Subsection (a) or provided by Subsection (b), including terms and conditions that differ from or are not included in a subsequent condemnation petition and agree to a deed, easement, agreement, or other instrument of conveyance that does not include or includes terms that differ from the terms required by Subsection (a).

(d) Provides that, except as provided by this subsection, this section does not prohibit a private entity or the property owner from agreeing to amend, alter, or omit the terms required by Subsection (a) at any time after the private entity first provides a deed, easement, agreement, or other instrument containing those 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 (a) to provide a copy of the amended deed, easement, 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.

(e) Provides that a private entity that amends a deed, easement, agreement, or other instrument of conveyance to which this section applies after the initial offer or final offer is not required to satisfy again any requirement of Section 21.0113 that the private entity has previously satisfied.

SECTION 2.03. Amends Section 21.012, Property Code, by adding Subsection (b-1) to require a petition filed by a private entity as defined by Section 21.031 to acquire property for a public use, in addition to the content prescribed by Subsection (b), to state the terms to be included in the instrument of conveyance under Section 21.0114(a).

SECTION 2.04. Amends Chapter 21, Property Code, by adding Subchapter B-1, as follows:

SUBCHAPTER B-1. ACQUISITION OF PROPERTY BY CERTAIN PRIVATE ENTITIES

Sec. 21.031. DEFINITION. Defines "private entity" for purposes of this subchapter.

Sec. 21.032. APPLICABILITY OF SUBCHAPTER. (a) Defines "industrial tract" for purposes of this section.

(b) Provides that, except as expressly provided by Section 21.034(d), this subchapter applies only to a private entity that seeks to acquire for a project for public use 25 or more tracts of real property that are not industrial tracts, including easements within those tracts, and that are owned by at least 25 separate and unaffiliated property owners.

(c) Provides that, except as expressly provided by Section 21.0392, this subchapter does not apply to a private entity that operates or proposes to construct an electric transmission line and is subject to the jurisdiction of the Public Utility Commission of Texas under Chapter 37 (Certificates of Convenience and Necessity), Utilities Code.

Sec. 21.033. NOTICE OF INTENT. (a) Requires the private entity, not later than the 30th day before the date a private entity holds a meeting under this subchapter, to send a written notice of intent to the county judge for each county in which the private entity will seek to acquire property.

(b) Requires a notice under Subsection (a) to include certain information.

Sec. 21.034. NOTICE OF PROPERTY OWNER INFORMATION MEETING. (a) Requires a private entity to, not later than the 14th day before the date of a meeting to be held under Section 21.035, provide a written notice advising the property owner of certain information.

(b) Authorizes the notice to include a statement of the right of the property owner to contact the private entity under Section 21.039.

(c) Requires the private entity to send the meeting notice to certain persons.

(d) Requires the private entity, if a project involves fewer than 25 tracts of real property, including easements within those tracts, owned by separate and unaffiliated property owners, to provide notice to the property owners in the manner prescribed by this section that a property owner may request a meeting with the private entity to receive the information required to be presented by a private entity under Section 21.038. Requires the private entity, if a property owner requests a meeting, to, not later than the 30th day after the date the private entity receives the meeting request, offer to hold the meeting.

Sec. 21.035. PROPERTY OWNER INFORMATION MEETING. (a) Requires the private entity, for each contiguous linear section of a proposed project route that is equal to or less than 100 miles in length, to hold at least one group property owner meeting. Requires the private entity, for a project that exceeds 100 miles in length, to hold at least one separate meeting for each 100-mile segment.

(b) Requires the private entity to hold a meeting required under Subsection (a) in a centrally located public location that meets certain criteria.

(c) Prohibits a meeting required under Subsection (a) from being scheduled to begin earlier than 5:30 p.m.

(d) Prohibits a private entity from holding a meeting required under Subsection (a) for a project section or segment earlier than the 240th day before the date the private entity makes an initial offer to a property owner within the project section

or segment or later than the 30th day before the date the private entity files a petition against a property owner within the project section or segment.

(e) Requires the private entity, if a private entity is unable to identify and provide notice to a property owner as required by Section 21.034 before the private entity holds a meeting required under Subsection (a), to provide notice to the property owner in the manner described by Section 21.034(d) and, if requested by the property owner, meet with the property owner as prescribed by that subsection.

Sec. 21.036. PERSONS AUTHORIZED TO ATTEND PROPERTY OWNER INFORMATION MEETING. (a) Authorizes the following individuals, in addition to the property owner and the private entity representatives, to attend a meeting held under Section 21.035:

(1) an invited relative of the property owner who is related to the property owner within the third degree by consanguinity or affinity, as determined under Chapter 573 (Definitions), Government Code;

(2) an attorney or licensed appraiser representing the property owner;

(3) an employee or a lessee of the property owner that has direct knowledge of the property; or

(4) an employee of an entity with whom the property owner has contracted for services to manage the property.

(b) Authorizes a private entity to include in the notice required by Section 21.034 a requirement that the property owner, not later than five days before the date of the meeting:

(1) notify the private entity that the property owner intends to attend the meeting; and

(2) identify persons described by Subsections (a)(1)–(4) who intend to attend the meeting.

(c) Prohibits the number of attendees under Subsections (a)(1)–(4) from exceeding five individuals for each separate tract of property.

(d) Authorizes the private entity to:

(1) require attendees to provide identification and complete a registration form that includes contact information; and

(2) exclude from the meeting:

(A) any person who does not provide identification or complete a registration form, if required under Subdivision (1); and

(B) any person described by Subsections (a)(1)–(4) who is not timely identified to the private entity, if required under Subsection (b).

(e) Authorizes the private entity to take reasonable steps to maintain safety and decorum at the meeting, including expelling attendees who do not meet the requirements of this subchapter or who disrupt the meeting.

(f) Prohibits the private entity, notwithstanding Subsection (b)(1), from denying entry to a property owner who provides proper identification and completes a registration form, if required under Subsection (d)(1).

Sec. 21.037. PARTICIPATION BY PRIVATE ENTITY REQUIRED. Requires one or more representatives designated by the private entity to attend each meeting required by Section 21.035 and participate in those meetings as described by Section 21.038.

Sec. 21.038. PROPERTY OWNER INFORMATION MEETING AGENDA. (a) Provides that at a meeting held under Section 21.035:

(1) the private entity is required to present:

(A) the landowner's bill of rights statement required to be provided to a property owner under Section 21.0112;

(B) a description of the public use for which the entity wants to acquire the real property;

(C) the terms required under Section 21.0114 to be included in a deed, easement, agreement, or other instrument of conveyance provided by the entity to the property owner;

(D) a general description of the method and factors the entity used or intends to use to determine the entity's initial offer, including certain information;

(E) a description of the private entity's regulatory filings specifically related to the project;

(F) the basis for the private entity's exercise of eminent domain authority for the project; and

(G) the name and contact information, as known at the time of the meeting, of any right-of-way agent or survey company to be used by the private entity to acquire the property rights sought; and

(2) any authorized attendee of the meeting must be given an opportunity at the meeting to ask questions and make comments regarding:

(A) the rights of the property owners;

(B) the proposed public use for which the real property is to be acquired; and

(C) any terms required under Section 21.0114 to be included in a deed, easement, agreement, or other instrument of conveyance provided by the private entity to a property owner.

(b) Requires the private entity, on request, to provide in written or electronic form, the materials provided by the private entity at the meeting to a property owner who could not attend the meeting.

Sec. 21.039. CONTACT AFTER PROPERTY OWNER INFORMATION MEETING.

(a) Prohibits a private entity that holds a meeting under Section 21.035 from, for three days following the date of the meeting, contacting a property owner who attended a meeting and, if required under Section 21.036(d)(1), provided identification and completed a registration form.

(b) Provides that nothing in this subchapter precludes:

(1) a property owner or an individual allowed to attend a meeting held under Section 21.035 from contacting the private entity at any time; or

(2) the private entity from engaging in discussions with a person described by Subdivision (1) after that person contacts the entity.

Sec. 21.0391. PROCEDURES AFTER PROJECT RE-ROUTE. Requires the private entity, if any part of the project is re-routed after any meeting is held under Section 21.035, to, with respect only to the tracts affected by the re-route the property owners of which were not provided notice under Section 21.034, comply with the provisions of this subchapter with respect to tracts along the re-route.

Sec. 21.0392. PROCEDURES FOR CERTAIN PRIVATE ENTITIES SUBJECT TO JURISDICTION OF PUBLIC UTILITY COMMISSION. (a) Provides that this applies only to a private entity that proposes to exercise the power of eminent domain to construct an electric transmission line and is subject to the authority of the Public Utility Commission of Texas (PUC) under Chapter 37, Utilities Code.

(b) Requires a private entity to which this section applies and that is required by the PUC to conduct a public meeting in connection with the electric transmission line project to present certain information at the meeting.

(c) Requires the private entity to give property owners the opportunity to ask the entity questions regarding eminent domain and right-of-way acquisition at the meeting.

(d) Requires the entity, after the PUC adopts a route for the electric transmission line, to provide certain information by letter to each property owner on the route.

(e) Requires the private entity, on request, to provide in written or electronic form, the materials provided by the private entity at the meeting to a property owner who could not attend the meeting.

SECTION 2.05. (a) Makes application of this Act, except as otherwise provided by this section, prospective.

(b) Provides that, except as provided by Subsection (c) of this section, the changes in law made by this article 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 article.

(c) Makes application of Section 21.0392, Property Code, as added by this article, prospective.

(d) Provides that, except as provided by Subsection (e) of this section, the changes in law made by this article do not apply to a pipeline for which an application for a permit to operate the pipeline has been filed with the Railroad Commission of Texas (railroad commission) before the effective date of this article.

(e) Provides that the changes in law made by this article apply to a pipeline project for which an application for a permit to operate the pipeline is filed with the railroad commission on or after September 1, 2019, unless a written survey request is provided to each property owner on the proposed route of the project not later than the 90th day after the date the application is filed.

SECTION 2.06. Effective date, this article: January 1, 2020.