

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

May 24, 2007

TO: Honorable Tom Craddick, Speaker of the House, House of Representatives

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB2006 by Woolley (Relating to the use of eminent domain authority.), **As Passed 2nd House**

The amount of additional costs and overall negative fiscal impact to a condemnor under the provisions of the bill would vary by condemnor and by case, and therefore the fiscal impact to the state cannot be estimated.

The bill would amend the Government Code, the Local Government Code, and the Property Code relating to procedures for the state or a political subdivision of the state to exercise the power of eminent domain. Included in those procedures would be the requirement for a governmental entity to authorize the initiation of the condemnation proceedings at a public meeting by a record vote. In addition, an entity with eminent domain authority that wants to acquire real property for a public use would be required to make a bona fide offer to acquire the property from the owner voluntarily. If a court hearing a suit related to eminent domain proceedings finds that the condemning entity did not make a bona fide offer to acquire the property from the owner voluntarily, the court would be required to abate the suit and order the condemnor to make a bona fide offer. If a court hearing a suit finds the condemnor violated Chapter 10, Civil Practices and Remedies Code, the court shall order the condemnor to pay all costs and any reasonable attorney's fees incurred by the property owner.

The bill would add specifications to the evidence related to the value of property being condemned that the special commissioners must consider when assessing actual damages to a property owner from a condemnation.

Under provisions of the bill, the repurchase price of property acquired under eminent domain would be the price paid to the owner by the governmental entity at the time the property was acquired, whereas under current statute, the repurchase price is the fair market value of the property at the time the public use is canceled.

The bill would amend Chapter 21 of the Property Code to alter how damages would be calculated by special commissioners regarding a tract or parcel of real property condemned for use related to control of access on all state highways, whether on controlled access facilities or on non-controlled facilities where control of access is implemented through police power for safety reasons. The bill would require the special commissioners to consider damages for loss of access or diminished access to the extent that it affects the present market value of the real property, including any factors considered when determining actual fair market value of property for ad valorem tax purposes.

According to analysis by the Texas Department of Transportation, the bill would require the state to make payment for damages that are not compensable under current law, and therefore would result in a substantial fiscal impact to the State Highway Fund. The size of the impact would be determined on a parcel by parcel basis and cannot be estimated.

The bill would amend the Natural Resources Code regarding the procedures that must be followed by a common carrier when exercising the power of eminent domain. A common carrier would be required to serve the owner of the property to be acquired with advance notice by regular mail and certified mail, return receipt requested, that the carrier intends to initiate condemnation proceedings. In

addition to the requirement for a common carrier to notify the owner of the property to be acquired, the provisions of the bill would prohibit the special commissioners in an eminent domain proceeding from scheduling a hearing to assess damages before the 30th day after the date of the special commissioners' appointment and would require the special commissioners to notify the property owner of the scheduled hearing.

The Property Code would be amended to require certain entities authorized by law to acquire property through the use of eminent domain to produce certain information within specified timeframes. If the entity does not comply, the attorney general may file an action and if the court determines a violation occurred, the court may award the attorney general reasonable expenses incurred.

The bill would amend Chapter 13, Water Code to authorize certain water and sewer utilities to acquire by condemnation only easements or lesser property interests reasonably necessary to comply with federal and state regulations relating to sanitation. A water and sewer utility would not be allowed to exercise the power of eminent domain in a municipality with a population of 1.7 million or more (City of Houston) or in its extraterritorial jurisdiction. Under Chapter 13, a "water and sewer utility" does not include a municipal corporation or a political subdivision of the state, except an affected county.

The bill would add to district court fees and costs, court costs for each special commissioner in an eminent domain proceeding as taxed by the court, \$10 or more, and would add to district court and to statutory county court fees and costs, court costs and attorney's fees as taxed by the court and as reasonable.

Not later than January 1, 2009, the comptroller would be required to identify all public and private entities with eminent domain authority and make recommendations to the legislature and the governor regarding listed issues concerning those entities and their eminent domain authority.

The bill would take effect on September 1, 2007, except for those sections of the bill that relate to the amount of the repurchase price of property previously taken by eminent domain but for which the public use has expired. Those sections would take effect on the date on which the constitutional amendment proposed by the Eightieth Legislature, Regular Session, 2007, takes effect. If that amendment is not approved by the voters, those sections of the bill would have no effect.

Based on the analysis of the Texas Department of Transportation, it is assumed the provisions of the bill would result in increased costs for the acquisition of highway right of way through condemnation. Because the factors considered in evaluating the value of the property to be condemned and estimating damages to a property owner would vary by case, any additional costs or negative fiscal implications to the state cannot be determined.

The Office of the Attorney General estimates that requirements in the bill that would affect the office could be absorbed utilizing existing resources.

It is anticipated that the provisions affecting the Comptroller of Public Accounts can also be implemented utilizing existing resources.

Local Government Impact

As with the state impact, the negative fiscal impact to units of local government related to changes to the Government Code, the Local Government Code, and the Property Code would vary depending on the number of situations in which the entity would seek to exercise its eminent domain authority, costs associated with and imposed by court proceedings, and the number of parcels of land involved in initial condemnation or in repurchase by the previous owner or their heirs. Actual amounts are not known, but as an example, Harris County reports having condemned 460 parcels at an aggregate market value of \$108 million between calendar years 2002 and 2006.

Regarding costs associated with damages for loss of access or diminished access to highways, the Harris County Toll Road Authority reports that paying damages when access has been denied, even temporarily, has cost about \$500,000 per tract. The authority estimates that it would incur additional costs of \$1 billion over a five-year period as a result of the provisions of the bill. Harris County has

plans to build 100 miles of toll roads during that period.

Both the Texas Municipal League and the Texas Association of Counties report that proposed changes in the bill to the Government Code, the Local Government Code, and the Property Code would result in significant cost increases for municipalities and counties.

Proposed changes to the Natural Resources Code are not expected to have a significant fiscal impact on units of local government.

Regarding the proposed changes to the Water Code, according to analysis provided by the Texas Rural Water Association and the Texas Municipal Utility Association, no significant fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 601 Department of Transportation

LBB Staff: JOB, KJG, SD, WK, MW, TG, DB