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Bill Title: Relating to the acquisition of real property by an entity with eminent domain authority.

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S.B. No. 421

A BILL TO BE ENTITLED

AN ACT

relating to the acquisition of real property by an entity with eminent domain authority.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 21.0113, Property Code, is amended by adding Subsections (c), (d), and (e) to read as follows:

(c) Notwithstanding Subsection (b), a private entity, as defined by Section 21.031, with eminent domain authority that wants to acquire real property for a pipeline or electric transmission project has made a bona fide offer only if the entity:

(1) satisfies the requirements of Subsection (b);

(2) includes in the initial offer:

(A) an offer of just compensation in an amount equal to or greater than:

(i) the market value of the property rights sought to be acquired, including damages to any of the property owner's remaining property, if any, and other damages, if any, based on an appraisal of the property prepared by an independent certified general appraiser licensed under Chapter 1103, Occupations Code; or

(ii) the estimated sales price of the property rights sought to be acquired based on data for at least three comparable arm's-length sales, including damages to any of the property owner's remaining property, if any, and other damages, if any, based on:

(a) a comparative market analysis of the property affected by the rights sought, prepared by an independent real estate broker licensed under Chapter 1101, Occupations Code;

.(b) a broker price opinion of the property affected by the rights sought, prepared by an independent real estate broker licensed under Chapter 1101, Occupations Code;
or

.(c) a market study of the property affected by the rights sought, prepared by an independent real estate broker licensed under Chapter 1101, Occupations Code;

.(E) the complete written report of the appraisal, the comparative market analysis, the broker price opinion, or the market study that forms the basis for the amount of the offer of compensation under Paragraph (A);

.(C) 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;

.(D) notice that the property owner may also receive a final offer accompanied by a written appraisal; and

.(E) a copy of the notice of property owner information meeting required by Section 21.033, if applicable, unless the entity has previously provided a copy of the notice to the property owner;

.(3) participates in the property owner information meeting in the manner prescribed by Section 21.037, if applicable;

.(4) obtains for purposes of Subsection (b)(4) a written appraisal report from a certified appraiser; and

.(5) includes in the final offer 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.

.(d) For purposes of Subsection (c)(2)(A)(ii), a real estate broker licensed under Chapter 1101, Occupations Code, is authorized to prepare an estimated sales price based on a comparative market analysis, a broker price opinion, or a market study.

.(e) An offer of compensation made under Subsection (c) must include a separate statement of:

.(1) the damages, if any, to any of the property owner's remaining property; and

.(2) the other damages, if any.

SECTION 2. Section 21.047(d), Property Code, is transferred to Section 21.0113, Property Code, redesignated as Section 21.0113(f), Property Code, and amended to read as follows:

.(f) [~~(d)~~] If a court hearing a suit under this chapter determines that a condemnor did not make a bona fide offer to acquire the property from the property owner voluntarily as required by this section [~~Section 21.0113~~], the court shall abate the suit, order the condemnor to make a bona fide offer, and order the condemnor to pay:

(1) all costs as provided by Section 21.047(a) [~~Subsection (a)~~]; and

(2) any reasonable attorney's fees and other

professional fees incurred by the property owner that are directly related to the violation.

SECTION 3. Subchapter B, Chapter 21, Property Code, is amended by adding Section 21.0114 to read as follows:

Sec. 21.0114. REQUIRED TERMS FOR INSTRUMENTS OF CONVEYANCE BY CERTAIN PRIVATE ENTITIES. (a) Except as provided by Subsections (c) and (d), a deed, easement, agreement, or other instrument of conveyance provided to a property owner by a private entity, as defined by Section 21.031, that has the power of eminent domain to acquire the property interest to be conveyed must include the following terms, as applicable:

(1) if the instrument conveys a pipeline right-of-way easement:

(A) the maximum number of pipelines that may be installed in the easement;

(B) the maximum diameter, excluding any protective coating or wrapping, of each pipeline to be initially installed in the easement;

(C) the type or category of substances permitted to be transported through each pipeline to be installed in the easement;

(D) a general description of any aboveground equipment or facility the private entity intends to install, maintain, or operate on the surface of the easement;

(E) any descriptions of the location of the easement, including metes and bounds or centerline descriptions, plats, and aerial or other map-based depictions of the location of the easement on the property, that are in the possession of the private entity when the private entity provides the instrument of conveyance to the property owner;

(F) the maximum width of the easement;

(G) the minimum depth at which each pipeline to be installed in the easement will initially be installed;

(H) a provision identifying whether the private entity intends to double-ditch areas of the easement that are not installed by boring or horizontal directional drilling;

(I) a provision limiting the private entity's right to assign the entity's interest under the deed, easement, agreement, or other instrument of conveyance without:

(i) written notice to the property owner at the last known address of the person in whose name the property is listed on the most recent tax roll of any taxing unit authorized to levy property taxes against the property; or

(ii) if the assignee, including an assignee that is an affiliate or subsidiary of or entity otherwise related to the private entity, will not operate each pipeline installed on the easement as a common carrier line or gas utility, the express written consent of the property owner, provided the property owner

does not unreasonably withhold consent;

.(J) a provision describing whether the easement rights are exclusive, nonexclusive, or otherwise limited;

.(K) a provision limiting the private entity's right to grant a third party access to the easement area for a purpose that is not related to the construction, safety, repair, maintenance, inspection, replacement, operation, or removal of each pipeline to be installed in the easement;

.(L) a provision regarding the property owner's right to recover actual monetary damages arising from the construction and installation of each pipeline to be installed in the easement, or a statement that the consideration for the easement includes any monetary damages arising from the construction and installation of each pipeline to be installed in the easement;

.(M) a provision regarding the property owner's right after initial construction and installation of each pipeline to be installed in the easement to actual monetary damages arising from the repair, maintenance, inspection, replacement, operation, or removal of each pipeline to be installed in the easement;

.(N) a provision:

.(i) regarding the removal, cutting, use, repair, and replacement of gates and fences that cross the easement or that will be used by the private entity; or

.(ii) providing for the payment for any damage that is not restored;

.(O) a provision:

.(i) regarding the private entity's obligation to restore the easement area and the property owner's remaining property used by the private entity to as near to original condition as is reasonably practicable and to maintain the easement, including restoring the easement to the easement's original contours and grades; or

.(ii) providing for the private entity to reimburse the property owner for actual monetary damages incurred by the property owner that arise from damage to the easement area and the property owner's remaining property caused by the private entity and not restored; and

.(P) a provision describing the private entity's rights of ingress, egress, entry, and access on, to, over, and across the easement; and

.(2) if the instrument conveys an electric transmission right-of-way easement:

.(A) a general description of any use of the surface of the easement the entity intends to acquire;

.(B) all descriptions of the location of the easement, including metes and bounds or centerline descriptions, plats, and aerial or other map-based depictions of the location of the easement on the property, that are in the possession of the

private entity when the private entity provides the instrument of conveyance to the property owner;

.(C) the maximum width of the easement;

.(D) the manner in which the entity will access the easement;

.(E) a provision limiting access to the easement area by a third party that has not obtained authorization from the property owner for a purpose that is not related to the transmission line's construction, safety, repair, maintenance, inspection, replacement, operation, or removal;

.(F) a provision regarding the property owner's right to recover actual monetary damages arising from the construction, repair, maintenance, replacement, or future removal of lines and support facilities in the easement, or a statement that the consideration for the easement includes such future damages;

.(G) a provision:

.(i) regarding the removal, cutting, use, repair, and replacement of gates and fences that cross the easement or that will be used by the private entity; or

.(ii) providing for the payment for any damage that is not restored;

.(H) a provision regarding the entity's obligation to restore the easement area and the property owner's remaining property to the easement area's and the remaining property's original contours and grades and:

.(i) a provision regarding the entity's obligation to restore the easement area and the property owner's remaining property following any future damages directly attributed to the use of the easement by the private entity; or

.(ii) a statement that the consideration for the easement includes future damages to the easement area and the property owner's remaining property;

.(I) a provision describing whether the easement rights are exclusive, nonexclusive, or otherwise limited; and

.(J) a prohibition against the assignment of the entity's interest in the property to an assignee that will not operate as a utility subject to the jurisdiction of the Public Utility Commission of Texas or the Federal Energy Regulatory Commission without written notice to the property owner at the last known address of the person in whose name the property is listed on the most recent tax roll of any taxing unit authorized to levy property taxes against the property.

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

.(1) a provision regarding the property owner's right to negotiate to recover damages, or a statement that the consideration for the easement includes damages, for:

.(A) damage to vegetation; and

.(B) the income loss from disruption of existing agricultural production or existing leases;

.(2) a prohibition against any use of the property being conveyed, other than a use stated in the deed, easement, agreement, or other instrument of conveyance, without the express written consent of the property owner;

.(3) a provision:

.(A) requiring the private entity to maintain at all times while the private entity uses the easement, including during construction and operations on the easement, liability insurance:

.(i) issued by an insurer authorized to issue liability insurance in this state; and

.(ii) insuring the property owner against liability for personal injuries and property damage sustained by any person caused by the negligence of the private entity or the private entity's agents or contractors; or

.(B) if the private entity is subject to the jurisdiction of the Public Utility Commission of Texas or has a net worth of at least \$25 million, requiring the private entity to indemnify the property owner against liability for personal injuries and property damage sustained by any person caused by the negligence of the private entity or the private entity's agents or contractors; and

.(4) a provision that the terms of the deed, easement, agreement, or other instrument of conveyance will bind the successors and assigns of the property owner and private entity.

.(c) A private entity, as defined by Section 21.031, or the property owner may:

.(1) negotiate for and agree to terms and conditions not required by Subsection (a) or provided by Subsection (b), including terms and conditions not included in a subsequent condemnation petition; and

.(2) agree to a deed, easement, agreement, or other instrument of conveyance that does not include the terms required by Subsection (a).

.(d) Except as provided by this subsection, this section does not prohibit a private entity or the property owner from agreeing to amend the terms required by Subsection (a) after the private entity makes an initial offer or final offer to the property owner as required by Section 21.0113. A private entity that changes the terms required by Subsection (a) must provide a copy of the amended deed, easement, agreement, or other instrument of conveyance to the property owner not later than the 14th day before the date the private entity files a condemnation petition relating to the property.

.(e) 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.

(f) A court hearing a suit under this chapter involving property the acquisition of which is subject to the requirements of this section:

(1) may determine whether the private entity has complied with the requirements of this section; and

(2) if the court determines that the private entity has not provided to a property owner a deed, easement, agreement, or other instrument of conveyance that complies with the requirements of this section, shall:

(A) order the private entity to:

(i) provide to the property owner a deed, easement, agreement, or other instrument of conveyance that complies with the requirements of this section; and

(ii) pay to the property owner:

(a) all costs related to the private entity's failure to comply with this section; and

(b) any reasonable attorney's fees and other professional fees incurred by the property owner that are directly related to the private entity's failure to comply with this section; and

(B) abate a pending proceeding until the instrument is provided.

SECTION 4. Section 21.012, Property Code, is amended by adding Subsection (b-1) to read as follows:

(b-1) In addition to the contents prescribed by Subsection (b), a petition filed by a private entity as defined by Section 21.031 to acquire property for a pipeline or electric transmission project must state the terms to be included in the instrument of conveyance under Section 21.0114.

SECTION 5. Chapter 21, Property Code, is amended by adding Subchapter B-1 to read as follows:

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

Sec. 21.031. DEFINITION. In this subchapter, "private entity":

(1) means:

(A) a for-profit entity, however organized, authorized to exercise the power of eminent domain to acquire private property for public use; and

(B) any affiliate or subsidiary of or entity related to an entity described by Paragraph (A), including a for-profit corporation organized under Chapter 67, Water Code, if the affiliate, subsidiary, or other entity was formed for purposes of a project for which property may be acquired through eminent domain; and

.(2) does not include a railroad operating in this state on or before September 1, 2019.

Sec. 21.032. APPLICABILITY OF SUBCHAPTER. (a) Except as expressly provided by Section 21.033(d), this subchapter applies only to a private entity that seeks to acquire for the same pipeline or electric transmission project 25 or more tracts of real property, including easements within those tracts, that are owned by at least 25 separate and unaffiliated property owners.

(b) Except as expressly provided by Section 21.0392, this subchapter does not apply to a private entity that:

(1) operates or proposes to construct an electric transmission line; and

(2) is subject to the jurisdiction of the Public Utility Commission of Texas under Chapter 37, Utilities Code.

(c) This subchapter does not apply to the acquisition of a tract of real property that is an industrial property, including a tract that contains a refinery, processing facility, underground storage facility, electric station, industrial facility, power plant facility, or storage terminal.

Sec. 21.033. NOTICE OF PROPERTY OWNER INFORMATION MEETING.

(a) A private entity shall, before or at the same time that the entity makes an initial offer as required under Section 21.0113, provide a written notice advising the property owner of:

(1) the property owner's right to participate in a meeting to discuss the proposed project, including:

(A) if the project is a pipeline, the substances, products, materials, installations, and structures the private entity intends to transport through, use for, or build as part of the project; and

(B) any regulatory filings for the project; and

(2) the date, time, and location of the meeting.

(b) The private entity shall send the meeting notice to:

(1) the property owner listed for the property on the most recent tax roll for a taxing unit with authority to levy an ad valorem tax on the property; or

(2) the address for the property listed on the tax roll described by Subdivision (1).

(c) The private entity shall also send the meeting notice to:

(1) any other address that the private entity has for the property owner; and

(2) each county judge of a county in which all or part of the project section or segment for which the meeting is to be held is located.

(d) If a pipeline involves fewer than 25 separate and unaffiliated property owners, the private entity shall 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 21.037. If a property owner requests a meeting, the private entity shall hold the meeting not later than the 30th day after the date the private entity sent the notice to the property owner.

Sec. 21.034. PROPERTY OWNER INFORMATION MEETING. (a) For each contiguous linear section of a proposed project route that is equal to or less than 100 miles in length, the private entity shall hold a group property owner meeting. For a project that exceeds 100 miles in length, the private entity shall hold at least one separate meeting for each 100-mile segment.

(b) The private entity shall hold a meeting required under Subsection (a) in a centrally located public location:

(1) appropriate to the size and nature of the meeting;
and

(2) as convenient as possible to the majority of property owners affected by the project or project segment for which the meeting is required.

(c) The private entity shall hold the meeting in a location the travel distance to which is 50 miles or less for the majority of property owners who reside on property being acquired for the project section or segment for which the meeting is to be held.

(d) A meeting required under Subsection (a) may not be scheduled to begin earlier than 5:30 p.m.

(e) A meeting required under Subsection (a) may not be held before the private entity sends at least 25 percent of the initial offers required by Section 21.0113.

Sec. 21.035. PERSONS AUTHORIZED TO ATTEND PROPERTY OWNER INFORMATION MEETING. (a) In addition to the property owner and the private entity representatives, the following individuals may attend a meeting held under Section 21.034:

(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, 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;

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

(5) a county judge of a county in which all or part of the project section or segment for which the meeting is held is located.

(b) A private entity may include in the notice required by Section 21.033 a requirement that the property owner identify persons described by Subsections (a)(1)-(4) who intend to attend the meeting not later than two days before the date of the meeting.

(c) The number of attendees under Subsections (a)(1)-(4)

may not exceed five individuals for each separate tract of property.

(d) The private entity may require attendees to provide identification and complete a registration form that includes contact information.

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

(f) The private entity may not deny entry to a property owner who provides proper identification.

Sec. 21.036. PARTICIPATION BY PRIVATE ENTITY REQUIRED. One or more representatives designated by the private entity shall:

(1) attend each meeting required by Section 21.034; and

(2) participate in those meetings in the manner prescribed by Section 21.037.

Sec. 21.037. PROPERTY OWNER INFORMATION MEETING AGENDA.

(a) At a meeting held under Section 21.034:

(1) the private entity shall present:

(A) the information contained in 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 description of the method and factors used by the entity to determine the entity's initial offer, including:

(i) how damages to remaining property, if any, were evaluated; or

(ii) the name of the person who prepared the appraisal report, comparative market analysis, broker price opinion, or market study required under Section 21.0113(c);

(E) a description of the private entity's regulatory filings 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 third-party contractor to be used by the entity to acquire the land or undertake the project; and

(2) any person who is an 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) On request, a private entity shall provide, in written or electronic form, the materials presented by the private entity at the meeting to a property owner who could not attend the meeting.

Sec. 21.038. CONTACT AFTER PROPERTY OWNER INFORMATION MEETING. A private entity that holds a meeting under Section 21.034 may not contact a property owner for three days following the date of the meeting. Nothing in this section precludes:

(1) a property owner or an individual allowed to attend a meeting held under Section 21.034 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. 21.039. PROCEDURES AFTER PROJECT RE-ROUTE. If any part of the project is re-routed after any meeting is held under Section 21.034, the private entity shall, with respect to that re-route only, comply with the provisions of this subchapter with respect to tracts along the re-route.

Sec. 21.0391. PRIVATE ENTITY NONCOMPLIANCE. (a) A private entity subject to this subchapter may not proceed with a special commissioners' hearing against a property owner unless the private entity has held a meeting required under this subchapter.

(b) If a court hearing a suit under this chapter determines that a private entity did not comply with the applicable provisions of this subchapter, the court shall:

(1) abate any condemnation proceeding filed by the private entity until the private entity has complied with this subchapter;

(2) order the private entity to comply with the applicable provisions of this subchapter; and

(3) order the private entity to pay:

(A) all costs of the proceeding; and

(B) any reasonable attorney's fees and other professional fees incurred by the property owner that are directly related to the entity's failure to comply with the applicable provisions of this subchapter.

(c) A condemnation proceeding that is abated under this section may proceed after a court finds that the private entity has complied with the applicable provisions of this subchapter.

Sec. 21.0392. PROCEDURES FOR CERTAIN PRIVATE ENTITIES SUBJECT TO JURISDICTION OF PUBLIC UTILITY COMMISSION. (a) This section 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 under Chapter 37, Utilities Code.

(b) A private entity to which this section applies and that is required by the Public Utility Commission of Texas to conduct a public meeting in connection with the electric transmission line

project shall present at the meeting:

.(1) the information contained in the landowner's bill of rights required to be provided to a property owner under Section 21.0112;

.(2) 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;

.(3) the name and contact information of any third-party contractor or right-of-way agent that will contact a property owner or seek access to the property owner's property in connection with the project, to the extent available;

.(4) the name and contact information, including direct telephone number and e-mail address, for an agent or employee of the entity with authority to answer questions about the electric transmission line project;

.(5) the method for calculating the value of the property being acquired by the entity and the damages, if any, to the property owner's remaining property, as part of the entity's initial offer to a property owner; and

.(6) a detailed summary of procedures for right-of-way acquisition after the route for the electric transmission line has been selected.

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

.(d) After the Public Utility Commission of Texas adopts a route for the electric transmission line, the entity shall provide by letter to each property owner on the route:

.(1) a copy of the entity's draft easement form containing a statement of the terms required by Section 21.0114 to be included in a deed, easement, agreement, or other instrument of conveyance provided by the entity to the property owner;

.(2) an explanation of the initial offer process and the basis for calculating the value of the property being acquired by the entity and the damages, if any, to the property owner's remaining property as part of the initial offer required by Section 21.0113;

.(3) a statement of the property owner's right under Section 21.0113 to receive a copy of the written appraisal with the final offer, if a copy of the written appraisal has not previously been provided to the property owner by the entity;

.(4) an explanation of the negotiation process, including the name and contact information of any right-of-way agent who will be participating in the process; and

.(5) the name and contact information, including the direct telephone number and e-mail address, for an agent or employee of the entity with authority to answer questions about the electric transmission line project.

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

SECTION 6. Section 21.042, Property Code, is amended by adding Subsection (d-1) to read as follows:

(d-1) In estimating injury or benefit under Subsection (c) in a condemnation proceeding relating to the acquisition of real property by a private entity as defined by Section 21.031 for a pipeline or electric transmission project, the special commissioners shall consider, in addition to the considerations required under Subsection (d), an injury or benefit to the remaining property as a result of:

(1) the characteristics, size, or visibility of any infrastructure on the condemned property;

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

(3) terms of the easement acquired in connection with, or the alignment of an easement in connection with, the condemnation.

SECTION 7. (a) Except as provided by Subsection (b) of this section, the changes in law made by this Act apply only to the acquisition of real property in connection with an initial offer made under Chapter 21, Property Code, on or after the effective date of this Act. An acquisition of real property in connection with an initial offer made under Chapter 21, Property Code, before the effective date of this Act is governed by the law applicable to the acquisition immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(b) Section 21.0392, Property Code, as added by this Act, applies only to a public meeting required under Chapter 37, Utilities Code, held on or after the effective date of this Act.

SECTION 8. This Act takes effect September 1, 2019.