

BILL ANALYSIS

Senate Research Center
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S.B. 421
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The proposed legislation consists of three components designed to provide additional protections and transparency for landowners who are forced to undergo the condemnation process. It is largely limited to private condemners.

Defined Minimum Easement Terms: The bill requires private condemners to use standardized easement forms that contain minimum protections for landowners related to issues that they may not otherwise know to discuss. S.B. 740 from the 85th Regular Session contained similar language.

Public Meeting Requirement: The bill requires a private condemner that wishes to acquire land for the same public use one or more tracts of property located entirely in one county and owned by at least four property owners to hold a public meeting in that county to allow the public to learn more about the acquisition. This requirement adds an additional layer of transparency and provides a forum where landowners can have their questions answered.

Low Offer Protection: Private entities often offer less than fair market value. This bill contains a provision designed to prevent low-ball offers. The bill would require a court to award additional damages to a landowner if the special commissioners' award is vastly higher than the initial offer. The bill provides varying levels of damages. If the special commissioners' award to the property owner damages in an amount that exceeds the amount of the condemner's initial offer by:

at least 25 percent but less than 50 percent, the condemner pays the damages awarded and an additional 25 percent of the damages awarded;

at least 50 percent but less than 100 percent, the condemner pays the damages awarded and an additional 30 percent of the damages awarded; or

100 percent or more, the condemner pays the damages awarded and 35 percent of the damages awarded.

As proposed, S.B. 421 amends current law relating to the acquisition of real property 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 21.0113, Property Code, by adding Subsections (c) and (d), as follows:

(c) Provides that, notwithstanding Subsection (b), a private entity as defined by Section 21.031 has made a bona fide offer only if the entity satisfies the requirements of Subsection (b), includes in the initial offer a copy of the provisions of Section 21.0471,

and a statement of the compensation being offered for the value of the property the entity seeks to acquire and the damage and loss of value to the remaining property, if applicable, and notice that the property owner will also receive a final offer accompanied by an appraisal and includes, in the initial offer and in any subsequent offer, a certification by the entity that the offer is in an amount that will not require the entity to make a payment for a low initial offer under Section 21.0471.

(d) Provides that, notwithstanding Subsections (b) and (c), a private entity subject to Subchapter B-1 has made a bona fide offer only if the entity satisfies the requirements of Subsections (b) and (c), includes in the initial offer a copy of the notice of public meeting required by Section 21.036, and participates in the public meeting in the manner prescribed by Section 21.038.

SECTION 2. Amends Subchapter B, Chapter 21, Property Code, by adding Sections 21.0114 and 21.0115, as follows:

Sec. 21.0114. **REQUIRED TERMS FOR INSTRUMENTS OF CONVEYANCE BY CERTAIN PRIVATE ENTITIES.** (a) Requires the deed, easement, or other instrument provided to a property owner by a private entity as defined by Section 21.031, to include, except as provided by Subsection (b), certain specified terms, as applicable.

(b) Authorizes the private entity as defined by Section 21.031 to present and include terms in addition to the terms required under Subsection (a). Authorizes the property owner and the entity to consider and agree to the additional terms, including rights and uses that are prohibited from being the subject of a later condemnation proceeding, if so stated in the instrument. Authorizes a property owner to negotiate a deed, easement, or other instrument that does not include all of the terms required under Subsection (a).

(c) Requires the Texas attorney general (attorney general) to prepare and make generally available a standard form that contains the terms required by Subsection (a).

(d) Authorizes the attorney general to bring an action in the name of the state to enjoin a violation of this section and to recover reasonable attorney's fees and costs incurred in bringing an action under this subsection.

Sec. 21.0115. **COMMUNICATION BY CERTAIN PRIVATE ENTITIES.** (a) Prohibits a private entity as defined by Section 21.031 that wants to acquire real property for a public use from engaging, without first attempting to include the owner of the real property, in ex parte communication with a court that has jurisdiction of a condemnation proceeding involving the property or with a special commissioner appointed in the condemnation proceeding.

(c) Defines "private entity" for purposes of this section.

SECTION 3. Amends Section 21.012, Property Code, by adding Subsection (b-1), as follows:

(b-1) Requires a petition filed by a private entity as defined by Section 21.031, in addition to the contents prescribed by Subsection (b), to state the terms to be included in the instrument of conveyance under Section 21.0114 using the form prepared by the attorney general under Section 21.0114(c).

SECTION 4. 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.** Provides that this subchapter applies only to a private entity that wants to acquire for the same public use one or more

tracts or parcels of real property located entirely in one county and owned by at least four property owners.

Sec. 21.033. NOTICE OF INTENT. (a) Requires a private entity, not later than the 45th day before the date the entity makes an initial offer to acquire real property under this chapter, to send a written notice of intent to a court that would have jurisdiction of a condemnation proceeding involving the property.

(b) Requires a notice sent under Subsection (a) to state the private entity's intent to acquire real property for public use, specify the public use, identify the real property the entity intends to acquire and the owners of the property, and disclose the date by which the entity will make the initial offer.

Sec. 21.034. PUBLIC MEETING. (a) Requires a court, not later than the 30th day after the date the court receives a notice of intent required by Section 21.033, to select the date on which a public meeting regarding the proposed acquisition will be held. Requires the court to facilitate the meeting.

(b) Provides that the meeting described by Subsection (a) is required to take place in a public location appropriate to the size and nature of the meeting in the county in which the real property is located and is prohibited from taking place earlier than the 14th day after the date a private entity makes an initial offer to a property owner identified in the notice of intent under Section 21.033.

Sec. 21.035. NOTICE OF PUBLIC MEETING. (a) Requires a court, as soon as is practicable after the court selects a date for a public meeting under Section 21.034, to give notice of the meeting to the private entity that sent the notice of intent under Section 21.033, publish notice of the public meeting on the county's Internet website, and publish notice of the public meeting in a newspaper of general circulation in the county.

(b) Requires a notice of public meeting under this section to include the date, time, and location of the meeting.

Sec. 21.036. NOTICE OF PUBLIC MEETING IN INITIAL OFFER. Requires a private entity that gives a notice of intent under Section 21.033 to include with the entity's initial offer notice of the public meeting to be held under Section 21.034, including the date, time, and location of the meeting.

Sec. 21.037. PARTICIPATION BY PRIVATE ENTITY REQUIRED. Requires a representative of the private entity that gives a notice of intent under Section 21.033 to attend the public meeting and to participate in the public meeting in the manner prescribed by Section 21.038.

Sec. 21.038. PUBLIC MEETING AGENDA. Provides that at a public meeting scheduled under Section 21.034:

(1) the court is required to present the information contained in the landowner's bill of rights statement required to be provided to a property owner under Section 21.0112 (Provision of Landowner's Bill of Rights Statement Required);

(2) the private entity is required to present:

(A) a description of the public use for which the entity wants to acquire the real property, including technical details;

(B) if applicable, a statement of the terms required under Section 21.0114 to be included in a deed, easement, or other instrument provided by the entity to the property owner;

(C) the method and factors used by the entity to calculate the entity's initial offer, including how damages to remaining property were evaluated and, if the entity used a property appraisal or

market value study, the name of the person that performed the appraisal or study;

(D) the entity's justification for the proposed public use, including any materials used by the entity to obtain a determination that the project is a public use;

(E) the legal and factual basis for the entity's exercise of its eminent domain authority;

(F) the name and contact information of any third-party contractor to be used by the entity to acquire the land or undertake the project; and

(G) a description of any regulatory process required for approval of the project, including any evaluation of the project's necessity, and information about how a property owner may participate in the process; and

(3) the property owners identified by the private entity under Section 21.033, the public, and public officials are required to be given an opportunity to ask questions and make comments regarding the rights of the property owners, the proposed public use, and terms required under Section 21.0114 to be included in a deed, easement, or other instrument provided by the entity to a property owner.

Sec. 21.039. CONTACT AFTER PUBLIC MEETING. Prohibits a private entity from contacting a property owner to whom the entity has made an initial offer before the seventh day after the date of the public meeting held under Section 21.034.

Sec. 21.0391. CERTIFICATION OF ENTITY PARTICIPATION IN PUBLIC MEETING REQUIRED. (a) Requires a private entity, after the entity participates in a meeting held under Section 21.034, to submit evidence documenting its participation to the court that facilitated the meeting. Requires the court to review the evidence submitted by the entity and, if the court determines that the entity has satisfied the requirements of this subchapter, to certify that the entity has satisfied the requirements of this subchapter.

(b) Prohibits a private entity from acquiring property to which this subchapter applies unless the entity receives the certification under Subsection (a) with respect to the property.

Sec. 21.0392. PUBLICATION AND PROVISION OF CERTAIN MATERIALS. Requires a private entity to publish on an Internet website any materials presented under Section 21.038(2)(D) and to provide to property owners identified by the entity under Section 21.033 any materials presented under Section 21.038(2)(D).

Sec. 21.0393. PROPERTY OWNER CHALLENGE OF EMINENT DOMAIN AUTHORITY. (a) Authorizes a property owner identified by a private entity under Section 21.033 to challenge the eminent domain authority of the entity in the court that provided the certification under Section 21.0391.

(b) Requires a challenge under Subsection (a) to be filed not later than the 30th day after the date of the public meeting held under Section 21.038.

Sec. 21.0394. INJUNCTION. (a) Authorizes the attorney general to bring in an action in the name of the state to enjoin a violation of this subchapter.

(b) Authorizes the attorney general to recover reasonable attorney's fees and costs incurred in bringing an action under this section.

SECTION 5. Amends Section 21.042, Property Code, by amending Subsection (d) and adding Subsections (d-1) and (d-2), as follows:

(d) Makes a nonsubstantive change and requires the appointed special commissioners, in estimating injury or benefit under Subsection (c), to consider an injury or benefit that is

peculiar to the property owner and that relates to the property owner's ownership, use, or enjoyment of the particular parcel of real property, including:

(1) an injury or benefit to the remaining property as a result of:

(A) the characteristics of any infrastructure on the condemned property, including the size or visibility of the infrastructure or the pressure or voltage range provided by the infrastructure;

(B) any limitation of future expansion on the remaining property; and

(C) a provision in an easement acquired in connection with, or the alignment of an easement in connection with, the condemnation; and

(2) creates this subdivision from existing text and makes a nonsubstantive change.

(d-1) Creates this subsection from existing text. Prohibits the special commissioners, in estimating injury or benefit under Subsection (c), from considering an injury or benefit that the property owner experiences in common with the general community, including circuitry of travel and diversion of traffic. Makes a nonsubstantive change.

(d-2) Makes a nonsubstantive change.

SECTION 6. Amends Subchapter C, Chapter 21, Property Code, by adding Section 21.0471, as follows:

Sec. 21.0471. PAYMENT FOR LOW INITIAL OFFER BY PRIVATE ENTITY. (a) Provides that this section applies only to a condemnor that is a private entity as defined by Section 21.031.

(b) Provides that, if the special commissioners award to the property owner damages in an amount that exceeds the amount of the condemnor's initial offer by:

(1) at least 25 percent but less than 50 percent, the condemnor is required to pay to the property owner the damages awarded and an additional amount equal to 25 percent of the damages awarded;

(2) at least 50 percent but less than 100 percent, the condemnor is required to pay to the property owner the damages awarded and an additional amount equal to 30 percent of the damages awarded; or

(3) 100 percent or more, the condemnor is required to pay to the property owner the damages awarded and an additional amount equal to 35 percent of the damages awarded.

(c) Provides that a property owner is entitled to an additional amount under Subsection (b) without regard to whether the condemnor objects to the findings of the special commissioners or appeals the decision of a trial court in the condemnation proceeding or to the amount of damages ultimately awarded to the property owner by a court.

SECTION 7. Makes application of this Act prospective.

SECTION 8. Effective date: September 1, 2019.