



Legislative UPDATE

April 1, 2016
Number 13

Senate State Affairs Committee Revisits Eminent Domain

On March 29, the Senate State Affairs Committee held a hearing on the following charge:

Gather and review data on the compensation provided to private property owners for property purchased or taken by entities with eminent domain authority. Examine the variance, if any, between the offers and the fair market values of properties taken through eminent domain. Make recommendations to ensure property owners are fairly compensated.

Invited witnesses included representatives from the Texas Department of Transportation, Texas Farm Bureau, electric utilities, gas pipelines, and various landowner groups. Testimony focused on the amount landowners receive when their land is taken using eminent domain. As one would expect, landowners testified that awards should be higher, and condemning entities testified that the process is working as it should.

The main idea discussed by reformers is that a condemnor, including a city, should pay the landowner's attorney fees and costs if the final award is some percentage greater than the initial offer. A bill to this effect was filed in 2015 but did not pass.

Those familiar with eminent domain practice know that to be an untenable change. A city's initial offer is – by law – based upon an appraisal obtained by the city. The fair market value and final award is then determined by negotiating or submitting the issue to a special commissioners

hearing. The fact that a city “negotiates up” to avoid litigation doesn’t necessarily mean that its initial offer was “lowballed.”

League staff was also asked to testify, and pointed out that – according to recent U.S. Census numbers – the more than 1,300 people per day who moved to Texas in 2014-2015 didn’t move to rural areas. They moved to cities. And that movement means that cities will need to judiciously use eminent domain for streets, utilities, and other vital public infrastructure.

City officials absolutely want the process to be fair, but they also can’t allow it to become so expensive as to be useless.

TxDOT Rules May Shift Excess Joint Project Costs to Cities

The Texas Department of Transportation (TxDOT) is proposing rule changes that may shift certain costs of local participation projects to cities. The proposal includes a number of amendments, but the greatest concern relates to joint project costs that are paid using the “specified percentage method” or the “periodic method” of payment. In those funding arrangements, a city – rather than TxDOT – will be responsible for any extra funds required to complete a project.

City officials who frequently enter into joint project agreements with TxDOT should review the proposed changes and provide comments to TxDOT. The proposed changes and information about filing comments are available in the [March 11 edition](#) of the *Texas Register*. Comments must be filed with TxDOT by 5:00 pm on April 11.

TML member cities may use the material herein for any purpose. No other person or entity may reproduce, duplicate, or distribute any part of this document without the written authorization of the Texas Municipal League.