Welcome to the
2017 Houston Chapter
Not in my Backyard —
Eminent Domain in Texas: Case Law and Legislative Update

Wednesday, June 14, 2017

Jones Day
717 Texas, Suite 3300, Houston TX
Energy Bar Association's Mission Statement

EBA has approximately 2,600 members and promotes the professional excellence and ethical integrity of its members in the practice, administration, and development of energy laws, regulations, and policies by providing:

- superior educational programming,
- networking opportunities, and
- information resources.
How Does an EBA Membership Enrich You?

- discounts for Continuing Legal Education and On-Demand programs
- access to federal and state regulatory officials who impact your clients
- two major annual meetings and other networking opportunities with peers and counterparts that enhance your career aspirations, as well as regional focused programs closer to home
- knowledge sharing events and print and digital content that keep you informed about what matters to you
- Volunteer leadership opportunities that allow you to establish yourself as a thought leader in the energy field

To Join EBA or get more information on EBA membership:
http://www.eba-net.org/joinEBA
An Energy Charity Making a Positive Difference Locally, Nationally, and Globally since 2002

- Energy sector donors are ensured that their charitable donations go to causes related to the energy field
- Relies upon tax-deductible contributions for its outreach efforts
- Supports programs focused on improving lives worldwide

Get involved and contribute:  www.cfeba.org
Connect with EBA

Linked In

https://www.linkedin.com/company/energy-bar-association

Twitter

@EnergyBarAssoc
Save the Dates!

October 16-17, 2017
Thanks to our Sponsor:
Save the Date!

The Honorable Chief Judge Curtis L. Wagner

ALJ Reception

Monday, October 16, 2017
Washington, DC

To be held in conjunction with the 2017 Mid-Year Energy Forum.
Quality EBA programming on the topics you want, when you want.

www.eba-net.org/on-demand
EBA Houston Chapter Program

Not in my Backyard - Eminent Domain in Texas: Case Law and Legislative Update
June 14, 2017
12:00pm – 1:00pm
Jones Day
Houston, TX

Program Overview:

Three presenters, expert practitioners in their fields, will provide an update of legislative and judicial activities regarding eminent domain in Texas, including the Denbury case and recent legislative activity backed by property rights advocates.

Speakers will address:

- The 85th Texas legislative session is about to end, has the Legislature modified the right utilities to exercise eminent domain?
- How has the Texas Legislature changed the procedures for acquiring real property by condemnation?
- What steps must a pipeline follow to use condemnation and what are the common pitfalls?
- Has the landowners' view of eminent domain evolved along with the growth shale plays across Texas?
- Does the level of eminent domain activity vary depending on the basin (i.e., Permian, Eagle Ford, Haynesville, etc.)?
- How will the condemning authorities cope with the ever changing eminent domain landscape across Texas?
- Are all condemnation cases the same?
- What are the most fair, successful and defensible methods of valuing the condemned property?

Speakers:

**Moderator: Patrick Byrd**, Senior Counsel, Boardwalk Pipeline Partners, LP

**Panelists:**

*Patrick Byrd*, Senior Counsel, Boardwalk Pipeline Partners, LP  
*J. Robin Lindley*, Managing Partner, Buck Keenan LLP  
*James Mann*, Partner, Duggins, Wren, Mann & Romero
Federal Court Condemnations*
(and a primer on the Natural Gas Act)

Patrick R. Byrd, Boardwalk Pipeline Partners, LP
J. Robin Lindley, Buck Keenan LLP

*The views and statements expressed in this presentation are those of the presenters alone, and do not represent the views of their respective employers
Our Authority: The Natural Gas Act

The Natural Gas Act, 15 U.S.C. §§717 et seq, applies to the transportation of natural gas in interstate commerce, the sale in interstate commerce of gas for ultimate public consumption; and natural-gas companies engaged in such transportation or sale. 15 U.S.C. §717(b).

“Natural-gas company” means a person engaged in the interstate transportation or sale of natural gas. 15 U.S.C. §717a (6).
FERC Certification Process… YAY!!!

• A natural-gas company cannot construct or operate interstate facilities without first obtaining a Certificate of Public Convenience and Necessity from FERC. 15 U.S.C. §717f (c).

• The certificate application process is extensive, and includes notice to all landowners affected by the proposed project followed by public hearings.

• The FERC Certificate, once issued, establishes:
  • **federal jurisdiction** over the proposed project,
  • the route and location of the proposed facilities, and
  • the public purpose and necessity for any taking of property along the approved route
Appealing Issuance of FERC Certificate

• There’s only **one** way to challenge the issuance of a FERC certificate.

• **15 U.S.C. §717r (Section 19) requires** that any challenge to a FERC Certificate must first be brought by the objecting party to FERC itself in a motion for rehearing, and then by direct appeal to a United States Court of Appeals.

• Section 19 provides the **exclusive** procedure for challenging the issuance of a FERC Certificate, including FERC’s determination that a project falls within its jurisdiction.

• Collateral attack upon a FERC Certificate in a state court or federal district court is **not permitted**. This prohibition on collateral challenges extends to both state and federal condemnation proceedings. **See Alliance Pipeline L.P. v. 4.360 Acres of Land, 746 F.3d 362, 365 (8th Cir. 2014); American Energy Corp. v. Rockies Express Pipeline, LLC, 622 F.3d 602, 605 (6th Cir. 2010); Williams Natural Gas Co. v. City of Oklahoma City, 890 F.2d 255, 260 (10th Cir. 1989).**
Right to Condemn Under the Natural Gas Act

Section 7 of the Natural Gas Act provides:

When any holder of a certificate of public convenience and necessity cannot acquire by contract, or is unable to agree with the owner of property to the compensation to be paid for, the necessary right-of-way to construct...a pipe line...for the transportation of natural gas,...or equipment necessary to the proper operation of such pipe line..., it may acquire the same by the exercise of the right of eminent domain in the district court of the United States for the district in which such property may be located, or in the State courts. The practice and procedure in any action or proceeding for that purpose in the district court of the United States shall conform as nearly as may be with the practice and procedure in similar action or proceeding in the courts of the State where the property is situated: Provided, That the United States district courts shall only have jurisdiction of cases when the amount claimed by the owner of the property to be condemned exceeds $3,000. 15 U.S.C. § 717f(h)

Or: If you have a FERC certificate and can’t agree on compensation with a landowner, then you can basically sue in federal court
Right to Condemn (Continued)

So, to exercise the right of eminent domain in federal court you must:

- have the Certificate authorizing the project;
- demonstrate that FERC has determined the property is necessary for the project (a.k.a. have the Certificate);
- have been unable to acquire the property by contract (as evidenced by the lawsuit); and
- show the amount claimed by the landowner exceeds $3,000.

At that point, the only issue for disposition in federal court is the compensation the landowner will receive for the easement.
The argument against right to condemn: The Hinshaw Amendment

The Hinshaw Amendment, 15 U.S.C. §717(c), exempts *intrastate* transactions from the Natural Gas Act

**HOWEVER:** Natural Gas Act jurisdiction applies if the *intrastate* facilities used are part of an *interstate* system or transaction, and are subject to federal regulation.
Federal Court Condemnation Procedures

Rule 71.1 of the Federal Rules of Civil Procedure governs all federal condemnation actions. Rule 71.1 supersedes the sentence in Section 7 of the Natural Gas Act requiring conformance with state court practice and procedure.
Possession During the Pendency of Suit

- The Natural Gas Act does not provide for a statutory right of possession during the pending litigation. There is no federal equivalent to the special commissioner procedures set forth in Chapter 21 of the Texas Property Code, including the rights of possession set out in Section 21.021.

- However, federal case law DOES recognize a right to immediate possession.

- *E. Tenn. Natural Gas Co. v. Sage*, 361 F.3d 808 (4th Cir. 2004), establishes a 2-step procedure for awarding immediate possession:
  - First, the condemnor must obtain a *partial summary judgment* confirming its right to condemn; and
  - Second, the condemnor must move for a *temporary injunction* awarding it immediate possession and satisfy the familiar 4-part test set forth in Rule 65.

(These motions are typically filed simultaneously.)
1) Motion for Partial Summary Judgment

- To grant summary judgment confirming the condemnor’s right to condemn, the federal court need only find:
  - (i) the condemnor holds a FERC Certificate authorizing the project;
  - (ii) the property condemned is located within the route approved by the Certificate; and
  - (iii) the condemnor has not been able to acquire the property by contract. The condemnor should also be prepared to demonstrate the $3,000 jurisdictional threshold has been met.

- After FERC issues its Certificate, the district court’s role is only to enforce the Certificate in accordance with its terms.

- The district court does not have jurisdiction to entertain collateral attacks on FERC’s issuance of the Certificate, including FERC’s determination of interstate jurisdiction, FERC’s determination of public necessity, or FERC’s approval of the route across the lands condemned.
2) Application for Temporary Injunction

Once a federal court recognizes a condemnor’s right to condemn, the company may obtain an injunction granting immediate possession by satisfying the 4-part test of Fed. R. Civ. P. 65:

(i) that it is likely to succeed on the merits of the case;
(ii) that it faces irreparable harm absent an injunction;
(iii) that the harm it faces without an injunction outweighs the harm that would be incurred by defendants with an injunction; and
(iv) that an injunction would be consistent with the public interest.
Likelihood of Success on the Merits

- The summary judgment establishing the condemning pipeline’s right to condemn will also establish its likelihood of success on the merits.

- So the MSJ = prevailing on its right to condemn (good thing we got the MSJ first)
Irreparable Harm

• This is the most difficult and fact intensive element.
• The condemnor should be prepared to show that it will recover significant additional and unrecoverable costs if its inability to obtain immediate possession delays completion of the project.
• Relevant factors include move-around costs, contract deadlines, scheduling issues, regulatory-imposed deadlines, environmental compliance issues, and linear progression issues.
Prospective Harm to Pipeline Outweighs Harm to Landowner

• Since the condemnor has established its right to condemn (MSJ), the landowner is left with a timing argument and a question of compensation.

• Any monetary harm to the landowner caused by immediate possession is mitigated by the pipeline posting security in the Court registry (similar to a special commissioners’ award).
  • Be prepared to present valuation evidence for the interest condemned and any remainder damage. Consider offering to post an amount equal to 1.5x or 2x the appraiser’s opinion of value.
Public Interest

• The Certificate establishes that the project is necessary and in the public’s interest.

• Most pipeline projects will involve significant energy infrastructure improvements.

• So the MSJ = public interest
The *Sage* Immediate Possession Approach is Widely Followed

*Sage* adopted by:

- The 1\textsuperscript{st}, 3\textsuperscript{rd}, and 8\textsuperscript{th} Circuit Courts of Appeal
- More than 150 federal district court opinions
- 15 district court opinions out of the 5\textsuperscript{th} Circuit supporting this approach (though not formally adopted by the 5\textsuperscript{th} Circuit, yet)

But that’s not all the Circuit Courts of Appeal……..
Is There a Split in the Circuits?

- No.
- Landowner attorneys may argue there is a split in the Circuits based on two opinions, *Northern Border Pipeline Co. v. 86.72 Acres of Land*, 144 F.3d 469 (7th Cir. 1998) and *Transwestern Pipeline Co., LLC v. 17.19 Acres of Property*, 550 F.3d. 770 (9th Cir. 2008).

- Both of these cases are distinguishable and turned on the condemnor’s failure to obtain a MSJ order establishing its right to condemn. *Transwestern* actually endorsed the *Sage* approach. And, subsequent federal district court opinions in both the 7th and 9th Circuits have followed *Sage*.
Advantages of Filing in Federal District Court

• **Joinder**: Under Rule 71.1(b), the condemnor may join all cases into a single action. If you are filing against 20 sets of landowners in a district, those actions can be filed in a single suit. This eliminates the need for multiple lawsuits and multiple special commissioners proceedings.

• **Consistency**: All immediate possession issues can be combined into one *Sage* hearing.

• **Avoids quirky state law**: The FERC Certificate should foreclose any “Denbury” type arguments.

• **Efficiencies**: Rule 71.1 provides the court with flexibility to conduct valuation hearings in a combined trial, by separate trials, or by an appointed three-person commission.

• **Avoids politics**: Local politics should be less of an issue.

• **Sharper pencils**: Security for immediate possession set by the trial court rather than special commissioners whose decision is not subject to review.

• **No home-court advantage**: Landowner attorneys will generally not be as familiar with federal condemnation practice.
Disadvantages of Federal Condemnation Practice

• The regulatory process (FERC) can be time consuming and expensive.

• There is no statutory right to immediate possession under the Natural Gas Act. You are relying upon the court’s use of its equitable powers.

• The *Sage* approach has not yet been adopted by the 5th Circuit Court of Appeals.

• There have been few Natural Gas Act projects in Texas in recent years. Texas federal judges will not be familiar with the *Sage* approach.
Condemnation Caselaw Update*

Patrick R. Byrd, Boardwalk Pipeline Partners, LP
J. Robin Lindley, Buck Keenan LLP

*The views and statements expressed in this presentation are those of the presenters alone, and do not represent the views of their respective employers.

2) Westlake Ethylene Pipeline Corp. V. Railroad Comm’n of Tex. and Eastman Chem. Co., 506 S.W.3d 676 (Tex. App.—Austin 2016)

**Denbury II**

**Background: Denbury I**

- Trial court granted MSJ on Denbury’s right to condemn

- Issue: Whether the pipeline (Green Line, owned by Denbury Green) was a common carrier and thus had the right to conduct a preliminary survey across land owned by Texas Rice.

- Holding: For a person intending to build a carbon dioxide pipeline to qualify as a common carrier under Texas Natural Resources Code Section 111.002(6), it was not sufficient for the pipeline owner to simply make the pipeline available for public use.
Background (continued):

- Can’t simply check the “common carrier” box on the T-4

- Instead, “a reasonable probability must exist that the pipeline will at some point after construction serve the public by transporting gas for one or more customers who will either retain ownership of their gas or sell it to parties other than the carrier.”

- Texas Supreme Court overturned MSJ, but stated it was limiting its opinion to persons seeking common-carrier pipeline status under Section 111.002(6), which relates to carbon dioxide and hydrogen pipelines only.
Appellate Courts Extended Denbury I

Despite Denbury I’s limitation to CO2 pipelines, Texas appellate courts have applied the “reasonable probability” test to other provisions of the Code, including the provisions granting common carrier status to crude petroleum pipelines.

- **Crawford Family Farm P’ship v. TransCanada Keystone Pipeline, L.P.,** 409 S.W.3d 908 (Tex. App.—Texarkana 2013, pet. denied): “Reasonable probability” test must be applied to Section 111.019(1), relating to the “the transportation of crude petroleum to or for the public for hire.”

Denbury II – “here we go again…”

Case remanded back to trial court to afford Denbury the opportunity to produce “reasonable proof of a future customer, thus demonstrating that [the pipeline] will indeed transport to or for the public for hire and is not limited in its use to the wells, stations, plants, and refineries of the owner.”
Denbury II – Trial Court

On remand, Denbury produced additional evidence to support its assertion of common carrier status, including:

• Transportation agreements with entities unaffiliated with Denbury; and

• The proximity of the Green Line to other CO₂ shippers once construction was completed.

The trial court found that Denbury Green is a common carrier with the power of eminent domain.

So, we’re good… right???
Denbury II – Court of Appeals

Not so fast…

On reviewing the evidence adduced on remand, the court concluded that “reasonable minds could differ regarding whether, at the time Denbury Green intended to build the Green Line, a reasonable probability existed that the Green Line would serve the public,” and reversed the trial court’s order granting Denbury Green summary judgment.
Denbury II – The Supreme Court

Found that it was improper for the court of appeals to focus its analysis on intent.

Found that, as a result of this focus on intent, the court of appeals wrongly disregarded relevant evidence, including:

1. Transportation agreements with entities unaffiliated with Denbury; and
2. The proximity of the Green Line to other CO₂ shippers once construction was completed.

Given these two pieces of wrongly-disregarded evidence: “no longer could a reasonable fact-finder determine that a genuine fact issue exists as to whether the Green Line would, at some point after construction, do what it now most certainly does: transport CO₂ owned by a customer who retains ownership of the gas.”
The Supreme Court (continued)

The only public interest test a pipeline must meet is: Whether the evidence establishes “a reasonable probability that the pipeline will, at some point after construction, serve even one customer unaffiliated with the pipeline owner.”

Per Denbury II, CO₂ pipeline owners can use post-construction contracts and other evidence to show that there is a reasonable probability that just one unaffiliated customer will use the pipeline, and this is enough to grant common carrier status under Section 111.019(6).

Expect lower courts to extend the ruling of Denbury II to other subsections of 111.019, so that it will also apply to crude petroleum pipelines.
Why This Matters in a Condemnation Context

• Clarifies the *Denbury I* test for whether a pipeline is a common carrier with a right to condemn;

• Points to the relevant evidence needed to short-circuit one of the landowners favored arguments

• **Does not resolve** one of the serious perils of *Denbury I*:
  • The common carrier status of one pipeline companies may be challenged in multiple jurisdictions by multiple land owners,
  • Conceivable these different jurisdictions might arrive at different answers as to whether the pipeline meets the “reasonable probability” test.
Westlake Ethylene Pipeline Corp
• Who is a common-carrier?

Background
• Mustang Pipeline Company (a subsidiary of Eastman Chemical Company) constructed an ethylene pipeline connection in 2002 which allowed the pipeline to accept bidirectional flow between Mont Belvieu and Longview.
• Ethylene was backhauled between Longview and Mont Belvieu several times over the years.
• Mustang issued a tariff in 2002, in which it identified Mont Belvieu and Longview as both origin and delivery points, and indicating that Mustang would offer exchange services.
Background (continued)

• Westlake Chemical purchased the pipeline in 2006.
• In 2013, Westlake Chemical sought to update the tariff for the pipeline.
• Under the 2013 Tariff, the backhaul and exchange services offered under the 2002 tariff would no longer be available.
• Eastman filed a discrimination complaint with the Railroad Commission against Westlake as a common-carrier
Westlake Chemical appealed, arguing:

- It is not a common carrier under *Section 111.020(d)*;
- Even if it is, it is not subject to all the provisions of Chapter 111, specifically the statutory prohibition against discrimination because it does not transport “crude petroleum”;
- Rather, Westlake’s rights and privileges as a common carrier stem from Business Organizations Code Section 2.105, giving it the “rights and powers” conferred by Chapter 111, but none of its anti-discrimination obligations.

Westlake Chemical conceded:

- It is a common carrier under *common law*;
- The Commission has jurisdiction over it as an entity operating a pipeline in Texas;
- What constitutes discrimination under the common law also constitutes discrimination under the statute.

The court therefore only analyzed Westlake’s appellate issues under common law.
Westlake argued that Section 111.015 doesn’t apply to ethylene pipelines, but only to the transportation of “crude petroleum,” and so the Commission’s stated basis for its decision was arbitrary and capricious.

Citing Vardeman v. Mustang Pipeline Co., 51 S.W.3d 308, 312 (Tex. Civ. App. — Tyler 2001, pet. denied) for the proposition that ethylene is included in the broad definition of “crude petroleum,” the court rejected this argument because it found the Commission’s decision to be correct under the broad common law prohibiting common carrier discrimination by providing an unreasonable preference to an affiliate.

The court therefore affirmed the district court’s judgment upholding the Commission’s finding that the tariff eliminating backhaul and exchange services was discriminatory.
Crosstex N. Tex. Pipeline v. Gardiner

Who else is looking at condemnation cases?

Background:

1. Crosstex constructed and operated a compressor station which generated continuous loud noise and vibrations.

2. Crosstex’s own public relations specialist noted that the noise was “BAD” and “VERY LOUD”, and that a person standing near the road by the station would have to “scream” to be heard.

3. After four years of failed noise mitigation efforts by Crosstex, the neighbors brought suit for negligence and intentional and negligent nuisance.
Key Eminent Domain Analysis:

• When a nuisance is permanent, the claimant may recover lost market value. The court looked to condemnation cases to describe how lost market value is to be calculated, but noting that in the case of ongoing nuisance, the standard calculation of “the difference in the reasonable market value of the property immediately before and immediate after the injury” was inadequate. Rather, the proper comparison is of “market value with and without the nuisance.”

• Eminent domain analysis reaching other areas of law, which, depending or your perspective, might be unsettling.
EMINENT DOMAIN IN
THE 85TH LEGISLATURE

James E. Mann
Duggins Wren Mann & Romero
Improvements have been made in past years to Texas’ eminent domain laws to better protect private property rights. The voter-approved amendment to the Texas Constitution in 2009 prohibited the taking of private property for economic development, and Senate Bill 18 in 2011 made changes to the condemnation process, but eminent domain remains at the forefront of concerns for Texas landowners.

Unfortunately, Texas landowners continue to struggle with an unbalanced set of laws that are at odds with a state known as a champion for private property rights. Despite past efforts, condemning entities continue to hold an unfair advantage over landowners who are forced to sell their property without truly being made whole when their property is taken. In Texas, where about 95 percent of the land is privately owned, our legal system should better protect landowners.

Texas landowners recognize that the state’s population is growing at a rapid pace. There is an increasing need for more land for public resources such as energy and transportation. But landowners also recognize that their property rights must be better protected, not only for themselves, but also for future generations.

Texans take great pride in their land, and they don’t want to see their private property rights taken advantage of. The condemnation process is not a willing buyer and willing seller transaction. It’s a legally forced sale. Therefore, it’s necessary to make further improvements to the laws that govern the use of eminent domain so Texas landowners can have more assurance that this process is fair and respectful of their private property rights when they are forced to sell their land.

Such improvements should include...

TexansforPropertyRights.com

TEXANS FOR PROPERTY RIGHTS COALITION

- Texas Farm Bureau
- Texas & Southwestern Cattle Raisers Association
- Texas Wildlife Association
- South Texas Property Rights Association
- Texas Forestry Association
- Texas Association of REALTORS
- Texas Sheep & Goat Raisers Association
- Texas Poultry Federation
- Independent Cattlemen’s Association of Texas
- Texas Grain Elevators Association
- Plains Cotton Growers, Inc.
- Texas Land & Mineral Owners Association
- Texas Association of Dairymen
- Texas Cattle Feeders Association
- Corn Producers Association of Texas
- Riverside & Landowners Protective Coalition
- Texas Grain & Feed Association
- Texas Citrus Mutual
- Texas Hills Country Heritage Association
- Texas Coalition for Conservation
- Texas Wheat Producers Association
- Texas Agricultural Land Trust
- Ranchers & Landowners Association of Texas
- Texas Nursery & Landscape Association

Contact:

Texas Farm Bureau
512-472-6263 | tflinfo@texasfarmbureau.org
Texas & Southwestern Cattle Raisers Assoc. 512-465-9711 | tscra@texasfarmbureau.org
Dear Members of the Texas Legislature:

The Texans for Property Rights coalition was created on behalf of Texas landowners to advance the common-sense reform of eminent domain laws. As you are all aware, the need to address eminent domain reform is urgent and critical. The recent Supreme Court decision in Kelo v. City of New London has raised new concerns and raised the need for action.

Texas landowners and their communities have been disproportionately affected by this issue. The coalition has been working tirelessly to ensure that the rights of property owners are protected.

At many times throughout the process, opponents of eminent domain reform have represented opposition to the legislation that they have been working with landowners when, in reality, they are simply promoting the process. Every concession made by landowners has been met with demands from opponents for even greater concessions.

Our coalition, and most importantly Texas landowners, rely on the leadership and support of the legislature. Leadership, however, often means making a tough choice to do what is right. It appears that the legislature is unwilling to make that choice and take a stand for landowners this session in the absence of language agreed to by Texas landowners’ very opponents. This has ultimately tied the hands of our coalition in the negotiation process. Due to the lack of willingness to make a tough legislative decision, Texas landowners have once again been pushed aside.

The latest versions of the legislation in both the House and Senate would be at best a hollow victory, offering little in the way of actual improvement for Texas landowners. At worst, it may threaten the few protections currently afforded to landowners. Therefore, our coalition must oppose SB 749 and HB 2694, as they no longer fulfill the commitment we made to our landowner members.

Our coalition takes extraordinary pride in working to ensure Texas’ tradition of private property rights are continued. A tradition that many, if not all, of our elected officials celebrate and tout during their campaigns for election. Texas landowners need and deserve a better process when faced with having their land taken by public and private entities acting on behalf of the State of Texas. Without the support of the Texas Legislature, this cannot happen.

Today we are sharing this letter with our 25 coalition partners and the hundreds of thousands of Texas landowners in every county that supported this effort and the legislation as filed. Our coalition remains strong and we look forward to continued work on this vitally important issue in the future.

Sincerely,

Richard Hooper, President
Texas and Southwestern Cattle Raisers Association

Russell Burch, President
Texas Farm Bureau

David Peeler, President
Texas Wildlife Association

TEXANS PROPERTY RIGHTS
Texas and Southwestern Cattle Raisers Association - Texas Farm Bureau - Texas Wildlife Association - Texas Association of Realtors - Texas Cattlemen’s Association - Texas Association of Builders - South Texas Property Rights Association - Texas Agricultural and Cattleman’s Association - Texas Hill Country Heritage Association - Texas Land and Mineral Owners Association - Texas Sheep and Wool Raisers Association - Texas Wheat Producers Association
SECTION 3. Section 21.041, Property Code, is amended to read as follows:

Sec. 21.041. EVIDENCE. (a) As the basis for assessing actual damages to a property owner from a condemnation, the special commissioners shall admit evidence on:

(b) The special commissioners may admit evidence on the price paid for pipeline or power line rights-of-way in privately negotiated transactions made in the absence of a potential, actual, or threatened condemnation.
SECTION 4. Section 21.047, Property Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) If the amount of damages awarded by the special commissioners is at least 20 percent greater than the amount of the condemnor's final offer made in accordance with Section 21.0113 or if the commissioners' award is appealed and a court awards damages in an amount that is at least 20 percent greater than the amount of the condemnor's final offer made in accordance with Section 21.0113, the condemnor shall pay:

(1) all costs as provided by Subsection (a); and

(2) any reasonable attorney's fees and other professional fees incurred by the property owner in connection with the eminent domain proceeding.
EMINENT DOMAIN IN THE 85TH LEGISLATURE
James E. Mann
Duggins Wren Mann & Romero

Reference Material

• TPR Eminent Domain Reform Flyer
• Coalition for Critical Infrastructure Groups
• Property Rights Protection and Bona Fide Offer Points
  • H.B. 2684
  • S.B. 740 Engrossed
• TPR Letter to Legislators
Improvements have been made in past years to Texas’ eminent domain laws to better protect private property rights. The voter-approved amendment to the Texas Constitution in 2009 prohibited the taking of private property for economic development, and Senate Bill 18 in 2011 made changes to the condemnation process, but eminent domain remains at the forefront of concerns for Texas landowners.

Unfortunately, Texas landowners continue to struggle with an unbalanced set of laws that are at odds with a state known as a champion for private property rights. Despite past efforts, condemning entities continue to hold an unfair advantage over landowners who are forced to sell their property without truly being made whole when their property is taken. In Texas, where about 95 percent of the land is privately owned, our legal system should better protect landowners.

Texas landowners recognize that the state’s population is growing at a rapid pace. There is an increasing need for more land for public resources such as energy and transportation. But landowners also recognize that their property rights must be better protected, not only for themselves, but also for future generations.

Texans take great pride in their land, and they don’t want to see their private property rights taken advantage of. The condemnation process is not a willing buyer and willing seller transaction. It’s a legally forced sale. Therefore, it’s necessary to make further improvements to the laws that govern the use of eminent domain so Texas landowners can have more assurance that this process is fair and respectful of their private property rights when they are forced to sell their land.

Such improvements should include...

TEXANS FOR PROPERTY RIGHTS COALITION

- Texas Farm Bureau
- Texas & Southwestern Cattle Raisers Association
- Texas Wildlife Association
- South Texas Property Rights Association
- Texas Forestry Association
- Texas Association of REALTORS
- Texas Sheep & Goat Raisers Association
- Texas Poultry Federation
- Independent Cattlemen’s Association of Texas
- Texas Grain Sorghum Association
- Plains Cotton Growers, Inc.
- Texas Land & Mineral Owners Association
- Texas Association of Dairymen
- Texas Cattle Feeders Association
- Corn Producers Association of Texas
- Riverside & Landowners Protection Coalition
- Texas Grain & Feed Association
- Texas Citrus Mutual
- Texas Hill Country Heritage Association
- Texas Coalition for Conservation
- Texas Wheat Producers Association
- Texas Agricultural Land Trust
- Ranchers & Landowners Association of Texas
- Texas Nursery & Landscape Association

Contact:

Texas Farm Bureau
512-472-8288 | mpatton@txfb.org
Texas & Southwestern Cattle Raisers Assoc.
512-469-0171 | jskaggs@tscra.org
Landowners recognize that their property rights must be better protected, not only for themselves, but also for future generations.

**REIMBURSEMENT OF LANDOWNER COSTS AND EXPENSES**
- Due to litigation costs and other legal expenses, landowners who challenge in courts for just compensation are often never made whole when their property is taken.
- Condemnors should be required to pay the costs and fees incurred by property owners in eminent domain proceedings if final damages awarded are greater than 125 percent of the entity’s offer.

**PROPERTY RIGHTS PROTECTION IN BONA FIDE OFFER**
- While state law grants the power of eminent domain to public and private entities there is hardly any oversight or protections to keep the entities who exercise this authority acting in good faith. It is left up to landowners to protect themselves against lowball offers and bad actors. This is difficult to do when they are provided little transparency as to the nature of the project for which their land is condemned for public use.
- As a requirement of a true bona fide offer a condemning entity should disclose certain information about the project and provide a minimum amount of property right protections in order to be allowed to condemn.

**DISCLOSURE OF APPRAISALS**
- Some condemning entities are taking advantage of a loophole in the law regarding appraisals. Although entities will make an appraisal available at the time of initial and final offer, they are being allowed to present a new or updated appraisal immediately before a commissioners court hearing. Meanwhile, landowners are required to provide appraisals no later than three business days prior to a hearing.
- Appraisals or opinions of property value, and damages caused by the condemnation, should be made available to the landowner at the time of the initial and final offer, no less than three business days prior to the special commissioners court hearing.

**VALUATION OF EASEMENTS**
- As the basis for assessing damages to a landowner from a condemnation, evidence of sales of freely negotiated comparable easements are usually not admissible in condemnation proceedings.
- The court should admit evidence on the price paid for pipeline or powerline rights-of-way in privately negotiated transactions made in the absence of condemnation authority.

**BOND REQUIREMENT**
- Some condemnors have refused to purchase a bond and then claimed bankruptcy or insolvency to avoid payment to the landowner for just compensation.
- As a condition of appealing a judgement, a condemning entity should be required to either pay the award or secure a bond in the amount of the award in order to guarantee payment to a prevailing landowner at the conclusion of the legal proceedings.

**ENFORCEABILITY OF POSSESSION AND USE AGREEMENTS**
- There are instances where landowners give possession of their property to a condemning entity through possession and use agreements. Any written agreement made between the condemning authority and the property owner during a condemnation case should be enforceable.

**PROPERTY TAXES**
- When landowners transfer possession of property to condemning entities under possession and use agreements, they still have to pay taxes on that property. Dispossessed property owners should not have to pay taxes on land once exclusive possession is granted to an entity with eminent domain authority.

**ROYALTY PAYMENTS**
- Often landowners are not aware that they have the ability to request royalty payments as an option in negotiating payment.
- Statute should state condemning entities and landowners can agree to royalty payments. This option should be permissive but noticeably available to landowners.
Property Rights Protection and Bona Fide Offer

In 2011, the Texas Legislature enacted Senate Bill 18, which included a provision in Sec. 21.0111 of the Property Code that an entity with eminent domain authority that wants to acquire real property for a public use must make a “bona fide offer” to acquire the property from the property owner voluntarily.

The law currently states that an entity with eminent domain authority has made a bona fide offer if:

- an initial and final offer are made in writing to a property owner
- a final offer is made on or after the 30th day after the date on which the entity makes a written initial offer to the property owner;
- before making a final offer, the entity obtains a written appraisal from a certified appraiser of the value of the property being acquired and the damages, if any, to any of the property owner's remaining property;
- the final offer is equal to or greater than the amount of the written appraisal obtained by the entity;
- the following items are included with the final offer or have been previously provided to the owner by the entity:
  - a copy of the written appraisal;
  - a copy of the deed, easement, or other instrument conveying the property sought to be acquired; and
  - the landowner's bill of rights statement prescribed by Section 21.0112;
- and, the entity provides the property owner with at least 14 days to respond to the final offer and the property owner does not agree to the terms of the final offer within that period.

While the provisions included under the bona fide offer section of the property code provided meaningful progress, many Texans continue to struggle to get the entity condemning their property to provide specifics on how their land will be used. It is for this reason that it is important to provide further improvements and require entities to provide more specifics on projects to the landowner.

To better constitute a bona fide offer, landowner groups believe the deed, easement or other instrument conveying the property sought to be acquired must include the following:

- For a pipeline right-of-way easement:
  - Maximum number of pipelines
  - Outside diameter of each pipeline
  - Type or category of each substance to be transported
  - Description of any use of surface and limitations or restrictions placed on property owners use of surface
  - Metes and bounds centerline description for the width of the easement, depth of the pipeline and amount of cover
  - Maximum duration of initial construction
  - A prohibition from transferring the easement to any other entity, subsidiary, or company that doesn’t have the power of eminent domain
  - A right to damages for construction maintenance, repair, replacement, growing crops, livestock, and or future removal of the pipeline within the easement
  - A covenant to lock and close all gates and fences as to prevent damage and destruction to livestock and maintain the right-of-way
  - A covenant to repair or restore areas used or damaged outside of the easement area to the original condition or better

- For an electrical transmission right-of-way easement:
  - The maximum number and spacing of the poses, towers or other support apparatus to carry electrical lines over the easements
  - The maximum number and electrical carrying capacity of the lines to be installed within the easement
  - A reasonable description of any use of the surface of the right-of-way that the condemning authority intends to acquire
  - A metes and bounds or center line description of the location of the easement
  - The width of the easement and a reservation of the right to grant additional easements to other parties within the easement area
  - A limitation of the access to the easement area
  - A right to damages of the surface of the property used
  - A covenant to lock and close all gates, maintain the right-of-way and repair and restore areas used or damaged outside the easement area.
A BILL TO BE ENTITLED

AN ACT

relating to the acquisition of property by an entity with eminent
domain authority; waiving certain sovereign and governmental
immunity.

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

SECTION 1. Section 21.0111, Property Code, is amended by
adding Subsection (a-1) to read as follows:

(a-1) After making an offer to which Subsection (a) applies,
the entity shall disclose to the property owner any new, amended, or
updated appraisal report produced or acquired by or on behalf of the
entity after making the offer and used in determining the entity's
opinion of value. A disclosure required by this subsection must be
made not later than the earlier of:

(1) the 10th day after the date the entity receives the
appraisal report; or

(2) the third business day before the date of a special
commissioner's hearing if the appraisal report is to be used at the
hearing.

SECTION 2. Section 21.0113, Property Code, is amended by
adding Subsection (c) to read as follows:

(c) For purposes of this section, the deed, easement, or
other instrument provided under Subsection (b)(6)(B) must include:

(1) for a pipeline right-of-way easement:

(A) the maximum number of pipelines that may be
installed in the right-of-way;

(B) the outside diameter of each pipeline to be installed in the right-of-way;

(C) the type or category of each petroleum product to be transported through the pipelines to be installed in the right-of-way;

(D) a reasonable description of any use of the surface of the right-of-way that the entity intends to acquire;

(E) a metes and bounds or center line description of the location of the easement;

(F) the width of the easement;

(G) the depth of the pipeline and amount of cover;

(H) a requirement to use the double-ditch method for installation of the pipeline when not bore-drilled;

(I) a prohibition from transferring the easement to any other entity, subsidiary, or company that does not have eminent domain authority;

(J) a reservation of the property owner's right to grant additional compatible easements in the easement area to other parties;

(K) a limit on third-party access to the easement area;

(L) a right to damages arising from construction, maintenance, repair, replacement, or future removal of the pipeline in the easement, including any damages to growing crops or livestock;
(M) a covenant to lock and close all gates and fences as necessary to prevent damage to or destruction of livestock;

(N) a covenant to maintain the right-of-way; and

(O) a covenant to repair and restore areas used or damaged outside the easement area to their original condition or better;

(2) for an electrical transmission right-of-way easement:

(A) the maximum number and spacing of the poles, towers, or other support apparatus to carry electrical lines over the easement;

(B) the maximum number and electrical carrying capacity of the lines to be installed in the easement;

(C) a reasonable description of any use of the surface of the right-of-way that the entity intends to acquire;

(D) a metes and bounds or center line description of the location of the easement;

(E) the width of the easement;

(F) a reservation of the property owner's right to grant additional compatible easements in the easement area to other parties;

(G) a limit on third-party access to the easement area;

(H) a right to damages arising from construction, maintenance, repair, replacement, or future removal of lines and support apparatus in the easement, including any damages to growing
crops or livestock;
(I) a covenant to lock and close all gates and fences as necessary to prevent damage to or destruction of livestock;
(J) a covenant to maintain the right-of-way; and
(K) a covenant to repair and restore areas used or damaged outside the easement area to their original condition or better;
(3) a prohibition against any use of the property being conveyed, other than a use stated in the instrument, without the express written consent of the property owner;
(4) a covenant that the entity will indemnify and hold the property owner harmless against any claim brought against the property owner arising out of or relating to the use of condemned property by the entity or the entity's agents or contractors; and
(5) a covenant that the entity will secure and keep in full force and effect at all times while the entity continues to use the condemned property a policy or policies of liability insurance:
(A) issued by an insurer authorized to issue such policies in this state;
(B) insuring the property owner against liability for personal injuries and property damage sustained by any person that arises from or is related to the use of the property by the entity or the entity's agents or contractors;
(C) naming the property owner or the owner's successor in title as an insured; and
(D) providing limits of liability as specified in
the instrument.

SECTION 3. Section 21.041, Property Code, is amended to read as follows:

Sec. 21.041. EVIDENCE. (a) As the basis for assessing actual damages to a property owner from a condemnation, the special commissioners shall admit evidence on:

(1) the value of the property being condemned;
(2) the injury to the property owner;
(3) the benefit to the property owner's remaining property; and
(4) the use of the property for the purpose of the condemnation.

(b) The special commissioners may admit evidence on the price paid for pipeline or power line rights-of-way in privately negotiated transactions made in the absence of a potential, actual, or threatened condemnation.

SECTION 4. Section 21.047, Property Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) If the amount of damages awarded by the special commissioners is at least 20 percent greater than the amount of the condemnor's final offer made in accordance with Section 21.0113 or if the commissioners' award is appealed and a court awards damages in an amount that is at least 20 percent greater than the amount of the condemnor's final offer made in accordance with Section 21.0113, the condemnor shall pay:

(1) all costs as provided by Subsection (a); and
(2) any reasonable attorney's fees and other
professional fees incurred by the property owner in connection with
the eminent domain proceeding.

SECTION 5. Section 21.063, Property Code, is amended by
adding Subsections (c) and (d) to read as follows:

(c) As a condition of appealing the decision of a trial
court in a condemnation proceeding, a nongovernmental condemnor
shall:

(1) pay to the property owner the amount of just
compensation awarded by the trial court;

(2) deposit that same amount with the court subject to
the order of the property owner; or

(3) post a surety bond in the same amount issued by a
surety company authorized to engage in business in this state,
conditioned to secure the payment of the trial court's award of just
compensation.

(d) If the property owner moves to enforce Subsection (c)
and the nongovernmental condemnor fails to comply with that
subsection before the 30th day after the date the property owner's
motion is filed:

(1) the court of appeals shall dismiss the appeal with
prejudice and order enforcement of the final judgment;

(2) the nongovernmental condemnor and its assigns
shall lose the right to remain on the property owner's property, and
any interest of the nongovernmental condemnor or its assigns in the
property reverts to the property owner; and

(3) the property owner is entitled to:

(A) any damages attributable to the
nongovernmental condemnor's occupation of the property;

(B) all reasonable expenses incurred to
remediate the property; and

(C) all reasonable and necessary fees for
attorneys, appraisers, photographers, and other experts hired in
relation to the condemnation.

SECTION 6. Chapter 21, Property Code, is amended by adding
Subchapter F to read as follows:

SUBCHAPTER F. AGREEMENTS MADE IN CONNECTION WITH CONDEMNATION

Sec. 21.151. AGREEMENTS ENFORCEABLE; WAIVER OF SOVEREIGN
IMMUNITY. A written agreement entered into by a governmental
entity with eminent domain authority and a property owner in
connection with a proceeding initiated by the entity to condemn the
owner's property or under a threat of condemnation by the entity of
the owner's property is enforceable by the property owner. Entry
into the agreement waives the entity's sovereign or governmental
immunity from suit and from liability to the extent necessary to
enforce the agreement.

SECTION 7. Section 26.11(a), Tax Code, is amended to read as
follows:

(a) If the federal government, the state, or a political
subdivision of the state acquires the right to possession of
taxable property under a court order issued in condemnation
proceedings, assumes possession of taxable property under a
possession and use agreement, or a similar agreement, that is
entered into under threat of condemnation, or acquires title to
taxable property, the amount of the tax due on the property is
calculated by multiplying the amount of taxes imposed on the
property for the entire year as determined as provided by Section
26.09 of this code by a fraction, the denominator of which is 365
and the numerator of which is the number of days that elapsed prior
to the date of the conveyance, the effective date of the agreement,
or the date of the order granting the right of possession, as
applicable.

SECTION 8. (a) Sections 21.0111 and 21.0113, Property
Code, as amended by this Act, apply only to the acquisition of real
property in connection with an initial offer made under Section
21.0113, Property Code, on or after the effective date of this Act.
An acquisition of real property in connection with an initial offer
made under Section 21.0113, Property Code, before the effective
date of this Act is governed by the law applicable to the
acquisition immediately before the effective date of this Act, and
that law is continued in effect for that purpose.

(b) Sections 21.041 and 21.047, Property Code, as amended by
this Act, apply only to an eminent domain proceeding commenced on or
after the effective date of this Act. An eminent domain proceeding
commenced before the effective date of this Act is governed by the
law applicable to the proceeding immediately before the effective
date of this Act, and that law is continued in effect for that
purpose.

(c) Section 21.063, Property Code, as amended by this Act,
applies only to an appeal commenced on or after the effective date
of this Act. An appeal commenced before the effective date of this
Act is governed by the law applicable to the appeal immediately
before the effective date of this Act, and that law is continued in effect for that purpose.

(d) Section 26.11, Tax Code, as amended by this Act, applies only to an agreement entered into on or after the effective date of this Act. An agreement entered into before the effective date of this Act is governed by the law applicable to the agreement immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 9. This Act takes effect September 1, 2017.
By: Kolkhorst, et al.  

S.B. No. 740

A BILL TO BE ENTITLED

AN ACT

relating to the acquisition of property by an entity with eminent domain authority.

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

SECTION 1.  Section 402.031(b), Government Code, is amended to read as follows:

(b) The landowner's bill of rights must notify each property owner that the property owner has the right to:

(1) receive notice of the proposed acquisition of the owner's property;

(2) contact and speak directly with an employee of the entity proposing to acquire the property who is qualified to discuss the acquisition of the property;

(3) receive a bona fide offer from, make a counteroffer to, and seek to negotiate terms and conditions with [good faith effort to negotiate by] the entity proposing to acquire the property;

(4) consult with a licensed real estate broker or sales agent, an attorney, an appraiser, or any other person regarding the proposed acquisition, offer of compensation, or other related
matters at any time;

(5) have [(4)] an assessment made of damages to the owner that will result from the taking of the property;

(6) be provided [(4)] a hearing under Chapter 21, Property Code, including a hearing on the assessment of damages;

and

(7) [(5) an] appeal [(of)] a judgment in a condemnation proceeding, including to [(an)] appeal [(of)] an assessment of damages; and

(8) contact the office of the attorney general for more information regarding a property owner's rights with respect to the condemnation process.

SECTION 2. Section 1101.002, Occupations Code, is amended by amending Subdivision (4) and adding Subdivisions (4-a), (6-a), and (6-b) to read as follows:

(4) "License" means a broker license or sales agent license issued under this chapter. The term does not include a right-of-way agent license.

(4-a) "License holder" means a broker or sales agent licensed under this chapter. The term does not include a holder of a right-of-way agent license.

(6-a) "Right-of-way agent license" means a license issued under Subchapter K.

(6-b) "Right-of-way agent license holder" means a person
SECTION 3. Section 1101.151(a), Occupations Code, is amended to read as follows:

(a) The commission shall:

(1) administer this chapter and Chapter 1102;

(2) adopt rules and establish standards relating to permissible forms of advertising by a license holder acting as a residential rental locator;

(3) maintain a list of right-of-way agent license holders; and

(4) design and adopt a seal.

SECTION 4. Section 1101.152(a), Occupations Code, is amended to read as follows:

(a) The commission shall adopt rules to charge and collect fees in amounts reasonable and necessary to cover the costs of administering this chapter, including a fee for:

(1) filing an original application for a broker license;

(2) renewal of a broker license;

(3) filing an original application for a sales agent license;

(4) renewal of a sales agent license;

(5) filing an original application for a right-of-way agent license;

(5-a) renewal of a right-of-way agent license;
(6) filing an application for a license examination;
(7) filing a request for a branch office license;
(8) filing a request for a change of place of business, change of name, return to active status, or change of sponsoring broker;
(9) filing a request to replace a lost or destroyed license or right-of-way agent license [or certificate of registration];
(10) filing an application for approval of an education program under Subchapter G;
(11) annual operation of an education program under Subchapter G;
(12) filing an application for approval of an instructor of qualifying real estate courses;
(13) transcript evaluation;
(14) preparing a license [or registration] history;
(15) filing a request for a moral character determination; and
(16) conducting a criminal history check for issuing or renewing a license.

SECTION 5. Section 1101.154(a), Occupations Code, is amended to read as follows:
(a) The fee for the issuance or renewal of a:
(1) broker license is the amount of the fee set under
Section 1101.152 and an additional $70 fee;

(2) sales agent license is the amount of the fee set under Section 1101.152 and an additional $20 fee; and

(3) right-of-way agent license [certificate of registration] is the amount of the fee set under Section 1101.152 and an additional $20 fee.

SECTION 6. Section 1101.205, Occupations Code, is amended to read as follows:

Sec. 1101.205. COMPLAINT INVESTIGATION OF RIGHT-OF-WAY AGENT LICENSE [CERTIFICATE] HOLDER. The commission shall investigate a signed complaint received by the commission that relates to an act of a right-of-way agent license [certificate] holder or a person required to hold a right-of-way agent license [certificate] under Subchapter K. Section 1101.204 applies to an investigation under this section.

SECTION 7. Subchapter K, Chapter 1101, Occupations Code, is amended to read as follows:

SUBCHAPTER K. RIGHT-OF-WAY AGENT LICENSE [CERTIFICATE] REQUIREMENTS

Sec. 1101.501. RIGHT-OF-WAY AGENT LICENSE [CERTIFICATE] REQUIRED. (a) A person may not sell, buy, lease, or transfer an easement or right-of-way [for another,] for compensation or with the expectation of receiving compensation[.] for an entity with eminent domain authority or for use in connection with

Page -5 -
telecommunication, utility, railroad, or pipeline service unless the person:

(1) holds a broker license or sales agent license issued under this chapter; or

(2) holds a right-of-way agent license [certificate of registration] issued under this subchapter.

(b) Subsection (a) does not apply to:

(1) an entity with eminent domain authority or the entity's employee; or

(2) an attorney licensed in this state.

Sec. 1101.502. ELIGIBILITY REQUIREMENTS FOR RIGHT-OF-WAY AGENT LICENSE [CERTIFICATE]. (a) To be eligible to receive or renew a right-of-way agent license [a certificate of registration or a renewal certificate under this subchapter], a person must [be]:

(1) be, at the time of application:

(A) at least 18 years of age; and

(B) [42+] a citizen of the United States or a lawfully admitted alien;

(2) satisfy the commission as to the applicant's honesty, trustworthiness, and integrity; and

(3) complete the required courses of study, including qualifying education requirements, prescribed by this subchapter.

(b) To be eligible to receive or renew a right-of-way agent
license [a certificate of registration or a renewal certificate under this subchapter], a business entity must designate as its agent one of its managing officers who holds a right-of-way agent license issued [is registered] under this subchapter.

Sec. 1101.503. ISSUANCE OF RIGHT-OF-WAY AGENT LICENSE [CERTIFICATE]. (a) The commission shall issue a right-of-way agent license [certificate of registration] to an applicant who meets the requirements for a right-of-way agent license under this subchapter [certificate of registration].

(b) The right-of-way agent license [certificate] remains in effect for the period prescribed by the commission if the right-of-way agent license [certificate] holder complies with this chapter, including the requirements of this subchapter, and pays the appropriate renewal fees.

Sec. 1101.504. RIGHT-OF-WAY AGENT LICENSE DURATION, [CERTIFICATE] EXPIRATION, AND RENEWAL. The provisions of Section 1101.451 governing the duration, expiration, and renewal of a broker or sales agent license apply [certificate of registration are subject to the same provisions as are applicable under Section 1101.451] to the duration, expiration, and renewal of a right-of-way agent license issued under this subchapter.

Sec. 1101.5041. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR RIGHT-OF-WAY AGENT LICENSE [CERTIFICATE]. An applicant for an original [certificate of registration] or renewal
right-of-way agent license [of a certificate of registration] must comply with the criminal history record check requirements of Section 1101.3521.

Sec. 1101.505. DENIAL OF RIGHT-OF-WAY AGENT LICENSE [CERTIFICATE]. The denial of a right-of-way agent license [certificate of registration] is subject to the same provisions as are applicable under Section 1101.364 to the denial of a broker or sales agent license.

Sec. 1101.506. CHANGE OF ADDRESS. Not later than the 10th day after the date a right-of-way agent license [certificate] holder moves its place of business from a previously designated address, the right-of-way agent license holder shall:

(1) notify the commission of the move; and

(2) obtain a new right-of-way agent license [certificate of registration] that reflects the address of the new place of business.

Sec. 1101.507. DISPLAY OF RIGHT-OF-WAY AGENT LICENSE [CERTIFICATE]. A right-of-way agent license [certificate] holder shall prominently display at all times the holder's right-of-way agent license [certificate of registration] in the right-of-way agent license holder's place of business.

Sec. 1101.508. NOTICE TO CONSUMERS. The commission by rule may:

(1) prescribe the text of consumer notices regarding a
right-of-way agent license holder; and

(2) establish the methods by which a right-of-way agent license holder provides a consumer notice or the statement prepared and provided under Section 402.031, Government Code.

Sec 1101.509. QUALIFYING EDUCATION REQUIREMENTS. (a) The commission by rule shall approve coursework that an applicant must successfully complete to be eligible for a right-of-way agent license under this subchapter.

(b) An applicant for a right-of-way agent license shall submit evidence satisfactory to the commission that the applicant has completed at least 15 classroom hours of right-of-way agent coursework approved by the commission in:

(1) the law of eminent domain, including the rights of property owners;

(2) appropriate standards of professionalism in contacting and conducting negotiations with property owners; and

(3) ethical considerations in the performance of right-of-way acquisition services.

Sec. 1101.510. CONTINUING EDUCATION. (a) To be eligible to renew a right-of-way agent license, the right-of-way agent license holder must submit evidence satisfactory to the commission that the right-of-way agent license holder successfully completed at least six classroom hours of continuing education approved by the commission.
(b) The commission by rule shall prescribe the title, content, administration, and duration of continuing education courses that a right-of-way agent license holder must successfully complete to renew a right-of-way agent license under this subchapter.

SECTION 8. Sections 1101.601 and 1101.602, Occupations Code, are amended to read as follows:

Sec. 1101.601. REAL ESTATE RECOVERY TRUST ACCOUNT. (a) The commission shall maintain a real estate recovery trust account to reimburse aggrieved persons who suffer actual damages caused by an act described by Section 1101.602 committed by:

(1) a license holder;

(2) a right-of-way agent license [certificate] holder; or

(3) a person who does not hold a license or right-of-way agent license [certificate] and who is an employee or agent of a license holder or right-of-way agent license [certificate] holder.

(b) The license holder or right-of-way agent license [certificate] holder must have held the license or right-of-way agent license [certificate] at the time the act was committed.

Sec. 1101.602. ENTITLEMENT TO REIMBURSEMENT. An aggrieved person is entitled to reimbursement from the trust account if a person described by Section 1101.601 engages in conduct that requires a license or right-of-way agent license [certificate of
registration] under this chapter and is described by Section 1101.652(a-1)(1) or (b), if the person is a license holder, or Section 1101.653(1), (2), (3), or (4), if the person is a right-of-way agent license [certificate] holder.

SECTION 9. Sections 1101.603(a) and (e), Occupations Code, are amended to read as follows:

(a) In addition to other fees required by this chapter, the commission shall collect a fee of $10 to deposit to the credit of the trust account from an applicant for an original license or right-of-way agent license [certificate of registration].

(e) On a determination by the commission at any time that the balance in the trust account is less than $1 million, each license holder or right-of-way agent license [certificate] holder at the next renewal must pay, in addition to the renewal fee, an additional fee of $10. The commission shall deposit the additional fee to the credit of the trust account.

SECTION 10. Section 1101.605(b), Occupations Code, is amended to read as follows:

(b) When an aggrieved person brings an action for a judgment that may result in an agreed judgment and order for payment from the trust account, the aggrieved person and the license holder or right-of-way agent license [certificate] holder against whom the action is brought shall notify the commission in writing before entry of the agreed judgment and deliver a copy of all petitions
and pleadings and the proposed agreed judgment to the commission. The commission will notify the parties not later than the 30th day after the date of receiving the documents if the commission intends to relitigate material and relevant issues as to the applicability of the trust account to the agreed judgment as provided by Section 1101.608.

SECTION 11. Section 1101.606(a), Occupations Code, is amended to read as follows:

(a) Except as provided by Subsections (c) and (c-1), an aggrieved person who obtains a court judgment against a license holder or right-of-way agent license [certificate] holder for an act described by Section 1101.602 may, after final judgment is entered, execution returned nulla bona, and a judgment lien perfected, file a verified claim in the court that entered the judgment.

SECTION 12. Section 1101.607, Occupations Code, is amended to read as follows:

Sec. 1101.607. ISSUES AT HEARING. At the hearing on the application for payment from the trust account, the aggrieved person must show:

(1) that the judgment is based on facts allowing recovery under this subchapter;

(2) that the person is not:

(A) the spouse of the judgment debtor or the
personal representative of the spouse;

(B) a license holder or right-of-way agent license certificate holder who is seeking to recover compensation, including a commission, in the real estate transaction that is the subject of the application for payment; or

(C) related to the judgment debtor within the first degree by consanguinity;

(3) that, according to the best information available, the judgment debtor does not have sufficient attachable assets in this or another state to satisfy the judgment;

(4) the amount that may be realized from the sale of assets liable to be sold or applied to satisfy the judgment; and

(5) the balance remaining due on the judgment after application of the amount under Subdivision (4).

SECTION 13. Sections 1101.610(b) and (c), Occupations Code, are amended to read as follows:

(b) Payments from the trust account for claims based on judgments against a single license holder or right-of-way agent license certificate holder may not exceed a total of $100,000 until the license holder or right-of-way agent license certificate holder has reimbursed the trust account for all amounts paid.

(c) If the court finds that the total amount of claims against a license holder or right-of-way agent license
[certificate] holder exceeds the limitations in this section, the court shall proportionately reduce the amount payable on each claim.

SECTION 14. Section 1101.613, Occupations Code, is amended to read as follows:

Sec. 1101.613. EFFECT ON DISCIPLINARY PROCEEDINGS. (a) This subchapter does not limit the commission's authority to take disciplinary action against a license holder or right-of-way agent license [certificate] holder for a violation of this chapter or a commission rule.

(b) A license holder's or right-of-way agent license holder's [certificate holder's] repayment of all amounts owed to the trust account does not affect another disciplinary proceeding brought under this chapter.

SECTION 15. Section 1101.615, Occupations Code, is amended to read as follows:

Sec. 1101.615. NOTICE TO CONSUMERS AND SERVICE RECIPIENTS. [(a)] The commission by rule shall prescribe a notice regarding the availability of payment from the trust account for aggrieved persons and establish methods by which each license holder and right-of-way agent license [certificate] holder shall provide the notice to consumers and service recipients.

SECTION 16. Section 1101.653, Occupations Code, is amended to read as follows:
Sec. 1101.653. GROUNDS FOR SUSPENSION OR REVOCATION OF RIGHT-OF-WAY AGENT LICENSE [CERTIFICATE]. The commission may suspend or revoke a right-of-way agent license [certificate of registration] issued under this chapter if the right-of-way agent license [certificate] holder:

(1) engages in dishonest dealing, fraud, unlawful discrimination, or a deceptive act;
(2) makes a misrepresentation;
(3) acts in bad faith;
(4) demonstrates untrustworthiness;
(5) fails to honor, within a reasonable time, a check issued to the commission after the commission has mailed a request for payment to the right-of-way agent license [certificate] holder's last known address according to the commission's records;
(6) fails to provide to a party to a transaction a written notice prescribed by the commission that:

(A) must be given before the party is obligated to sell, buy, lease, or transfer a right-of-way or easement; and
(B) contains:

(i) the name of the right-of-way agent license [certificate] holder;
(ii) the right-of-way agent license [certificate] number;
(iii) the name of the person the right-of-way
agent license [certificate] holder represents;

(iv) a statement advising the party that the party may seek representation from a lawyer or broker in the transaction; and

(v) a statement generally advising the party that the right-of-way or easement may affect the value of the property; or

(7) disregards or violates this chapter or a commission rule relating to right-of-way agent license [certificate] holders.

SECTION 17. Section 1101.654, Occupations Code, is amended to read as follows:

Sec. 1101.654. SUSPENSION OR REVOCATION OF LICENSE OR RIGHT-OF-WAY AGENT LICENSE [CERTIFICATE] FOR UNAUTHORIZED PRACTICE OF LAW. (a) The commission shall suspend or revoke the license or right-of-way agent license [certificate of registration] of a license holder or right-of-way agent license [certificate] holder who is not a licensed attorney in this state and who, for consideration, a reward, or a pecuniary benefit, present or anticipated, direct or indirect, or in connection with the person's employment, agency, or fiduciary relationship as a license holder or right-of-way agent license [certificate] holder:

(1) drafts an instrument, other than a form described by Section 1101.155, that transfers or otherwise affects an interest in real property; or
(2) advises a person regarding the validity or legal sufficiency of an instrument or the validity of title to real property.

(b) Notwithstanding any other law, a license holder or right-of-way agent license [certificate] holder who completes a contract form for the sale, exchange, option, or lease of an interest in real property incidental to acting as a broker is not engaged in the unauthorized or illegal practice of law in this state if the form was:

(1) adopted by the commission for the type of transaction for which the form is used;

(2) prepared by an attorney licensed in this state and approved by the attorney for the type of transaction for which the form is used; or

(3) prepared by the property owner or by an attorney and required by the property owner.

SECTION 18. The heading to Section 1101.655, Occupations Code, is amended to read as follows:

Sec. 1101.655. REVOCATION OF LICENSE [OR CERTIFICATE] FOR CLAIM ON ACCOUNT.

SECTION 19. Sections 1101.655(a), (b), and (c), Occupations Code, are amended to read as follows:

(a) The commission shall revoke a license, approval, or right-of-way agent license [registration] issued under this chapter
or Chapter 1102 if:

(1) the commission makes a payment from the real estate recovery trust account under Subchapter M on behalf of a license holder or right-of-way agent license [registration] holder; and

(2) the license holder or right-of-way agent license [registration] holder does not repay the real estate recovery trust account the full amount of a payment made on the license holder's or right-of-way agent license [registration] holder's behalf before the 31st day after the date the commission provides notice to the license holder or right-of-way agent license [registration] holder.

(b) The commission may probate an order revoking a license, approval, or right-of-way agent license [registration] under this section.

(c) A person is not eligible for a license or right-of-way agent license [certificate] until the person has repaid in full the amount paid from the account for the person, plus interest at the legal rate.

SECTION 20. Section 1101.657(a), Occupations Code, is amended to read as follows:

(a) If the commission proposes to deny, suspend, or revoke a person's license or right-of-way agent license [certificate of registration], the person is entitled to a hearing conducted by the State Office of Administrative Hearings.

SECTION 21. Section 1101.660(b), Occupations Code, is amended
to read as follows:

(b) Rules adopted under this section must:

(1) provide the complainant and the license holder, right-of-way agent license [certificate] holder, or regulated entity an opportunity to be heard; and

(2) require the presence of:

(A) a public member of the commission for a case involving a consumer complaint; and

(B) at least two staff members of the commission with experience in the regulatory area that is the subject of the proceeding.

SECTION 22. Section 1101.663, Occupations Code, is amended to read as follows:

Sec. 1101.663. REAPPLYING AFTER REVOCATION, SURRENDER, OR DENIAL. A person whose license or right-of-way agent license [registration] has been revoked, a person who has surrendered a license or right-of-way agent license [registration] issued by the commission, or a person whose application for a license or right-of-way agent license [registration] has been denied after a hearing under Section 1101.657 may not apply to the commission for a license or right-of-way agent license [registration] before the second anniversary of the date of the revocation, surrender, or denial.

SECTION 23. The heading to Section 1101.753, Occupations
Code, is amended to read as follows:

Sec. 1101.753. CIVIL PENALTY FOR CERTAIN VIOLATIONS BY BROKER, SALES AGENT, OR RIGHT-OF-WAY AGENT [CERTIFICATE HOLDER].

SECTION 24. Section 1101.753(a), Occupations Code, is amended to read as follows:

(a) In addition to injunctive relief under Sections 1101.751 and 1101.752, a person who receives a commission or other consideration as a result of acting as a broker or sales agent without holding a license or right-of-way agent license [certificate of registration] under this chapter is liable to the state for a civil penalty of not less than the amount of money received or more than three times the amount of money received.

SECTION 25. The heading to Section 1101.754, Occupations Code, is amended to read as follows:

Sec. 1101.754. PRIVATE CAUSE OF ACTION FOR CERTAIN VIOLATIONS BY BROKER, SALES AGENT, OR RIGHT-OF-WAY AGENT [CERTIFICATE HOLDER].

SECTION 26. Section 1101.754(a), Occupations Code, is amended to read as follows:

(a) A person who receives a commission or other consideration as a result of acting as a broker or sales agent without holding a license or right-of-way agent license [certificate of registration] under this chapter is liable to an aggrieved person for a penalty of not less than the amount of money received or more than three times the amount of money received.
SECTION 27. The heading to Section 1101.758, Occupations Code, is amended to read as follows:

Sec. 1101.758. CRIMINAL PENALTY FOR CERTAIN VIOLATIONS BY BROKER, SALES AGENT, OR RIGHT-OF-WAY AGENT [CERTIFICATE HOLDER].

SECTION 28. Section 1101.758(a), Occupations Code, is amended to read as follows:

(a) A person commits an offense if the person acts as a broker or sales agent without holding a license under this chapter or engages in an activity for which a right-of-way agent license [certificate of registration] is required under this chapter without holding a right-of-way agent license [certificate].

SECTION 29. Section 21.0111, Property Code, is amended by adding Subsections (a-1) and (a-2) to read as follows:

(a-1) After an offer to which Subsection (a) applies is made, the entity or the property owner shall disclose to the other party any new, amended, or updated appraisal report that is produced or acquired by or on behalf of the entity or property owner after the offer is made and that is used in determining the entity's or the property owner's opinion of value. A disclosure required by this subsection must be made not later than the earlier of:

(1) the 10th day after the date the entity or property owner receives the appraisal report; or

(2) the third business day before the date of a special commissioner's hearing if the appraisal report is to be used at the
(a-2) A new, amended, or updated appraisal report that is not disclosed as required by Subsection (a-1), and any testimony or other evidence based on the report, may not be presented in a hearing under Section 21.015.

SECTION 30. Section 21.0113(b), Property Code, is amended to read as follows:

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

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

(A) a monetary offer in an amount:

   (i) equal to or greater than 150 percent of the market value of the property sought to be acquired, as determined on a per acre or per square foot proportionate valuation of raw land as reflected in the appraisal of the county taxing authority as of the date of the initial offer; or

   (ii) if an appraisal of the property sought to be acquired and any damages to any remaining property has been completed by a certified appraiser, equal to or greater than the amount provided by the appraisal report;

(B) a statement that the entity will not contact the property owner sooner than the fourth business day after the date of the first personal contact made by the entity after the
entity sends the initial offer, except to respond to an inquiry from the property owner;

(C) the name and telephone number of an employee of the entity that the property owner may contact with questions regarding the initial offer; and

(D) a copy of the appraisal report on which the offer is based, if applicable;

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

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

(4) before making a final offer, the entity obtains an appraisal report from a certified appraiser of the value of the property being acquired and the damages, if any, to any of the property owner's remaining property;

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

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

(A) a copy of the appraisal report;

(B) a copy of the deed, easement, or other instrument conveying the property sought to be acquired; and
the landowner's bill of rights statement prescribed by Section 21.0112; and

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

SECTION 31. Subchapter B, Chapter 21, Property Code, is amended by adding Sections 21.0114 and 21.0115 to read as follows:

Sec. 21.0114. REQUIRED TERMS FOR INSTRUMENTS OF CONVEYANCE.
(a) Except as provided by Subsection (b), the deed, easement, or other instrument provided to a property owner under Section 21.0113(b)(6)(B) must include the following terms, as applicable:

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

(A) the maximum number of pipelines that may be installed in the right-of-way;

(B) the maximum diameter, excluding any protective coating or wrapping, of each pipeline to be installed in the right-of-way;

(C) the type or category of each substance to be transported through the pipelines to be installed in the right-of-way;

(D) a general description of any use of the surface of the right-of-way the entity intends to acquire;

(E) a metes and bounds or center line description
of the location of the easement, plat, or other legally sufficient description of the location of the easement;

(F) the maximum width of the easement;

(G) the minimum depth at which the pipeline will initially be installed;

(H) whether the double-ditch method will be used for installation of the pipeline in areas that are not bore-drilled;

(I) whether the easement is assignable in whole or in part to any other entity, subsidiary, or company that does not have eminent domain authority;

(J) whether the entity has exclusive, nonexclusive, or otherwise limited rights to the right-of-way;

(K) a limit on access to the easement area by a third party for a purpose that is not related to:

(i) the pipeline’s construction, safety, maintenance, or operation activities; or

(ii) other uses authorized by law;

(L) a right to recover actual monetary damages arising from construction, maintenance, repair, replacement, or future removal of the pipeline in the right-of-way, including any actual monetary damages to growing crops or livestock, or a statement that the offer includes such future damages;

(M) a provision regarding the use and repair of any
gates and fences;

(N) a provision regarding the maintenance of the right-of-way;

(O) a provision regarding the repair and restoration of areas used or damaged outside the right-of-way area to their original condition or better, to the extent reasonably practicable, or the payment of actual monetary damages for areas not restored; and

(P) the manner in which the entity will access the right-of-way, other than in case of emergency, in which case any reasonable access may be used;

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

(A) a general description of any use of the surface of the right-of-way the entity intends to acquire;

(B) a depiction identifying the approximate location of the right-of-way on the property;

(C) a metes and bounds or center line description of the location of the easement, plat, or other legally sufficient description of the location of the easement;

(D) the maximum width of the right-of-way easement;

(E) the manner in which the entity will access the right-of-way, other than in case of an emergency, in which case any reasonable access may be used;
(F) a limit on access to the easement area by a third party for a purpose that is not related to:

(i) the transmission line's construction, safety, maintenance, or operation activities; or

(ii) other uses authorized by law;

(G) a provision regarding the right to recover actual monetary damages arising from construction, maintenance, repair, replacement, or future removal of lines and support facilities in the right-of-way, or a statement that the offer includes such future damages;

(H) a provision regarding the use and repair of any gates and fences;

(I) a provision regarding the maintenance of the right-of-way;

(J) a provision regarding the repair and restoration of areas used or damaged outside the right-of-way area to their original condition or better, to the extent reasonably practicable, or the payment of actual monetary damages for areas not restored; and

(K) whether the entity has exclusive, nonexclusive, or otherwise limited rights to the right-of-way;

(3) a prohibition against any use of the property being conveyed, other than a use stated in the deed, easement, or other instrument, without the express written consent of the property
(4) a statement that the landowner is protected from liability under Section 21.0115, including the full text of that section;

(5) if the entity is a nongovernmental entity that is not otherwise self-insured, an agreement that the entity will keep liability insurance in effect at all times during construction or, if the entity is a governmental entity, a statement that the entity is required by law to pay a judgment ordered by a court of competent jurisdiction if the court determines that the entity is liable to the property owner for personal injury and property damage sustained by any person that arises from or is related to the use of the property by the entity or the entity's agents or contractors; and

(6) a statement that the terms of the deed, easement, or other instrument will bind the successors and assigns of the parties to the instrument.

(b) The entity may present and include terms in addition to the terms required under Subsection (a). The property owner and the entity may consider and agree to the additional terms, including rights and uses that may not be the subject of a later condemnation proceeding. A property owner may negotiate a deed, easement, or other instrument that does not include all of the terms required under Subsection (a).
Sec. 21.0115. LIMITATION OF PROPERTY OWNER LIABILITY. A property owner is not liable to a condemning entity, the entity's agents, employees, or contractors, including the contractor's subcontractors of any tier, or a third party for personal injury, death, or property damage:

(1) arising from the use by a person other than the property owner of property, including for a right-of-way, acquired from the property owner by condemnation; and

(2) not caused by the property owner's negligence or intentional conduct.

SECTION 32. Section 21.063, Property Code, is amended by adding Subsections (c) and (d) to read as follows:

(c) As a condition of appealing the final judgment of a trial court in a condemnation proceeding, a nongovernmental condemnor shall:

(1) deposit with the trial court the amount of the final judgment, less the amount of any monetary deposit made and any bonds posted by the condemnor under Sections 21.021(a)(2) and (3), subject to the order of the court of appeals; or

(2) post a surety bond, issued by a surety company authorized to engage in business in this state and conditioned to secure the payment of the final judgment, in the amount of the final judgment, less the amount of any monetary deposit made and any bonds posted by the condemnor under Sections 21.021(a)(2) and
(3).

(d) If the property owner moves to enforce Subsection (c) and the nongovernmental condemnor fails to comply with that subsection before the 30th day after the date the trial court grants the motion:

(1) the court of appeals shall dismiss the appeal with prejudice and order enforcement of the final judgment; and

(2) the property owner is entitled to all reasonable and necessary fees for attorneys hired in relation to the appeal of the condemnation.

SECTION 33. Section 26.11(a), Tax Code, is amended to read as follows:

(a) If the federal government, the state, or a political subdivision of the state acquires the right to possession of taxable property under a court order issued in condemnation proceedings, assumes possession of taxable property under a possession and use agreement, or a similar agreement, that is entered into under threat of condemnation, or acquires title to taxable property, the amount of the tax due on the property is calculated by multiplying the amount of taxes imposed on the property for the entire year as determined as provided by Section 26.09 of this code by a fraction, the denominator of which is 365 and the numerator of which is the number of days that elapsed prior to the date of the conveyance, the effective date of the agreement,
or the date of the order granting the right of possession, as applicable.

SECTION 34. Effective March 1, 2018, Section 1101.002(2), Occupations Code, is repealed.

SECTION 35. The office of the attorney general shall make the landowner's bill of rights statement required by Section 402.031, Government Code, as amended by this Act, available on the attorney general's Internet website not later than January 1, 2018.

SECTION 36. Not later than September 1, 2018, the Texas Real Estate Commission shall adopt rules to implement Subchapter K, Chapter 1101, Occupations Code, as amended by this Act.

SECTION 37. (a) Chapter 1101, Occupations Code, as amended by this Act, applies only to an application for an original or renewal right-of-way agent license filed on or after March 1, 2018. An application for an original or renewal certificate of registration as an easement or right-of-way agent filed before March 1, 2018, is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

(b) Sections 21.0111 and 21.0113, Property Code, as amended by this Act, and Sections 21.0114 and 21.0115, Property Code, as added by this Act, apply only to the acquisition of real property in connection with an initial offer made under Section 21.0113, Property Code, on or after the effective date of this Act.
acquisition of real property in connection with an initial offer made under Section 21.0113, Property Code, before the effective date of this Act is governed by the law applicable to the acquisition immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(c) Section 21.041, Property Code, as amended by this Act, applies only to an eminent domain proceeding commenced on or after the effective date of this Act. An eminent domain proceeding commenced before the effective date of this Act is governed by the law applicable to the proceeding immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(d) Section 21.063, Property Code, as amended by this Act, applies only to an appeal commenced on or after the effective date of this Act. An appeal commenced before the effective date of this Act is governed by the law applicable to the appeal immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(e) Section 26.11, Tax Code, as amended by this Act, applies only to an agreement entered into on or after the effective date of this Act. An agreement entered into before the effective date of this Act is governed by the law applicable to the agreement immediately before the effective date of this Act, and that law is continued in effect for that purpose.
SECTION 38. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2017.

(b) Chapter 1101, Occupations Code, as amended by this Act, takes effect March 1, 2018.
Dear Members of the Texas Legislature:

The Texans for Property Rights coalition was created on behalf of Texas landowners to advance the common-sense reform of eminent domain laws. As you are all aware, the need to address eminent domain arises out of the widespread dissatisfaction and consistent opposition to the current process. Texas landowners may disagree over other issues, but all agree eminent domain has exceeded any reasonable definition of balance. The public message is clear and has been growing louder over the last several sessions. In advance of this Session, the coalition sought direct feedback from thousands of landowners. Their message is consistent and clear: Landowners are not adequately compensated for their property, and the process by which their property is taken is neither just nor transparent. The continued taking of private property through the use of outdated statutory procedures has left landowners determined to see a change.

Since February of this year, the Texans for Property Rights coalition has met and discussed all parts of the legislation with those who oppose eminent domain reform, many, but not all, of whom are the sources of the problem. Like any major legislative effort, meaningful discussions often result in productive changes to the proposed legislation. Our members expected, and often welcomed these changes. Texans for Property Rights did not seek reforms that would unduly impair the growth of infrastructure in Texas. The meetings both inside and outside of the Capitol resulted in some modifications that would still serve the landowners of Texas.

To demonstrate our commitment to good faith negotiation and consensus, our coalition faced a very difficult choice. The filed legislation provided Texas landowners, for the first time, the right to a reimbursement of landowner’s costs, including attorney's fees and expenses, if the entity taking their property was proven to have offered compensation significantly below fair market value. This is a key problem in all parts of Texas and this legislation would have placed Texas in line with many other energy producing states. Regrettably for Texas landowners, elements within the infrastructure coalition sought to portray our organization and its landowners as encouraging trial lawyers and runaway jury verdicts, known pitfalls in the Texas Legislature.

There was no basis in this assertion, just a well-contrived message to deprive Texas landowners of a right afforded to landowners in other states. Our coalition was assured that the attorney fee provision was the source of opposition to the legislation. To address this, our coalition opened the discussion to an alternative as long as the key landowner protections in the remaining portions of the bills were preserved. That significant and difficult concession unfortunately did not end negotiations. Opponents to the bill then levied opposition to almost every other aspect of the landowner protections.

The opponents of eminent domain reform continue to present new points of objection and changes to the legislation that significantly weaken, if not all together negate, its benefit. This is a clear attempt to avoid agreement and prevent the advancement of legislation, or to create enough loopholes in the legislation to prevent the meaningful eminent domain reform that Texas landowners deserve. Ironically, the all or nothing approach to this legislation is the very same approach that many of these companies continue to employ against landowners as they are forced to confront the threat of eminent domain.
At many times throughout the process, opponents to eminent domain reform have represented to the legislature that they have been working with landowners when, in reality, they are simply slow-playing the process. Every concession made by landowners has been met with demands from opponents for even greater concessions.

Our coalition, and most importantly Texas landowners, rely on the leadership and support of the legislature. Leadership, however, often means making a tough choice to do what is right. It appears that the legislature is unwilling to make that choice and take a stand for landowners this session in the absence of language agreed to by Texas landowners' very opponents. This has ultimately tied the hands of our coalition in the negotiation process. Due to the lack of willingness to make a tough legislative decision, Texas' landowners have once again been pushed aside.

The latest versions of the legislation in both the House and Senate would be at best a hollow victory, offering little in the way of actual improvement for Texas landowners. At worst, it may threaten the few protections currently afforded to landowners. Therefore, our coalition must oppose SB 740 and HB 2684, as they no longer fulfill the commitment we made to our landowner members.

Our coalition takes extraordinary pride in working to ensure Texas’ tradition of private property rights are continued. A tradition that many, if not all, of our elected officials celebrate and tout during their campaigns for election. Texas landowners need and deserve a better process when faced with having their land taken by public and private entities acting on behalf of the State of Texas. Without the support of the Texas Legislature, this cannot happen.

Today we are sharing this letter with our 25 coalition partners and the hundreds of thousands of Texas landowners in every county that supported this effort and the legislation as filed. Our coalition remains strong and we look forward to continued work on this vitally important issue in the future.

Sincerely,

Richard Thorpe, President
Texas and Southwestern Cattle Raisers Association

Russell Boening, President
Texas Farm Bureau

David Yeates, CEO
Texas Wildlife Association

TEXANS☆PROPERTY RIGHTS

Texas and Southwestern Cattle Raisers Association · Texas Farm Bureau · Texas Wildlife Association · Texas Association of Realtors · Corn Producers Association of Texas · Farm and Ranch Freedom Alliance · Riverside and Landowners Protection Coalition · South Texas' Property Rights Association · Texas Association of Dairymen · Texas Forestry Association · Texas Grain Sorghum Association · Texas Hill Country Heritage Association · Texas Land and Mineral Owners Association · Texas Sheep and Goat Raisers Association · Texas Wheat Producers Association