

BILL ANALYSIS

H.B. 1387
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Land & Resource Management
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Currently, school districts may condemn property through the power of eminent domain on any property without conducting a feasibility study. As a result, property may be acquired through the power of eminent domain that is later found not to be needed for the intended use. For example, a school district (after acquiring the property) may find a better location for the project, or may find that it has condemned too much property for the project.

The purpose of H.B. 1387 is to require a school district to conduct a feasibility study prior to the condemnation of property in an attempt to ensure that the district is condemning only that property that they need and will use.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

SECTION 1. *Amends Section 11.155, Education Code, by adding Section (a-1), as follows:*

Requires a school district that intends to acquire title to real property under Section 11.155, Education Code (titled EMINENT DOMAIN), to provide for a study as prescribed by the new Section 11.1551, Education Code, as added by SECTION 2 of this bill, to determine the feasibility of acquiring title to the property.

SECTION 2. *Amends Subchapter D, Chapter 11, Education Code, by adding Section 11.1551 as follows:*

Titles the new Section FEASIBILITY STUDY REQUIRED TO ACQUIRE TITLE BY EMINENT DOMAIN.

Defines "permit" to mean a license, certificate, approval, registration, consent, permit, contract, or other form of authorization required by law, rule, regulation, order, or ordinance before a person may perform an action or initiate, continue, or complete a project for which the permit is sought.

Requires a school district to order a feasibility study before it may acquire title to real property under Section 11.155, Education Code.

Requires the feasibility study to be performed by an engineer licensed under Chapter 1001, Occupations Code, or an architect registered under Chapter 1051, Occupations Code.

Requires the feasibility study to include the following:

A comparative analysis of available sites in the geographic area in which the school district intends to acquire real property;

An analysis, including a demographic analysis if the property is intended as the site of an instructional facility, to determine whether the district will need the property on or before the third anniversary of the date the study is completed;

A site analysis identifying any physical feature of a proposed site or the surrounding area that may affect development;

An analysis of zoning, platting, and comprehensive plan requirements and restrictions affecting a proposed site, including the costs of any necessary permits;

An analysis of water, sewer, gas, electric, and telecommunications availability for a proposed site and the cost of providing those services;

An analysis of roadway access and master thoroughfare plan requirements for a proposed site and the cost of any necessary extensions, including the cost of acquiring right-of-way access;

An analysis of wetlands, waters of the United States, and floodplains that may affect a proposed site, including an estimate of the cost to mitigate or reclaim the site;

An analysis of drainage patterns and requirements affecting a proposed site, including the cost of providing any necessary drainage;

An analysis of conceptual grading plans for a proposed site, including total earthwork requirements and the estimated cost of site development;

A summary of any permits required for development of a proposed site; and

A cost-benefit analysis that:

Summarizes the overall cost to the school district of acquiring and developing a proposed site; and

Accounts for any loss of tax revenue to each taxing unit as defined by Section 1.04, Tax Code, in which the proposed site is located that would result from converting taxable development property, based on projected land use as shown on existing zoning or comprehensive plans, to public use.

Requires the study to provide an adequate justification for immediate acquisition of the property if a determination is made under Subsection (d)(2) that the property will not be needed before the third anniversary of the date the study is completed. Subsection (d)(2) requires an analysis, including a demographic analysis if the property is intended as the site of an instructional facility, to determine whether the district will need the property on or before the third anniversary of the date the study is completed

Requires that for purposes of Subsection (d)(11)(A) (of the new Section 11.1551, Education Code), if property is currently being developed, the study to account for, as district costs, accrued interest charges and the costs of consultants, attorneys, studies performed, zoning changes, permit processes, plan preparation, and any other reasonable costs of

development that have accrued to the owners of the property or their successors or assigns. In this subsection, property currently being developed is any property for which a permit has been obtained, property that is included in a municipal annexation plan or proposed for annexation, and property that is undergoing physical development.

SECTION 3. Provides that the change in law made by this Act applies to a petition to condemn property that is filed on or after the effective date of this Act. A petition to condemn property that is filed before the effective date of this Act is governed by the law in effect when the petition was filed, and the former law is continued in effect for that purpose.

SECTION 4. Effective Date.

EFFECTIVE DATE

September 1, 2007.