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FISCAL IMPACT REPORT

SPONSOR Wirth ORIGINAL DATE 1/31/09
LAST UPDATED _____ HB _____
SHORT TITLE Eminent Domain Litigation SB 100
ANALYST Wilson

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total	Indeterminate See Below	Indeterminate See Below	Indeterminate See Below	Indeterminate See Below	Recurring	General

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Attorney General's Office (AGO)

Department of Finance & Administration (DFA)

Department of Transportation (DOT)

SUMMARY

Synopsis of Bill

Senate Bill 100 adds a new provision to Section 42A-1-25 providing for the award of litigation expenses in eminent domain cases. The bill provides that the court shall award litigation expenses if the judgment of just compensation is more than 125% of the amount offered as compensation for the tract.

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary will be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

DOT states that this bill is expected to cause disruption to DOT project scheduling and budgeting as costs and outcomes can not be predicted until the resulting litigation is concluded.

SIGNIFICANT ISSUES

DFA notes that this bill will clarify the existing law by providing a quantitative reference for determining the award of litigation expenses in condemnation proceedings.

DOT provided the following:

The bill will award condemned their litigation expenses if they prevail to the point of obtaining a judgment of 125% of the condemnor's offer. Litigation expenses include attorneys fees and any costs. The effect will be to encourage the condemnees to pursue their cases through litigation rather than settle.

By law and by federal regulation, the NMDOT is required to offer the condemnee the fair market value for his or her property based on an independent and reviewed appraisal. More than 90% of acquisitions settle based on this value, thereby avoiding litigation. However, if there was a possibility that their legal expenses will be paid, there is little incentive to accept the NMDOT's offer and increased litigation will result.

It is expected that the result will be to greatly increase costs to the NMDOT and disrupt the NMDOT's project scheduling and budgeting. It will also be necessary for the NMDOT to greatly expand its legal staff to handle the increased litigation load. The payment of these costs could also be significant and will be difficult to budget into project costs until the conclusion of a case, when they can be accurately determined. It has been reported that in the few states where condemnees are awarded their litigation expenses, the litigation rate is greatly increased and the project scheduling and planning is negatively impacted.

ADMINISTRATIVE IMPLICATIONS:

As noted above, DOT will need to employ additional legal staff to handle the increased litigation load. It is also expected to disrupt project scheduling and budgeting. Until increased financial resources are available, it is expected that projects will have to be delayed or cancelled due to the DOT being unable to handle the expected increase in litigation workload and expenses with present funding and resources.

TECHNICAL ISSUES

The AGO noted the proposed language of "for any tract" may be ambiguous, as Section 42A-1-17 governs very specific tracts of property.

DW/mc