

# Concerns Regarding Legal Fees for Eminent Domain Proceedings

SB 474 by Kolkhorst

AECT Position: **Oppose**

## Proposal

- SB 474 would modify the Property Code to require that if the amount of damages awarded in an eminent domain proceeding before the special commissioners exceeds the amount the condemnor offered to pay before proceedings began by 10 percent, the condemnor must pay all attorney's fees and professional fees connected to the case.
- Presently, the condemnor is obligated solely for court costs if the final award is higher than the condemnor's offer – and not the additional attorney and professional fees.

## AECT Concerns

- SB 474 would result in a significant increase in attorney fees associated with condemnation proceedings, which would ultimately be borne by utility customers.
- In fact, SB 474 would result in a significant increase in cost for every public project built in Texas. It creates a disincentive to settle eminent domain cases, and effectively encourages landowners and their lawyers to extend the proceedings and increase associated legal and professional fees. Utility customers bear this cost.
- It is utilities' practice to balance offers that are fair to the landowner while being prudent for rate payers. There is often a wide disparity between the utility-procured appraisal and the landowner appraisal. The 10% threshold is meaningless since settlement will almost always exceed it - effectively meaning that virtually all cases will be subject to an unfair penalty of paying landowner's attorney's fees.
- Special Commissioners appointed in the condemnation cases are generally friends and neighbors of the landowners and may not be objective on the amount of the award.
- Attorneys that represent landowners often take condemnation cases on a contingency fee basis. Therefore, with this legislation, the cost of rights of way and payments to attorneys and consulting professionals will be compounded.

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