

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

April 2, 2017

TO: Honorable Joan Huffman, Chair, Senate Committee on State Affairs

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: SB740 by Kolkhorst (Relating to the acquisition of property by an entity with eminent domain authority.), **As Introduced**

There is an indeterminate fiscal impact to the state from the provisions of the bill due to the case by case nature of the requirements on future condemnation proceedings.

The bill would amend the Property Code related to certain eminent domain actions and in certain cases requires the condemning entity to reimburse the attorney and expert fees of the condemnee if the Special Commissioner's award or Final Judgment in Condemnation is at least 20 percent greater than the condemner's final offer. The bill amends the Tax Code to change the date used to calculate the amount of tax due on a property acquired under a possession and use agreement entered into under threat of condemnation to be the effective date of the agreement.

Based on the analysis of the Department of Transportation, it is assumed the bill would result in increased costs for the acquisition of highway right-of-way through condemnation due to the requirement that a condemner pay the landowner's reasonable attorney and expert fees if the Special Commissioner's award or Final Judgment in Condemnation is at least 20 percent greater than the condemner's final offer.

Because of the factors considered in evaluating the value of the property to be condemned, estimating damages to a property owner would vary case by case. In addition, the number of condemnation proceedings that will occur during the 2016-19 biennium is unknown. As a result, any additional costs or negative fiscal implications to the state cannot be determined. It is anticipated the bill would result in increased costs for the acquisition of property through condemnation proceedings.

In addition, provisions of the bill could be read as waiving the sovereign immunity of the state as well as potentially require the Texas Department of Transportation to acquire insurance on all remainder properties for the lifetime of the highway rather than the current practice of the agency to self-insure.

The bill would take effect September 1, 2017.

Local Government Impact

According to the Texas Municipal League, 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.

According to the Texas Association of Counties, 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.

Source Agencies: 455 Railroad Commission, 601 Department of Transportation, 103 Legislative Council, 304 Comptroller of Public Accounts, 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

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