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LEGAL UPDATES

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# New Eminent Domain Laws from the 2021 Texas Legislative Session

The Texas Legislature recently approved five bills that will impact eminent domain matters throughout the state.

## HB 2730

HB 2730 was signed by Governor Greg Abbott on June 16, 2021, and goes into effect on January 1, 2022. HB 2730 amends several sections of the Texas Government Code and Texas Property Code concerning the rights of landowners and obligations of condemning authorities seeking to use statutory eminent domain powers. The bill includes significant changes that impact **all** condemning authorities:

### Landowner's Bill of Rights

Notice to the landowner regarding the landowner's right to file a written complaint against an agent of a condemning entity;

An addendum containing the terms of the property conveyance instrument, including which terms are negotiable; and

Regular review (every two years) by the Texas Attorney General for compliance by condemning authorities.

### Initial offer to landowner

A statement, in bold print and larger font than the other portions of the offer, indicating whether the offered compensation includes damages to the remainder of the property, OR a formal appraisal which identifies any damages to the remainder of the property; and

Contact information (name and telephone) for a representative of the condemning entity.

Condemnation lawsuits

Notice of the condemnation lawsuit petition to the landowner via certified mail, return receipt requested, AND first class mail;

Judges must appoint two alternate special commissioners in addition to the three statutory special commissioners required; and

Parties have the later of 10 days after the special commissioners are appointed, or 20 days after the petition is filed, to strike a special commissioner.

Some changes in HB 2730 only affect certain private entities with eminent domain authority, including requiring the entity's conveyance instruments provided to the landowner to contain:

Identification of general terms in the conveyance instrument that the landowner can negotiate;

The maximum number of pipelines that may be installed under the conveyance instrument;

A description of the type of pipeline appurtenances (e.g. pipes, valves, compressors, pumps, meters, etc.) authorized under the conveyance instrument;

The maximum diameter of each pipeline to be installed;

The type or category of substances permitted to be transported through each pipeline installed;

A provision describing whether the easement rights are exclusive or nonexclusive; and

A provision limiting the private entity's right to grant third-party access.

HB 2730 also amends the Texas Occupation Code, imposing additional requirements for agents of condemning entities, and penalties for conduct such as "accept[ing] a financial incentive to make an initial offer that the [agent] knows or should know is lower than the adequate compensation required under the Texas Constitution."

**HB 4107**

HB 4107 was signed by Governor Abbott on June 18, 2021, and goes into effect on September 1, 2021. HB 4107 relates to a common carrier pipeline entity exercising eminent domain power. Prior to entering the subject property to survey the property, the entity must now provide the property owner with:

Written notice of the entity's intent to enter the property; and

An indemnification for the property owner in the event the entity's survey damages the property.

These items must be provided two days before the entity enters the property, include contact information in the event the property owner has questions or objections regarding the survey, and must be served pursuant to the Texas Rules of Civil Procedure (e.g. first class mail, e-mail, personal delivery, etc.). Furthermore, entry to the property:

Is only to the portion of the property anticipated to be affected by the eminent domain taking;

Is solely to survey and identify the boundaries of the property, unless additional access is granted by the property owner;

Requires restoration of the property to the pre-survey condition;

Requires all survey equipment and tools to be removed by a certain date;

Requires the property owner receive a free copy of a resulting survey plat or depiction, upon written request from the property owner.

#### **SB 721**

SB 721 was signed by the Governor on May 18, 2021, with an effective date of September 1, 2021. SB 721 requires an entity with eminent domain power to disclose to the property owner “any and all current and existing appraisal reports produced or acquired by the entity relating specifically to the owner’s property and used in determining the entity’s opinion of value.” This law requires the disclosure no later than three business days before the special commissioner’s hearing and applies if an appraisal report is to be used at the hearing.

#### **SB 725**

SB 725 was signed by Governor Abbott on May 18, 2021, and goes into effect on September 1, 2021. This law requires a condemning entity to cover the additional taxes and expenses if a subject property with an agricultural tax exemption loses its tax exemption solely because of the condemnation. The law also prevents agricultural land from losing its exemption solely because the land is subject to a right-of-way that is less than 200 feet wide and taken through condemnation.

#### **SB 726**

SB 726 was signed on May 24, 2021, with an effective date of September 1, 2021. SB 726 revises “actual progress” for the purposes of determining whether a property owner can repurchase their property under Chapter 21 of the Property Code. The new law generally requires that condemning entities now complete at least three actions (previously, two) identified under Section 21.101 to demonstrate “actual progress.”

The law contains an exception for a navigation district, port authority, or water district implementing a project included in the state water plan adopted by the Texas Water Development Board. These entities only need to complete one identified action, if the entity's governing body adopts a finding at a public hearing of a development plan for a public use project that the entity will not complete more than one identified action before the expiration of the 10th anniversary of the date the entity acquired the property (this exception previously applied to any governmental entity).

**Contact us**

If you have questions about how these changes may affect your rights or obligations as a property owner or condemning authority, respectively, please reach out to Kate David, Robert Eckels, Mike Stafford, Ben Stephens, Anthony Franklyn, Logan Leal or your Husch Blackwell attorney for more information.