

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

HB 1167 - SB 1184

March 11, 2017

SUMMARY OF BILL: Prohibits a local government from condemning private land to be used for an industrial park and citing the justification for the condemnation as being for public use unless certain circumstances are met. Requires fees and costs to be awarded by the court to property owners at certain condemnation proceedings. Requires damages on property taken by eminent domain to be calculated and paid based on the highest and best use of the property.

ESTIMATED FISCAL IMPACT:

Increase State Expenditures – Exceeds \$1,500,000/Highway Fund

Increase Local Expenditures – Exceeds \$5,000/Each Instance

Other Fiscal Impact – Due to multiple unknown factors, a precise determination of forgone local revenue cannot reasonably be determined.

Assumptions:

- Pursuant to Tenn. Code Ann. § 29-17-102, government may condemn private land for public use. Government may not cite condemnation for public use when any public benefits are indirect and the result of private economic development, except when private land is taken for public transportation purposes, use by a public or private utility, urban renewal of a blighted property by a housing authority, when the private use is merely incidental to public use, or when local governments condemn land for use as an industrial park.
- The proposed language would remove condemnation of private land by local governments for use as an industrial park from classification as a public use.
- Pursuant to Tenn. Code Ann. § 29-17-106, when a condemnation is abandoned by the condemner or the final judgement of the court is that the condemner cannot acquire the property through eminent domain, the court awards property owners reimbursement for reasonable attorney, appraisal, and engineering fees. In condemnation cases where the amount of damages awarded at trial exceeds the amount assessed originally by the condemner, no such additional fees are awarded to the property owner.

- The proposed language would require reasonable attorney, appraisal, and engineering fees to be awarded in all proceedings, except in cases when the amount of damages awarded at trial exceeds the amount assessed originally by the condemner. In those instances only appraisal and engineering fees are awarded to the property owner.
- Pursuant to Tenn. Code Ann. § 29-16-203, for purposes of determining the extent of just compensation to be paid for condemned property, the fair market value of buildings, structures, or improvement contributions shall contribute to the fair market value of the real property to be acquired.
- The proposed language would require property to be valued at its highest and best use when valuing for just compensation instead of at the fair market value.
- The Federal Highway Administration (FHA), pursuant to § 24 CFR 24.102(d), requires the Tennessee Department of Transportation (TDOT) to establish an amount it believes is just compensation for the real property which shall not be less than the approved appraisal of the fair market value of the property.
- It is reasonably assumed that a highest and best use valuation of a property will always exceed the valuation of a property at fair market value because a highest and best use valuation could be based on multiple future contingencies that could extend into perpetuity that could significantly elevate the property value relative to the fair market value which is determined more so on currently-existing contingencies; therefore no funds received by TDOT from the FHA are estimated to be in jeopardy.
- According to TDOT, approximately 150 cases of condemnation are settled in court each year and the proposed language would require TDOT to pay attorney, appraisal, and engineering costs for a majority of condemnation cases. Such costs would be paid from the Highway Fund.
- The payment of attorney, appraisal, and engineering costs in conjunction with the change in valuation of land taken by condemnation to be assessed at highest and best use is reasonably estimated to increase state expenditures exceeding \$10,000 per case; this is because more appraisal and engineering work will likely have been performed in order to determine highest and best use valuations because of the multiple future contingencies that would have to be factored into any such valuation on any relevant parcel. The total recurring increase to state expenditures to the Highway Fund is estimated to exceed \$1,500,000 (\$10,000 additional costs per case x 150 cases per year).
- Due to multiple unknown factors such as how many municipalities previously condemned land for use as industrial parks, the extent of industrial parks which will not be created due to the provisions of this bill, and the extent of any property tax revenue which would have been collected on businesses installed at such industrial parks, a precise amount of local revenue which will be forgone cannot reasonably be determined.
- It is unknown how many municipalities condemn private land through use of eminent domain, the extent of damages currently awarded to private land owners by municipalities, the extent of the increase in damages awarded for increased valuation of property taken by condemnation in addition to attorney, appraisal, and engineering fees which will be paid under the provisions of the bill. Due to these unknown factors a precise increase in local expenditures cannot be determined; but is reasonably estimated to exceed \$5,000 each instance of condemnation.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Krista M. Lee, Executive Director

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