

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

May 20, 2005

TO: Honorable Kenneth Armbrister, Chair, Senate Committee on Natural Resources

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

IN RE: HB2833 by Cook, Robby (Relating to the protection of private real property from regulatory takings.), **Committee Report 2nd House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill defines "takings" and revise regulations and governmental actions that affect private real property. The bill adds protections for private real property from regulatory takings and deadlines for filing suit, protects action taken by a municipality relating to specific regulations, and limits home-rule municipalities, with a population of more than 1.1 million, who rely on a sole source aquifer, to redefine "takings" to limit overall use of an owner's private real property to not less than 30 percent of the surface area of the property. Additional exemptions are added for certain specified governmental actions.

This Act takes effect immediately if it receives a vote of two-thirds of all the members of each house, otherwise this Act takes effect on September 1, 2005.

The proposed legislation will likely result in new complaints, investigations and cases by the Office of the Attorney General. However it is projected that this increase could be absorbed by current resources.

Local Government Impact

According to the Texas Municipal League, costs to local governments to implement the provisions of the bill would vary. There would be costs associated with preparing the takings assessments, certifying that all actions meet the requirements established by the attorney general, and providing sufficient notice to citizens. Additionally, if a private real property owner brings suit, a local government would have to bear the costs of legal fees.

The financial impact on cities is anticipated to be substantial, especially in fast-growing areas of the state. Municipal land use regulations are implemented and changed frequently pursuant to the demands of city residents. Each implementation or change could result in a twenty-five percent reduction in value to property. Thus, a city would be prudent to prepare a takings impact assessment for each regulation rather than subject the regulation to challenge.

Compliance with the takings impact assessment provisions alone could range from \$12,000 to over \$500,000 per year for advertising, preparation of assessments, and legal fees. If a city must defend a regulation in court, the costs of attorneys and consultants would also be included.

Further, certain city regulations may qualify as a taking under the bill, which would require compensation by the city. The costs are expected to be high, although they are difficult to quantify because no such requirement has as yet been applied to cities. Also, the uncertainty created by the bill could result in high legal fees to determine whether appraisals are correct and whether, in fact, property value was reduced by more than twenty-five percent.

Source Agencies: 302 Office of the Attorney General

LBB Staff: JOB, KJG, WK, MS