

SENATE PROPOSED AMENDMENT(S)

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the acquisition of real property by an entity with  
3 eminent domain authority.

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

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

8 (b) An entity with eminent domain authority has made a bona  
9 fide offer if:

10 (1) an initial offer is made in writing to a property  
11 owner that includes:

12 (A) an offer of compensation in an amount equal  
13 to or greater than 145 percent of the market value of the property  
14 sought to be acquired and damages, if any, to any of the property  
15 owner's remaining property, based on:

16 (i) an appraisal report on the property by a  
17 certified appraiser; or

18 (ii) a market study of the property  
19 conducted by a certified appraiser; and

20 (B) the complete written appraisal report or  
21 market study that forms the basis for the amount of the offer of  
22 compensation under Paragraph (A);

1 (2) a final offer is made in writing to the property

2 owner that includes an offer of compensation in an amount equal to  
3 or greater than the amount of the offer of compensation included in  
4 the initial offer;

5 (3) the final offer is made on or after the 30th day  
6 after the date on which the entity makes a written initial offer to  
7 the property owner;

8 (4) before making a final offer, the entity obtains a  
9 written appraisal report from a certified appraiser selected or  
10 approved by the property owner of the value of the property being  
11 acquired and the damages, if any, to any of the property owner's  
12 remaining property;

13 (5) the final offer is equal to or greater than the  
14 amount of the written appraisal report [~~obtained by the entity~~];

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

17 (A) a copy of the written appraisal report;

18 (B) a copy of the deed, easement, agreement, or  
19 other instrument conveying the property sought to be acquired; and

20 (C) the landowner's bill of rights statement  
21 prescribed by Section 21.0112; and

22 (7) the entity provides the property owner with at  
23 least 14 days to respond to the final offer and the property owner  
24 does not agree to the terms of the final offer within that period.

25 (c) Notwithstanding Subsection (b), a private entity as  
26 defined by Section 21.031 has made a bona fide offer only if the  
27 entity:

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

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(2) includes in the initial offer:

(A) 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; and

(B) notice that the property owner will also receive a final offer accompanied by an appraisal.

(d) Notwithstanding Subsections (b) and (c), a private entity subject to Subchapter B-1 has made a bona fide offer only if the entity:

(1) satisfies the requirements of Subsections (b) and (c);

(2) includes in the initial offer a copy of the notice of the property owner information meeting required by Section 21.036; and

(3) participates in the meeting in the manner prescribed by Section 21.038.

(e) A court with jurisdiction of a condemnation proceeding involving property for which an entity is required to make a bona fide offer under this section may:

(1) determine whether the entity has complied with the requirements of Subsection (b), including whether the entity or the entity's certified appraiser intentionally omitted damages to the property owner's remaining property; and

(2) if the court determines that the entity has not complied with the requirements of Subsection (b):

- 1                   (A) abate a pending proceeding; and
- 2                   (B) make an award of such relief as the court
- 3 considers appropriate.

4           SECTION 2. Subchapter B, Chapter 21, Property Code, is  
5 amended by adding Sections 21.0114 and 21.0115 to read as follows:

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

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

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

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

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

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

26                           (E) the best available description of the  
27 location of the easement, which may include a metes and bounds or

1 centerline description, a plat, or an aerial or other map-based  
2 depiction of the location of the easement on the property;

3 (F) the maximum width of the easement;

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

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

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

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

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

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

24 (K) a provision limiting the private entity's  
25 right to grant a third party access to the easement area for a  
26 purpose that is not related to the construction, safety, repair,  
27 maintenance, inspection, replacement, operation, or removal of

1 each pipeline to be installed in the easement;

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

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

13 (N) a provision regarding the private entity's  
14 rights and obligations regarding the removal, cutting, use, repair,  
15 or replacement of any gates or fences that cross the easement or  
16 will be used by the private entity;

17 (O) a provision regarding the private entity's  
18 obligation to maintain the easement, including leveling of the  
19 easement, and a provision regarding the entity's obligation to  
20 restore the property owner's property used by the private entity to  
21 original condition or as near to original condition as is  
22 reasonably practicable or a statement that the private entity will  
23 reimburse the property owner for actual monetary damages incurred  
24 by the property owner that arise from damage to the property caused  
25 by the private entity and not restored;

26 (P) a provision regarding:

27 (i) the repair and restoration of areas

1 used or damaged outside the easement area to their original  
2 condition or better, to the extent reasonably practicable; or

3 (ii) the payment of actual monetary damages  
4 for areas not restored; and

5 (Q) a provision describing the private entity's  
6 rights of ingress, egress, entry, and access on, to, over, and  
7 across the easement, including the location where the entity will  
8 access the easement; and

9 (2) if the instrument conveys an electrical  
10 transmission right-of-way easement:

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

13 (B) the best available description of the  
14 location of the easement, which may include a metes and bounds or  
15 centerline description, a plat, a map-based depiction of the  
16 location of the easement, or another legally sufficient description  
17 of the location of the easement on the property;

18 (C) the maximum width of the easement;

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

21 (E) a provision limiting the private entity's  
22 right to grant a third party access to the easement area for a  
23 purpose that is not related to the transmission line's  
24 construction, safety, maintenance, inspection, or operation;

25 (F) a provision regarding the property owner's  
26 right to actual monetary damages arising from the construction,  
27 maintenance, repair, replacement, or future removal of lines and

1 support facilities in the easement, or a statement that the  
2 consideration for the easement includes such future damages;

3 (G) a provision regarding the private entity's  
4 rights and obligations regarding the removal, cutting, use, repair,  
5 or replacement of any gates or fences that cross the easement or  
6 will be used by the entity;

7 (H) a provision regarding the entity's  
8 obligation to maintain the easement and restore the easement to the  
9 easement's original contours and grades and a provision regarding  
10 the entity's obligation to restore the easement following any  
11 future damages caused by the private entity or a statement that the  
12 consideration for the easement includes such future damages;

13 (I) a provision regarding:

14 (i) the repair and restoration of areas  
15 used or damaged outside the easement area to their original  
16 condition or better, to the extent reasonably practicable; or

17 (ii) the payment of actual monetary damages  
18 for areas not restored;

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

21 (K) prohibition against the assignment of the  
22 entity's interest in the property to an assignee, including an  
23 assignee that is an affiliate or subsidiary of or entity otherwise  
24 related to the private entity, that will not operate as a utility  
25 subject to the jurisdiction of the Public Utility Commission of  
26 Texas or the Federal Energy Regulatory Commission without:

27 (i) written notice to the property owner at



1 the last known address of the person in whose name the property is  
2 listed on the most recent tax roll of any taxing unit authorized to  
3 levy property taxes against the property; and

4 (ii) the express written consent of the  
5 property owner or record owner on the tax records.

6 (b) A property owner may negotiate for the following terms  
7 to be included in a deed, easement, agreement, or other instrument  
8 of conveyance described by Subsection (a):

9 (1) a provision regarding the property owner's right  
10 to negotiate to recover damages for tree loss and the income loss  
11 from disruption of agricultural production or hunting;

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

16 (3) a provision:

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

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

23 (ii) insuring the property owner against  
24 liability for personal injuries and property damage sustained by  
25 any person caused by the use of the easement by the private entity  
26 or the private entity's agents or contractors; or

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(B) if the private entity is subject to the

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1 jurisdiction of the Public Utility Commission of Texas or has a net  
2 worth of at least \$25 million, requiring the private entity to  
3 indemnify the property owner against liability for personal  
4 injuries and property damage sustained by any person caused by the  
5 use of the easement by the private entity or the private entity's  
6 agents or contractors; and

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

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

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

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

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

27 petition relating to the property.

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1 (e) A private entity that amends a deed, easement,  
2 agreement, or other instrument of conveyance after the initial  
3 offer or final offer is not required to satisfy again any  
4 requirement of that section that the private entity has previously  
5 satisfied.

6 (f) A court with jurisdiction of a condemnation proceeding  
7 involving property the acquisition of which is subject to the  
8 requirements of this section may:

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

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

15 (A) abate a pending proceeding;

16 (B) order the private entity to provide to the  
17 property owner a deed, easement, agreement, or other instrument of  
18 conveyance that complies with the requirements of this section; and

19 (C) order the private entity to pay to the  
20 property owner:

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

23 (ii) any reasonable attorney's fees and  
24 other professional fees incurred by the property owner that are  
25 directly related to the private entity's failure to comply with

26 this section.

27 Sec. 21.0115. EX PARTE COMMUNICATION. (a) A private

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1 entity, as defined by Section 21.031, that wants to acquire real  
2 property for a public use, the entity's representative, or the  
3 owner of the real property may not, without first attempting to  
4 include the property owner or the entity, as applicable, engage in  
5 ex parte communication concerning the merits of the condemnation  
6 with:

7 (1) a court that has jurisdiction of a condemnation  
8 proceeding involving the property; or

9 (2) a special commissioner appointed in the  
10 condemnation proceeding.

11 (b) A private entity shall provide written notice to a  
12 property owner of any communication between the entity and a court  
13 or special commissioner described by Subsection (a) for which the  
14 property owner is not present.

15 (c) For the purposes of this section, "private entity"  
16 includes:

17 (1) the entity's attorney; and

18 (2) any third-party contractor of the entity,  
19 including a right-of-way agent.

20 SECTION 3. Section 21.012, Property Code, is amended by  
21 adding Subsection (b-1) to read as follows:

22 (b-1) In addition to the contents prescribed by Subsection  
23 (b), a petition filed by a private entity as defined by Section  
24 21.031 must state the terms to be included in the instrument of  
25 conveyance under Section 21.0114.

26 SECTION 4. Chapter 21, Property Code, is amended by adding  
27 Subchapter B-1 to read as follows:

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

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

5 (1) includes:

6 (A) a corporation authorized to exercise the  
7 power of eminent domain to acquire private property for public use;  
8 and

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

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

17 Sec. 21.032. APPLICABILITY OF SUBCHAPTER. This subchapter  
18 applies only to a private entity that wants to acquire for the same  
19 public use one or more tracts or parcels of real property:

20 (1) located entirely in one county; and

21 (2) owned by at least four property owners.

22 Sec. 21.033. NOTICE OF INTENT. (a) Not later than the 45th  
23 day before the date a private entity makes an initial offer to  
24 acquire real property under this chapter, the entity must send a

25 written notice of intent to a court that would have jurisdiction of  
26 a condemnation proceeding involving the property.

27 (b) A notice sent under Subsection (a) must:

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1 (1) state the private entity's intent to acquire real  
2 property for public use;

3 (2) specify the public use;

4 (3) identify the real property the entity intends to  
5 acquire and the owners of the property; and

6 (4) disclose the date by which the entity will make the  
7 initial offer.

8 Sec. 21.034. PROPERTY OWNER INFORMATION MEETING. (a) Not  
9 later than the 30th day after the date a court receives a notice of  
10 intent required by Section 21.033, the private entity shall select  
11 the date on which a public meeting regarding the proposed  
12 acquisition will be held.

13 (b) The meeting described by Subsection (a):

14 (1) must take place:

15 (A) in a public location appropriate to the size  
16 and nature of the meeting in the county in which the real property  
17 is located; and

18 (B) at a time when the property owners identified  
19 by the private entity under Section 21.033 may reasonably be able to  
20 attend; and

21 (2) may not take place earlier than the 14th day after  
22 the date a private entity makes an initial offer to a property owner  
23 identified in the notice of intent under Section 21.033.

24 Sec. 21.035. PERSONS AUTHORIZED TO ATTEND PROPERTY OWNER

25 INFORMATION MEETING. In addition to the property owner and the  
26 private entity, the following individuals may attend a meeting held  
27 under Section 21.034:

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1 (1) an individual invited by the property owner who is  
2 related to the property owner within the third degree by  
3 consanguinity or affinity, as determined under Chapter 573,  
4 Government Code;

5 (2) an attorney or appraiser representing the property  
6 owner;

7 (3) any individual with a real property interest in  
8 the property subject to the initial offer under Section 21.0113;  
9 and

10 (4) any public official.

11 Sec. 21.036. NOTICE OF PROPERTY OWNER INFORMATION MEETING  
12 IN INITIAL OFFER. A private entity that gives a notice of intent  
13 under Section 21.033 must include with the entity's initial offer  
14 notice of the meeting to be held under Section 21.034, including the  
15 date, time, and location of the meeting.

16 Sec. 21.037. PARTICIPATION BY PRIVATE ENTITY REQUIRED. A  
17 representative of the private entity that gives a notice of intent  
18 under Section 21.033 shall:

19 (1) attend the meeting; and

20 (2) participate in the meeting in the manner  
21 prescribed by Section 21.038.

22 Sec. 21.038. PROPERTY OWNER INFORMATION MEETING AGENDA. At  
23 a meeting scheduled under Section 21.034:

24 (1) the private entity shall present:

25 (A) the information contained in the landowner's  
26 bill of rights statement required to be provided to a property owner  
27 under Section 21.0112;

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1 (B) a description of the public use for which the  
2 entity wants to acquire the real property, including technical  
3 details;

4 (C) if applicable, a statement of the terms  
5 required under Section 21.0114 to be included in a deed, easement,  
6 agreement, or other instrument of conveyance provided by the entity  
7 to the property owner;

8 (D) the method and factors used by the entity to  
9 calculate the entity's initial offer, including:

10 (i) how damages to remaining property were  
11 evaluated; and

12 (ii) if the entity used a property  
13 appraisal report or market value study, the name of the person that  
14 performed the appraisal or study;

15 (E) the entity's justification for the proposed  
16 public use, including any materials used by the entity to obtain a  
17 determination that the project is a public use;

18 (F) the legal and factual basis for the entity's  
19 exercise of its eminent domain authority;

20 (G) the name and contact information of any  
21 third-party contractor to be used by the entity to acquire the land  
22 or undertake the project; and

23 (H) a description of any regulatory process



24 required for approval of the project, including any evaluation of  
25 the project's necessity, and information about how a property owner  
26 may participate in the process; and

27 (2) each property owner identified by the private

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1 entity under Section 21.033 or the property owner's designee, must  
2 be given an opportunity to ask questions and make comments  
3 regarding:

4 (A) the rights of the property owners;

5 (B) the proposed public use; and

6 (C) terms required under Section 21.0114 to be  
7 included in a deed, easement, agreement, or other instrument of  
8 conveyance provided by the entity to a property owner.

9 Sec. 21.039. CONTACT AFTER PROPERTY OWNER INFORMATION  
10 MEETING. A private entity may not contact a property owner to whom  
11 the entity has made an initial offer before the seventh day after  
12 the date of the meeting held under Section 21.034.

13 Sec. 21.0391. CERTIFICATION OF ENTITY PARTICIPATION IN  
14 PROPERTY OWNER INFORMATION MEETING REQUIRED. (a) After a private  
15 entity participates in a meeting held under Section 21.034, the  
16 entity shall submit evidence documenting its participation to the  
17 court to which the entity gave notice of intent under Section  
18 21.033. The court shall review the evidence submitted by the entity  
19 and, if the court determines that the entity has satisfied the  
20 requirements of this subchapter, shall certify that the entity has  
21 satisfied the requirements of this subchapter.

22 (b) In this subsection, "electric utility" means an entity

23 subject to Chapter 37, Utilities Code, and this subchapter.  
24 Notwithstanding any other provision of this subchapter, a court  
25 shall certify that an electric utility has satisfied the  
26 requirements of this subchapter if the electric utility  
27 participates in a hearing under Chapter 37, Utilities Code, that

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1 also complies with the requirements of this subchapter.

2 (c) A private entity may not acquire property to which this  
3 subchapter applies unless the entity receives a certification under  
4 Subsection (a) or (b) with respect to the property.

5 Sec. 21.0392. PUBLICATION AND PROVISION OF CERTAIN  
6 MATERIALS. A private entity shall:

7 (1) publish on an Internet website any materials  
8 presented under Section 21.038(1) (E); and

9 (2) provide to property owners identified by the  
10 entity under Section 21.033 any materials presented under Section  
11 21.038(1) (E).

12 SECTION 5. Section 21.042, Property Code, is amended by  
13 adding Subsection (d-1) to read as follows:

14 (d-1) In estimating injury or benefit under Subsection (c)  
15 in a condemnation proceeding relating to the acquisition of real  
16 property by an entity subject to Subchapter B-1, the special  
17 commissioners shall consider, in addition to the considerations  
18 required under Subsection (d), an injury or benefit to the  
19 remaining property as a result of:

20 (1) the characteristics of any infrastructure on the  
21 condemned property, including the size or visibility of the  
22 infrastructure or the pressure or voltage range provided by the

23 infrastructure;  
24 (2) any limitation of future expansion of the  
25 remaining property; and  
26 (3) terms of the easement acquired in connection with,  
27 or the alignment of an easement in connection with, the

1 condemnation.

2 SECTION 6. The changes in law made by this Act apply only to  
3 the acquisition of real property in connection with an initial  
4 offer made under Chapter 21, Property Code, on or after the  
5 effective date of this Act. An acquisition of real property in  
6 connection with an initial offer made under Chapter 21, Property  
7 Code, before the effective date of this Act is governed by the law  
8 applicable to the acquisition immediately before the effective date  
9 of this Act, and that law is continued in effect for that purpose.

10 SECTION 7. This Act takes effect September 1, 2019.

