

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 4100-21  
Bill No.: SS for SCS for HCS for HB 1944  
Subject: Eminent Domain and Condemnation: Political Subdivisions  
Type: Original  
Date: May 3, 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>

**\* Oversight assumes annual costs would exceed \$100,000.**

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

\* Oversight assumes annual costs would exceed \$100,000.

### FISCAL ANALYSIS

#### ASSUMPTION

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

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

The **Department of Conservation** has not historically exercised the power of eminent domain. However, the proposed Senate Substitute creates a heritage value and a homestead value to be added to fair market value of some properties subject to eminent domain. In applicable transactions, the price paid could increase up to 150% beyond appraised value. This requirement could have significant fiscal impact should the Conservation Commission be required to consider eminent domain in the future.

ASSUMPTION (continued)

Officials of the **Office of Administration - Budget and Planning Division** in response to fiscal note 4100-10 SCS for HCS for HB 1944 issued the following fiscal impact statement.

**Section 2 Capital Gains Deduction:**

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.

Due to timing constraints, the **Department of Transportation** was unable to issue a fiscal impact statement. **Oversight** assumes the Department of Transportation would have increased costs when property would qualify for increased payments made under the "heritage value" and "homestead" designations. **Oversight** assumes annual fiscal impact in excess of \$100,000.

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.

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

<u><b>Cost</b></u> to Department of Transportation From changes in condemnation and eminent domain procedures. *	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
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**\* Annual costs are expected to exceed \$100,000.**

<u>FISCAL IMPACT - Local Government</u>	FY 2007 (10 Mo.)	FY 2008	FY 2009
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## **LOCAL GOVERNMENTS**

### **Cost to Local Governments**

From project delays, court costs, legal costs, appraisal fees, etc.	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
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<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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**\* Oversight assumes on a statewide basis that annual local costs would exceed \$100,000.**

### **FISCAL IMPACT - Small Business**

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

### **DESCRIPTION**

#### **Sections 99.120 & 99.460**

These sections require the board members of a municipal housing authority to be appointed by one or more elected officials in order to have the right to acquire property through the use of eminent domain. Such authorities must comply with the procedures and requirements of Chapter 523, RSMo.

#### **Section 100.420**

This section requires the board members of a planned industrial expansion authority to be appointed by one or more elected officials in order to have the right to acquire property through the use of eminent domain. Such authorities must comply with the procedures and requirements of Chapter 523, RSMo.

#### **Section 238.247**

This section requires a transportation development district to receive the approval of the local governing body, as well as the Missouri Highways and Transportation Commission or the local transportation authority, prior to condemning land.

### Section 353.130

This section requires an urban redevelopment corporation to be operating pursuant to a redevelopment agreement executed prior to or on August 31, 2006 with a municipality for a DESCRIPTION (continued)

particular redevelopment area in order to have the right to acquire property through the use of eminent domain.

### Section 523.001

This section defines term useds to determine the amount of compensation that a property owner shall receive for condemned property.

The term "fair market value" means the value of the property taken after considering comparable sales in the area, capitalization of income, and replacement cost less depreciation, singularly or in combination, as appropriate, and additionally considering the value of the property based upon its highest and best use, using generally accepted appraisal practices. If less than the entire property is taken, fair market value shall mean the difference between the fair market value of the entire property immediately prior to the taking and the fair market value of the remaining or burdened property immediately after the taking.

The term "heritage value" means the value assigned to any real property, including but not limited to, real property owned by a business enterprise with fewer than 100 employees, that has been owned within the same family for 50 or more years, such value to be 50% of fair market value.

The term "homestead taking" means any taking of a dwelling owned by the property owner and functioning as the owner's primary place of residence or any taking of the owner's property within 300 feet of the owner's primary place of residence that prevents the owner from utilizing the property in substantially the same manner as it is currently being utilized.

### Section 523.039

In all condemnation proceedings filed after December 31, 2006, just compensation shall be determined using one of the three following provisions, whichever yields the highest compensation, as applicable to the particular type of property and taking:

- (1) An amount equivalent to the fair market value of the property;
- (2) For condemnations that result in a homestead taking, an amount equivalent to the fair market value of the property multiplied by 125%;
- (3) For condemnations of property that result in any taking that prevents the owner from

utilizing property in substantially the same manner as it was currently being utilized on the day of the taking and involving property owned within the same family for 50 or more years, an amount equivalent to the sum of the fair market value and heritage value. Family ownership of

#### DESCRIPTION (continued)

property may be established through evidence of ownership by children, grandchildren, siblings, or nephews or nieces of the family member owning the property 50 years prior to the taking; and in addition, may be established through marriage or adoption by such family members.

If any entity owns the real property, members of the family shall have an ownership interest in more than 50% of the entity in order to be within the family line of ownership for the purposes of this subdivision. The property owner shall have the burden of proving to the commissioners or jury that the property has been owned within the same family for 50 or more years.

#### Section 523.040

This section requires condemnation commissioners return a report of the assessed damages resulting from condemnation within 45 days of being appointed by the court, unless such time limit is extended for good cause. Prior to issuing a report, a commissioner shall notify the parties at least 10 days prior to viewing the property of their opportunity to accompany the commissioners on the viewing and of their opportunity to present information.

In addition, the commissioners shall view the property, hear arguments, and review other relevant information that may be offered by the parties.

#### Section 523.055

This section allows the occupants, as well as the owners, of property to make a motion to grant an extension of time before condemned property must be delivered. Otherwise, the owners or those in possession must deliver possession of the property within ten days.

Generally, the property owner or those persons in possession must deliver possession of condemned property within 10 days of receiving notice. Under this section, any displaced owner of a principal place of residence shall have not less than 100 days from the date of the award to deliver possession.

#### Section 523.060

Currently, any party that files an exception to an award issued by the condemnation commissioners has the right to a trial by jury. A jury shall use the definition of fair market value when determining the property owner's award.

## DESCRIPTION (continued)

### Section 523.061

The circuit judge presiding over the condemnation proceeding shall determine the fair market value of the property, whether a homestead taking has occurred, whether heritage value is payable, and shall increase the commissioners' award to provide for the additional compensation when applicable. If a jury trial of exceptions occurs, the circuit judge presiding over the condemnation proceeding shall determine the fair market value of the property, whether a homestead taking has occurred, whether heritage value is payable, and shall increase the jury verdict to provide for the additional compensation when applicable.

### 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

Currently, the governing body of an city, or agency thereof, must establish a relocation policy prior to approval of a redevelopment project that may displace people. Under this section, any political subdivision, governmental entity, or urban redevelopment corporation initiating condemnation proceedings that might necessitate displacement of persons must create such a policy.

Under this section, "person" means any individual, family, partnership, corporation, or association, that has a legal right to occupy the property, including but not limited to, month-to-month tenants. The term "business" now includes any lawful activity that is conducted on a not-for-profit basis and exempt from paying federal income taxes and veterans organizations.

Any relocation plan for displaced persons shall include a program for providing proper and timely notice to all displaced persons.

There shall be a general information notice informing residential and nonresidential owners and occupants of a potential project. There shall also be a notice of relocation eligibility to be issued as soon as feasible after the execution of the redevelopment agreement. It must inform occupants about relocation assistance, including ninety days advance notice of the date they must vacate.

Currently there is a program for referrals of displaced persons that requires at least three

safe referrals. Such notice shall be given to handicapped persons at least 90 days prior to the date of displacement and to all other persons at least 60 days prior to displacement. This section requires the notice to be at least 90 days prior to displacement for all persons.

#### DESCRIPTION (continued)

This section requires any displaced residential person to be eligible for payments based upon the following options as chosen by such person:

- 1) A \$1,000 fixed payment rather than a \$500; or
- 2) Actual reasonable costs of relocation, which shall not include the cost of replacement property or any capital improvements.

All displaced businesses eligible for relocation payments may choose:

- 1) A \$3,000 fixed payment for moving expenses and up to \$10,000 for reestablishment expenses, rather than a \$1,500; or
- 2) Actual reasonable costs of relocation, which shall not include the cost of replacement property or any capital improvements, and up to an additional \$10,000 for reestablishment expenses.

Any waiver of relocation payments shall not include a waiver of any notice provisions.

#### Section 523.250

At least 60 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) identifying the interest in real property to be acquired and a legal description or commonly known location of the property; 2) the purpose for which the property is to be acquired; 3) statement of property owner's rights. The owner may waive the requirements in writing.

The written notice shall be deposited in the U.S. mail, certified or registered, with pre-paid postage. The receipt from the post office shall constitute proof of compliance with the notice requirements.

#### Section 523.253

A written offer must be presented to the property owners at least 30 days prior to filing a condemnation petition. It must be held open for 30 days unless an agreement is made sooner.



The offer shall be deposited in the U.S. mail, certified or registered, with pre-paid postage. The receipt from the post office shall constitute proof of compliance. Parties may negotiate during the 30-day period.

#### DESCRIPTION (continued)

Any condemning authority shall, at the time of the offer, provide the property owner with an appraisal or an explanation with supporting financial data for its determination of the value of the property. Any appraisal must be made by a state-licensed or state-certified appraiser using generally accepted appraisal practices.

#### Section 523.256

Before a court may enter an order of condemnation, the court shall find that the condemning authority engaged in good faith negotiations, including proper and timely notice was given to all property owners, an initial offer no lower than the appraisal amount or determination value was given, 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, and where applicable, it has considered an alternate location.

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.

#### Section 523.259

If any condemning authority abandons a condemnation, each owner of interests shall be entitled to recover:

- (1) Their reasonable attorneys' fees, expert expenses, and costs; and
- (2) the lesser of the owner's actual damages accruing from the pendency of condemnation or the damages required to be paid to an owner under the terms of the applicable redevelopment plan or agreement.

If the redevelopment plan is silent regarding damages to the owner in the event of abandonment, a court shall order the condemning authority to pay the owner's actual reasonable attorneys' fees and expenses, and shall award damages as resulting from the pendency of the condemnation if proven by the landowner.

The provisions of this section shall only apply to redevelopment plans or agreements

entered into after December 31, 2006.

#### Section 523.261

Under this section, any legislative determination of blight shall not be arbitrary or capricious or induced by fraud, collusion, or bad faith and shall be supported by substantial evidence. A condemning authority or the affected property owner may seek a determination as to whether these standards have been met by a court of competent jurisdiction in any condemnation action filed to acquire the owner's property or in an action seeking a declaratory judgment. Upon the filing of such a declaratory judgment or when such a defense is raised in a condemnation proceeding, the circuit court shall give the case preference in the order of hearing to all other cases, except elections cases, in order to conclude the case within thirty days of having been filed. Either party may thereafter file an interlocutory appeal of the circuit court's order upholding or rejecting the legislative body's determination. Any subsequent or interlocutory appeal shall be given preference and concluded in an expedited manner. An interlocutory appeal shall not stay proceedings in the court unless the court of appeals so orders.

#### 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;
- 3) urban redevelopment corporations operating pursuant to a redevelopment agreement executed prior to or on August 31, 2006 with a municipality for a particular redevelopment area;  
or
- 4) 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.

Any entity with the power of eminent domain and pursuing the acquisition of property for the purpose of constructing a power generation facility after December 31, 2006, after providing notice in a newspaper of general circulation in the county where the facility is to be constructed, shall conduct a public meeting disclosing the purpose of the proposed facility prior to making any offer to purchase property in pursuit thereof or, alternatively, shall provide the property owner with notification of the identity of the condemning authority and the proposed purpose for which the condemned property shall be used at the time of making the initial offer.

#### Section 523.265

RWB:LR:OD (12/02)

Under this section, a property owner may propose an alternative location on the same parcel of land 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 takings of an entire parcel of land. A written statement by the condemning authority to the landowner that has considered all such alternative locations, and briefly stating why they were rejected or

#### DESCRIPTION (continued)

accepted, is conclusive evidence that sufficient consideration was give to the alternative locations.

#### Section 523.271

This section prohibits acquiring private property through the use of eminent domain for solely economic development purposes. "Economic development" means a use of a specific piece of property which would provide an increase in the tax base, tax revenues, employment, and general economic health, and does not include the elimination of a blighted or conservation area.

#### Section 523.274

This section requires a condemning authority to individually consider whether each parcel of property in a defined area is blighted. If the condemning authority finds that a preponderance of the defined redevelopment area is blighted, it may proceed with the condemnation of any parcel in the area.

No action to acquire property by eminent domain within a redevelopment area shall be commenced later than 5 years from the date of the legislative determination that the property is blighted, or is eligible for classification within a conservation area. However, such determination may be renewed for successive five-year periods by the legislative body.

#### Section 523.277

An office of Ombudsman shall be established by the Office of Public Counsel in order to provide guidance for citizens about condemnation proceedings and procedures. The ombudsman shall document the use of eminent domain within the state and any issues associated with its use and shall submit a report to the general assembly on January 1, 2008, and each year after.

#### Section 523.282

Any blanket easement created after December 31, 2006, shall be void and wholly unenforceable. The term "blanket easement" shall mean an easement in real property acquired by condemnation or negotiations in lieu of the exercise thereof where the instrument or order of condemnation, by its terms, allows the easement holder to locate its facilities at an undefined

location on, over, under, or across the burdened property.

However, the term "blanket easement" shall not apply to any instrument containing language that explicitly fixes the burden, scope of use, and footprint within the express terms of the instrument and also contains an express statement that upon completion of the initial structure the location of the burden shall be fixed to the degree occupied by the initial structure

#### DESCRIPTION (continued)

upon completion of such structure. Nothing in this section shall prohibit the expansion or upgrade of the initially completed structure, provided that the purpose and footprint of the expansion or footprint were explicitly described in the original terms of the instrument.

#### Section 523.283

Easements or right-of-way interests acquired after August 28, 2006, by utility, pipeline, or railroad, by either formal condemnation proceedings or by negotiations in lieu of condemnation proceedings, are fixed and determined by the particular use for which the property was acquired as described in either the instrument of conveyance or in the condemnation petition. Expanded use of the property beyond that which is described in the instrument of conveyance or the condemnation petition shall require either an additional condemnation proceeding or new negotiations for the expanded use of the property and appropriate consideration and damages to the current owner of the property for the expanded use.

The term "expanded use" shall mean:

- (1) The exclusion of use by the current owner of the burdened property from an area greater than the area originally described at the time of acquisition by the condemning authority; or
- (2) An increased footprint or burden greater than the footprint or burden originally described in the instrument of conveyance or condemnation petition.

Commissioners or a jury shall be entitled to assume, in assessing the just compensation due for a taking, that the condemning authority shall exercise, from and after the date the property interest is acquired, each and every right acquired to the fullest extent.

If a property owner prevails in an action for trespass or expanded use against a utility, pipeline, or railroad, such property owner may be awarded reasonable attorneys' fees, costs, and expenses.

#### Section 1

RWB:LR:OD (12/02)

No condemning authority shall declare farmland blighted for the purposes of exercising eminent domain.

## 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.

## DESCRIPTION (continued)

## Section 3

A property owner of land burdened by an easement created after December 31, 2006, abandoned in whole for a period in excess of 10 years, may petition a court to obtain the rights previously transferred and vacation of the easement for monetary consideration equal to the original consideration obtained by the property owner in exchange for the easement.

The holder of the easement shall be a party to such action. The holder of any such easement shall be allowed to maintain the easement upon a showing that the holder, in good faith, plans to make future use of the easement. The right to request that an easement be vacated may be waived by the property owner from whom the easement was originally acquired or by such property owner's successor in title to the burdened property either in the original instrument of conveyance or in a subsequent signed writing.

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

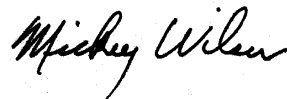
## SOURCES OF INFORMATION

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  
Platte County

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.

Timing constraints did not allow for responses in a timely manner.

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

Mickey Wilson, CPA  
Director  
May 3, 2006