

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION**

**April 11, 2005**

**TO:** Honorable Anna Mowery, Chair, House Committee on Land & Resource Management

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

**IN RE: HB3017** by Orr (Relating to the procedure for initiating and the award of certain costs in eminent domain proceedings. ), **Committee Report 1st House, Substituted**

**No significant fiscal implication to the State is anticipated.**

The bill would require an entity with eminent domain authority that wants to acquire real property for a public use to perform an appraisal of the property before an offer to purchase is made and to share that appraisal with the property owner. However, if the property to be acquired is less than 2,000 square feet, an appraisal is not required unless requested by the property owner. The bill stipulates what the appraisal report should consider in determining the property's value.

In addition, the bill would authorize a court hearing a suit, if it finds that the condemning entity did not make a good faith offer regarding exercising eminent domain, to require the entity to pay all costs of defending against the entity's exercise of eminent domain, including reasonable attorney's fees and expert witness fees, incurred by the property owner. An award of fees would be limited in the aggregate to no more than \$250,000. The bill would establish that evidence of an appraisal produced for the property owner at the time of the offer would be considered prima facie evidence that the offer and negotiations were conducted in good faith.

The bill would also add to the list of district court fees and costs to be imposed, those determined by the court in an eminent domain proceeding.

The bill would take effect September 1, 2005 and would apply only to a condemnation proceeding initiated on or after that date.

There are both state and local government entities that are authorized to exercise the power of eminent domain. The Texas Department of Transportation (TxDOT) is an example of a large state agency that exercises eminent domain for the construction of highways throughout the state. According to TxDOT, the agency already follows the procedures described in the bill; therefore, the agency anticipates no fiscal impact if the bill is enacted.

The Office of Attorney General (OAG), the agency that represents state agencies in legal matters such as defending eminent domain, indicates that the "good faith offer" and "good faith negotiations" aspects of the bill may result in an increase in the number of suits brought regarding eminent domain; however, the agency anticipates that it could absorb any additional workload using existing resources.

**Local Government Impact**

Entities with eminent domain authority that do not presently acquire an appraisal prior to exercising eminent domain would incur the costs of an appraisal. According to a sampling of small municipalities, the cost for appraisals could range from \$1,200 to \$5,000 per case. Other impact would vary by entity and would also depend on whether the entity is successful if its actions are challenged in court.

If an act of eminent domain is challenged and the court finds in favor of the property owner, the

condemning entity would incur additional costs for court, expert witness fees, and attorney's fees, not to exceed \$250,000 per case.

Harris County, as the largest local governmental entity in the state, indicates that approximately 120 condemnation suits are filed there each year. The county already performs an appraisal prior to an offer and negotiations. In about one-half of the cases the county experienced prior to the Supreme Court's ruling in *Hubenak v. San Jacinto Gas Transmission Company*, 141 S.W.3d 172 (Tex. 2004) the landowner raised "bad faith" as an issue. Following the ruling in that case, the county has seen a decrease in the number of cases filed based on bad faith allegations. The county assumes that provisions of the bill related to using good faith determinations would reverse that trend and increase the number of cases the county would have to defend in court by at least 60 in fiscal year 2006, significantly increasing the county's costs associated with eminent domain even if the county is successful in defending against those challenges.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council, 302 Office of the Attorney General, 601 Department of Transportation

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