

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

April 3, 2007

TO: Honorable Kip Averitt, Chair, Senate Committee on Natural Resources

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

IN RE: SB1677 by Hegar (Relating to conservation easements created by governmental action.), **As Introduced**

There could be a negative fiscal impact to the state as a result of implementing the provisions of the bill; the amount of the impact would depend on costs associated with the number of suits filed against a state agency, the outcome of those suits, amounts of judgments against the agency, and loss of revenue from any potential reduction in the number of permits that could be issued.

The bill would add Subchapter D to Chapter 2007 of the Government Code to specify the conditions under which a governmental action creates a conservation easement on an owner's property. The bill would establish a process by which such an owner could file suit in district court to contest the easement. The district court judge would be required to issue a finding determining the value of the easement and granting the governmental entity that created the easement the option to void the creation of the conservation easement or compensate the property owner for the easement. For the purposes of the bill, a governmental entity includes agencies within the executive branch of Texas state government and political subdivisions.

The bill would apply only to a governmental action that commences on or after the effective date of the bill. The bill would take effect immediately if it were to receive the required two-thirds vote in each house; otherwise, it would take effect September 1, 2007.

While the bill provides exceptions for applicability of the provisions in Subchapter D, if a suit is filed and the court finds in favor of the property owner, the governmental entity would incur legal costs and could incur costs associated with compensating the property owner. Amounts would depend on the judgment of the court.

In addition, the Texas Commission on Environmental Quality (TCEQ), indicates the provisions of the bill could adversely affect the issuance of permits, which would reduce revenue. If the agency is unable to pay for easements to enforce agency rules regarding buffer zones or prohibitions on land use or to provide acceptable environmental alternatives to the easements, TCEQ may not be able to issue permits where buffers are required.

According to analysis by the Texas Department of Transportation (TxDOT), provisions of the bill would create a certain level of uncertainty and risk in the use of the condemnation process to acquire conservation easements. If the condemnation process is used by a governmental entity and the landowner files a lawsuit, additional time and money would be spent by TxDOT employees covering such an issue. In addition, legal fees and court costs would also be incurred.

Local Government Impact

There could be a negative fiscal impact to units of local government as a result of implementing the provisions of the bill; the amount of the impact would depend on costs associated with the number of suits filed against a local governmental entity, the outcome of those suits, and amounts of judgments against the entity.

Source Agencies: 580 Water Development Board, 582 Commission on Environmental Quality, 601
Department of Transportation

LBB Staff: JOB, WK, ZS, DB