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Every Friday, this newsletter will keep you up to speed on some of the legislation important to Texas Farm Bureau members that the Austin staff is following.

Please do not hesitate to contact the appropriate staff with any questions.

Eminent Domain Reform Bills Filed - Please TAKE ACTION

HB 991 (Burns) & **SB 421 (Kolkhorst)** were filed this week to reform the eminent domain process for private entities in our state. These bills are the top priority for our organization this session. They provide landowners with a more fair and transparent negotiation with private entities that can condemn private property. These bills also provide a consequence for bad actors that try to "lowball" landowners in the negotiation.

Please contact your state senator and state representative as soon as possible and **ask them to sign onto these bills as a co-sponsor**. Becoming a co-sponsor of the bill shows your legislators are committed to help us pass these bills.

You can find your legislators' contact information by going to this webpage and entering your home address: **<https://fyi.capitol.texas.gov/Home.aspx>**

Below is an explanation of why each change to the eminent domain process is needed and a summary of the bill.

Why is it necessary?

We made progress on eminent domain reform in 2011, but our system still needs additional protections for property owners to be treated fairly. We need a reformed

system that is fair, accountable and transparent. We need a system that supports economic growth in our state while at the same time respecting the rights of landowners. This legislation is common sense reform that all Texans can support.

What do the bills do?

First and foremost, it reforms the eminent domain process to make it more fair, accountable and transparent. It does this by implementing several common sense solutions.

Some key components of the bill are:

- Implement public meetings in counties so that landowners have an opportunity to understand the process and why their land is needed.
- Providing protections against lowball offers. Unfortunately, landowners experience ridiculous lowball offers from private companies more times than they should, and Texas law does not currently prohibit private companies from offering less than fair market value. We need protections for hardworking landowners.
- Require minimum easement terms. These include some simple measures like asking the private companies to tell the landowner the number of and size of pipelines and transmission lines that will be on the landowner's property; the product and voltage of that product being carried on the property; and defining the access of the private company to the landowner's private property among other issues. These are all common sense items that can and should be addressed.

Why is it important to have public meetings? Can't the landowner just deal directly with the private company?

There is a virtual information vacuum when it comes to private companies using eminent domain in Texas. Eminent domain is a governmental power that is supposed to be used only for the public good. However, private entities use eminent domain and have very few obligations to operate in the kind of transparent manner that citizens have come to expect from public projects. For example, transmission line companies must at least present a proposed route to the Public Utility Commission (PUC), which meets in Austin and allows public input. Common carrier pipeline companies have no such requirement. In fact, there is no requirement for even a single public discussion of any kind about a current or proposed pipeline project. It seems like common sense to require public meetings in the actual communities where pipeline and transmission line companies intend to condemn property. It is not too much to ask these private

companies who utilize a public process for the public good to do so in a public forum. A mechanism to give the public a voice and an opportunity to ask reasonable questions seems more than prudent. It's fair and transparent.

Opponents say you are simply impeding economic progress in our state. Will this bill make it more difficult to transport energy, increase the cost of energy and cost Texas precious tax dollars?

Nothing is further from the truth. We are keenly aware that the continued success of Texas depends, in part, on reliable infrastructure. We enthusiastically support the continued growth of Texas. Our communities rely on this infrastructure to carry electricity to our homes and provide fuel for our vehicles. We want the process to be fair and predictable. We simply want to see landowners treated like respected and necessary partners. We are pro-growth and support progress. We want to ensure that the process going forward is fair, accountable and transparent. Together, we can make Texas even stronger.

Does it help trial lawyers by providing increased opportunity for litigation?

This is a complete farce of an argument put forth by opponents of landowners' rights. In fact, we support less litigation and a more open, transparent, fair and predictable eminent domain process. The improvements to the current process laid out in this bill will not only encourage less litigation but will also result in less litigation than the current process.

Where have the reforms come from? Have you talked to landowners and private companies?

These improvements to existing law address numerous concerns brought to us directly by Texas landowners who have actually faced forced condemnation, and it is important to continually point out that no provisions we bring forth will adversely impact Texas' role as an energy leader. And they will they not slow the process of building the pipelines and power lines necessary to support a growing state and economy. Texas is growing and we are proud of that growth. We will not stand in the way of growth, but we will stand up for private property rights. Transparency is not too much to ask.

What do condemning entities think of this legislation?

We want to work with all stakeholders to ensure that improvements are best for the landowners and the state of Texas. We have reached out to stakeholders who

currently defend the status quo to explain our improvements to the current laws and how these improvements positively affect all stakeholders. Ultimately, we are confident that all will agree that this legislation is a model to continue moving Texas forward.

Bill Summary

The following provisions apply only to private entities, as well as any affiliates, subsidiaries, or related entities, and political subdivisions formed by privately-owned entities.

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 its 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.

TFB supports HB 991 & SB 421. (TFB Policy 2017: "Eminent Domain" Pg. 55-57)

Taxes

HB 42 by Rep. James White (R-Hillister), filed a bill clarifying that a portion of severance taxes collected for oil and gas shall be used for local infrastructure. This bill is designed to help counties, particularly rural counties, in high oil and gas producing areas to maintain their roads from heavy traffic.

After the comptroller collects the tax, it will then be distributed to counties based on the portion of revenue that originates from each county in the form of oil and gas production. The money counties receive can only be used to supplement construction and maintenance of county roads and bridges impacted by oil and gas activities.

TFB supports HB 42. (TFB Policy: Other Taxes 143, pg. 43, lines 44-49 of 2019 policy book.)

Transportation

HB 153 by **Rep. James White** (R-Hillister), removes the Electronic Logging Device (ELD) requirement from being enforced by the Department of Public Safety for commercial motor vehicles for intrastate commerce.

HB 153 would prevent the requirement of an electronic logging device to record an intrastate operator's duty status or to be installed in a commercial motor vehicle used only for intrastate commerce.

TFB supports HB 153. (TFB Policy: Truck Transportation 164, pg. 93, lines 101-104 of 2019 policy book.)

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