CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

June 8, 2018

H.R. 1689
Private Property Rights Protection Act of 2017

As ordered reported by the House Committee on the Judiciary on April 25, 2018

H.R. 1689 would deny federal economic development assistance to state or local governments that exercise the power of eminent domain for economic development purposes. (Eminent domain is the right to take private property for public use.) The bill also would prohibit federal agencies from engaging in such practices. Private property owners would be given the right to bring legal actions seeking enforcement of those provisions, and the bill would waive states' constitutional immunity to such suits.

The bill would require the Department of Justice (DOJ) to notify states and the public of how the legislation would affect individuals' property rights and to report to the Congress each year on private rights of action brought against state and local governments. Based on the costs of similar tasks, CBO estimates that additional reporting by the DOJ would cost less than $500,000; such spending would be subject to the availability of appropriated funds.

The federal government provides economic development assistance to state and local governments through several programs, including the Community Development Block Grant Program, the Social Services Block Grant Program, Economic Development Administration Grants, Department of Agriculture grants and loans, and grants made by several regional commissions. CBO estimates that expenditures from those major programs totaled about $8.5 billion in 2017 (although, depending on how the term is interpreted, some of those expenditures may not meet the definition of economic development under the bill).

Many states have amended their constitutions or enacted laws to directly or indirectly prohibit the use of eminent domain for economic development purposes. While data on eminent domain is difficult to obtain at the national level, evidence suggests that its use solely for economic development purposes is minimal compared to other purposes, such as public infrastructure projects (which would be allowed under the bill without penalty). CBO expects that most state and local governments would not risk the loss of federal economic development assistance by exercising the use of eminent domain in situations described by the bill. As a result, CBO estimates that implementing the bill would have no significant net effect on those expenditures—which stem from both discretionary sources (such as the Community Development Block Grant Program) and mandatory sources (such as the Social Services Block Grant Program)—to state and local governments over the next five years.

Enacting H.R. 1689 also could affect direct spending by agencies that are not funded through annual appropriations; therefore, pay-as-you-go procedures apply. The bill would require federal agencies to report to the DOJ on how to bring existing regulations and procedures related to eminent domain into compliance with the bill. However, CBO estimates that the effects would be insignificant. Enacting the bill would not affect revenues.

CBO estimates that enacting H.R. 1689 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

H.R. 1689 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA), but it would impose significant new conditions on the receipt of federal economic development assistance by state and local governments. (Such conditions for receiving federal assistance are not considered mandates under UMRA.) Because the conditions would apply to a large pool of funds, the bill effectively would restrict the use of eminent domain by state and local governments, and would limit the ability of local governments to manage land use in their jurisdictions. Further, state and local governments could incur significant legal expenses to respond to private legal actions authorized by the bill. However, CBO cannot predict the magnitude, likelihood, or timing of such effects.

The CBO staff contacts for this estimate are Robert Reese and Janani Shankaran (for federal costs) and Andrew Laughlin (for mandates). The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.