



CITY OF HOUSTON

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Mayor

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May 20, 2021

The Honorable Joan Huffman
Senate Jurisprudence Committee
P.O. Box 12068
Austin, TX 78711

Re: HB 2730 (Engrossed)

Dear Chair Huffman and Members of the Senate Jurisprudence Committee,

On behalf of the City of Houston, I write in opposition to House Bill 2730 (Engrossed) and ask that this written testimony be included in the formal legislative record for House Bill 2730 (Engrossed). We thank the Committee and the Chairperson for the opportunity to comment regarding this proposed legislation.

My name is Steven Beard. I am a Senior Assistant City Attorney for the City of Houston and I have been for almost four years. I practice exclusively in the field of eminent domain law in the State of Texas. The City of Houston has the power of eminent domain through Chapter 21 of the Texas Property Code.

Every year, the City of Houston constructs infrastructure projects that build, maintain and improve roads, sanitary sewer systems, hike and bike trails, water lines and parks. These projects are especially important as the City of Houston continues to grow in population. For the most part, the City of Houston acquires property for these major infrastructure projects through arms-length transactions. However, in very limited circumstances due to title issues or disagreement in value, eminent domain must be used so that the City may acquire the needed property for its various projects. Currently, the eminent domain process provides protections to both landowners and condemning entities. In my opinion, House Bill 2730 (Engrossed) adds burdensome new obligations for government to acquire property. We analyze below.

1. HB 2730 seeks to amend Sec. 21.014 of the Property Code by adding new time requirements for the court to appoint special commissioners and for the parties to strike special commissioners. The problems with the proposed changes are as follows:
 - A. In the proposed legislation, Section 21.014 (a) would state that the judge shall provide an Order containing the names and contact information of the special commissioners appointed to the parties (which already occurs) in a fixed period and provides a new deadline for parties who wish to move to strike a commissioner. However, the proposed legislation does not provide a fixed method for how the court is to inform the parties when the commissioners are appointed. Currently, the parties usually learn of

when the commissioners were appointed by mail or sometimes with an email/call from the clerk of court's office. There is no set method. This needs to be addressed because the next proposed provision in this bill states that the parties will only have 10 days to move to strike a commissioner commencing from when the order appointing the commissioners is signed by the court. Since this bill now imposes a time limit on the parties to strike a commissioner, it must be dictated as to how the parties are to receive immediate notification of when the appointment of commissioners was made by the court. A possible solution would be if the clerk of court is directed to inform the parties electronically no later than three days after the judge signs the order appointing the commissioners. That would at least provide a safeguard to the parties so they will know when their ten-day deadline to strike a commissioner commences. The committee should remember that often the date a court order is signed does not mean the parties receive notice of that order on the same day. The bill needs to give parameters to the court to establish a method to provide immediate notice to the parties of when commissioners are assigned or when a strike of a commissioner is granted.

- B. The legislation would also set a three-day timeline for the other parties to strike a commissioner after the initial strike of a commissioner is filed. The bill states that the three days begin when the party files the initial strike. I suggest it should state that the three days begins after service to all parties is perfected of the filing of the initial strike. That way, no party is caught off guard and misses their three-day window because they did not know the exact day a strike was filed. Once again, the committee must keep in mind that the parties are typically not notified by the clerk of court on the exact day that the judge signs an order or a strike is filed.
2. HB 2730 seeks to amend Section 402.031 of the Government Code to include filing a complaint with TREC to report alleged misconduct by a registered easement or right-of-way agent. The City's agents are not required to maintain a license under TREC, so this provision should not be enforceable against the City's employees. The landowner's bill of rights will also include an addendum of the terms required in a conveyance instrument under Sec. 21.0114(c) of the Property Code. The amendment provides that this conveyance instrument and all its requirements are applicable to certain private entities. Since the City is a public entity, this is inapplicable and may confuse property owners when the City's deeds do not comply with this new requirement of what's to be in the Landowner Bill of Rights ("LBOR").
 3. Section 21.0113 provides additional requirements of items to be contained in the initial and final offers by requiring a) LBOR including the addendum prescribed by Sec. 402.031(c-1), b) the compensation in bold font or larger font indicating any damages to the remainder or an appraisal including damages to the remainder, c) a conveyance instrument that complies with Sec. 21.0114 of the Texas Property Code unless the entity previously provided the conveyance instrument complying with the section, the property owner desires to use a different instruments, or the property owner provided the entity with the instrument prior to the initial offer, and the name and phone number of the appropriate point of contact for the entity. These additional changes would be burdensome on the City, affect how the City drafts its own conveyance instruments, and cause the Initial and Final offer process to be more onerous and time consuming. It will slow the acquisition process and it is unclear how this benefits the landowner.

Sincerely,

/s/ Steven Beard

Steven Beard, City of Houston - Legal Department