

April 20, 2019

# Eminent domain now in spotlight

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**San Antonio Express-News**



Kin Man Hui / Staff photographer

Eminent domain is granted to public and private entities that are considered “common carriers,” meaning they’re carrying goods such as oil and gas or electricity for public use.

With the state's ever-increasing infrastructure needs, Texas farmers and ranchers are bracing for the likelihood of pipelines, transmission lines and railways cutting through their fields and pastures.

But some say it’s unfair to allow private companies or other entities wielding the power of eminent domain to pressure landowners to accept lowball offers that don’t take into account the overall loss of value to their property.

“This may be the property rights issue of our time,” Texas Farm Bureau spokesman Gary Joiner said in a meeting this week with the San Antonio Express-News Editorial Board.

The Texas Senate on April 4 approved an eminent domain reform bill by Sen. Lois Kolkhorst, R-Brenham, in a 28-3 vote. Supporters say the legislation would require entities using eminent domain to treat landowners more fairly.

A House committee led by Rep. Tom Craddick, R-Midland, is set to hear a companions bill sponsored by Rep. Dwayne Burns, R-Cleburne, next week.

The legislation — a watered-down version of a bill that failed in 2017 — calls for three new requirements: initial offers based on more than the company’s assessment; clear easement terms, with protections in case there’s property damage; and meetings to allow landowners to address companies in a group setting.

“You have a for-profit company that knows this process well, and they go to a landowner who knows nothing about this process and has very little information,” said Si Cook, executive director of the Texas Farm Bureau. “So you really have an uneven playing field.”

San Antonio Democrat José Menéndez was one of three senators who voted against the measure. He’s worried the measure could be used to stop rail projects.

“I’m a big supporter of the high-speed rail, and I’m concerned that this eminent domain bill could be used to derail — pun intended — high-speed rail,” he said. “As someone that commutes between San Antonio and Austin every single day, I can tell you I’d much rather be riding on a train with Wifi than driving four hours a day round-trip.”

“While I support the idea of a fair eminent domain process, I just didn’t think we were there yet,” he said.

Still, it looks like entities that use eminent domain have warmed to the legislation.

“We would like to solve this problem this session and be finished with it for a while,” said Lisa Kaufman of the Coalition for Critical Infrastructure, whose members include the Texas Association of Manufacturers, Texas Oil and Gas Association, Texas Pipeline Association and others. “We have agreed with the landowners on the three fundamental concepts currently in the bill, and we are negotiating from our perspective.”

Eminent domain is granted to public and private entities that are considered “common carriers,” meaning they’re carrying goods such as oil and gas or electricity for public use. It gives them the right to acquire land for fair compensation.

“We are working with the landowner groups and the authors of the bill to come up with eminent domain reform that provides landowners with more additional information, that’s more transparent but at the same time doesn’t slow down or curtail the ability of everyday Texans from getting the critical infrastructure they need like water, electricity, fuel,” Kaufman said.

Russell Boening, a Poth farmer and rancher who serves as the state Farm Bureau president, said property owners often feel defenseless when approached by company representatives with what they say is their best possible offer.

“As a property owner, I can’t walk away because they have the power of eminent domain,” Boening said. “It’s a business transaction, but it’s not a normal business transaction.

“You’re selling your house, and I come over there and you don’t like the offer I make, you can tell me to get lost. I can’t tell them, that company, to get lost.”

While large landowners are likely to have attorneys, smaller owners may not have the money for legal help, especially since one-third of any gains over the initial offer price typically go toward legal fees.

The part of the reform bill addressing initial offers says that appraisals, broker price opinions, comparative market analysis or market studies along with an assessment of damage to the overall property should be used to determine the value of the land.

“When they put a pipeline in the ground, forever they dictate what happens on top of that pipeline,” Cook said. “You can’t build on top of it, you can’t drill there. There’s so many things that you cannot do. And it also decreases the value of your land. You’re not going to put a housing subdivision there, build a house, or a barn or anything. So that property is worth less.” Easement terms would need to include protections for landowners during construction and the promise of payment in case of damages to the property.

The meetings would be a chance for property owners to get more details about the project. The sessions would be mandatory when a project would affect 25 or more property owners, or if requested by landowners.

“You know, if there’s 25 of us in a room, some other landowner may think to ask a question that I wouldn’t think of,” Boening said. “It could be a very legitimate, a very fair question but you don’t know to ask those things.”

Regan Beck, the state Farm Bureau’s director of government affairs, said property owners groups have been negotiating extensively with industry since June. They abandoned a 2017 provision that would require entities to pay legal fees for disputes decided in property owners’ favor.

Kaufman, of the Coalition for Critical Infrastructure, said that while her group was open to legislation, a lot of details still have to be hammered out.

“We are not OK with the bill as filed,” she said. “It would ... lead to significant litigation and curtail our ability to provide critical infrastructure.”