

## LEGISLATIVE BUDGET BOARD

Austin, Texas

### FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

April 15, 2011

**TO:** Honorable David Dewhurst, Lieutenant Governor, Senate

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

**IN RE: SB18** by Estes (Relating to the use of eminent domain authority.), **As Passed 2nd House**

**There would be an indeterminate cost to the state from the provisions of the bill.**

The bill would amend Government Code, Property Code, Transportation Code, and Water Code related to the scope and process of private property condemnation under the power of eminent domain. Due to the number of project specific variables involved in state property acquisitions and an unknown projected number of such projects during the 2012-13 biennium, any additional costs or negative fiscal implications to the state cannot be determined. The bill also amends Vernon's Texas Civil Statutes regarding the eminent domain authority of certain charitable corporations in obtaining a residential property. The bill would take effect September 1, 2011.

Based on an analysis by state agencies, it is anticipated the bill would result in increased costs for the acquisition of property through condemnation proceedings, specifically those related to highway right-of-way projects and actions by institutions of higher education. Due to the case by case impact of the bill's requirements on future condemnation proceedings, the fiscal cost cannot be determined.

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 right of repurchase provisions and the creation of new standards for the determination of damages for access and assessment of attorney and professional fees. Because the factors considered in evaluating the value of the property to be condemned and estimating damages to a property owner would vary case by case, any additional costs or negative fiscal implications to the state cannot be determined.

Institutions of higher education also reported anticipated increased costs to property acquisitions given the provisions of the bill. These additional costs include: additional record keeping and document storage requirements; obligations to make offers for property at or above appraisal values; loss of investment value from property repurchased by previous owners; and the payment of relocation services and expenses for persons displaced by the transfer of the property to the condemning entity. The fiscal impact of these requirements is indeterminate because the number and type of condemnation proceedings to be conducted during the 2012-13 biennium is unknown.

#### **Local Government Impact**

It is anticipated that the fiscal impact to local governmental entities 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.

According to the Texas Association of Counties (TAC), the fiscal impact on counties that condemn and acquire properties could be significant. However, it is impossible to determine how many properties would be acquired through the condemnation process and the value of those properties. In addition, it is also impossible to know how many properties acquired through the condemnation process that would have to be acquired through another process in the future. Therefore, it is not possible to quantify the extent of the fiscal impact on counties.

According to the Texas Municipal League (TML), the negative fiscal impact to a political subdivision relating to the acquisition and compensation for real property could be significant, but would vary depending on the number of property acquisitions for which the additionally listed costs would be required, and therefore cannot be determined.

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

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