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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 Austin staff are following.

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

Eminent Domain Update

SB 421, by **Sen. Lois Kolkhorst (R- Brenham)**, was passed out of the Senate State Affairs Committee on Monday, March 11. Kolkhorst presented an amended bill to the committee that was based on bill language submitted by stakeholders. The original bill was changed in the following ways:

Low Initial Offer

- Removes the "penalty" for low offers based on the special commissioners' award. It addresses low offers by requiring the initial offer to be 145 percent of market value and damages to the remainder. There is a question as to whether or not requiring a condemning entity to pay 45 percent more than fair market value and the damages to the remaining property is constitutional.
- Requires the initial offer to be based on an appraisal or market study by a certified appraiser. An appraisal is good, but a market study does not calculate damages to the remainder.
- Requires final offer to be equal to or greater than the initial offer.
- Allows the court to consider if an appraiser "intentionally omitted" damages to the remainder. We are concerned that it would be difficult to prove that an appraiser "intentionally omitted" information.

Easement Terms

- Consistent with the language negotiated in the House. No major changes.

Landowner Meeting

- Amends the definition of private entity to ensure public entities aren't affected.
- Exempts railroads operating on or before Jan. 1, 2019 from the definition of a private entity, which means none of the provisions in SB 421 applies to current freight railroads. It only applies to the High Speed Rail project.
- Removes the court from organizing and facilitating the meeting. The company will hold the meeting. *(Agreed to during House negotiations)*
- The notice of the meeting will not be made available to the public. Only affected landowners get the notice. *(Agreed to during House negotiations)*
- The "property owner information meeting" will be limited to the property owner, relatives, tenants and public officials. *(Agreed to during House negotiations)*
- Electric companies are exempt, if they include the eminent domain information in their current PUC routing meetings at the county level. *(Agreed to during House negotiations)*

Additional Eminent Domain Bills

[SB 552](#), by **Sen. Charles Schwertner (R-Georgetown)**, and [HB 1245](#), by **Rep. Trent Ashby (R-Lufkin)**, relate to notice of a property owner's rights relating to the examination or survey of property by an entity with eminent domain authority.

When a landowner is issued their "Landowner Bill of Rights," the condemning entity would be required to be responsible for any damages arising from an examination or survey of the property. In addition, the property owner would now have the following two options during a condemning process, along with the right to object to and appeal an amount of damages awarded:

- Refuse to grant permission to the condemning entity to enter the property and conduct an examination or survey of the property;
- Negotiate the terms of the examination or survey of the property.

The condemning entity's right to sue for a court order authorizing the examination or survey, if the property owner refuses to grant permission for the examination or survey, must also be included in the "Landowner Bill of Rights."

Another provision states that if an entity with eminent domain authority provides a form to landowners requesting their permission to enter the property with the potential to condemn, they must state that:

- The owner has a right to refuse to allow the entity to enter and conduct an examination or survey on their property;
- The entity has the right to sue for a court order authorizing them to enter the property and conduct the examination or survey if the owner refuses;
- The owner has the right to negotiate the terms of the examination or survey;
- The entity has the responsibility of any damages that occur from the examination or survey.

SB 552 was favorably reported from the Senate State Affairs Committee, and HB 1245 has been referred to the House Land and Resource Management Committee.

TFB supports SB 552 and HB 1245. (TFB Policy: Eminent Domain 151, lines 28-31)

[SB 553](#), by **Sen. Charles Schwertner (R-Georgetown)**, and [HB 1246](#), by **Rep. Trent Ashby (R-Lufkin)**, relate to the acquisition of certain real property in conjunction with the acquisition of real property for a public use through eminent domain.

These bills state that if a condemning entity does not seek to acquire a complete plot of land, they must separately identify and make an offer on the portion of the land they do not wish to take in the initial offer. This would not apply to an acquisition of real property under the Transportation Code.

SB 553 was favorably reported from the Senate State Affairs Committee, and HB 1246 has been referred to the House Land and Resource Management Committee.

TFB supports SB 553 and HB 1246. (TFB Policy: Eminent Domain 151, lines 38-43)

[SB 554](#), by **Sen. Charles Schwertner (R-Georgetown)**, and [HB 1253](#), by **Rep. Ben Leman (R-Iola)**, relate to establishing "actual progress" for the purposes of determining the right of repurchase real property from a condemning entity.

In order to be defined as "actual progress," three instead of two of the following actions must occur:

1. A significant amount of labor;
2. A purchase of a significant amount of the materials needed;
3. Hiring or contracting with the performance of a significant amount of work by an architect, engineer or surveyor to prepare a plan, or easement;
4. Application for state or federal funds;
5. Application for state or federal permits or certificates.

A navigation district or port authority may establish "actual progress" by completing one action described above and the adoption of a development plan that indicates that the entity will not complete more than one action described above before the 10th anniversary of the property acquisition.

SB 552 was favorably reported from the Senate State Affairs Committee, and HB 1245 has been referred to the House Land and Resource Management Committee.

TFB supports SB 554 and HB 1253. (TFB Policy: Eminent Domain 151, lines 67-71)

Sen. Perry Files Bill to Protect Groundwater Rights

[SB 2026](#), by **Sen. Charles Perry (R-Lubbock)**, was filed as an identical companion to [HB 2122](#), by **Rep. Cody Harris (R-Palestine)**. These bills relate to regulating the production of a retail public utility well by a groundwater conservation district.

SB 2026 and HB 2122 protect landowners from public water utilities attempting to use landowners' groundwater without compensation or consent. These utilities have asked groundwater conservation districts and the Legislature to allow them to be credited with the acreage in their service area. They want credit for this acreage, so they can pump groundwater from under this acreage without compensating landowners or getting the landowner's consent. This is a taking of private property for public use in violation of the Constitution.

SB 2026 and HB 2122 require the utilities to either buy, lease or get permission from the affected landowners to pump the groundwater under acreage the utility doesn't own. This method of determining how much a utility can pump is consistent with groundwater ownership.

TFB supports SB 2026. (TFB Policy: Real Property Rights 150, Lines 2-5; Groundwater 153, Lines 9-13; 78-82; 175-178)

Transportation

[HB 3571](#), by **Rep. Brad Buckley (R-Killeen)**, and [HB 2386](#), by **Rep. Kyle Kacal (R-Bryan)**, exclude certain vehicles from being operated by a driver with a commercial driver's license.

The Transportation Code already exempts the following drivers from needing a commercial driver's license:

- Vehicles controlled and operated by a farmer;
- Firefighting or emergency vehicles;
- Military vehicles;
- Recreational vehicles;
- Vehicles owned, leased or controlled by an air carrier; or
- Vehicles used exclusively to transport seed cotton modules or cotton burrs.

The proposed companion bills would also add vehicles that are being used for the purpose of participating in equine activities or attending livestock shows and covered farm vehicles to the list, meaning you will not have to have commercial driver's license to operate these.

HB 2386 has been referred to the House Homeland Security and Public Safety Committee.

TFB supports HB 3571 and HB 2386. (TFB Policy: Farm Machinery 163, lines 6-9)

[HB 2837](#), by **Rep. Terry Canales (D-Edinburg)**, is a multi-purpose transportation bill relating to the operation of and equipment for vehicles.

This bill adds vehicles that are being used for the purpose of participating in equine activities or attending livestock shows and covered farm vehicles to the list of vehicles exempt from being operated by a driver with a commercial driver's license.

HB 2837 also authorizes an improved shoulder as lane of traffic for slow-moving vehicles. Currently, the driver of a slow-moving vehicle is at fault for an accident if they are driving on the shoulder. This change is a common sense change that should bring relief to rural communities. Police men and bicycles already have this authority.

Additionally, the bill requires that an operator of a vehicle must yield the right-of-way, drive as close as possible to the right-hand edge of the road or curb and stop and remain standing until a police vehicle has passed when they are using audible or visual signals. Current law only requires a driver to do the previous things if the police vehicle is using audible sirens.

This final provision in HB 2837 is identical to [HB 2810](#), by **Rep. Kyle Kacal (R-Bryan)**, which is a standalone bill. These bills state that a trailer, semitrailer or pole trailer that is equipped with air or vacuum brakes, or that has a gross weight of 4,500 pounds instead of 3,000 pounds, would be required to have brakes on all wheels that are operating and that they be able to be applied promptly and remain applied for at least 15 minutes in case of a breakaway from the towing vehicle.

HB 2837 and HB 2810 have been referred to the House Transportation Committee.

TFB supports HB 2837 and HB 2810. (TFB Policy: Farm Machinery 163, lines 6-9 and 13-18, General Law Enforcement 184, lines 36-40, Truck Transportation 164, lines 4-8)



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