

Summary of Version CSHB 2730 (87R23191 BEE-F)

Landowner's Bill of Rights and Easement Addendum

Section 1

HB 2730 proposes additional protections within and attached to the Landowner's Bill of Rights (LBOR). In addition to the current list, the landowner would also be notified of their right to file a written complaint of alleged misconduct in the eminent domain process. These complaints would be processed by the Texas Real Estate Commission (TREC).

The LBOR currently includes a description of the condemnation procedure, condemning entity's obligations, and property owner's options. HB 2730 proposes including an addendum describing the requirements for instruments of conveyance described in Section 7.

It will be the duty of the Attorney General (AG) to tailor the LBOR to the specifications of the government code while ensuring its readability by the common landowner. Before making those changes, the AG would be required to publish the proposed changes to the Texas Register and accept public comment before adopting the changes.

Land Agent Certifications, Requirements, and Ethics

Sections 2 + 3 + 4

HB 2730 proposes an additional requirement for certification eligibility. In addition to being at least 18 years old and a citizen or lawfully admitted individual of the United States, the land agent must complete required coursework and maintain continuing education. Land agents may be granted probationary certificates while completing 16 hours of coursework in the law of eminent domain, professionalism in contacting and negotiating with landowners, the ethics of right-of-way acquisitions, and other coursework the commission deems appropriate.

The Occupations Code currently contains the section "Grounds for Suspension or Revocation of Certificate." HB 2730 proposes adding a section that specifically condemns a land agent who accepts a financial incentive [bribe] to make an initial offer that he knows is inadequate.

Entity's Survey Access Rights

Section 5

Nothing in this chapter prevents an entity from seeking survey access rights as provided by law.

Bona Fide Offer

Section 6

A condemning entity has only made a bona fide offer when its initial offer meets the following requirements:

- (A) A copy of the LBOR and easement addendum.
- (B) A bold and large font statement whether the offer includes damages to the remainder of the property.
- (C) An instrument of conveyance that contains the requirements described in Section 7. An entity may be exempt from this requirement if:
 - (i) entity provided this document at an earlier occasion,
 - (ii) property owner wishes to use a different document and certifies this in writing to the entity, or
 - (iii) the property owner provides his/her own document to the entity prior to this initial offer.
- (D) The name and telephone number of the representative of the condemning entity.

Requirements for Instruments of Conveyance

Section 7

A **pipeline instrument of conveyance** provided to a property owner must address the following terms:

- (A) the maximum number of pipelines,
- (B) description of the types of machinery and facilities allowed to be installed,
- (C) the maximum diameter of each pipeline,
- (D) the type of substance that will be transported through each pipeline,
- (E) general description of the facilities and equipment intended for the easement,
- (F) map-based depiction of the location of the easement on the property,
- (G) maximum width of the easement,
- (H) minimum depth of each pipeline,
- (I) double-ditching intentions,
- (J) notice to the landowner when the entity is acquired by merger, consolidation, or similar transfer to another entity,
- (K) the exclusivity of the easement,
- (L) limitations on third-party access,
- (M) the landowner's right to recover damages arising from the installation and construction of each pipeline or a statement that clarifies that these damages are included in the offer,
- (N) the landowner's right to recover damages arising from the upkeep or removal of each pipeline or a statement that clarifies that these damages are included in the offer,
- (O) the plan for altering fences to accommodate the private entity and the plan for restoring such damage or a statement that clarifies that these damages are included in the offer,
- (P) the entity's obligations to restore and maintain affected areas to as near original condition as is reasonably practicable; or to reimburse the owner for damages; or a statement that clarifies that real property damages are included in the offer, and
- (Q) the entity's methods and rights of access to the easement.

An **electric transmission line instrument of conveyance** provided to a property owner must address the following terms:

- (A) general description of the intended uses,
- (B) map-based depiction of the location of the easement on the property,
- (C) maximum width of the easement,
- (D) the manner in which the entity will access the easement,
- (E) limitations on third-party access,
- (F) the landowner's right to recover damages arising from the installation and construction of each line or a statement that clarifies that these damages are included in the offer,
- (G) the plan for altering fences to accommodate the private entity and the plan for restoring such damage or a statement that clarifies that these damages are included in the offer,
- (H) the entity's obligations to restore and maintain affected areas to as near original condition as is reasonably practicable; or to reimburse the owner for damages; or a statement that clarifies that real property damages are included in the offer,
- (I) the exclusivity of the easement, and
- (J) prohibition against assigning the private entity's interest to an entity that will not operate as a utility without notice to the landowner.

Neither private pipeline entities nor private transmission line entities may use the property for rights other than those expressly granted in the instrument.

In addition to the terms discussed above, the private entity must notify the landowner of the right to negotiate any of the following terms to be included in the instrument of conveyance:

- (1) Compensation for damaged vegetation or other existing agricultural production based on verifiable losses.
- (2) The private entity's obligation to carry insurance, protecting the landowner against liability for injuries or damage cause by the negligence of the private entity.

After the private entity complies with the requirements of this section and has made a bona fide offer, the entity may proceed with negotiations—meaning the entity and landowner can negotiate terms that differ entirely from the easement terms discussed above once they have met those minimum requirements.

Notice of Filed Condemnation Petition

Section 8

If the entity files a condemnation petition, it must send a copy to the landowner and the landowner's attorney if he/she has one. The entity must provide the copy by first class certified mail with return receipt requested to the landowner. It must also provide a copy of the petition to the landowner's attorney by first class mail, commercial delivery service, fax, or e-mail.

Special Commissioners Appointment

Section 9

Alternate special commissioners must be appointed within 30 calendar days after the petition is filed. The judge shall appoint a first and second alternate. The parties must receive the contact information of each special and alternate commissioner from the judge. Either 10 days after the appointment or 20 days after the filing date, the parties may strike one special commissioner each.

The parties must notify the other of their decision to strike. Any represented party must receive immediate electronic notice, while unrepresented parties must receive first class mail notice.

If a special commissioner is struck or unable to serve, the first alternate takes his/her place. The party who has not yet used a strike may now strike one commissioner from this new panel of two special commissioners and first alternate commissioner.

All parties and their counsel are entitled to a copy of the court's appointment of the special and alternate commissioners.

Implementation and Effective Date

Sections 10 + 11 + 12 + 13

Texas Real Estate Commission shall effect changes made by this Act to Chapter 1101, Occupations Code.

Land agents who apply for a certification or certification-renewal before January 1, 2023 are not subject to education requirements until the next renewal application.

This act takes effect on January 1, 2022.

