

- SUBJECT:** Requiring school districts to conduct feasibility studies before taking land
- COMMITTEE:** Land and Resource Management — favorable, without amendment
- VOTE:** 8 ayes — Mowery, Orr, Zerwas, Callegari, R. Cook, Geren, Pickett, Ritter
0 nays
1 absent — Y. Davis
- WITNESSES:** For — Bill Peacock, Texas Public Policy Foundation; Merry Lynn Gerstenschlager, Education Liaison-Texas Eagle Forum; Kenneth Davis; (*Registered, but did not testify:* Reagan Beck, Texas Farm Bureau).
Against — None
- BACKGROUND:** Education Code, sec. 11.155 permits school districts to exercise the power of eminent domain to acquire title to real property for the construction of new schools and other purposes.
- DIGEST:** HB 1387 would require a school district to conduct a feasibility study before acquiring title to property through eminent domain. The study would have to be performed by a licensed engineer or architect and include an analysis of:
- the overall costs and benefits of the project to the school district, accounting for the loss of tax revenue for any conversion of taxable development property based on its projected future land use;
 - various factors, including demographic factors if the site was to be used as an instructional facility, that make the acquisition necessary within three years of the completion of the study and any reasonable costs of development that have accrued to the owner;
 - the comparative development potential of available sites in the geographic area where the school district intended to acquire property;
 - zoning, platting, and comprehensive plan requirements and restrictions affecting a proposed site, including the costs of any necessary permits;

- the cost of providing additional necessary infrastructure, including roadway and right-of-way access, as well as utility services on and around the site;
- wetlands, waters, and floodplains that might affect the site, including costs to mitigate or reclaim the site;
- flooding and drainage patterns on the site, including an estimate of the cost to complete any necessary improvements to meet water control standards; and
- an analysis of conceptual grading plans for a proposed site, including earthwork requirements and the cost of site development.

If the study determined that the property would not be needed within three years of the study's completion, the study also would have to include justification for immediate acquisition of the property.

The bill would apply to a petition to condemn property on or after the September 1, 2007, effective date.

**SUPPORTERS
SAY:**

HB 1387 would help ensure that school district land acquisitions remained fair for all parties involved. The initial costs of the feasibility study would be outweighed in the long run by the value of good decisions. The bill would offer a measured approach to the use of eminent domain that was flexible enough to accommodate school districts' need to acquire new property.

The use of eminent domain in Texas is widespread, and few rules exist to distinguish decisions that are fair from those that are not. Some school districts elect to take property in the absence of a pressing need or a clear analysis of which site is most suitable for development. Sometimes school districts acquire property that may remain unused for many years or may be in the process of expensive development plans. Existing law offers few protections against such imprudent takings decisions and does not define standards for determining which properties to acquire.

By requiring a school district to conduct a feasibility study before acquiring property, HB 1387 would establish safeguards against common grievances associated with poorly planned and executed takings decisions. These public entities would have to adhere to a standard similar to that to which many private entities already adhere. Misguided acquisitions resulting in poor use of a site hurt taxpayers who carry the cost of the

acquisition and property owners who lose their property and any plans for development on the acquired site.

The misuse of eminent domain has resulted in some bad outcomes in public schools. In the El Paso area, for instance, poorly planned eminent domain decisions have led to schools that are sited in dangerous locations that municipal entities have zoned for higher-intensity land uses. In the Dallas area, school takings have needlessly derailed development plans and deprived owners of irretrievable development-related expenses.

Those whose land is subject to taking through eminent domain power deserve the assurance that the decision to acquire their land results from careful planning and due consideration of alternatives. HB 1387 would go a long way toward providing this guarantee because it would force schools to look at broader city planning goals, the comparative development potential of different sites, and the costs and benefits of proposed acquisition plans.

Careful site selection also benefits school districts. School expansions undertaken to satisfy an imminent need and based on a careful cost-benefit analysis result in new schools that are well timed and placed in a good location. Correctly sited schools have community benefits that last as long as the school operates, and poorly sited schools cause problems for just as long. Feasibility studies would require school districts to attend to major factors affecting a school's long-term success, such as flood hazards, infrastructure, and comprehensive municipal land use plans.

HB 1387 also would help standardize and systematize informal studies already conducted by school districts at a reasonable additional expense, and it would add transparency to the school property acquisition process.

The feasibility study would include a determination of whether property acquisition was necessary within three years of the termination of the study. If the study could not make this finding, the district would have to provide justification for immediate acquisition of the property. This would allow schools to acquire property when it was justifiable even if they were unable quantitatively to prove an imminent need. This would give schools enough flexibility to exercise eminent domain when it was warranted while preventing them from acquiring property when it was gratuitous.

OPPONENTS
SAY:

HB 1387 would place an inordinate burden on school districts trying to exercise their right to acquire land through eminent domain. The requirements would add excessive costs ultimately borne by taxpayers. Rapidly expanding districts would be disproportionately affected, and the bill would provide no offsetting compensation for the mandates it imposes.

School districts would have to develop procurement guidelines and submit proposals for a licensed architect or engineer for a competitive bid. This licensed professional would not necessarily have the expertise needed to complete a fiscal cost-benefit analysis, a future school needs analysis, or other aspects of the plan required by the bill, such as the assessment of flooding and drainage potential of a site. These duties likely would have to be subcontracted to specialized professionals. The need to subcontract would create a heavy administrative and financial burden because it could involve additional competitive bids, the need to evaluate and verify qualifications, and potential conflicts of interest.

The requirements of the study could be time-intensive, as well as complicated by a need to access private property, research site-specific and municipal ordinances, and complete a fiscal analysis based on appraisal records. Delays at the beginning of the process could lead to many other problems, especially for rapidly growing districts. Districts establish new schools in response to a need for more classrooms and teachers. An arduous study process could impair a district's ability to respond to local community needs.

Districts generally try to build schools where development is rapid and ongoing. Developing areas often are marked by fast appreciation of property values and ongoing subdivision and platting applications. Placing administrative hurdle at the beginning of the process could lead to higher land values and diminished availability of developable land. For these reasons, schools try to plan for development years in the future. HB 1387 would present an obstacle to school districts' ability to engage in long-range planning. The three-year timeline for establishing need in the study would be too short to accommodate real planning efforts. Once land is acquired, the financing and construction process alone can easily exceed three years.

Expanding districts often do informal feasibility studies in less time with fewer resources, conditioned by local circumstances. HB 1387 would

establish a rigid, bureaucratic prerequisite that could make future property acquisitions difficult. Any value of the mandatory study would be outweighed by its administrative burdens. More obstacles to school districts translate into valuable revenue diverted from much-needed school funds.

**OTHER
OPPONENTS
SAY:**

A feasibility study would be a good means of ensuring the decision to take property was made only when necessary. HB 1387 should be broadened to apply to other entities with the power of eminent domain, such as universities, utility districts, and economic development corporations.

NOTES:

A related bill, HB 3177 by T. King, which would prohibit school districts in certain counties from taking land to construct arterial streets, has been referred to the Borders and International Affairs Committee.