

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 19, 2009

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

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

IN RE: SB18 by Estes (Relating to the acquisition of property by entities with eminent domain authority.), **Committee Report 2nd House, Substituted**

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, there would be an indeterminate fiscal impact to the state.

The bill would amend the Government Code relating to certain easement limitations for property owners constructing streets or roads across the easement. The bill would also require a state or local governmental entity to hold a public meeting and gain a record vote prior to initiating a petition for a condemnation proceeding. If more than one member of a governing body objects to adopting an ordinance for all units of property in a condemnation proceeding, a separate record vote must be taken for each unit of property.

The bill would also amend the Government Code to require public and private entities with eminent domain power to submit to the Comptroller of Public Accounts (CPA), by December 31, 2010, a letter describing the entity's eminent domain authority. Eminent domain authority would expire on September 1, 2011 for entities that did not submit this letter to the CPA. The bill requires the Texas Legislative Council to prepare statute changes for a future legislature to consider that reflect eminent domain authority expirations of various entities.

The bill would amend the Local Government Code, and repeal sections, regarding procedures a municipality must follow when identifying property as having the characteristics of blight and before exercising powers of eminent domain.

The bill would amend the Property Code relating to eminent domain concerning easement limitations, appraisal disclosure, initial offers, confidentiality, bona fide offers, condemnation petitions, damage assessment by special commissioners, repurchase offers, producing information, court jurisdiction and costs, impairment of direct access to property, and assistance to effected property owners.

The bill would also amend the Property Code to require the special commissioners when assessing actual damages and for estimating injury or benefit to a property owner from a condemnation to admit evidence regarding the impact the condemnation would have on the property owner's standard of living if the owner has to move or move their farm as a result of the condemnation. 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.

Although the requirements for the special commissioners to take the issues addressed in the bill into consideration would in and of itself have no direct fiscal implication to the state or to units of local government, a decision by the special commissioners that the government entity exercising eminent domain must compensate the property owner to restore the property owner's standard of living to the level that existed prior to the taking, could result in additional and possibly significant costs to the government entity. Those costs would depend on the number of property owners involved and the costs involved in restoring the standard of living.

The bill would also amend the Property Code to require a department, agency, instrumentality, or political subdivision of this state to provide a relocation advisory service for an individual, family, business concern, farming or ranching operation, or nonprofit organization being displaced by the exercising of powers of eminent domain. This state or a political subdivision of this state would be required to pay moving expenses and rental supplements, make relocation payments, provide financial assistance to acquire replacement housing, and compensate for expenses incidental to the transfer of the property if an individual, family, business concern, farming or ranching operation, or nonprofit organization would be displaced in connection with acquisition of property. Under current statute, payment of these costs by the state or political subdivisions acquiring the property is optional.

The bill would amend the Tax Code to authorize a municipality or a county to exercise any power necessary and convenient to carry out provisions of Chapter 311, Tax Code, to include consistent with the project plan for a reinvestment zone to acquire by condemnation any interest, including a fee simple interest, in real property that is a blighted area and necessary for the reinvestment zone, but only if the taking is in accordance with Chapter 2206, Government Code, which places limitations on the use of eminent domain.

The bill would amend the Transportation Code relating to standards for determining the fair value of the state's interest in access rights to a highway right-of-way.

The bill would add Section 7 to Article 3183b-1, Texas Revised Civil Statutes regarding eminent domain power for certain nonprofit charitable corporations, which are not a governmental entity.

The bill would repeal Section 552.0037, Government Code, Section 374.003(19) and Section 374.016, Local Government Code, Section 21.024, Property Code, Section 311.008(c), Tax Code, and Section 49.2205, Water Code.

Based on the analysis of the Texas Department of Transportation, it is assumed the bill would result in increased costs for the acquisition of highway right of way through condemnation, primarily due to the repurchase and the new access provisions. Because the factors considered in evaluating the value of the property to be condemned and estimating damages to a property owner would vary by case, any additional costs or negative fiscal implications to the state cannot be determined.

This Act takes effect September 1, 2009.

Local Government Impact

The negative fiscal impact to a political subdivision relating to the acquisition of and compensation for real property would vary depending on the number of property acquisitions for which the additionally listed costs would be required, and therefore cannot be determined; however, according to the Texas Association of Counties and the Texas Municipal League, it could be significant.

Additionally, other provisions of the bill would also have a negative fiscal impact that could be significant and would vary depending on several factors: (1) the restriction on counties to regulate the placement of driveways and other access points to its roads; (2) the right to repurchase land within 10 years after condemnation, unless actual progress is made to the property under Section 21.101, which would impair a county flood control district's ability to plan and implement major flood control projects; (3) the number of tracts of land involved, because a governmental entity would be required to vote on each tract, causing an additional administrative burden on the courts and staff; and (4) whether a property owner whose property is acquired through eminent domain for the purpose of creating an easement would choose to construct items listed in the bill above the easement, causing additional expenses to a local governmental entity to make repairs to those constructed items when accessing utilities such as a buried pipeline under the easement.

Harris County reported the provisions of the bill would result in significant additional costs for property owner damage compensation, the costs of repurchasing property. Harris County also stated the diminished access requirements would result in an additional \$1 million for every mile of toll road built.

The Northeast Texas Municipal Water District reported the costs would depend on how often condemnation proceedings are used to acquire property, but those events are expected to continue to be rare; therefore, the costs to the district are not anticipated to be significant.

The San Antonio Water System reported the costs of implementing the provisions of the bill would be an estimated \$64,000 for fiscal year 2010 for the creation of a database to track appraisals, and for one additional employee, including salary and benefits.

The Austin Water Utility reported the costs to implement SECTION 32 relating to eminent domain power for a Municipal Utility District (MUD) outside of the MUD boundaries, and SECTION 34 relating to the repeal of Section 49.2205 of the Water Code relating to water districts and water supply corporations to provide easements for energy related projects are not anticipated to be significant.

The Nottingham Country Municipal Utility District reported the costs to implement the provisions of the bill are not anticipated to be significant.

The bill would amend the Water Code to include road projects and additional recreational facilities to the list of items that a water district may not exercise the power of eminent domain outside the district boundaries.

Source Agencies: 304 Comptroller of Public Accounts, 305 General Land Office and Veterans' Land Board, 601 Department of Transportation, 710 Texas A&M University System Administrative and General Offices, 720 The University of Texas System Administration, 802 Parks and Wildlife Department

LBB Staff: JOB, SZ, SD, PJK, KJG, TP, DB