

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 4100-04  
Bill No.: HB 1944  
Subject: Eminent Domain and Condemnation: Political Subdivisions  
Type: Original  
Date: March 13, 2006

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**FISCAL SUMMARY**

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

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
FUND AFFECTED	FY 2007	FY 2008	FY 2009
State Road	(\$2,083,658 to Unknown)	(\$2,575,390 to Unknown)	(\$2,652,640 to Unknown)
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>(\$2,083,658 to Unknown)</b>	<b>(\$2,575,390 to Unknown)</b>	<b>(\$2,652,640 to Unknown)</b>

Numbers within parentheses: ( ) indicate costs or losses.  
This fiscal note contains 8 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2007</b>	<b>FY 2008</b>	<b>FY 2009</b>
<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 2007</b>	<b>FY 2008</b>	<b>FY 2009</b>
<b>Local Government</b>	<b>(Unknown)</b>	<b>(Unknown)</b>	<b>(Unknown)</b>

### **FISCAL ANALYSIS**

#### **ASSUMPTION**

Officials of the **Missouri Department of Transportation** assume this legislation makes changes to the current eminent domain laws. Enactment of this legislation will have a significant fiscal and legal impact on MoDOT by delaying projects by a minimum of 130 days and increased project costs and legal costs.

523.040.1 - Increased Cost from Appraisal Valuations Requirements - This proposal will introduce speculation into the appraisal process by requiring that condemnation commissioners consider factors presently prohibited under Missouri law in their appraisal of parcels acquired by eminent domain. These factors include:

Project Influence – Subdivision (2) would require that commissioners consider the value of similar condemned property. Courts presently prohibit such data because condemnors typically pay a premium over fair market value to avoid litigation risk and landowners are not entitled to compensation for the loss of added value created by the project.

Ownership Term – Subdivision (3) would require that commissioners consider the term of ownership by the current owner although that term is irrelevant of what an independent buyer would pay in a real transaction

RWB:LR:OD (12/02)

ASSUMPTION (continued)

Future Use – Subdivision (6) would require commissioners place a value on anticipated future gains from condemned property, a feat that amounts to pure speculation and is not currently allowed in condemnation proceedings for that reason.

Condemnor Payment of Landowner Appraisal Costs: MoDOT currently does not pay the landowner's appraisal cost but this proposal would require MoDOT to do. Officials stated that they acquire approximately 1,000 parcels annually at an average price of \$2,500 per appraisal, the total negative fiscal impact to MHTC/MoDOT is \$2.5 million annually (1,000 x \$2,500 - \$2,500,000).

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

Additionally, this proposal would require that condemnors pay attorney fees and expenses whenever they abandon. MoDOT presently voluntarily pays landowner attorney fees when an abandonment is caused by the fault of MoDOT. The potential fiscal impact to MoDOT is difficult to discern because of the lack of clarity in the legislation. There is no way to determine how many times a court may award a landowner their attorney fees and punitive damages against MHTC for alleged bad faith during the condemnation process, or for an abandonment. MoDOT estimates a negative fiscal impact exceeding \$100,000 annually.

Section 523.265 provides that alternate locations/routes to 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.

The biggest concern to MoDOT in terms of long range implications are project delays and increased costs making it difficult to meet MoDOT's construction commitments.

This provision has some significant delay costs associated with it, especially through the likely protracted litigation that may occur. The resulting negative fiscal impact will be significant, exceeding \$100,000 annually.

The negative fiscal impact due to this legislation would be a range of \$2,500,390 (\$2,500,000 appraisal fees + \$390 mailing fees) - negative unknown for the appraisal valuation requirements, projects delays, attorney fees, and punitive damages for abandonment and bad faith.

ASSUMPTION (continued)

Officials of the **Office of Administration - Division of Facilities Management, Design and Construction** assume no fiscal impact.

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

Officials of the **Department of Agriculture** assume no fiscal impact.

Officials of the **Department of Elementary and Secondary Education** assume no fiscal impact.

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

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

Officials of the **Missouri Department of Conservation** assume no fiscal impact.

Officials of the **City of Maryland Heights** assume that the sections regarding the process set forth in implementing eminent domain, if they remain applicable to traditional local public works projects such as street widening or construction, water and sewer projects, installation of curb, gutter and sidewalks, etc. would have significant negative fiscal impact on the City of Maryland Heights and other local governments in the State of Missouri.

Officials of the **Office of Administration -St. Louis County** assume the automatic abandonment of utility easements in proposed RSMo. 392.080 would not affect St. Louis County, but the language in proposed RSMo. 523.283 that would require the abandonment of easements not used for ten years after their acquisition would significantly increase the cost of road projects. St. Louis County typically acquires easements for future road expansion, and the automatic abandonment of such easements would increase future road project costs. The County would have to repurchase needed land in the future at a much higher price. Although these costs would likely be incurred many years in the future and are very difficult to estimate, the abandonment of right-of-way adjacent to a major St. Louis County road could cost tens or even hundreds of millions of dollars to reacquire. The additional notice and time requirements proposed in the eminent domain process would increase the cost of acquiring land for public works projects, and the one hundred-day time period proposed in RSMo. 523.055 for the delivery of condemned property will also add to the length of time required for road projects.

There may be future tax revenue losses due to an inability to assemble land for redevelopment, but such costs are not calculable.

ASSUMPTION (continued)

**Oversight** sent response request to the cities of Columbia, Fulton, Kansas City, Springfield, St. Joseph, St. Charles, and many other cities, and to the Counties of Jackson, Jefferson, Franklin, St. Charles, Warren, Webster, Greene, Cass, Clay, Platte, and many other counties but have yet to receive a response.

<u>FISCAL IMPACT - State Government</u>	FY 2007 (10 Mo.)	FY 2008	FY 2009
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**STATE ROAD FUND**

<u>Cost</u> to Department of Transportation From change in eminent domain and condemnation procedures, project delays, attorney fees, appraisal valuation requirements, etc.	(\$2,083,658 to <u>Unknown</u> )	(\$2,575,390 to <u>Unknown</u> )	(\$2,652,640 to <u>Unknown</u> )
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<b>ESTIMATED NET EFFECT TO STATE ROAD FUND</b>	<u>(\$2,083,658 to Unknown)</u>	<u>(\$2,575,390 to Unknown)</u>	<u>(\$2,652,640 to Unknown)</u>
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<u>FISCAL IMPACT - Local Government</u>	FY 2007 (10 Mo.)	FY 2008	FY 2009
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**LOCAL GOVERNMENTS**

<u>Cost</u> to Local Governments From project delays, future costs of land acquisitions, procedure requirements etc.	(Unknown)	(Unknown)	(Unknown)
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<b>ESTIMATED NET EFFECT TO LOCAL GOVERNMENTS</b>	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
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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 specifies that:

- (1) Private property may only be taken through the use of eminent domain after determining blight of the property or that the taking is for a public use and not without just compensation. Compensation will be determined by considering the comparable sales in the area, appraisal value of similar property taken by condemnation, term of ownership of the property by the current property owner, current use of the property, availability of comparable property in the area, anticipated profits of the acquiring entity that results from the acquisition, and any other relevant factors;
- (2) Vacant land that has never been developed and farmland will not be determined to be blighted;
- (3) At least 30 days prior to initiating negotiations to acquire a property interest, the condemning authority must give actual notification to the owner of record of its intent, the property interest to be acquired, the purpose for which the property is being condemned, the right of the property owner to obtain legal counsel, an appraisal paid for by the condemning authority, a judicial determination regarding the propriety of the condemnation, the amounts of the proposed compensation for the property, and the right to have these issues decided by a jury. The property owner may employ an appraiser to appraise the property to be acquired within 60 days upon receipt of the notice. Projects which are comprised of five or fewer parcels of property, less than 50 acres, or are solely for easements are exempt from the notification requirements. A written offer must be presented to the property owners of record at least 30 days before filing a condemnation petition;
- (4) 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 at the condemning authority's expense. If any of these events do not occur, the condemnation petition will go no further;
- (5) The court may order payment of the landowner's legal fees and expenses and award damages to the property owner if the condemning authority abandons condemnation prior to the final

judgment of the court;

(6) Unless the taking is a total taking, a landowner may propose an alternative location on his or her property which must be considered by the condemning authority;

#### DESCRIPTION (continued)

(7) No condemning authority will acquire private property through the process of eminent domain for solely economic purposes;

(8) The condemning authority must determine that each parcel of property located in a redevelopment plan is blighted property. A condemnation petition must be filed within five years of this determination. If no petition is filed within the five-year period or if any parcel of property is determined not to be blighted, the authority to condemn will expire;

(9) 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;

(10) Any easements that are acquired after the effective date of the bill and are no longer used for the original acquired purpose or have not been used by the easement holder for 10 continuous years will be deemed abandoned or vacated. Abandonment or vacation will result in the reversion of the easement to the owner of record, unless the owner waives the reversion in writing;

(11) An Office of Ombudsman will be established in the Office of the Governor to assist citizens seeking information regarding the condemnation process and procedures; and

(12) Any financial gain to the property owner arising from a condemnation action will be deducted from the taxpayer's federal adjusted gross income.

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 State Courts Administrator  
Office of Administration - Facilities Management, Design and Construction  
Missouri Department of Conservation  
Department of Natural Resources  
Department of Agriculture  
Department of Elementary and Secondary Education

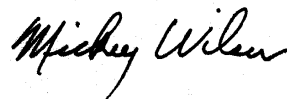
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Department of Economic Development  
City of Maryland Heights  
St. Louis County - Director of Administration

NOT RESPONDING

**Oversight** sent response request to the cities of Columbia, Fulton, Kansas City, Springfield, St. Joseph, St. Charles, and many other cities, and to the Counties of Jackson, Jefferson, Franklin, St. Charles, Warren, Webster, Greene, Cass, Clay, Platte, and many other counties but have yet to receive a response.

A handwritten signature in black ink that reads "Mickey Wilson". The signature is written in a cursive, flowing style.

Mickey Wilson, CPA  
Director  
March 13, 2006