

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

March 28, 2009

TO: Honorable Robert Duncan, Chair, Senate Committee on State Affairs

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

IN RE: SB18 by Estes (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 to require a state or local governmental entity to hold a public meeting and gain a record vote prior to initiating a petition for a condemnation proceeding. If more than one member of a governing body objects to adopting an ordinance for all units of property in a condemnation proceeding, a separate record vote must be taken for each unit of property. The bill also directs district and county courts to collect certain court costs.

The bill would amend the Property Code relating to eminent domain concerning bona fide offers, repurchase offers, producing information, court jurisdiction and costs, diminished access to property, and assistance to effected property owners.

If a portion of property is condemned for the use, construction, operation, or maintenance of the state highway system or of a county toll project that is part of a state highway system, the special commissioners must consider the diminished access to the highway when determining the actual fair market value of the property for ad valorem taxes. A condemning entity could be held liable for a property owner's court costs and attorney fees for certain violations.

The bill would amend the Natural Resources Code regarding procedures for condemnations initiated by a common carrier. The bill would also amend the Water Code regarding procedures for easement or lesser property interest condemnations initiated by a water and sewer utility.

The bill would require the Comptroller of Public Accounts, not later than January 1, 2011, to identify all public and private entities with eminent domain authority and make recommendations to the Legislature regarding the use of this authority.

The bill would repeal Section 552.0037, Government Code, and Section 21.024(i), Property Code.

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

It is anticipated that the fiscal impact to local governmental entities could be significant and would vary depending on several factors: (1) the restriction on counties to regulate the placement of driveways and other access points to its roads; (2) the right to repurchase land within 10 years after condemnation, which would impair a county flood control district's ability to plan and implement major flood control projects; (3) the number of tracts of land involved, because a commissioners court

would be required to vote on each tract, causing an additional administrative burden on the courts and staff; and (4) whether a property owner whose property is acquired through eminent domain for the purpose of creating an easement would choose to construct items listed in the bill above the easement, causing additional expenses to a local governmental entity to make repairs to those constructed items when accessing utilities such as a buried pipeline under the easement.

Harris County reported the diminished access requirements would result in an additional \$10 million for every mile of toll road built, amounting to \$1 billion over a five-year period. Other counties with toll roads may experience the same fiscal impact as Harris County. Harris County also stated the issue is very problematic to their county, and to other counties that have installed toll roads or plan to in the future.

The Northeast Texas Municipal Water District (NTMWD) reported the cost of acquiring easements by eminent domain would depend on how frequently condemnation proceedings are used to acquire property. The NTMWD stated the entity recently acquired more than 30 miles of easement without any condemnations. There were over 150 tracts, with many tracts having multiple owners. If owners had initiated condemnation proceedings, the cost to acquire the easements would have been significant to comply with the provisions of the bill.

Other counties, including Comal, Dallas, Fort Bend, Tarrant, Tom Green, Williamson, and Washington, reported the provisions of the bill would not have a significant fiscal impact.

Source Agencies: 304 Comptroller of Public Accounts, 305 General Land Office and Veterans' Land Board, 601 Department of Transportation, 710 Texas A&M University System Administrative and General Offices, 720 The University of Texas System Administration, 802 Parks and Wildlife Department

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