

COMMITTEE ON LEGISLATIVE RESEARCH  
 OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 4266-01  
Bill No.: HB 1892  
Subject: Courts; Eminent Domain and Condemnation; Real and Personal Property  
Type: Original  
Date: February 27, 2002

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON STATE FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2003</b>	<b>FY 2004</b>	<b>FY 2005</b>
General Revenue	(Unknown)	(Unknown)	(Unknown)
Highway Funds	(\$4,138,508)	(\$8,551,745)	(\$13,218,205)
<b>Total Estimated Net Effect on <u>All</u> State Funds</b>	<b>(\$4,138,508 to Unknown)</b>	<b>(\$8,551,745 to Unknown)</b>	<b>(\$13,218,205 to Unknown)</b>

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2003</b>	<b>FY 2004</b>	<b>FY 2005</b>
None			
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2003</b>	<b>FY 2004</b>	<b>FY 2005</b>
<b>Local Government</b>	<b>(Unknown)</b>	<b>(Unknown)</b>	<b>(Unknown)</b>

Numbers within parentheses: ( ) indicate costs or losses.

This fiscal note contains 5 pages.

**FISCAL ANALYSIS**

## ASSUMPTION

Officials of the **Office of Administration - Division of Design and Construction** and the **Department of Conservation** assume the proposed legislation would have no fiscal impact on their agencies.

Officials from the **Office of Attorney General** assume the costs of the proposed legislation could be absorbed within existing resources.

Officials from the **Department of Natural Resources (DNR)** assume the proposal allows for reimbursement of expenses in certain condemnation and inverse condemnation proceedings. Section 253.040 RSMo gives the DNR the authority to acquire land by eminent domain, if the DNR determines the land should be held, preserved, improved and maintained for park or parkway purposes. However, the DNR has used this authority only once in the last 15 years. Therefore, the DNR does not anticipate any costs associated with this legislation.

Officials from the **Department of Corrections (DOC)** assume any condemnation of property for the DOC would be done by the Office of Administration. Any costs incurred due to condemnation of property for a DOC facility would be part of a Capital Improvement budget appropriated for that project. Capital Improvement budgets are funded through the OA Division of Design and Construction on behalf of the DOC.

Officials from the **University of Missouri (UM)** assume the proposal would have a substantially adverse fiscal impact upon the University. The proposal would require condemnors to pay substantially higher amounts for property condemned in the future. UM officials were unable to project the increased fiscal impact.

Officials from the **Department of Transportation (MoDOT)** state that they acquire between 1,000 and 1,300 parcels of real property per year for right-of-way purposes. Approximately 80% to 85% of these properties are acquired by negotiation with the landowner. Only approximately 15% to 20% of the parcels per year must be acquired by condemnation.

MoDOT assumes the opportunity to collect attorney fees and engineering fees will dramatically increase the number of condemnation cases since landowners will be less likely to agree to a negotiated price for their property. Furthermore, there will be little incentive for the property owners to control litigation costs if they can be recovered from MoDOT.

ASSUMPTION (continued)

MoDOT stated that a similar provision in the State of Florida has been disastrous. The Florida Department of Transportation must now acquire approximately 36% to 48% of its right-of-way by condemnation due to the liberal award of attorney fees and other fees. For FY 99/00, the Florida DOT paid approximately \$56 million for such costs while acquiring 1,800 parcels.

MoDOT assumes this bill would increase the percentage of parcels which must be acquired by condemnation from 15% to approximately 50%. This would necessitate a permanent increase in the number of attorneys and legal staff which MoDOT must employ to handle the increased cases. MoDOT assumes they would require 12 FTE Assistant Counsel (each at \$35,000 per year, plus fringe benefits, equipment and expenses), 6 FTE Legal Assistants (each at \$25,000 per year, plus fringe benefits, equipment and expenses), and 6 FTE Legal Secretaries (each at \$17,000 per year, plus fringe benefits, equipment and expenses).

In addition to the FTE, MoDOT officials estimated the proposal would cost approximately \$17,000,000 per year in professional fees, based on 50% of 1,300 acquisitions per year with an average cost of \$25,000 per acquisition. The 50% is based on Florida DOT's experience and the \$25,000 is the average for current condemnation acquisitions. These costs do not include any estimate of costs due to fees awarded to land owners by courts.

MoDOT estimates the fiscal impact of the proposal to be \$15,207,191 in FY 03; \$18,551,499 in FY 04; and \$19,103,018 in FY 05.

**Oversight** notes that 15% of land acquisitions are currently acquired through condemnation; therefore 30% of the additional \$17,000,000 would be incurred in any case. Oversight assumes the percentage of condemnations would not jump from 15% to 50% in the first year the proposal would be in effect. For fiscal note purposes, it is assumed the 50% level would be reached in the third year the proposal would be in effect. Therefore, Oversight assumes the FTE required would likewise increase each year, reaching MoDOT's estimated 24 FTE in FY 05.

<u>FISCAL IMPACT - State Government</u>	FY 2003 (10 Mo.)	FY 2004	FY 2005
<b>GENERAL REVENUE FUND</b>			
<u>Costs – University of Missouri</u>			
Increased condemnation costs	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>	<b><u>(Unknown)</u></b>	<b><u>(Unknown)</u></b>	<b><u>(Unknown)</u></b>

<u>FISCAL IMPACT - State Government</u>	FY 2003 (10 Mo.)	FY 2004	FY 2005
<b>HIGHWAY FUND</b>			
<u>Costs – Department of Transportation</u>			
Personal Service (8, 16, 24 FTE)	(\$191,333)	(\$470,680)	(\$723,671)
Fringe Benefits	(\$81,068)	(\$199,427)	(\$306,619)
Equipment and Expense	(\$74,440)	(\$70,805)	(\$120,177)
Additional Condemnations	<u>(\$3,791,667)</u>	<u>(\$7,810,833)</u>	<u>(\$12,067,738)</u>
Total Costs – MoDOT	<u>(\$4,138,508)</u>	<u>(\$8,551,745)</u>	<u>(\$13,218,205)</u>
<b>ESTIMATED NET EFFECT ON HIGHWAY FUND</b>	<b><u>(\$4,138,508)</u></b>	<b><u>(\$8,551,745)</u></b>	<b><u>(\$13,218,205)</u></b>

<u>FISCAL IMPACT - Local Government</u>	FY 2003 (10 Mo.)	FY 2004	FY 2005
<b>POLITICAL SUBDIVISIONS</b>			
<u>Costs – legal costs and purchase prices from additional condemnations</u>	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
<b>ESTIMATED NET EFFECT ON POLITICAL SUBDIVISIONS</b>	<b><u>(Unknown)</u></b>	<b><u>(Unknown)</u></b>	<b><u>(Unknown)</u></b>

FISCAL IMPACT - Small Business

Small businesses which have property in possible highway construction rights-of-way could be affected by this proposal.

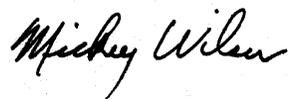
DESCRIPTION

This proposal would require entities acquiring real property for public use to reimburse the prior owner for certain fees and expenses. The proposal would allow owners to collect attorney fees and other expenses in certain unsuccessful condemnation proceedings and in some inverse condemnation proceedings.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space. This legislation would not affect Total State Revenue.

SOURCES OF INFORMATION

Office of Administration  
– Division of Design and Construction  
Department of Conservation  
Department of Natural Resources  
Department of Corrections  
Office of Attorney General  
Department of Transportation  
Office of State Courts Administrator  
University of Missouri



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