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Office

H.B. 64
135th General Assembly

Fiscal Note & Local Impact Statement

[Click here for H.B. 64's Bill Analysis](#)

Version: As Introduced

Primary Sponsors: Reps. Kick and Creech

Local Impact Statement Procedure Required: Yes

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Highlights

- Public agencies that use eminent domain to acquire property may incur new costs as a result of the bill's requirements for awarding of attorney fees, costs, and damages in contested eminent domain cases. These new costs could be significant depending on the circumstances.
- The bill prohibits a public agency from reducing or revoking an initial offer before filing an appropriation petition. This may lead to higher acquisition costs for public agencies that discover conditions that would otherwise warrant a decreased offer for the property being taken.
- The bill prohibits the use of eminent domain to acquire property for the purpose of providing recreational trails. Public agencies engaged in trail building could incur higher costs to acquire property for trails as a result.

Detailed Analysis

The bill modifies the law governing the use of eminent domain that may increase the costs of appropriating property by public agencies. Depending on the circumstances these increased costs could be significant. In particular, for cases that are disputed in court and determined in favor of an affected property owner, changes made by the bill dealing with standards for awarding of attorney fees, expenses, and damages, including creating an inverse condemnation process, are likely to increase costs for public agencies. Other changes, including a prohibition against reducing an initial offer to acquire property and a general prohibition from using eminent domain to acquire property for the purpose of creating a recreational trail may also increase costs for public agencies. Fiscal effects of these changes are discussed in more detail under the headings below.

Disputed eminent domain

Attorney fees, cost awards, and coercive actions

Public agencies may incur significant new costs in eminent domain cases that are disputed in court and resolved in favor of an affected property owner. The bill expands a provision in current law requiring the awarding of attorney fees and costs to property owners by adding that those awards be granted when a ruling is made “wholly or partially” in the property owner’s favor. The bill also requires the court to award these fees and costs to property owners in cases where a taking agency appeals a ruling and does not prevail, either in whole or in part. Finally, the bill removes a provision in current law that requires a property owner to pay any court costs incurred after an agency offers a certain amount of compensation which the owner declines, provided that the owner is later awarded less compensation.

Taking agencies could also incur significant new costs to pay damages awarded by a court if they are found to have used coercive actions at any time during the eminent domain process. Although coercive actions are not defined by the bill, provisions in continuing law place some prohibitions on taking agencies. Please see the LSC Bill Analysis for additional details regarding coercive actions.

Inverse condemnation

Public agencies using eminent domain may also face significant new costs under the bill’s provision allowing for inverse condemnation actions. Under the bill, inverse condemnation actions allow an owner who alleges that a public agency has taken property without bringing appropriation proceedings to sue that agency for damages, attorney fees, and costs. Under the bill the property owner must prove, by preponderance of the evidence, that the agency did not bring the appropriation proceedings prior to taking the property. Inverse condemnation actions must be brought in the court of common pleas in the county where the affected property is located. As a result, county courts of common pleas may also incur new costs to handle additional caseloads. The number of additional cases, however, is unlikely to be large and any additional costs for the courts are likely to be minimal at most and could be at least partially offset by court costs assessed to the losing party of inverse condemnation actions.

Initial offer to acquire property

The bill prohibits an initial offer by an agency to acquire property by negotiation from being reduced or revoked. The bill allows an agency to increase its offer, but if it does, the bill prohibits the higher offer from being reduced or revoked. As a result, in circumstances where an agency discovers a property is less valuable than initially thought, or it determines that a property is no longer required, the agency will incur higher acquisition costs than under current law which allows agencies to revise their offers before filing an appropriation petition if they discover conditions that could not reasonably have been discovered at the time of the initial offer or upon the exchange of proposals between the agency and owner.

Prohibition against use of eminent domain for recreational trails

The bill prohibits the use of eminent domain for the purpose of providing a recreational trail, which includes trails for hiking, bicycling, horseback riding, ski touring, canoeing, or other nonmotorized forms of recreational travel. As a result, public agencies may incur additional costs to reroute planned trails if they are unable to acquire property along a planned route by negotiating with property owners.