

LEGISLATIVE BUDGET BOARD
Austin, Texas

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

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: SB421 by Kolkhorst (Relating to the acquisition of real 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 regarding procedures for eminent domain actions. The bill would create a new scheme of procedural requirements for actions undertaken by a private entity, including public meetings and notices, petition requirements, and limitations on certain communications. The bill would require the Office of the Attorney General (OAG) to create and to publish a form for the required deed terms and would permit the OAG to sue to enforce all new procedural and deed requirements. The bill would add three new categories of damages that special commissioners could consider when assessing compensation for a condemnation case; these categories of damages would be applicable to all entities with the power of eminent domain, whether public or private.

According to the Office of Court Administration (OCA), the bill would require several new duties for certain courts. Although OCA tracks the number of eminent domain cases filed in a given year, its case numbers do not account for initial offering made by private entities nor distinguish between condemnation cases filed by a government unit or by a corporation with the power of eminent domain. Courts may see increased costs associated with holding, facilitating, and certifying the meetings required by the bill, but OCA cannot estimate these costs because it lacks information on the number of initial offerings made. The agency anticipates that the impact may be significant in certain areas, while in other areas it may be able to be absorbed with existing resources.

According to the Department of Transportation (TxDOT) the bill would have a fiscal impact on the agency. The bill creates new specific special damages that a property owner can claim. According to the agency, allowing a landowner to claim these damages would reverse the treatment of them as "community damage," which currently is specifically disallowed. To reverse this standard would create the opportunity for the landowner to argue for an increase in damages on any parcel acquisition which leaves a remainder property. Because partial acquisitions account for the majority of TxDOT's acquired parcels the bill would create additional compensable damages to the remainder property that were not otherwise compensable. However, a fiscal impact cannot be determined.

According to the OAG, the bill would result in an increased number of condemnation cases that the agency would be involved in. The agency developed an estimate of historical increases in these types of cases and then projected an additional increase based upon the provisions of this bill. They estimate that the bill would result in 165 additional cases in fiscal year 2020, increasing to 218 additional cases in fiscal year 2024.

Because the nature of these cases is complex, according to the agency, the number of additional hours required would begin at 4,950 in fiscal year 2020 and rise to 6,540 in fiscal year 2024. This would entail an increase of 1 FTE Attorney General III positions and 3 FTE Attorney General I positions. Additional costs would include travel, capital equipment, and benefits.

Because the fiscal cost as assessed by OCA and TxDOT is significant but indeterminate, the overall cost of this bill cannot be determined.

Local Government Impact

According to OCA, the bill would require several new duties for certain courts. Although OCA tracks the number of eminent domain cases filed in a given year, its case numbers do not account for initial offering made by private entities nor distinguish between condemnation cases filed by a government unit or by a corporation with the power of eminent domain. Local courts may see increased costs associated with holding, facilitating, and certifying the meetings required by the bill, but OCA cannot estimate these costs because it lacks information on the number of initial offerings made. The agency anticipates that the impact may be significant in certain areas, while in other areas it may be able to be absorbed with existing resources.

According to the TxDOT, many local governmental entities have eminent domain authority similar to the agency, and TxDOT anticipates those entities would have the same undeterminable fiscal impacts as described by TxDOT. This local government impact cannot be determined.

According to Harris County, the bill would make it easier for attorneys representing landowners to argue for greater acquisition prices. According to the county, although the fiscal impact cannot be readily quantified, acquisition price increases would be expected to increase and there would be the potential for government projects being completed later as a result of increased litigation.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 302 Office of the Attorney General, 601 Department of Transportation

LBB Staff: WP, CMA, SD, GP, JMO, PBO, TG, AF