

BILL ANALYSIS

Senate Research Center

C.S.S.B. 740
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State Affairs
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 740 as proposed makes several changes to the eminent domain process.

Currently, thousands of entities in the state claim eminent domain authority. As Texas continues to grow, these condemning authorities increasingly engage in hard-nosed tactics to obtain land for their projects. The current law favors for-profit companies, giving landowners few options in a fight for their property. S.B. 740 is designed to make this process more fair for the landowner.

Currently, the Property Code requires the parties to swap appraisals before they go to court. The condemnor must provide an appraisal with their initial and final offers, but often, the condemnor provides another updated appraisal at the hearing, giving the landowner no time to prepare. Landowners, on the other hand, must provide any appraisal they intend to use at the hearing three business days in advance. SECTION 1 of S.B. 740 requires the condemnor to provide any appraisal it intends to use at the special commissioners hearing at least three days prior to the hearing.

In 2011, the Texas Legislature enacted S.B. 18, which included a provision in Section 21.0111, Property Code, that 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 property owner voluntarily. While S.B. 18 provided meaningful progress, many Texans continue to struggle to get the entity condemning their property to provide specifics on how their land will be used. SECTION 2 of S.B. 740 requires a condemnor to provide minimum property rights protection and delineate the uses for the condemned property. Many of these protections are specifically directed to pipelines and electrical transmission right-of-way-easements.

Property owners are often forced to accept diminished compensation for their land in eminent domain cases because they cannot afford the legal costs to challenge the offer through litigation. Condemnors are aware that property owners can rarely afford litigation and take advantage of property owners by offering excessively low compensation for property, using appraisers that are known for undervaluing property, and drawing out the litigation process to make it more expensive. Currently, the Property Code requires the loser in an eminent domain proceeding to pay court costs. SECTION 3 of S.B. 740 requires condemnors to reimburse property owners for attorney's and professional fees in eminent domain proceedings where it is determined that the condemnor's lowest offer for the property is 20 percent or more lower than the amount determined by a special commissioner or other court. This is similar to S.B. 474, 84th Legislature, Regular Session, 2015, and is included as a recommendation to Charge No. 5 from the State Affairs Committee's Interim Report.

Often, following an award by a special commissioners court, a condemnor will refuse to purchase a bond to cover the award and then claim bankruptcy or insolvency to avoid payment to the landowner for just compensation. Stakeholders argue that a condemning entity should be required to either pay the jury award or secure a bond in the amount of the jury award in order to guarantee payment to a prevailing landowner at the conclusion of the legal proceedings. SECTION 4 of S.B. 740 requires a condemnor to either pay the award to the landowner, deposit the amount with the court, or purchase a surety bond to cover the award, should the entity go bankrupt, change organization, or go insolvent.

Finally, under current law, a landowner's obligation to pay ad valorem taxes on property taken in eminent domain ends when the government acquires title or possession by order of the court, whichever occurs sooner. Increasingly, landowners give possession and use agreements which are agreements that transfer possession by agreement. No title changes hands and no court order is rendered. Despite the fact that the landowner is entirely dispossessed by virtue of agreement, taxing authorities take the position that the landowner still needs to pay taxes, even though said dispossession is the same as if an order of the court were entered. SECTION 5 of S.B. 740 shifts this obligation to the condemnor, making them responsible for the property taxes for the portion of the land that has been taken. (Original Author's / Sponsor's Statement of Intent)

C.S.S.B. 740 amends current law relating to the acquisition of property by an entity with eminent domain authority.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Real Estate Commission in SECTION 4 (Sections 1101.5021 and 1101.5043, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 402.031(b), Government Code, as follows:

(b) Requires that the landowner's bill of rights notify each property owner that the property owner has the right to:

- (1) receive notice of the proposed acquisition of the owner's property;
- (2) contact and speak directly with an employee of the entity proposing to acquire the property who is qualified to discuss the acquisition of the property;
- (3) receive a bona fide offer from, make a counteroffer to, and seek to negotiate terms and conditions with the entity proposing to acquire the property, rather than a bona fide good faith effort to negotiate by the entity proposing to acquire the property. Redesignates existing Subdivision (2) as Subdivision (3);
- (4) consult with a licensed real estate broker or sales agent, an attorney, an appraiser, or any other person regarding the proposed acquisition, offer of compensation, or other related matters at any time;
- (5) have an assessment made of certain damages to the owner. Redesignates existing Subdivision (3) as Subdivision (5);
- (6) be provided a hearing under Chapter 21 (Eminent Domain), Property Code, including a hearing on the assessment of damages. Redesignates existing Subdivision (4) as Subdivision (6);
- (7) appeal a judgment in a condemnation proceeding, including to appeal an assessment of damages. Redesignates existing Subdivision (5) as Subdivision (7) and makes nonsubstantive changes; and
- (8) contact the Office of the Attorney General (OAG) for more information regarding a property owner's rights with respect to the condemnation process.

SECTION 2. Amends Section 1101.501, Occupations Code, as follows:

Sec. 1101.501. CERTIFICATE REQUIRED. (a) Creates this subsection from existing text. Prohibits a person, except as provided by Subsection (b), from selling, buying, leasing, or transferring an easement or right-of-way, for compensation or with the expectation of receiving compensation, on behalf of an entity with eminent domain authority unless the person holds a certain license or certificate of registration. Deletes

existing text prohibiting a person from selling, buying, leasing, or transferring an easement or right-of-way for another, for compensation or with the expectation of receiving compensation, for use in connection with telecommunication, utility, railroad, or pipeline service unless the person holds a certain license or certificate of registration. Makes nonsubstantive changes.

(b) Provides that Subsection (a) does not apply to an entity with eminent domain authority or the entity's employee or an attorney licensed in this state.

SECTION 3. Amends Section 1101.502(a), Occupations Code, as follows:

(a) Requires a person, to be eligible to receive a certificate of registration under this subchapter (Certificate Requirements), to hold a license issued under this chapter (Real Estate Brokers and Sales Agents) and complete a right-of-way agent responsibility course approved by the Texas Real Estate Commission (TREC) under Section 1101.5021, which is added by this Act. Deletes existing text requiring a person, to be eligible to receive a certificate of registration or a renewal certificate under this subchapter, to be at least 18 years of age and a citizen of the United States or a lawfully admitted alien. Makes nonsubstantive changes.

SECTION 4. Amends Subchapter K, Chapter 1101, Occupations Code, by adding Sections 1101.5021, 1101.5042, and 1101.5043, as follows:

Sec. 1101.5021. RIGHT-OF-WAY AGENT RESPONSIBILITY COURSE. (a) Requires TREC, by rule, to approve a right-of-way agent responsibility course.

(b) Requires that a course approved by TREC include at least 15 hours of classroom instruction related to certain topics.

Sec. 1101.5042. ELIGIBILITY REQUIREMENTS FOR RENEWAL CERTIFICATE. Requires a person, to be eligible to receive a renewal certificate under this subchapter, to hold a license issued under this chapter and satisfy the continuing education requirements under Section 1101.5043.

Sec. 1101.5043. CONTINUING EDUCATION. (a) Requires TREC, by rule, to approve a continuing education course for certificate holders.

(b) Requires a continuing education course approved under Subsection (a) by TREC to include at least six hours of classroom instruction related to the acquisition of easements and rights-of-way under eminent domain authority.

SECTION 5. Amends Section 21.0111, Property Code, by adding Subsections (a-1) and (a-2), as follows:

(a-1) Requires the entity or the property owner, after an offer to which Subsection (a) (relating to requirements for an entity with eminent domain authority that wants to acquire real property for a public use) applies is made, to disclose to the other party any new, amended, or updated appraisal report that is produced or acquired by or on behalf of the entity or property owner after the offer is made and that is used in determining the entity's or the property owner's opinion of value. Requires that a required disclosure be made not later than the earlier of certain dates.

(a-2) Prohibits a new, amended, or updated appraisal report that is not disclosed as required, and any testimony or other evidence based on the report, from being presented in a hearing under Section 21.015 (Hearing).

SECTION 6. Amends Section 21.0113(b), Property Code, as follows:

(b) Provides that an entity with eminent domain authority has made a bona fide offer if:

(1) an initial offer is made in writing to a property owner that includes certain information;

(2) and (3) makes no changes to these subdivisions;

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

(5) the final offer is equal to or greater than the amount provided by the appraisal report, rather than the final offer is equal to or greater than the amount of the written appraisal obtained by the entity;

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

(A) a copy of the appraisal report, rather than a copy of the written appraisal;

(B) and (C) makes no changes to these paragraphs;

(D) a notice, as appropriate, as described by Section 21.0114, which is added by this Act; and

(7) makes no changes to this subdivision.

SECTION 7. Amends Subchapter B, Chapter 21, Property Code, by adding Sections 21.0114 and 21.0115, as follows:

Sec. 21.0114. NOTICE REGARDING PIPELINE AND ELECTRIC TRANSMISSION RIGHTS-OF-WAY. (a) Requires the condemning entity, unless otherwise addressed by the easement, to provide a list of items that the landowner may consider when reviewing the offer of the condemning entity.

(b) Requires that the notice include certain information if the property is to be acquired for purposes of a pipeline right-of-way.

(c) Requires that the notice include certain information if the property is to be acquired for purposes of an electric transmission right-of-way.

(d) Authorizes a property owner and the entity to agree to terms other than those required to be included in the required notice.

(e) Requires an entity, if the entity does not have sufficient information to include in a required notice an item listed in Subsection (c) or (d), as applicable, to:

(1) in the notice:

(A) indicate the item that is not included; and

(B) state that information regarding the item will be provided to the property owner in an amended notice when known; and

(2) as soon as practicable after the entity obtains the information, provide the information to the property owner in an amended notice.

Sec. 21.0115. LIMITATION OF PROPERTY OWNER LIABILITY. Provides that a property owner is not liable to a condemning entity, the entity's agents, employees, or

contractors, including the contractor's subcontractors of any tier, or a third party for certain personal injury, death, or property damage.

SECTION 8. Amends Section 21.041, Property Code, as follows:

Sec. 21.041. EVIDENCE. (a) Creates this subsection from existing text and makes no further changes to this subsection.

(b) Authorizes the special commissioners to admit evidence on the price paid for pipeline or electrical line rights-of-way in privately negotiated transactions made in the absence of a potential, actual, or threatened condemnation.

SECTION 9. Amends Section 21.063, Property Code, by adding Subsections (c) and (d), as follows:

(c) Requires a nongovernmental condemnor, as a condition of appealing the final judgment of a trial court in a condemnation proceeding, to:

(1) deposit with the trial court the amount of the final judgment, less the amount of any monetary deposit made and certain bonds posted by the condemnor, subject to the order of the court of appeals; or

(2) post a surety bond, issued by a certain entity, in the amount of the final judgment, less the amount of any monetary deposit made and certain bonds posted by the condemnor.

(d) Requires the court of appeals, if the property owner moves to enforce Subsection (c) and the nongovernmental condemnor fails to comply with that subsection before a certain date, to dismiss the appeal with prejudice and order enforcement of the final judgment. Provides that, if the property owner moves to enforce Subsection (c) and the nongovernmental condemnor fails to comply with that subsection before a certain date, the property owner is entitled to all reasonable and necessary fees for attorneys hired in relation to the condemnation.

SECTION 10. Amends Section 26.11(a), Tax Code, to provide that, if the federal government, the state, or a political subdivision of the state acquires the right to possession of taxable property under a court order issued in condemnation proceedings, assumes possession of taxable property under a possession and use agreement, or a similar agreement, that is entered into under threat of condemnation, or acquires title to taxable property, the amount of the tax due on the property is calculated by multiplying the amount of taxes imposed on the property for the entire year as determined by Section 26.09 (Calculation of Tax) by a fraction, the denominator of which is 365 and the numerator of which is the number of days that elapsed prior to the date of the conveyance, the effective date of the agreement, or the date of the order granting the right of possession, as applicable.

SECTION 11. Requires OAG to make the landowner's bill of rights statement required by Section 402.031, Government Code, as amended by this Act, available on OAG's website not later than January 1, 2018.

SECTION 12. Requires TREC, not later than January 1, 2018, to adopt rules to implement Subchapter K, Chapter 1101, Occupations Code, as amended by this Act.

SECTION 13. (a) Makes application of Sections 21.0111 and 21.0113, Property Code, as amended by this Act, and Sections 21.0114 and 21.0115, Property Code, as added by this Act, prospective, regarding the acquisition of real property in connection with an initial offer made under Section 21.0113, Property Code.

(b) Makes application of Section 21.041, Property Code, as amended by this Act, prospective.

(c) Makes application of Section 21.063, Property Code, as amended by this Act, prospective.

(d) Makes application of Section 26.11, Tax Code, as amended by this Act, prospective.

SECTION 14. (a) Effective date, except as provided by Subsection (b): September 1, 2017.

(b) Effective date, Sections 1101.501 and 1101.502, Occupations Code, as amended by this Act, and Section 1101.5042, Occupations Code, as added by this Act: March 1, 2018.