

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4100-10
Bill No.: SCS for HCS for HB 1944
Subject: Eminent Domain and Condemnation: Political Subdivisions
Type: Original
Date: April 28, 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 | (\$8,613,146 to Unknown) | (\$10,632,049 to Unknown) | (\$10,948,846 to Unknown) |
| | | | |
| Total Estimated Net Effect on <u>Other</u> State Funds | (\$8,613,146 to Unknown) | (\$10,632,049 to Unknown) | (\$10,948,846 to Unknown) |

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 14 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 Department of Transportation

Section 523.040.1 - This provision would 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. There would be a negative fiscal impact from the additional appraisal valuation factors of project influence, ownership term, and future use. The negative impact is estimated to exceed \$100,000.

Section 523.040.3 – Heritage Value – This language would replace the words, “any other relevant factors” with the term, “heritage value of the property”, and goes on to state that any condemnation commissioners shall increase their condemnation award by a percentage equal to the length of time in years a landowner or business entity (as long as a family has a majority ownership in the business) has owned such property to a maximum of 100%. This will also be applicable to any trial on the exceptions (so that any jury award would also automatically be increased by 1% for each year that the landowner has owned the parcel to be acquired).

ASSUMPTION (continued)

This heritage value language will cause the cost of right of way acquisitions to increase significantly. The departments right of way expenditures (for land, easements and damages) for the fiscal years 2003, 2004 and 2005 were \$84,936,454, \$47,288,139 and \$51,657,316 respectively. Estimating an average length of ownership of 10 years per parcel would have increased the right of way expenditures by 10% or approximately \$8,493,645 for FY 03, \$4,728,814 for FY04 and \$5,165,732 for FY 05. This does not take into account the jury awards which would also be increased. The additional cost of the jury awards is unknown. For the purposes of estimating the cost of this legislation, we will assume the FY 05 amount calculated above to be the minimum annual fiscal impact.

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:

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 also, Commissioner's should be able to assess damages and return their report within 30 days or less. The additional time would add to project time.

Just Compensation Redefined – Under Section 1, in addition to fair market value of the property, the proposed language would require MoDOT to value and pay for such speculative damages as the landowner's willingness to sell, the heritage value of the property, the availability of comparable property in the area and the like as well as interjecting the value of relocation and replacement costs into the concept of just compensation.

Section 523.042 - Offers of Judgment - The condemning authority is to submit an offer of judgment to the court at the time of filing of the condemnation petition. After a final judgment is issued by either the condemnation commissioners or the jury, if the final damage award exceeds the condemnor's offer of judgment by 15% or more, the property owner shall be awarded their reasonable attorneys fees and any other reasonable costs, including appraisal costs. Because the offer of judgment is submitted at the time of the filing of the condemnation petition, which is the earliest stage of the condemnation process, it is very likely that such offer will not be within the 15% condemnation commissioners' award or jury award margins as both of these stages provide both sides with additional information on the property that would not have been available at the time of the original offer of judgment at the time of the filing of the condemnation commission. As a result, there will be a substantial, negative fiscal impact resulting from this provision.

ASSUMPTION (continued)

Based on CY05 information, the attorney fee payment provisions would have been triggered in 20 of the 21 jury trials and 90 of the 97 settlements. Assuming \$25,000 accruing in attorney fees for jury trials and \$15,000 accruing in attorney fees for settlements obtain pre-jury trial, it equals \$500,000 in attorney fee payments for CY05's jury trials (20 x \$25,000) and \$1.35 million in attorney fee payments for CY05's settlements (90 x \$15,000) for a total of \$1.85 million for CY05 MoDOT case dispositions (trials & settlements) alone.

Also, the estimated appraisal costs for trials are approximately \$5,000/trial and for settlements, approximately \$2,500. As a result for the twenty trials for which MHTC would be required to pay the landowner's appraisal costs because the jury award exceeded MoDOT's offer of judgment by 15% of more, the amount of such appraisal costs are \$100,000 (\$5,000 X 20). For the 90 settlements that were over the 15% statutory threshold, the total costs is \$225,000 (\$2,500 X 90).

523.055 - Possession - Current department policy is to give a 90-day vacancy notice at the time of the filing of the condemnation petition for property owners who are displaced or have to move items of personalty and not less than 30 days from the payment of the commissioner's award. We give unimproved properties 10 days from the payment of the commissioner's award. Should we be required to give 100 days notice after the payment of the award this automatically adds a minimum of 3 months to each project schedule. These delays could cause many currently programmed projects to miss their intended construction season, leading to increased project inflation costs.

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 30 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 thirty-day period, this will cause some delays in acquiring the property.

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 523.250.2(7) - The provision that requires MoDOT/MHTC to pay the landowner's appraisal fees would have a negative fiscal impact of \$2,500,000 (1000 parcels per year X \$2,500 per appraisal).

ASSUMPTION (continued)

523.253.2.(1) - Mediation. MoDOT currently has a mediation policy in place in which mediation is offered to all owners before proceeding to condemnation. It has proved successful for the department. The only major difference between our mediation policy and the one proposed is the provision that would allow the court to determine the mediator if one could not be agreed upon.

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 timeframe provided in this section comes after all the environmental documents are already approved. The fiscal impact is estimated to exceed \$100,000 annually.

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

523.259 - Attorney Fees/Punitive Damages for Abandonment and Bad Faith - This proposed section would permit the court to impose attorneys fees, expenses and punitive damages against the condemnor if it determines a condemnor acted in "bad faith" but gives the court no guidance as to what type of factors should be considered to make such determination.

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.

On average, MHTC acquires approximately 1,000 parcels of real property per year to build roads and bridges. Historically, our condemnation rate has been 15%; however, if the legislation passes and MHTC is required to pay landowner's attorney fees during the condemnation process we estimate this rate will double. Therefore, for the purpose of this legislation we assume that about 300 parcels per year (1,000 x 30%) will be acquired by condemnation. The increase in the condemnation case load would necessitate an additional four attorneys at grade 14. The increase would also require two legal assistants (grade 7) and two legal secretaries (grade 5) to assist. The attorneys would work solely on eminent domain cases and the legal assistant and secretaries would assist the attorneys.

ASSUMPTION (continued)

The fiscal impact includes salaries, fringe benefits, and office expenses associated with the 8 additional positions, condemnation attorneys fees, appraisal fees, heritage value and mailing costs associated with the legislation.

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 timeframe provided in this section comes after all the environmental documents are already approved. The fiscal impact is estimated to exceed \$100,000 annually.

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 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 Conservation** stated that the department has not historically exercised the power of eminent domain. However, the proposed Senate Committee Substitute amended with Section 523.040(3) creates a heritage value to be added to fair market value of properties subject to eminent domain. In applicable transactions, the price paid could increase up to 100% beyond appraised value. Section 523.040(3) could have significant fiscal impact if the Conservation Commission required the use of eminent domain in the future.

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.

ASSUMPTION (continued)

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 **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

In response to similar legislation, fiscal note 4100-06 HCS for HB 1944, the following fiscal impact statements were issued.

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

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.

FISCAL IMPACT - State Government

FY 2007
(10 Mo.)

FY 2008

FY 2009

STATE ROAD FUND

Cost to Department of Transportation
 From changes in condemnation and
 eminent domain procedures and the
 following:

| | | | |
|-------------------------------|-----------------------------|-----------------------------|-----------------------------|
| Personal Service (8 FTE) | (\$226,136) | (\$278,147) | (\$285,100) |
| Fringe Benefits | (\$125,483) | (\$154,344) | (\$158,202) |
| Equipment | (\$56,752) | (\$58,455) | (\$60,208) |
| Expense: | | | |
| Condemnation Awards (1) | (\$4,304,777 to Unknown) | (\$5,320,704 to Unknown) | (\$5,480,325 to Unknown) |
| Jury Trials (20) | (\$416,667) | (\$515,000) | (\$530,450) |
| Postage | (\$325) | (\$402) | (\$414) |
| Pre-Jury trial settlements | (\$1,125,000) | (\$1,390,500) | (\$1,432,215) |
| Jury trial appraisal fees | (\$83,333) | (\$103,000) | (\$106,090) |
| Pre-jury trial appraisal fees | (\$187,500) | (\$231,750) | (\$238,703) |
| Landowner appraisal fees | (\$2,083,333) | (\$2,575,000) | (\$2,652,250) |
| Office Supplies | (\$2,000) | (\$2,472) | (\$2,546) |
| Pagers | (\$240) | (\$297) | (\$306) |
| Telephone expense | (\$1,600) | (\$1,978) | (\$2,037) |

**ESTIMATED NET EFFECT TO
STATE ROAD FUND**

(\$8,613,146 to
Unknown)

(\$10,632,049 to
Unknown)

(\$10,948,846 to
Unknown)

FISCAL IMPACT - Local Government

FY 2007
(10 Mo.)

FY 2008

FY 2009

LOCAL GOVERNMENTS

Cost to Local Governments
 From project delays, court costs, legal
 costs, appraisal fees, etc.

(Unknown)

(Unknown)

(Unknown)

**ESTIMATED NET EFFECT TO
LOCAL GOVERNMENTS**

(Unknown)

(Unknown)

(Unknown)

FISCAL IMPACT - Small Business

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

DESCRIPTION

This act modifies the laws relating to eminent domain.

Sections 99.120 & 99.460

These sections, which allow a municipal housing authority to acquire property through the use of eminent domain, have been removed from statute.

Section 100.420

This section, which allows a planned industrial expansion authority to acquire property through the use of eminent domain, has been removed from statute.

Section 353.130

This section removes an urban redevelopment corporation's power to acquire property through the use of eminent domain.

Section 523.040

This section requires the condemnation commissioners to assess a property owner's damages within 45 days of being appointed by the court. They shall consider various factors, including fair market value, willingness of the owner to sell the property, the heritage value, the highest and best reasonable use of the property, the availability and cost of comparable property, anticipated profits, associated reasonable relocation and replacement costs, and other relevant factors.

"Heritage value" is defined as a value assigned to any real property that has been owned by the same family for one or more years. If the ownership of the property is by an entity, the family shall control more than 50% of the entity in order to meet the standard of same family. A sliding scale shall be used to determine the heritage value award. If the property has been in the same family for one year, the award for heritage value may be an additional amount not to exceed 1% of the original award for damages.

DESCRIPTION (continued)

RWB:LR:OD (12/02)

An additional percent increase shall be added for each year, with the total award not to exceed 100% of the original award.

Prior to issuing a report of assessed damages, the condemnation commissioners shall view the property, hear arguments, and review relevant information offered by the parties.

Section 523.042

A condemning authority shall submit an offer of judgment to the court when filing a petition of condemnation. After a final judgment is issued and all appeals are exhausted, if the final assessment of damages awarded to the property owner exceeds the offer of judgment submitted with the petition of condemnation by at least 15%, the property owner shall be awarded any reasonable attorneys' fees accrued after the filing of the petition and any other reasonable costs, including but not limited to, appraisal costs. If the final assessment of damages awarded to the property owner is less than 15% greater than the offer of judgment, the payment of attorneys' fees and costs shall be paid as otherwise provided.

Section 523.055

Currently, property owners or those persons in possession must deliver possession of condemned property within 10 days after receiving notice. This section requires delivery of the property within 100 days of the award or within 90 days of receiving notice of the need to vacate. An extension shall be allowed under exigent circumstances.

Section 523.200

This section adds public school districts to the definition of "public agency" in the statutes relating to the relocation assistance of persons displaced by eminent domain.

Section 523.205

This section ensures that any political subdivision, not just those receiving federal funding for a project or those proposing a redevelopment plan, which proposes the displacement of persons through the use of eminent domain must establish, by ordinance or rule, a relocation policy with equal or greater requirements than those of the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

This section provides that all displaced residential persons eligible for relocation payments may receive, as one option, actual reasonable costs of relocation. Displaced business persons may receive reasonable costs of moving.

DESCRIPTION (continued)

Section 523.250

At least 30 days before filing a condemnation petition, the condemning authority shall provide the property owner with written notice of the intended acquisition. The notice shall include: 1) the legal description of the property; 2) the purpose for which the property is to be acquired; and 3) a statement of property owner's rights. The written notice shall be deposited in the U.S. mail. Notice shall not be required prior to conducting discussions or meetings to determine the location of property that may be taken by eminent domain. Upon receiving notice, the property owner may employ his or her own appraiser within 60 days.

The condemning entity, at or before the time of notice, shall provide public notice regarding the general nature of the project and its proposed location unless 1) the property interests are only easements; or 2) five or fewer parcels of land or properties containing less than 50 acres are involved.

Section 523.253

A written offer must be presented to the property owners at least 30 days prior to filing a condemnation petition. The offer shall be held open for 30 days.

If the property owner so chooses, the condemning authority shall engage in mediation with the property owner to determine the amount of compensation the owner shall receive for the property. The mediation is nonbinding and independently administered and the condemning authority shall pay the cost. If the parties cannot agree upon a mediator, the property owner may petition the circuit court where the property is located to appoint a mediator. The court shall appoint a mediator within three business days. The mediation shall take place within the 30-day period that the written offer is held open. If the parties cannot come to an agreement, the offer will remain open and the condemning authority may proceed with condemnation proceedings.

The condemning entity or property owner may include any person or entity in the mediation that is reasonably necessary to determine the appropriate amount of compensation for the property. No person who serves as a mediator shall be compelled to disclose any matter disclosed in the mediation process. The mediation shall be regarded as settlement negotiations and the confidentiality of such proceeding shall be as set forth in Supreme Court Rule No. 17.

Section 523.526

Before a court may enter an order of condemnation, the court shall find that the condemning authority gave proper and timely notice to all property owners, an initial offer no lower than the appraisal amount was made, and the landowner was given an opportunity to obtain his or her

DESCRIPTION (continued)

own appraisal. The court shall find that the requirements have been met before a condemnation petition can move forward.

Section 523.259

If a condemning authority abandons condemnation at any point prior to a final judgment, the court may order the authority to pay the landowner's legal fees and expenses and may award damages accruing as a direct and proximate result of the pending condemnation, unless the ceasing was by agreement or settlement. Once an order approving the condemnation is entered, the court may impose additional costs if it determines that the condemning authority has acted in bad faith.

Section 523.261

This section requires any legislative determination of blight shall not be arbitrary and capricious, shall be supported by substantial evidence, and shall be reviewable by a circuit court.

Section 523.262

The power of eminent domain shall only be vested in:

- 1) governmental bodies or agencies whose governing body is elected;
- 2) governing bodies appointed by elected officials; and
- 3) private utility companies, public utilities, rural electric cooperatives, municipally owned utilities, pipeline, or railroad or common carriers. Such entities shall provide relocation assistance to displaced persons.

Section 523.265

Under this section, a property owner may propose an alternative location to condemn within 30 days of receiving written notice of the proceedings and the condemning authority shall consider such location. This provision does not apply to total takings. The alternative location shall be on the same parcel of the landowner's property as the property being sought after for condemnation.

Section 523.271

This section prohibits acquiring private property through the use of eminent domain for predominantly economic development purposes.

DESCRIPTION (continued)

"Economic development" means a use of a specific piece of property which would provide an increase in the tax base, tax revenues, employment, or general economic health.

Section 523.274

This section requires a condemning authority to individually consider each parcel of property in the area with regard to whether the property is blighted. Any condemnation petition regarding land deemed to be blighted shall be filed within five years after the redevelopment plan is authorized. If no petition is filed within five years, the authority to acquire the property shall expire. Future acquisition after five years shall require reauthorization of the project.

Section 523.277

The Governor's Office of the General Counsel shall create an office of ombudsman in order to provide free consultations to individuals seeking information regarding condemnation proceedings and procedures. The ombudsman shall document the use of eminent domain and any complaints associated with its use from persons utilizing the assistance of the office and other relevant sources.

Section 1

Private property shall not be taken through the use of eminent domain without just compensation. "Just compensation" shall mean the amount determined by taking into consideration factors, including fair market value, willingness of the owner to sell the property, the heritage value, the highest and best reasonable use of the property, the availability and cost of comparable property, anticipated profits, associated reasonable relocation and replacement costs, and other relevant factors.

Farmland shall not be determined to be blighted.

Section 2

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

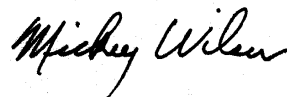
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Department of Transportation
Office of State Courts Administrator
Office of Administration - Facilities Management, Design and Construction
 Budget and Planning Division
Missouri Department of Conservation
Department of Natural Resources
Department of Elementary and Secondary Education
Department of Economic Development
St. Louis County - Director of Administration
Clay County Commission

NOT RESPONDING

Oversight sent response request to the cities of St. Louis, Kansas City, Springfield, Cape Girardeau, St. Charles, Columbia and many others and no response has been submitted.
Oversight sent response request to the counties of Jackson, St. Charles, Jefferson, Greene, Boone, and many others and no response has been submitted.



Mickey Wilson, CPA
Director
April 28, 2006