

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.), **Committee Report 1st House, Substituted**

According to the Department of Transportation, there would be an indeterminate fiscal impact to the State due to a possible reduction in highway construction and increase in amounts paid for right-of-way acquisition. For illustrative purposes, if right-of-way acquisitions in fiscal years 2020 and 2021 were to occur at similar rates to fiscal year 2019, the two-year estimated cost to the State Highway Fund and the Texas Mobility Fund is estimated to be \$416,480,000.

The bill would amend the Property Code regarding procedures for eminent domain actions. The bill would apply primarily to defined private entities with the power of eminent domain and would create a new scheme of procedural requirements for these entities, including public meetings and notices, petition requirements, and limitations on certain communications, for condemnation actions brought by those entities. The bill would specify required terms for deeds conveying real property and would create new categories of damages in condemnation actions to such private entities.

The bill would require that all condemning authorities (public or private) offer 145 percent of the amount of an appraisal report appraising market compensation for the property condemned and damages, if any, to any remainder property.

According to the Office of Court Administration (OCA), the bill would require that courts certify that private entities have complied with the new requirements of the law. OCA tracks the number of eminent domain cases filed in a given year; however, the agency's case numbers do not distinguish between condemnation cases filed by a government unit or by a corporation with the power of eminent domain. The agency anticipates the fiscal impact from the required certifications could be absorbed with existing resources.

According to the Office of the Attorney General (OAG), the bill would allow a court hearing a condemnation case to make a judicial fact-finding determination as to whether the condemning authority's offer is sufficient. It is uncertain whether this requirement would result in additional cases; however, OAG believes that any additional legal work resulting from the passage of this bill could be reasonably absorbed with current resources.

According to the Department of Transportation (TxDOT) the bill would have a negative fiscal impact on the agency. The provision of the bill that increases offer requirements to 145 percent of

an appraisal report would apply to the agency. The bill could also require TxDOT to pay for two appraisals for each parcel.

In fiscal year 2019, TxDOT estimates spending \$450,000,000 in right-of-way acquisition. TxDOT estimates that a 45 percent increase over the current required minimum offer would represent a minimum increase of \$202,500,000 per year.

In fiscal year 2018, TxDOT made 1,913 offers for parcels at an estimated \$3,000 per appraisal. Additional costs for the second appraisal required under the provisions of the bill would result in an estimated annual cost of \$5,740,000 per year.

Under current rates of parcel acquisition, the two-year estimated cost to the State Highway Fund and the Texas Mobility Fund to the state from the provisions of the bill is estimated by TxDOT to be \$416,480,000. Because of the substantial effective change in land valuations that would be caused by the provisions of the bill, however, it is assumed that there would be some combination of additional fiscal costs for right-of-way acquisition as well as reduced highway construction. As a result the actual fiscal cost to the State cannot be determined.

Local Government Impact

According to OCA, the bill would require that courts certify that private entities have complied with the new requirements of the law. OCA tracks the number of eminent domain cases filed in a given year; however, its case numbers do not distinguish between condemnation cases filed by a government unit or by a corporation with the power of eminent domain. The agency anticipates the fiscal impact from the required certifications to local courts could be absorbed with existing resources.

According to TxDOT, many local governmental entities have eminent domain authority similar to the agency, and TxDOT anticipates those entities would have the negative 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 greater acquisition prices due to characteristics of any infrastructure on the condemned property and limitation of future expansion on the remaining property. Although the fiscal impact cannot be readily quantified, acquisition price increases would be expected as would the potential for government projects being completed later as a result of increased litigation. The bill would also require that the county make offers 145 percent above market value which would significantly increase costs. The bill would require the condemning authority to obtain an appraisal from an appraiser selected or approved by the landowner and could delay the acquisition process if the landowner chose to not supply one.

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

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