

BILL ANALYSIS

C.S.H.B. 2730
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Land & Resource Management
Committee Report (Substituted)

BACKGROUND AND PURPOSE

A public or private entity with eminent domain authority that wants to acquire property for a public use must meet certain requirements. Over the past several legislative sessions, the Texas Legislature has been asked by various landowner groups to change those requirements to make the process more transparent, accountable, and fair for landowners. C.S.H.B. 2730 seeks to address this issue by making changes relating to the acquisition of real property by an entity with eminent domain authority and the regulation of easement or right-of-way agents.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Real Estate Commission in SECTION 3 of this bill.

ANALYSIS

C.S.H.B. 2730 revises statutory provisions relating to eminent domain, the landowner's bill of rights, and the regulation of easement or right-of-way agents.

Changes to Eminent Domain Provisions

Required Terms for Instruments of Conveyance of Certain Easements

C.S.H.B. 2730 amends the Property Code to set out provisions relating to required terms for 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 is included with an offer made under eminent domain provisions to acquire a property interest for a public use. These provisions expressly do not apply in relation to the following:

- an electric power line that operates below 60 kilovolts; or
- a pipeline or appurtenance that is:
 - downstream of the point where natural gas is measured and custody is transferred from a transmission pipeline to a gas local distribution company for distribution to end-use customers; or
 - at a location where a gas utility taps a transmission pipeline to a city gate, provided that the pipeline does not exceed 100 feet.

C.S.H.B. 2730 sets out a list of general terms that must be addressed, as applicable, by a deed, agreement, or other instrument of conveyance provided to a property owner by a private entity with eminent domain authority for the acquisition of the property interest that is to be conveyed,

including terms specific to an instrument that conveys a pipeline right-of-way easement or an easement related to pipeline appurtenances and terms specific to an instrument that conveys an electric transmission line right-of-way easement. Additionally, the bill requires a private entity to notify the property owner that the property owner may negotiate for the following general terms to be included in such a deed, agreement, or other instrument of conveyance:

- a provision regarding the property owner's right to negotiate to recover damages, or a statement that the consideration for the instrument includes damages, for damage to certain vegetation and the income loss from disruption of existing agricultural production or existing leases based on verifiable loss or lease payments; and
- a provision requiring the private entity to maintain commercial liability insurance or self-insurance that satisfies specified criteria prescribed by the bill.

C.S.H.B. 2730 authorizes a private entity or the property owner, after the entity provides a compliant instrument of conveyance as part of the initial bona fide offer as required by the bill, to do the following:

- negotiate for and agree to terms and conditions that are not required by the bill, including terms and conditions that differ from or are not included in a subsequent condemnation petition; and
- negotiate for and agree to a deed, agreement, or other instrument of conveyance that does not include or includes terms that differ from the required general terms.

C.S.H.B. 2730 establishes that these provisions of the bill do not prohibit a private entity or the property owner from negotiating for or agreeing to amend, alter, or omit the required general terms at any time after the private entity first provides a deed, agreement, or other instrument containing the required general terms to the property owner, whether before or at the same time that the entity makes an initial offer to the property owner. A private entity that changes the required general terms must provide a copy of the amended deed, 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 unless the parties agree in writing to waive the notice.

C.S.H.B. 2730 establishes that a private entity that changes or amends a deed, agreement, or other instrument has satisfied bona fide offer requirements if the requirements were previously satisfied as part of the initial offer.

C.S.H.B. 2730 defines "private entity" for purposes of these provisions of the bill as the following:

- a for-profit entity, as defined under the Business Organizations Code, however organized, including an affiliate or subsidiary, authorized to exercise the power of eminent domain to acquire private property for public use; or
- a nonprofit water supply or sewer service corporation that has a for-profit entity, however organized, as the sole or majority member.

The term "private entity" does not include an entity governed by the federal Natural Gas Act, unless the entity seeks to acquire property under state eminent domain provisions.

Bona Fide Offer Requirements

To comply with the bona fide offer requirements, C.S.H.B. 2730 requires an initial offer made by an entity with eminent domain authority to include the following:

- a copy of the landowner's bill of rights statement, including the addendum prescribed by the bill, if applicable;
- a statement, in bold print and a larger font than the other portions of the offer, indicating whether the compensation being offered includes the following:
 - damages to the remainder, if any, of the property owner's remaining property; or

- an appraisal of the property, including damages to the remainder, if any, prepared by a certified appraiser certified to practice as a certified general appraiser under the Texas Appraiser Licensing and Certification Act;
- an instrument of conveyance, provided that if the entity is a private entity as defined by the bill's provisions relating to required terms for instruments of conveyance of certain easements, the instrument must comply with those provisions, as applicable, unless any of the following circumstances apply:
 - the entity has previously provided an instrument complying with those provisions;
 - the property owner desires to use an instrument different than one complying with those provisions and consents in writing to use a different instrument; or
 - the property owner provided the entity with the instrument prior to the issuance of the initial offer; and
- the name and telephone number of a representative of the entity who is:
 - an employee of the entity;
 - an employee of an affiliate providing services on the entity's behalf;
 - a legal representative of the entity; or
 - if the entity does not have employees, an individual designated to represent the entity's day-to-day operations.

Survey Access Rights

C.S.H.B. 2730 establishes that nothing in eminent domain provisions prevents an entity from seeking survey access rights as provided by law.

Condemnation Petition

C.S.H.B. 2730 revises the requirement for an entity filing a condemnation petition to concurrently provide a copy of the petition to the property owner by first class mail, in addition to certified mail, return receipt requested. The bill requires the entity, if it has received written notice that the property owner is represented by counsel, to also concurrently provide a copy of the petition to the property owner's attorney by first class mail, commercial delivery service, fax, or email.

Special Commissioners

C.S.H.B. 2730 revises provisions relating to the appointment of special commissioners in an eminent domain case to do the following:

- set an appointment deadline;
- revise the procedures and time frame for the court appointing and the parties striking of a special commissioner;
- clarifies that the court must give preference to the appointment of special commissioners agreed on by the parties, if applicable;
- provide for the appointment of alternate special commissioners;
- require commissioner names and contact information to be provided to the parties; and
- entitle a party to a copy of the court's order appointing special commissioners and provide for the manner in which that copy is provided.

Landowner's Bill of Rights

C.S.H.B. 2730 amends the Government Code to require the landowner's bill of rights statement prepared by the attorney general to notify each property owner that the property owner has the right to file a written complaint with the Texas Real Estate Commission (TREC) regarding alleged misconduct by a registered easement or right-of-way agent acting on behalf of the entity exercising eminent domain authority. The bill requires the statement to include an addendum of the terms required for an instrument of conveyance and the terms a property owner may

negotiate as provided by the bill's provisions relating to required terms for instruments of conveyance of certain easements. The bill requires the attorney general, at least once every two years, to do the following:

- evaluate the statement, including the addendum, for compliance with statutory requirements for the statement, including the requirement that the statement be written in plain language designed to be easily understood by the average property owner; and
- make any change to the statement and addendum that the attorney general determines necessary to comply with those requirements, including making a change to the writing style of the statement or addendum necessary to improve compliance with the plain language requirement.

The bill requires the office of the attorney general, before making any changes to the statement, to publish the proposed changes in the Texas Register and accept public comment regarding the proposed statement for a reasonable period after the date the proposed statement is published.

Certificate of Registration for Easement or Right-of-Way Agent

C.S.H.B. 2730 amends the Occupations Code to do the following with regard to a certificate of registration for an easement or right-of-way agent:

- require a person to successfully complete required courses of study in order to be eligible to receive a certificate of registration or a renewal certificate and specify that the requirements that the person be at least 18 years of age and a U.S. citizen or a lawfully admitted alien apply at the time of application;
- require the TREC by rule to approve coursework that an applicant must successfully complete to be eligible for the issuance or renewal of a certificate of registration;
- require an applicant for the issuance of an original certificate of registration to submit evidence satisfactory to the TREC that the applicant has completed at least 16 classroom hours of coursework approved by the TREC in the following subjects:
 - 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 acquisition services;
- require an applicant for the renewal of a certificate of registration to submit evidence satisfactory to the TREC that the applicant has, during the renewal period, completed at least 16 classroom hours of coursework approved by the TREC that provides current information regarding the specified subjects and other relevant subjects as prescribed by TREC rule;
- authorize the TREC to issue a probationary certificate of registration and require the TREC by rule to adopt reasonable requirements for the issuance of the probationary certificate; and
- authorize the TREC to suspend or revoke a certificate of registration if the certificate holder directly or indirectly accepts a financial incentive to make an initial offer that the certificate holder knows or should know is lower than the adequate compensation required under the Texas Constitution.

C.S.H.B. 2730 requires the TREC to adopt rules necessary to implement the bill's changes relating to easement or right-of-way agent certificates of registration not later than September 1, 2022. The bill establishes that a person who has submitted an application for the issuance or renewal of a certificate of registration before January 1, 2023, is not subject to the education requirements until the first renewal of the certificate after March 1, 2023.

Transitions

C.S.H.B. 2730 establishes that its changes to eminent domain provisions in the Property Code:

- apply to the acquisition of real property for which an initial offer is made under Chapter 21, Property Code, on or after the bill's effective date; and

- do not apply to an electric transmission project for which the Public Utility Commission of Texas has issued a final and appealable order that amends a certificate of convenience and necessity before the bill's effective date.

C.S.H.B. 2730 provides that the acquisition of real property for which the initial offer is made under Chapter 21, Property Code, before the bill's effective date is governed by the law in effect at the time the offer was made and that the law is continued in effect for that purpose.

EFFECTIVE DATE

January 1, 2022.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2730 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The original repealed provisions relating to the preparation of a landowner's bill of rights statement by the attorney general and set out different provisions specifying the exact text of the landowner's bill of rights. The substitute does not include any of those provisions. Instead, it retains the existing provisions relating to the preparation of the landowner's bill of rights statement by the attorney general but adds certain content and addendum requirements and provides for the statement to be updated at least once every two years. The substitute also does not include provisions from the original that revised the requirements for the provision of the bill of rights by an entity with eminent domain authority.

The substitute does not include provisions included in the original requiring the TREC to establish an ombudsman office for the purpose of providing information to landowners whose real property may be acquired by a governmental or private entity through the use of the entity's eminent domain authority.

The substitute differs from the original with respect to certificates of registration for easement and right-of-way agents in the following ways:

- the substitute changes certain details of the continuing education requirements for the renewal of a certificate of registration;
- the substitute postpones from not later than December 1, 2021, to not later than September 1, 2022, the deadline for the TREC to adopt rules necessary to implement the bill's changes relating to certificates of registration; and
- the substitute revises the procedural provisions relating to the initial implementation of the bill's changes relating to certificates of registration.

The substitute includes a provision not included in the original establishing that nothing in eminent domain provisions prevents an entity from seeking survey access rights as provided by law.

The substitute differs from the original with respect to the bill's changes to the initial bona fide offer requirements. Among other differences, the substitute does not include the original's provisions specifying the minimum amount of compensation that must be offered and includes instead a requirement for the offer to include a certain statement regarding the compensation being offered.

The substitute does not include provisions included in the original relating to the following:

- a requirement that an instrument of conveyance of an easement that does not relate to an oil, natural gas, oil product, or liquidified mineral pipeline provided to a property owner as part of the initial bona fide offer include specified terms; and

- a requirement that an instrument of conveyance of an easement provided to a property owner as part of the initial bona fide offer that relates to an oil, natural gas, oil product, or liquidified mineral pipeline include a prescribed statement.

The substitute replaces those provisions of the original with provisions relating to required terms for 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 is included with an offer made under eminent domain provisions to acquire a property interest for a public use, with certain exceptions. These provisions of the substitute list certain general terms that must be addressed, as applicable, by a deed, agreement, or other instrument of conveyance provided to a property owner by a private entity with eminent domain authority for the acquisition of the property interest that is to be conveyed, including terms specific to an instrument that conveys a pipeline right-of-way easement or an easement related to pipeline appurtenances and terms specific to an instrument that conveys an electric transmission line right-of-way easement. Both the original and substitute include provisions relating to negotiation, although the details differ. Among other changes relating to what may be negotiated and when negotiation may occur, the substitute includes the following provisions not in the original:

- provisions requiring a private entity to notify the property owner that the property owner may negotiate for the inclusion of specified terms relating to the owner's right to negotiate to recover damages and the entity's maintenance of insurance;
- a requirement for a private entity that changes the required general terms to provide a copy of the amended deed, agreement, or other instrument of conveyance to the property owner by a certain deadline; and
- a specification that a private entity that changes or amends a deed, agreement, or other instrument of conveyance has satisfied bona fide offer requirements if the requirements were previously satisfied as part of the initial offer.

The substitute includes changes not included in the original relating to the provision of a copy of a condemnation petition by the petitioning entity to the property owner and counsel.

The substitute differs from the original with respect to the appointment of special commissioners in an eminent domain case in the following ways:

- the substitute sets a different deadline for appointing the special commissioners than the original did and makes different changes to the procedures and time frame for striking a commissioner;
- the substitute omits a provision of the original that defined "disinterested real property owner"; and
- the substitute includes provisions not included in the original relating to a party's entitlement to a copy of the court order appointing the commissioners.

The substitute does not include provisions included in the original relating to the following:

- a hearing in an eminent domain proceeding;
- notice of the hearing; and
- an in-person meeting between a property owner and an entity with eminent domain authority.

The substitute includes a provision not included in the original establishing that the bill's changes to eminent domain provisions in the Property Code do not apply to an electric transmission project for which the Public Utility Commission of Texas has issued a final and appealable order that amends a certificate of convenience and necessity before the bill's effective date.