

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

March 24, 2009

TO: Honorable Dennis Bonnen, Chair, House Committee on Land & Resource Management

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

IN RE: HB4 by Orr (Relating to eminent domain, including certain limitations, procedures, and standards relating to the use of eminent domain.), **As Introduced**

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 the fiscal impact to the state cannot be estimated.

SECTION 1 of the bill would amend the Government Code to require a governmental entity to authorize the condemnation at an open meeting by a record vote before proceeding with the condemnation. The bill would also cause an entity's eminent domain authority to expire on September 1, 2011, unless the entity submits to the Comptroller of Public Accounts a letter that identifies the source of the entity's eminent domain authority.

SECTIONS 2 through 11 of the bill would amend the Property Code to require:

- certain appraisal reports be sent by certified mail, return receipt requested;
- the entity's initial purchase offer to include fair market and damage estimates, including a statement that the owner has the right to request certain information from the entity, including information previously obtained about adjacent property;
- the entity to provide at least two written purchase or lease offers, and to negotiate in good faith;
- the entity, upon the property owner's request, to procure an appraisal by an appraiser chosen by the owner, at the entity's expense;
- that a judge appoint a special commission of three real property owners to assess damages, and;
- the entity to resell the property to the owner, his heirs or assigns, at the original price paid if the property is not used after 10 years.

The proposed change in statute would apply only to a condemnation proceeding in which the petition is filed 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, 2009.

The Legislative Council and the General Land Office reported that the requirements in the bill could be absorbed within existing resources. The Parks and Wildlife Department reported it has the authority to exercise powers of eminent domain, but by policy it does not do so.

The University of Texas System Office reported that if the UT System were to acquire property by eminent domain, that the bill will increase the cost of acquiring the property, although the precise effect depends on the particular property so acquired. Examples of additional cost are \$3,000 to \$10,000 for an appraisal and approximately 40 staff hours to research files of other properties nearby that were previously acquired or sought to acquire.

Based on the analysis of the Texas Department of Transportation (TxDOT), it is assumed the provisions of the bill would result in increased costs for eminent domain acquisitions. Because the factors considered in determining the number of appraisal requests by landowners and the number of court cases that TxDOT might be found to not negotiate in good faith would vary by case, any additional appraisal or legal costs or negative fiscal implications to the state cannot be determined.

Local Government Impact

The bill would amend the Government Code relating to eminent domain, including adding certain limitations, procedures, and standards relating to the use of eminent domain. The bill would have a significant fiscal impact on counties, and that impact could fluctuate greatly depending on the different circumstances in which a county is allowed to use its eminent domain authority. Several counties reported the fiscal impact associated with implementing the bill.

Harris County reported that the bill would impose cumbersome administrative burdens on their county and would reduce the flexibility in dealing with landowners on a case by case basis, limiting the number of negotiated settlements in eminent domain matters. The county pays a minimum of \$1,500 in appraisal fees for each property it buys, and additional fees are higher if a condemnation is filed on a property. An appraisal performed by an independent appraiser who does not regularly work or handle condemnation cases will cost more.

Williamson County reported that the bill would add additional administrative burdens on counties in dealing with eminent domain cases, and impose further delays in the process, driving up the cost of materials and supplies. Some eminent domain cases can take up to a year or more, and the average cost is around \$3,000 to \$7,000 per appraisal.

Fort Bend County reported the bill would require that each acquisition of property would require a separate appraisal, which would automatically drive up the appraisal costs.

The City of Fort Worth reported the bill would increase the costs of condemnation, and would give the landowner the right to receive an appraisal by the appraiser of the landowner's choice that would be paid for by the condemning entity. The second appraisal would be in addition to an appraisal conducted by the condemning entity, resulting in increased costs for delays while appraisals are being conducted.

The City of Mesquite reported the bill would add cost increases for staff time to ensure that all provisions and timetables are met. The city also estimates cost increases for additional or expedited appraisals, copies of related appraisals required to be provide to requesting property owners, additional certified mailings to property owners, litigation over certain provisions, and procedures to be met, such as whether or not the city negotiated in good faith.

Source Agencies: 103 Legislative Council, 304 Comptroller of Public Accounts, 305 General Land Office and Veterans' Land Board, 601 Department of Transportation, 720 The University of Texas System Administration, 802 Parks and Wildlife Department

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