

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 4100-06  
Bill No.: HCS for HB 1944  
Subject: Eminent Domain and Condemnation: Political Subdivisions  
Type: Original  
Date: April 10, 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	(Unknown)	(Unknown)	(Unknown)
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>(Unknown)</b>	<b>(Unknown)</b>	<b>(Unknown)</b>

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

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

### FISCAL ANALYSIS

#### ASSUMPTION

Officials of the **Department of Transportation** assume that increased costs from appraisal valuation requirements (Section 523.060.2) could introduce speculation into the trial process by requiring the jury to consider “any other relevant factors” in valuing property subject to a trial of the exceptions in a condemnation case, which is not presently authorized under Missouri law and the Missouri approved jury instructions. However, the extent of the negative fiscal impact resulting from the use of the new valuation factors is unknown.

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.

ASSUMPTION (continued)

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 **Office of Administration - Budget and Planning Divisions** stated this legislation would have no additional costs or savings to the Division of Budget and Planning.

Officials stated this proposal could have negative impact on general revenue, but there is no way to estimate the amount of capital gains that would be realized from an eminent domain sale and 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 **Clay County** assume if they would have to go to court this proposal would cost the county an estimated \$50,000 per case.

**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, Platte, and many other counties but have yet to receive a response.

FISCAL IMPACT - State Government

FY 2007  
(10 Mo.)

FY 2008

FY 2009

**STATE ROAD FUND**

Cost to Department of Transportation

From change in eminent domain and condemnation procedures	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
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<u>FISCAL IMPACT - State Government</u>	FY 2007 (10 Mo.)	FY 2008	FY 2009
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<b>ESTIMATED NET EFFECT TO STATE ROAD FUND</b>	<b><u>(Unknown)</u></b>	<b><u>(Unknown)</u></b>	<b><u>(Unknown)</u></b>
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<u>FISCAL IMPACT - Local Government</u>	FY 2007 (10 Mo.)	FY 2008	FY 2009
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## LOCAL GOVERNMENTS

<b><u>Cost</u></b> to Local Governments			
From project delays, court costs	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>

<b>ESTIMATED NET EFFECT TO LOCAL GOVERNMENTS</b>	<b><u>(Unknown)</u></b>	<b><u>(Unknown)</u></b>	<b><u>(Unknown)</u></b>
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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 substitute 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 substitute 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, 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 any other relevant factors;

(2) Farmland will not be determined to be blighted;

DESCRIPTION (continued)

(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 identifying the interest in real property to be acquired; the purpose for which the property is being condemned; an appraisal paid for by the condemning authority if the damages due to the taking are greater than \$15,000; a statement of the property owners rights including the right of the property owner to seek legal counsel; and the right 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;

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

(5) 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 attorneys fees and costs;

(6) The court may 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;

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

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

(9) The condemning authority must individually consider each parcel of property in the area with

regard to whether the property is blighted. If the condemning authority finds that the area is predominately blighted, it may proceed with condemnation of any parcel in the area;

(10) 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;

#### DESCRIPTION (continued)

(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;

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

(13) Any easements that are acquired after the effective date of the substitute that are not used in whole or in part for the purpose for which they were acquired for a period of 15 consecutive years must be vacated by the holder of the easement upon written request from the then-owner of record of the burdened property. If the holder of the easement does not vacate the easement within 90 days after receiving the request, the landowner has the right to petition the circuit court to obtain vacation of the easement and the holder has the right to petition the circuit court to grant an extension of 15 years; and

(14) Any legislative determination that an area is blighted, substandard, or insanitary must not be arbitrary or capricious and must be supported by substantial evidence. Upon the filing of any appeal of a legislative determination of blight, the circuit court must give preference in the order of hearing to all other cases, except elections cases, to the extent necessary to conclude the case within 30 days of having been filed. Any subsequent appeals must be given preference and concluded in an expedited manner similar to the manner set forth for a hearing in circuit court.

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

Department of Transportation  
Office of State Courts Administrator  
Office of Administration - Facilities Management, Design and Construction  
Budget and Planning Division  
Missouri Department of Conservation

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Department of Natural Resources  
Department of Agriculture  
Department of Elementary and Secondary Education  
Department of Economic Development  
Clay County Clerk

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, 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 fluid and cursive, with the first name "Mickey" and last name "Wilson" clearly distinguishable.

Mickey Wilson, CPA  
Director  
April 10, 2006