

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4100-24
Bill No.: Truly Agreed To and Finally Passed CCS for SS for SCS for HCS for HB 1944
Subject: Eminent Domain and Condemnation
Type: Original
Date: May 22, 2006

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2007	FY 2008	FY 2009
Total Estimated Net Effect on General Revenue Fund	\$0	\$0	\$0

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2007	FY 2008	FY 2009
State Road	(\$806,860 to Unknown)	(\$806,860 to Unknown)	(\$806,860 to Unknown)
Total Estimated Net Effect on <u>Other</u> State Funds	(\$806,860 to Unknown)	(\$806,860 to Unknown)	(\$806,860 to Unknown)

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 11 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2007	FY 2008	FY 2009
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2007	FY 2008	FY 2009
Local Government	(Unknown)	(Unknown)	(Unknown)

FISCAL ANALYSIS

ASSUMPTION

Officials of the **Central Missouri State University** assume no fiscal impact.

Officials of the **Office of State Courts Administrator** assume no fiscal impact on the Courts.

Officials of the **Department of Economic Development** assume no fiscal impact to the department.

Officials of the **Department of Conservation** stated that they have not historically exercised the power of eminent domain. This legislation creates a heritage value and a homestead value to be added to fair market value of some properties subject to eminent domain. Officials assume in applicable transactions, the price paid could increase up to 150% beyond appraised value. This requirement could have a significant fiscal impact should the Conservation Commission be required to consider eminent domain in the future.

Officials of the **Department of Natural Resources** assume no fiscal impact.

ASSUMPTION (continued)

Officials of the **Office of Administration - Budget and Planning** assume no fiscal impact to their office, however, officials stated the provisions in section 2 of this proposal could have a negative impact on general revenue. Officials stated they could not estimate the amount of capital gains that would be realized from an eminent domain sale subsequently subtracted from the federal adjusted gross income, thereby reducing the state income tax obligation.

Oversight assumes that affected taxpayers would obtain professional advice to delay the recognition of any capital gain that is outlined in IRS Code Section 1033. **Oversight** assumes there would be minimal fiscal impact to the state.

Officials of the **Department of Transportation** assume they would have fiscal impact as outlined below:

Officials assume increased costs from appraisal valuation requirements to determine just compensation (Section 523.001 and Section 523.061) – This proposal will introduce speculation into the appraisal process by requiring that judges consider valuation factors presently prohibited under Missouri law in their appraisal of parcels acquired by eminent domain. These factors include:

Heritage Value – Section 523.001 requires a separately allocable increase in damage awards to landowners equal to 50 percent of the acquired property's fair market value (FMV) if the property is owned by the landowner's family for at least 50 years or more. The problem with the amendment is that it actually allows double dipping because condemnation commissioners and juries already consider heritage value when determining FMV of the property and this judge award will be added onto the FMV determination.

Heritage Value – This section would have a significant impact on the cost associated with right of way acquisition. The department's expenditures for land, improvements and damages for fiscal years 2003, 2004, 2005 were \$84,936,454, \$47,288,139 and \$51,657,316 respectively. Since data on length of ownership are not currently collected in the right of way acquisition process, we must postulate circumstances and look at the potential results. Over a period of several years MoDOT has acquired on average approximately 1000 parcels per year.

An estimate of between 1% (10 parcels) to 10% (100 parcels) of the 1000 parcels would be affected by the heritage value. The calculations for for these estimates are as follows:

ASSUMPTION (continued)

FY	1% of Cost	Heritage Value Increase	Revised Cost	Additional Cost
03	\$849,365	150%	\$1,274,048	\$424,683
04	\$472,881	150%	\$709,322	\$236,441
05	\$516,573	150%	\$774,860	\$258,287
FY	10% of Cost	Heritage Value Increase	Revised Cost	Additional Cost
03	\$8,493,645	150%	\$12,740,048	\$4,246,423
04	\$4,728,814	150%	\$7,093,221	\$2,364,407
05	\$5,165,732	150%	\$7,748,597	\$2,582,865

The average annual increase for 1% of right of way cost due to heritage value would be \$306,470 $(\$424,683 + \$236,441 + \$258,287)/3$. The average annual increase for 10% of right of way cost due to heritage value would be \$3,064,565 $(\$4,246,423 + \$2,364,407 + \$2,582,865)/3$. Therefore the annual negative fiscal impact of the heritage value provision would range from \$306,470 - \$3,064,565.

Homestead Taking – Section 523.001 requires any taking of the place or residence of the landowner or of the landowner's property within 300 feet of the residence shall entitle the landowner to have the judge apply an additional 25% additive to the FMV calculation of the condemnation commissioner or jury. Therefore, this provision would increase the cost of right a way acquisitions significantly, however the negative fiscal impact is unknown expected to exceed \$100,000.

Section 523.055 - This section of the bill has been changed to allow for any displaced owner of a principal place of residence to have an additional 100 days from the date of a commissioners award. Current department policy is to give a 90 day vacancy notice as of the date of filing of a condemnation petition and then an additional vacancy notice of 30 days at the date of payment of the award. The new language amounts to an additional 70 days for the department to wait for possession of the property as outlined in the bill. The 70 days will amount to project delays of which the fiscal impact is unknown but most likely will exceed \$100,000.

Section 523.250 - Early Notice of Acquisition. Under current law, MoDOT can begin negotiations as soon as appraisals are complete. Under this section, however, condemnors would be required to provide written notice, at least 60 days before beginning negotiations, to all landowners of record of the property to be acquired. Because this provision intends that all negotiations to purchase the property be put on hold for this sixty-day period, this will cause some delays in acquiring the property.

ASSUMPTION (continued)

Section 523.250.1 - The mailing of the notices would result in a negative fiscal impact of \$390 (1,000 average annual number of parcels X \$.39 current postal rate.

Section 523.256 - Court Determinations - This will likely get MHTC involved in protracted evidentiary hearings which could result in some condemnations being delayed or denied.

Section 523.259 - Attorney Fees/Punitive Damages for Abandonment and Bad Faith - These proposed sections would allow the court to impose attorneys fees and expenses and damages against the condemnor if: (1) a condemnor abandons at any time during the condemnation process prior to final judgment; or (2) the court determines a condemnor did not act in "good faith" in its negotiation tactics.

Section 523.256 and 523.259 – Condemnation Attorneys Fees and Damages in Abandonments - This provision would require, instead of allow, a court to assess the landowner's attorney fees and other damages accruing as a result of a condemnation against a condemning entity if the condemning entity abandons the proceeding. By making this payment mandatory instead of discretionary, this will result in a negative fiscal impact on MHTC and MoDOT. Because this provision allows not just attorney fees but other damages accruing under the condemnation, this will result in a significant fiscal impact to MoDOT. The amount cannot be determined, but we estimate the negative fiscal impact will exceed \$100,000 per year.

Section 523.265 - Alternate Locations/Routes Shall Be Considered – This section would require condemnors to consider all reasonable alternate routes proposed by landowners during the written notice stage (just prior to written offer). While MoDOT has historically considered alternate routes through its National Environmental Policy Act (NEPA) process, the time frame provided in this section comes after all the environmental documents are already approved. The fiscal impact is estimated to exceed \$100,000 annually.

Oversight sent response request to the Cities of St. Louis, Kansas City, Springfield, Columbia, Cape Girardeau, Joplin, St. Charles and many other cities and the Counties of St. Louis, Jackson, Greene, Jasper, Franklin, Jefferson, St. Charles and many others with no response.

ASSUMPTION (continued)

In response to similar earlier versions of the Eminent Domain legislation the following fiscal impact statements were issued:

Officials of **Platte County** assumes the proposed changes will likely have a fiscal impact. The impact will likely occur in the form of increased legal fees, more frequent and larger payments to land owners involved in right-of-way and public land issues, and project delays which result in increased costs.

Officials of **St. Louis County** stated this proposal will increase the cost of acquiring properties for public infrastructure/road projects. These include the 100-day period for property owners to relinquish condemned property, the 60-day appraisal period, the heritage value inflation factor, mediation, etc. Costs would also be higher for redevelopment projects, although many of those may not go forward under these new provisions that would eliminate eminent domain for predominantly economic development purposes.

This version of the bill would eliminate urban redevelopment corporations (Chapter 353) from utilizing eminent domain to assemble properties for development. It would also eliminate eminent domain for projects that are predominantly for economic development, and it would require that each property to be acquired must be blighted. These factors would reduce the number of redevelopment projects in older portions of St. Louis County, and our real property and sales tax base would diminish. It would be more difficult to redevelop older urban areas, and therefore, development would be more likely to occur in newer suburban and ex-urban areas

Officials of **Clay County** assume if they would have to go to court this proposal would cost the county an estimated \$50,000 per case.

<u>FISCAL IMPACT - Local Government</u> (continued)	FY 2007 (10 Mo.)	FY 2008	FY 2009
ESTIMATED NET EFFECT TO LOCAL GOVERNMENT	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

DESCRIPTION

This bill changes the laws regarding the use of eminent domain. The power of eminent domain will be vested in governmental entities or agencies whose governing body is elected or appointed by elected officials, private utility companies, public utilities, rural electric cooperatives, municipally owned utilities, pipelines, railroads, and common carriers.

In its main provisions, the bill:

- (1) Specifies that private property may only be taken through the use of eminent domain after determining blight of the property or the taking is for a public use and not without just compensation. Compensation will be determined by considering the comparable sales in the area, current use of the property, fair market value of the property based on its highest and best use, availability of comparable property in the area, and heritage value of the property;
- (2) Defines "fair market value," "heritage value," "farmland," and "homestead taking";
- (3) Specifies that farmland will not be determined to be blighted;
- (4) Requires that for all condemnations filed after December 31, 2006, just compensation for condemned property will be determined by fair market value, homestead taking (an amount equal to fair market value multiplied by 125%), or heritage taking (an amount equal to fair market value multiplied by 150%);
- (5) Specifies that all displaced residential individuals eligible for assistance will receive a \$1,000 fixed moving expense payment or the actual reasonable costs of relocation not including the cost of replacement property. All displaced businesses eligible for relocation assistance can choose to receive a \$3,000 fixed moving expense and up to an additional \$10,000 for reestablishment purposes or the actual costs of moving and up to an additional \$10,000 for reestablishment;

DESCRIPTION (continued)

(6) Requires after the filing of the commissioners' report, the circuit judge presiding over the condemnation and whether a homestead taking has occurred and will determine whether heritage value is to be paid to the property owner;

(7) Specifies that at least 60 days prior to initiating negotiations to acquire a property interest, the condemning authority must give actual notification to the owner of record identifying the interest in real property to be acquired; the purpose for which the property is being condemned; and a statement of the property owner's rights including the right to seek legal counsel, to make a counteroffer and engage in negotiations, to obtain the landowner's own appraisal, to contest the condemnation proceeding, and to have just compensation determined preliminarily by court-appointed condemnation commissioners and, ultimately, a jury. The jury will consider the same factors as those used for determining just compensation when blighted property or property for a public use is taken. If the property owner employs an appraiser to appraise the property to be acquired, the appraisal must be delivered to the condemning authority within 60 days;

(8) Specifies that a written offer must be presented to the property owners of record at least 30 days before filing a condemnation petition;

(9) Requires that before a condemning authority may proceed with condemnation, there must be a court determination that proper and timely notice was given to all property owners, an initial offer no lower than the appraisal amount was given, and that the landowner was given an opportunity to obtain his or her own appraisal from a state-licensed or state-certified appraiser of his or her choice. If the court finds good faith negotiations have not taken place, the court must dismiss the condemnation petition and order the condemning authority to reimburse the owner for his or her actual reasonable attorney fees and costs;

(10) Requires the court to order payment of the landowner's legal fees and expenses and award damages accruing as a direct and proximate result of the pendency of the condemnation if the condemning authority abandons condemnation prior to the final judgment of the court;

(11) Specifies that no condemning authority can acquire private property through the use of the power of eminent domain for solely economic development purposes and defines "economic development" to mean a use of a specific piece of property which would provide an increase in the tax base, tax revenues, or employment for any political subdivision;

(12) Requires the condemning authority to individually consider each parcel of property in an area with regard to whether the property is blighted. If the condemning authority finds a preponderance of the area is blighted, it may proceed with the condemnation of any parcel;

DESCRIPTION (continued)

(13) Specifies that property interests acquired through eminent domain by private utility companies, public utilities, rural electric cooperatives, municipally owned utilities, or common carriers are fixed and determined by the particular use for which the property was acquired. Any expanded use of the property will require additional eminent domain proceedings to acquire the additional rights;

(14) Establishes an Office of Ombudsman in the Office of Public Counsel within the Department of Economic Development to assist citizens seeking information regarding the condemnation process and procedures;

(15) Specifies that blanket easements will be void as against public policy and will be unenforceable;

(16) Allows any financial gain to the property owner arising from a condemnation action to be deducted from the taxpayer's federal adjusted gross income;

(17) Specifies that any easements acquired after December 31, 2006, and abandoned in whole for a period in excess of 10 years may be vacated by a court of competent jurisdiction and upon the property owner paying monetary consideration equal to the original consideration paid by the easement holder. The holder of the easement must be a party to the action and may be allowed to maintain the easement upon a showing, in good faith, that the holder plans to make future use of the easement; and

(18) Specifies that within 30 days of the initial notice by the condemning authority, a landowner may propose an alternative location on his or her property which must be considered by the condemning authority.

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

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SOURCES OF INFORMATION

Department of Natural Resources
Office of Administration - Budget and Planning
Department of Transportation
Office of State Court Administrator
Department of Economic Development
Department of Conservation
Central Missouri State University
St. Louis County
Platte County
Clay County

NOT RESPONDING

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May 22, 2006