

# S.B. 421 by Kolkhorst & H.B. 991 by Burns

## BILL SUMMARY

The following provisions regarding minimum easement terms, public meetings, and a payment for a low initial offer apply only to private entities as well as any affiliates, subsidiaries, or related entities, and political subdivisions formed by privately-owned entities.

This legislation is subject to change based upon feedback from legislators and stakeholders. However, the core issues of providing a public meeting, a consequence for not providing the landowner with a market-based offer that includes compensation for damages to the remainder, and minimum easement terms to protect property owners will be included in any legislation filed.

### 1. Minimum Easement Terms to Protect Landowners

- A deed, easement, or other instrument provided to a property owner by a privately-owned entity must include the following terms for pipeline right-of-way easements:
  - Maximum number of pipelines;
  - Maximum diameter of each pipeline;
  - Type or category of each product to be transported;
  - General description of any use of the surface of the easement by the entity, description of limitations placed on property owner's use of surface;
  - Metes and bounds or centerline description of easement location, the width of the easement, the depth of the pipeline and amount of cover;
  - Whether to use double-ditch method for installation;
  - Prohibition against transfer of easement to any other entity, subsidiary, or company that doesn't have the power of eminent domain without express written consent of the property owner;
  - Whether entity has exclusive, nonexclusive, or otherwise limited rights to the easement;
  - Limitation of access to the easement area;
  - Property owner's right to damages for construction, maintenance, repair, replacement, removal of the pipeline, including any damages to crops or livestock;
  - Property owner's right to negotiate a recover of damages for tree loss, income loss from interference with hunting or recreational activities, and income loss from disruption of agriculture production;
  - A provision regarding the use and repair of any gates and fences, the entity maintaining the easement and leveling, to repair and restore areas used or damaged outside the easement area to original condition;
  - Manner in which the entity will access the easement.

- A deed, easement, or other instrument provided to a property owner by a privately-owned entity must include the following terms for electrical transmission right-of-ways easements:
  - A general description of any use of the surface of the easement;
  - Approximate location of the easement on the property;
  - Metes and bounds or center line description of easement location, the width of the easement;
  - Manner in which the entity will access the easement;
  - Limitation of access to the easement area;
  - Property owner's right to damages for construction, maintenance, repair, replacement, removal of the lines, or statement that offer includes such future damages;
  - Property owner's right to negotiate a recover of damages for tree loss, income loss from interference with hunting or recreational activities, and income loss from disruption of agriculture production;
  - A provision regarding the use and repair of any gates and fences, the entity maintaining the easement, and to repair and restore areas used or damaged outside the easement area to original condition;
  - An agreement prohibiting transfer of the easement to any other entity, subsidiary, or company that does not have eminent domain;
  - Written notice to the property owner of any transfer of the easement.
- Prohibition against any use of the property being conveyed, other than a use stated in the instrument.
- An agreement that the entity will keep and maintain liability insurance
- A statement that the terms of the deed, easement, or other instrument will bind the successors and assigns of the parties to the instrument.
- The Attorney General's office will promulgate and enforce a standard easement form that incorporates these protections. Privately-owned entities with eminent domain authority will be required to use this form with landowners.
- The entity may present and include terms in addition to the terms provided above with the consent of the property owner. The property owner may also voluntarily agree to eliminate any of the minimum terms.
- Any condemnation action will be required to include these minimum easement terms, an important improvement for landowners who often are deprived of essential protections when a lawsuit is filed.

## 2. Public Meetings for Private Projects

- Privately-owned entities with the power of eminent domain shall be required to provide the local court with advance notice of the planned project and also shall participate in a public meeting at the county level prior to acquiring any property. Public meetings shall not be required for projects involving four landowners or less.
- A local court will provide accountability that the meeting was held according to the requirements in law. The entity may not begin negotiating to acquire property until the court certifies the meeting requirements were met.
- The entity shall notify all affected property owners of the time and place for the meeting in the first offer letter. Notice shall also be placed in the newspaper and on the county website.
- The public meeting shall include the following:
  - Presentation on the landowners bill of rights and other information for landowners upon receipt of an offer;
  - Presentation by the entity seeking to acquire property:
    - Description of the project and it's public use, including technical details;
    - The required minimum easement terms under law,
    - Methods and factors used in calculation of compensation to property owners including:
      - how damages to remaining property are determined
      - whether the entity will use appraisals or a market value study
    - Justification of the entity's eminent domain authority and disclosure of all application materials provided to obtain CCN or T-4 permit;
    - The legal and factual basis for the entity's exercise of eminent domain;
    - Description of the regulatory process required to obtain approval of the project and how the public can participate in the that process;
    - Contact information of any third party contractors used to acquire property and construction of the project.
  - Opportunity for property owners and public officials to ask questions regarding the project and their rights.
- Negotiations shall not be conducted until after the public meeting is held allowing landowners a reasonable opportunity to consider their rights.
- Following the meeting, landowners will be afforded the opportunity to make any challenge to the exercise of eminent domain.
- Condemnation entities and their attorneys will be required to include landowners in any communications with the court and special commissioners handling their matter.

### **3. Consequences for Making a Low Initial Offer**

- Specify in law that the initial offer to a property owner shall include:
  - Fair market value for the property being acquired plus damages to the remaining property;
  - Notice that final offer will include an appraisal;
  - Notice that the landowner will receive an additional payment if the court finds the initial offer was low.
  
- If damages awarded by special commissioners are:
  - 25% or greater than the initial offer, then the condemnor shall pay a landowner's expense payment in the amount of 25% of the special commissioners award, in addition to the award.
  - 50% or greater than the initial offer, then the condemnor shall pay a landowner's expense payment in the amount of 30% of the special commissioners award, in addition to the award.
  - 100% or greater than the initial offer, then the condemnor shall pay a landowner's expense payment in the amount of 35% of the special commissioners award, in addition to the award.
  
- The additional payment to the landowner shall be in addition to payment of court-ordered award of fair compensation.
  
- The condemning entity shall provide the landowner with notice of this right and certify in its first offer to a landowner that the amount offered complies with this section.

### **4. Requirements for Determining Damages to the Remainder**

- In estimating damages in a condemnation proceeding, special commissioners shall consider:
  - 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;
  - Any potential for future expansion of the infrastructure; and
  - Terms of the easement and the alignment of an easement across the property.