

March 2, 2020

REVISED

The Honorable Sean Tarwater, Chairperson
House Committee on Commerce, Labor and Economic Development
Statehouse, Room 151D-S
Topeka, Kansas 66612

Dear Representative Tarwater:

SUBJECT: Revised Fiscal Note for HB 2605 by Representative Warren

In accordance with KSA 75-3715a, the following revised fiscal note concerning HB 2605 is respectfully submitted to your committee.

HB 2605 would require a condemning authority to provide written notice by mail to the owner of a property 60 days before filing a condemnation proceeding. The notice must include: a legal description of the property; the right of the owner to obtain counsel; the right of the owner to make a counteroffer; the right of the owner to obtain an appraisal; and the right to contest the condemnation in a separate proceeding. Thirty days before, the condemning authority would be required to mail an offer to all owners of record that includes an appraisal or other determination of the value of the property.

Before a district court could enter an order of condemnation, the court would be required to make a finding that the plaintiff condemning authority engaged in good faith negotiations prior to filing the condemnation petition as specified in the bill. If a court does not find that that good faith negotiations have occurred, the court would be required to dismiss the condemnation petition and order the condemning authority to reimburse the owner for the owner's actual and reasonable attorney fees and costs.

The Office of Judicial Administration estimates enactment of HB 2605 could increase the number of cases filed in district court because it allows the right to contest a condemnation in a separate court proceeding, which would result in more time spent by court employees and judges processing and deciding these cases. According to the Office, a fiscal effect cannot be estimated until the Judicial Branch has had an opportunity to operate under the bill's provisions.

Since the original fiscal note was issued, the Kansas Department of Transportation (KDOT) indicates acquisition of private property by KDOT is subject to the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970. All federal, state, and local government agencies receiving federal financial assistance for public programs and projects, that require the acquisition of real property, are required to comply with the policies and provisions of the Act.

The Act allows for exceptions to the appraisal requirement if the appraisal is uncomplicated and available data supports a fair market value of \$10,000 or less. In these instances, KDOT can prepare a wavier valuation, rather than an appraisal, to estimate fair market value. Enactment of the bill would require appraisal by a state certified or licensed appraiser for these properties.

The agency indicates it does not presently have a licensed or state certified appraiser on staff, and appraisals completed on the behalf of KDOT are done by a licensed or certified state appraiser at a contracted firm. Since the bill would increase the number of properties requiring appraisal, the agency would have an increase in contractual service expenditures to hire outside firms to perform the appraisal.

Also, the agency states the time constraints specified in the bill would have an effect of prolonging the right-of-way acquisition phase of projects, affecting the overall project development schedules, which could cause some project construction to be delayed by a full construction season or carry over multiple construction seasons because of lettings moved past the most efficient dates. This would apply to any projects currently underway. Future project start dates would need to take the additional time requirements into consideration, which would require reprogramming of schedules in the agency's system.

KDOT states enactment of HB 2605 would require additional contractual appraisals on approximately 35.0 percent of the tracts to be acquired. This percentage represents the number of estimated tracts that are currently exempt from appraisal under the Act.

The agency estimates acquiring 180 tracts in FY 2021. The average cost of a contracted appraisal is approximately \$1,750. Utilizing the estimated 35.0 percent additional tracts requiring appraisal under the bill would require additional expenditures of \$110,250 in FY 2021 (63 appraisals x \$1,750 average cost of an appraisal).

Enactment of the bill would also increase the legal caseload work and the agency estimates additional expenditures of \$51,803 for an additional 0.50 Attorney FTE position. The agency's operations expenditure limitation would need to be increased by \$162,053 in FY 2021 if the bill is enacted.

KDOT estimates higher acquisition numbers for FY 2022 through FY 2024 because of the completion of delayed T-WORKS projects and in anticipation of FORWARD projects. Any fiscal effect associated with HB 2605 is not reflected in *The FY 2021 Governor's Budget Report*.

Both the League of Kansas Municipalities and the Kansas Association of Counties state enactment of the bill could increase administrative costs for local governments related to condemnation proceedings.

Sincerely,

A handwritten signature in black ink, appearing to read "L. L. Campbell". The signature is fluid and cursive, with the first name "L." and last name "Campbell" clearly visible.

Larry L. Campbell
Director of the Budget

cc: Mary Rinehart, Judiciary
Trey Cocking, League of Municipalities
Jay Hall, Association of Counties