

By: Kolkhorst

S.B. No. 474

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the recovery of costs and fees in connection with
3 certain eminent domain proceedings.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 21.047, Property Code, is amended by
6 adding Subsection (a-1) to read as follows:

7 (a-1) If the amount of damages awarded by the special
8 commissioners is at least 10 percent greater than the amount the
9 condemnor offered to pay before the proceedings began or if the
10 commissioners' award is appealed and a court awards damages in an
11 amount that is at least 10 percent greater than the amount the
12 condemnor offered to pay before the proceedings began, the
13 condemnor shall pay:

14 (1) all costs as provided by Subsection (a); and

15 (2) any reasonable attorney's fees and other
16 professional fees incurred by the property owner in connection with
17 the eminent domain proceeding.

18 SECTION 2. The change in law made by this Act applies only
19 to an eminent domain proceeding commenced on or after the effective
20 date of this Act. An eminent domain proceeding commenced before the
21 effective date of this Act is governed by the law applicable to the
22 proceeding immediately before the effective date of this Act, and
23 that law is continued in effect for that purpose.

24 SECTION 3. This Act takes effect September 1, 2015.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

March 6, 2015

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

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: SB474 by Kolkhorst (Relating to the recovery of costs and fees in connection with certain eminent domain proceedings.), **As Introduced**

No fiscal implication to the State is anticipated.

The bill would amend the Property Code to delegate the party responsible for payment of costs and fees associated with certain eminent domain proceedings.

Local Government Impact

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

Source Agencies:

LBB Staff: UP, AG, SD, EK

BILL ANALYSIS

Senate Research Center
84R7147 AJA-F

S.B. 474
By: Kolkhorst
State Affairs
2/11/2015
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Property owners are often forced to accept diminished compensation for their land in eminent domain cases because they cannot afford the legal costs to challenge the offer through litigation. Condemnors are aware that property owners can rarely afford litigation and take advantage of property owners by offering excessively low compensation for property, using appraisers that are known for undervaluing property, and drawing out the litigation process to make it more expensive. Existing regulations to ensure adequate compensation in eminent domain cases are largely ineffective due to the underutilization of court proceedings.

Currently, over 9,000 entities in the state claim eminent domain authority. The Property Code stipulates that the loser in an eminent domain proceeding only has to pay court costs, not the other side's attorney's or professional fees. The property owner's legal fees only have to be covered if the condemnor is found to have not made a "bona fide offer," a high standard that rarely provides relief to property owners even when it is determined that the condemnor has made an unfair offer.

S.B. 474 requires condemnors to reimburse property owners for attorney's and professional fees in eminent domain proceedings where it is determined that the condemnor's lowest offer for the property is 10 percent or more lower than the amount determined by a special commissioner or other court. Eleven other states have similar provisions that require a condemnor to reimburse a landowner if the final award is a certain percentage higher than an offer and a total of 46 states have a law that provides a method for a property holder to be compensated for fees. The bill is not designed to halt eminent domain proceedings, but rather to encourage fairer offers in an effort to avoid litigation altogether. S.B. 474 removes cost barriers that deter landowners from asserting their right to receive adequate compensation for their land, which compels the condemnor to explain the basis for their offer in a court of law.

As proposed, S.B. 474 amends current law relating to the recovery of costs and fees in connection with certain eminent domain proceedings.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 21.047, Property Code, by adding Subsection (a-1) to require the condemnor, if the amount of damages awarded by the special commissioners is at least 10 percent greater than the amount the condemnor offered to pay before the proceedings began or if the commissioners' award is appealed and a court awards damages in an amount that is at least 10 percent greater than the amount the condemnor offered to pay before the proceedings began, to pay all costs as provided by Subsection (a) and any reasonable attorney's fees and other professional fees incurred by the property owner in connection with the eminent domain proceeding.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2015.