

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3654-03
Bill No.: HCS for HB 1085
Subject: Cities, Towns and Villages; Economic Development; Property, Real and Personal.
Type: Original
Date: March 25, 2004

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
Total Estimated Net Effect on General Revenue Fund	\$0	\$0	\$0

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
Road Fund	(Unknown)	(Unknown)	(Unknown)
Total Estimated Net Effect on <u>Other</u> State Funds *	(Unknown)	(Unknown)	(Unknown)

* Could exceed \$100,000 in any given year.

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 7 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
Local Government*	(Unknown)	(Unknown)	(Unknown)

* Could exceed \$100,000 in any given year.

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of the State Courts Administrator, Department of Natural Resources** and the **Office of Administration - Division of Design and Construction** each assume the proposal would not fiscally impact their respective agencies.

In response to a previous version of the proposal, officials from the **Office of the Attorney General** assumed that they could absorb any additional costs associated with this proposal. However, there may be some potential lost revenue to the state in out-years if the entity taking the property has to sell the property back to the original landowner at the same cost at which it was originally purchased ten years before.

Officials from the **Department of Transportation (MoDOT)** state Section 227.120.2, RSMo, of this legislation would require jurors to consider loss of access when awarding condemnation damages. This is contrary to current law and practice in which, the fair market value is considered before and after the taking. Typically, particularly in urban areas, damages awarded for loss of access represents a large portion of the ultimate costs of acquiring the right of way for completion of highway projects. Recent awards in the St. Louis area have resulted in the right of way cost increasing from \$1,000,000 to \$5,000,000, on a single commercial tract.

ASSUMPTION (continued)

MoDOT states this provision would also direct appraisers, commissioners, and jurors to "consider" loss of direct access, including the prohibition of making right or left turns into or out of a property, in assessing damages. This expansion of the parameters for inclusion of damages is anticipated to lead to greater condemnation awards. The fiscal impact on DOT would be significant, however the amount is unknown.

Section 523.010.7 would require MoDOT to provide a publication of notice at least three times in the newspaper of general circulation in the county that the property is located. Currently, MoDOT does not provide such notices, therefore this requirement have a negative fiscal impact on MoDOT's road funds.

In Section 523.070, the proposed changes could be interpreted to simply remove the court's discretion to award the costs of the proceeding. This interpretation would have little effect on the Missouri Highways and Transportation Commission (MHTC) / MoDOT. However, under the most likely interpretation, the proposed changes could mean that all costs of the proceeding, including attorney fees and expert witness fees, are to be paid by the condemner, which would include MHTC/MoDOT. This could significantly increase the costs of these proceedings because MoDOT could be paying all the bills of the landowner in every condemnation proceeding.

On average, MHTC acquires between 1,000 and 1,300 parcels of real property per year to support its project development program. Historically, MHTC acquires approximately 85% of these properties by negotiation with the landowner. Only about 15% of the total parcels needed per year must be acquired by condemnation. The opportunity to collect all attorney fees, appraisal fees, and engineering fees in every case could dramatically increase the number of condemnation cases since landowners will have little incentive to agree to a negotiated price for their property. Furthermore, there will be little incentive for property owners to control litigation costs if they can all be recovered from MHTC.

DOT assumes an unknown negative fiscal impact to the state's Road Fund for all attorney fees, appraisal fees, engineering fees, greater condemnation awards, newspaper publication notices and for the increased number of condemnation cases.

Officials from **Cole County** assume the proposal would not fiscally impact their agency.

In response to a previous version of this proposal, officials from the **City of Boonville** stated this bill could have far-reaching implications for their city. All riverfront property in the City's

gaming district was purchased by a 353 Redevelopment Corporation, some of it through

ASSUMPTION (continued)

condemnation. The property was then transferred to the City's ownership within the one year time frame that would be disallowed by this proposal.

Giving individuals who were condemned upon the right of first refusal to repurchase the property at the same price paid to them if the property would no longer be a casino until the ten year limit expires, gives them the right of first refusal to portions of a property that has had a capital investment of over \$50 million, while most property owners in the area were paid between \$10,000 and \$100,000.

The potential effect of this bill could be as much as \$50 million to the City of Boonville.

In response to a previous version of this proposal, officials from the **City of Springfield** stated the proposal could have a substantial fiscal impact on local government. The proposal provides that private property can not be taken by a political subdivision for 'private development purposes'. This would mean that the current University Plaza project (which currently produces \$300,000 in sales taxes and in real property taxes annually) could not have been built because the property was acquired from private persons and transferred to a private developer. The proposal would result in a loss to the City of Springfield of \$300,000 per year. In addition, the City currently buys up dangerous buildings which have been abandoned or unfit for human habitation in order to clear the title for redevelopment which properties are transferred to private developers. The annual estimated loss of this program, while difficult to measure, is substantial.

Officials from the counties of **Andrew, Boone, Butler, Callaway and Greene** as well as the cities of **Belton, Kansas City, St. Louis, Independence, Rolla and North Kansas City** did not respond to our request for fiscal impact.

Oversight assumes the proposal could increase the cost to the local political subdivisions for condemnation proceedings, if required to pay all of the cost resulting from the proceedings. The proposal may also have an indirect negative impact on the development in cities and counties of the state if eminent domain can no longer be utilized to privately develop land within the local jurisdictions. However, Oversight assumes the act of eminent domain is discretionary and this proposal limits the causes for which eminent domain may be utilized. Oversight assumes the part of the proposal specifying that the original landowner be given the right of first refusal if the land is not developed within ten years is beyond the scope of this fiscal note.

<u>FISCAL IMPACT - State Government</u>	FY 2005	FY 2006	FY 2007
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ROAD FUND

<u>Costs</u> - potential increased costs of condemnation proceedings for the Department of Transportation	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
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ESTIMATED NET EFFECT TO THE ROAD FUND *	<u>(UNKNOWN)</u>	<u>(UNKNOWN)</u>	<u>(UNKNOWN)</u>
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*** Could exceed \$100,000 in any given year.**

<u>FISCAL IMPACT - Local Government</u>	FY 2005	FY 2006	FY 2007
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LOCAL POLITICAL SUBDIVISIONS

<u>Costs</u> - potential increased costs of condemnation proceedings for local political subdivisions	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
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ESTIMATED NET EFFECT TO LOCAL POLITICAL SUBDIVISIONS*	<u>(UNKNOWN)</u>	<u>(UNKNOWN)</u>	<u>(UNKNOWN)</u>
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*** Could exceed \$100,000 in any given year.**

FISCAL IMPACT - Small Business

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

DESCRIPTION

This substitute makes changes to the laws regarding the condemnation of real property. The substitute:

- (1) Requires the condemning entity to declare the exact location of the property desired and the specific intended use of the property;
- (2) Prohibits condemnation of property for private development purposes, with certain exception;
- (3) Prohibits the condemning entity from using the property for any purpose other than its original intended purpose;
- (4) Prohibits the condemning entity from transferring the property to another entity;
- (5) Entitles the property owner to have the right to buy back any condemned property that the condemning entity does not use for 10 years;
- (6) Requires the condemning entity to pay for all reasonable and necessary costs of litigation;
- (7) Establishes a method by which the court must appoint commissioners for condemnation proceedings. The condemning entity will select a commissioner, the landowner will select a commissioner, and the two parties must agree on an independent appraiser to serve as the third commissioner. If they cannot agree on a third commissioner, the court will appoint one; and
- (8) Requires the State Highways and Transportation commissioners and jury in condemnations cases to consider a property owner's loss or restriction of highway access in determining the damages due that property owner.

The substitute exempts from the new condemnation process and restrictions:

- (1) Condemnations made by state agencies and most utility entities;
- (2) Condemnations within the cities of St. Louis or Kansas City, and the counties of St. Louis, Jackson, Cass, Platte, or Clay; and
- (3) Condemnations which are part of any project involving tax increment financing, pursuant to Chapter 99, RSMo; industrial development, pursuant to Chapter 100; or urban redevelopment, pursuant to Chapter 353.

DESCRIPTION (continued)

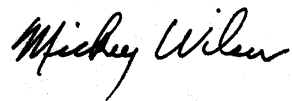
This proposal contains an emergency clause.

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

SOURCES OF INFORMATION

Office of the Attorney General
Office of Administration
Office of the State Courts Administrator
Department of Natural Resources
Department of Transportation
City of Boonville
City of Springfield
Cole County

NOT RESPONDING: Counties of Andrew, Boone, Butler, Callaway and Greene as well as the cities of Belton, Kansas City, St. Louis, Independence, Rolla and North Kansas City



Mickey Wilson, CPA
Director
March 25, 2004