

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 1167 – SB 1184

May 1, 2017

SUMMARY OF ORIGINAL 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.

FISCAL IMPACT OF ORIGINAL BILL:

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

SUMMARY OF AMENDMENT (008215): Deletes and rewrites the bill such that the only substantive changes are as follows: (1) removes any condemnation proceeding initiated for the purpose of a public utility, road, highway, bridge, or other structure, facility, or project used for public transportation from applicability; and (2) removes the requirement that damages on property taken by eminent domain be calculated and paid based on the highest and best use of the property.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Increase Local Expenditures – Exceeds \$1,000/Each Instance/Permissive

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

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Assumptions for the bill as amended:

- 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 condemnation proceedings which were not initiated for the purpose of a public utility, road, highway, bridge, or other structure, facility, or project used for public transportation, 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.
- It is assumed that all condemnations which have been removed from applicability are condemnations which are currently conducted by the Tennessee Department of Transportation; therefore, because such condemnations are governed by current law, there will be no increase in state expenditures.
- 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 legislation, 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.
- The proposed language applies to condemnation proceedings initiated on or after enactment as law; as such, any increase in local expenditures as a result of condemnation proceedings is considered a mandatory cost incurred as a result of a municipality initiating the permissive action of condemnation.
- It is unknown how many municipalities condemn private land which will not be used for a public utility, road, highway, bridge, or other structure facility, or project used for public transportation, the extent of damages currently awarded to such private land owners by municipalities, the extent of the increase in damages awarded for condemnation for additional attorney, appraisal, and engineering fees which will be paid under the provisions of the legislation. Due to these unknown factors a precise increase in local expenditures cannot be determined; but is reasonably estimated to exceed \$1,000 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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