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FISCAL IMPACT REPORT

ORIGINAL DATE 1/23/2019

SPONSOR Stephanics LAST UPDATED _____ HB _____

SHORT TITLE Eminent Domain Property Appraisals SB 217

ANALYST Glenn

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Indeterminate	Indeterminate	Indeterminate		Recurring	See Fiscal Implications

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Transportation (NMDOT)

New Mexico Attorney General (NMAG)

SUMMARY

Synopsis of Bill

Senate Bill 217 amends Section 42A-1-5 of the Eminent Domain Code, NMSA 1978, §§ 42A-1-1 to 42A-1-33, to require both the condemnor and condemnee (landowner), if they are unable to negotiate a settlement and before the condemnor files a condemnation action, to obtain appraisals.

The bill further amends the “three appraiser process” described in Section 42A-1-5(A) by providing that a condemnor cannot file a condemnation lawsuit prior to completion of the 3-appraiser process, with certain exceptions in existing law. Finally, SB 217 provides that the condemnor cannot offer as compensation for the taking an amount less than the appraisal of the jointly appointed third appraiser if all three appraisers do not agree. Under current law, the condemnor’s appraisal is relied on if there is no agreement among the three appraisers.

FISCAL IMPLICATIONS

NMDOT posits that SB 217, if enacted, would have a significant impact on NMDOT projects, especially with regard to federal and state highway and transportation funding. See more detailed explanation under Significant Issues.

SIGNIFICANT ISSUES

NMDOT explains that the Special Alternative Condemnation Procedure, NMSA 1978, ch. 42, art. 2, provides for a “quick take” procedure for the acquisition of properties needed for highway improvement projects. The legislation establishes a special procedure “whereby the state can enter into possession at the inception of the proceeding, and the interests of the property owner are protected by providing for an adequate bond prior to vesting of title and the taking of possession, and also safeguarding the property owners’ right to a speedy judicial determination of the total just compensation due.” NMSA 1978, § 42-2-1.

NMDOT is concerned that the bill would adversely affect the objectives of the “quick take” provisions of the Special Alternative Condemnation Procedure. According to NMDOT, the amendment proposed by NMDOT would create a scenario where a condemnee could delay project schedules and planning by several weeks or months while the 3-appraiser process is initiated and completed. Because NMDOT would be prevented from filing its condemnation lawsuit and obtaining an order of entry while the 3-appraiser process is underway, the project could not be certified with the federal government, nor could projects be planned and scheduled in a reliable way. The effect could delay or even cancel projects, or at a minimum, result in increased project cost and potential construction delay claims and damages. Further, if the projects cannot be timely certified (meaning that all the right-of-way needed for the project has been acquired), the federal Highway Administration could move the federal funds elsewhere or withdraw them completely.

Another issue raised by NMDOT is that, under SB 217, the condemnor cannot offer less than the appraised amount of the jointly appointed appraiser if the three appraisers cannot agree on the amount of just compensation due. Under existing law, the condemnor may offer no less than the appraisal prepared by NMDOT, as condemnor, if the three appraisers cannot agree. The change made by the bill would likely result in increased project costs and may encourage litigation. NMDOT is already under state and federal mandate to provide appraisals prepared by qualified appraisers and reviewed and approved by qualified review appraisers, and must treat the landowners fairly. By making the jointly appointed appraiser’s opinion the minimum amount that can be offered, it encourages landowners to engage in the 3-appraiser process with no safeguards and the possibility of the appointment of a third appraiser less competent or less experienced in condemnation matters. This has the potential to significantly increase NMDOT’s right-of-way acquisition costs.

BG/gb