

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

March 25, 2009

TO: Honorable Dennis Bonnen, Chair, House Committee on Land & Resource Management

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

IN RE: HB1483 by Pitts (Relating to the use of eminent domain authority.), **As Introduced**

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

The bill would amend the 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 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 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 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, 2009.

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.

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 reported in 2007 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, Harris County estimates costs would reach about \$220 million each year for the next five fiscal years, and undeterminable costs associated with flood control project opportunities.

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: 304 Comptroller of Public Accounts, 455 Railroad Commission, 601 Department of Transportation

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