

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION

April 19, 2023

TO: Honorable Brian Birdwell, Chair, Senate Committee on Border Security

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: SB1481 by Creighton (Relating to the exercise of eminent domain authority by the Texas Facilities Commission to build a wall along this state's international border.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for SB1481, As Introduced : a negative impact of (\$4,232,224) through the biennium ending August 31, 2025.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five- Year Impact:

<i>Fiscal Year</i>	<i>Probable Net Positive/(Negative) Impact to General Revenue Related Funds</i>
2024	(\$2,194,692)
2025	(\$2,037,532)
2026	(\$2,037,532)
2027	(\$2,037,532)
2028	(\$2,037,532)

All Funds, Five-Year Impact:

<i>Fiscal Year</i>	<i>Probable Savings/(Cost) from General Revenue Fund 1</i>	<i>Change in Number of State Employees from FY 2023</i>
2024	(\$2,194,692)	16.0
2025	(\$2,037,532)	16.0
2026	(\$2,037,532)	16.0
2027	(\$2,037,532)	16.0
2028	(\$2,037,532)	16.0

Fiscal Analysis

The bill would grant the Texas Facilities Commission (TFC) the power of eminent domain for the purpose of acquiring real property to construct a border wall along the Texas-Mexico border.

The bill would allow TFC to build a wall for the purpose of preventing human trafficking and certain illegal entry into the United States.

The bill would allow TFC to exercise the power of eminent domain to acquire land in fee simple or any interest less than fee simple in, on, under, or above land, including easement, right-of-way, or right to use of airspace or

subsurface space.

The bill requires TFC to issue a finding of necessity of each acquisition prior to filing a condemnation suit. The bill further provides that such a finding by the TFC is conclusive evidence of public necessity and public purpose.

Methodology

The case workload generated by the bill would be largely dependent on the number of lawsuits that TFC initiates to acquire property to build a border wall along the border between Texas and Mexico.

According to the Office of the Attorney General (OAG), the federal government previously conducted surveying and contracting with real estate appraisers to perform appraisals of the properties that would be impacted by federal eminent domain proceedings. According to appraisers contracted to perform this work, acquisitions of approximately 3,000 individual parcels of property will be required to build a border wall along Texas' international border. The OAG anticipates that a similar number of properties would result where the state, instead of the federal government, is acquiring the same or similar property for the purposes of the border wall.

The OAG anticipates that acquisitions related to the border wall will increase the caseload related to eminent domain by about 1,500 (50% of 3,000 total parcels). Assuming that these cases are worked on over the next five years, that would be an increase of 300 cases per year. It is expected that each of these cases will require 105 attorney hours, which results in a total of 31,500 additional attorney hours to litigate eminent domain cases per year. According to the OAG, these additional hours of work would require fourteen additional Assistant Attorney Generals.

The OAG also anticipates that each case would require 18 support staff hours, which results in a total of 5,400 additional support staff hours to litigate eminent domain cases per year. According to the OAG, this translates to two additional support staff (Legal Assistants) to address the increased workload.

In addition to the time it takes to litigate eminent domain cases, each case also involves attorney travel costs, as eminent domain suits must be filed and litigated in the county in which the subject property is situated. Additional travel expenses are estimated at \$220,000 per fiscal year.

It is expected that at least one environmental lawsuit will be filed against TFC once wall project activities begin. Based on past casefiles and time reporting, it is estimated that previous projects of a similar magnitude to that projected for a border wall project have required 1,300 hours of total attorney time to complete tasks including the coordination and preparation of an administrative record, drafting pleadings, and appearing in court. The OAG estimates that at least 1,300 additional attorney hours, or 260 hours per year over five years, will be required to defend environmental lawsuits brought against the agencies administering the border wall project. Costs for an environmental lawsuit would also include electronic assembly and Bates labeling of the administrative record, which is estimated at a one-time cost of \$80,000.

TFC anticipates that eminent domain would improve predictability in land acquisition success, contiguous alignments, location in highest priority areas, cost and schedule of land delivery to the program. Conceptually, it could lower the cost of land acquisition for larger parcels and allow for larger awards to design-builders thus increasing their efficiency and lowering cost per mile of the infrastructure. The fiscal impact on TFC's management of the program, however, cannot be determined.

According to the Comptroller's Office, the fiscal implications of the bill cannot be determined.

Technology

The technology impact includes one-time costs of \$69,380 in fiscal year 2024 and a recurring annual cost in each fiscal year 2024-2028 of \$63,228. One-time costs include standard laptop, software, printer, and telecom/voicemail. Annual recurring charges cover data services and voice line.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 303 Facilities Commission, 304 Comptroller of Public Accounts,
305 General Land Office and Veterans' Land Board

LBB Staff: JMc, DDeI, LCO, HGR, NV