

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

April 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.), **Committee Report 1st House, Substituted**

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, there would be an indeterminate fiscal impact to the state.

The bill would amend the Government Code relating to certain easement limitations for property owners constructing streets or roads across the easement. The bill would also 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 would also amend the Government Code to require public and private entities with eminent domain power to submit to the Comptroller of Public Accounts (CPA), by December 31, 2010, a letter describing the entity's eminent domain authority. Eminent domain authority would expire on September 1, 2011 for entities that did not submit this letter to the CPA. The bill requires the Texas Legislative Council to prepare statute changes for a future legislature to consider that reflect eminent domain authority expirations of various entities.

The bill would amend the Property Code relating to eminent domain concerning appraisal disclosure, initial offers, confidentiality, bona fide offers, condemnation petitions, damage assessment by special commissioners, repurchase offers, producing information, court jurisdiction and costs, impairment of direct access to property, and assistance to effected property owners.

The bill would amend the Transportation Code relating to standards for determining the fair value of the state's interest in access rights to a highway right-of-way.

The bill would repeal Section 552.0037, Government Code, Section 21.024, Property Code, and Section 49.2205, Water Code.

Based on the analysis of the Texas Department of Transportation, it is assumed the bill would result in increased costs for the acquisition of highway right of way through condemnation, primarily due to the repurchase and the new access provisions. 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.

If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2009.

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 governmental entity 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 provisions of the bill would result in additional costs for property owner damage compensation, and the costs of repurchasing property, even if substantial progress was made within the 10 year limit on a project for which condemnation was sought.

The Northeast Texas Municipal Water District (NETMWD) reported the costs would depend on how often condemnation proceedings are used to acquire property, but those events are expected to continue to be rare; therefore, the costs to the district are not anticipated to be significant.

The San Antonio Water System reported the costs of implementing the provisions of the bill would be an estimated \$64,000 for fiscal year 2010 for the creation of a database to track appraisals, and for one additional employee, including salary and benefits.

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

LBB Staff: JOB, PJK, KJG, SD, TP, DB