

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 per

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.