

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 0579-01  
Bill No.: HB 72  
Subject: Eminent Domain and Condemnation; Property, Real and Personal; Courts  
Type: Original  
Date: January 3, 2017

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Bill Summary: This proposal changes the laws regarding condemnation proceedings.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
<b>FUND AFFECTED</b>	<b>FY 2018</b>	<b>FY 2019</b>	<b>FY 2020</b>
<b>Total Estimated Net Effect on General Revenue</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2018</b>	<b>FY 2019</b>	<b>FY 2020</b>
State Road Funds	\$0 to (\$40,450,000)	\$0 to (\$40,450,000)	\$0 to (\$40,450,000)
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>\$0 to (\$40,450,000)</b>	<b>\$0 to (\$40,450,000)</b>	<b>\$0 to (\$40,450,000)</b>

Numbers within parentheses: ( ) indicate costs or losses.

This fiscal note contains 6 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2018</b>	<b>FY 2019</b>	<b>FY 2020</b>
Federal Funds	\$0 to (\$160,000,000)	\$0 to (\$160,000,000)	\$0 to (\$160,000,000)
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0 to (\$160,000,000)</b>	<b>\$0 to (\$160,000,000)</b>	<b>\$0 to (\$160,000,000)</b>

<b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b>			
<b>FUND AFFECTED</b>	<b>FY 2018</b>	<b>FY 2019</b>	<b>FY 2020</b>
<b>Total Estimated Net Effect on FTE</b>	<b>0</b>	<b>0</b>	<b>0</b>

Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any of the three fiscal years after implementation of the act.

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2018</b>	<b>FY 2019</b>	<b>FY 2020</b>
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

## FISCAL ANALYSIS

### ASSUMPTION

Officials at the **Missouri Department of Transportation (MoDOT)** assume under the proposed §523.051, MoDOT would be liable for damages beyond the fair market value of the property as defined under §523.001. If the appointed Commissioners' determination of fair market value is 120% greater than the fair market value offered by MoDOT under §523.253, then MoDOT is liable for 3 times the difference between the offer and the Commissioners' determined amount. So, for example, if the offer was \$804,100 and the Commissioners determined a fair market value of \$2,200,000, then MoDOT would have been responsible for 3 times the cost (\$2,200,000-\$804,100 = \$1,395,900 times 3) or \$4,187,000. Further, MoDOT would be liable for attorney's fees and related valuation expert costs. This result is under the proposed language in §523.060 as well; however, under that section, it is the jury's determination of fair market value.

The proposed language in §523.265 will have a cost associated with the additional time spent by staff on completing all "commercially feasible steps," which is undefined, and for calculating all costs associated with an owner's proposed alternate location. If requested, the Missouri Highway Transportation Commission (MHTC) acquires utility easements for utility companies on MHTC projects. If property is acquired for high-voltage transmission lines in fee simple title rather than a utility easement, MoDOT would see a negative fiscal impact. On average, MHTC acquires 80 utility easements per year. If 10% of utility easements are now acquired in fee simple for high-voltage transmission lines, 8 utility easements estimated at 1.72 acres per easement at \$25,000/acre would cost MHTC \$344,000, rather than \$172,000. This estimate does not include if MHTC was required to purchase more land than needed by the utility.

MoDOT has discussed the proposed legislation with Federal Highway (FHTA) and did not have a commitment that the FHTA would participate in the additional cost. If the FHTA elects not to participate in the additional costs, it could jeopardize the federal match against the state's acquisition cost. Altogether that could mean the loss of an estimated \$160 million in federal dollars per year.

Based on a case from 2009, MoDOT estimates the following costs:

- Effects of the 120% - \$40,000,000
- Attorney fees - \$300,000
- Appraisals - \$150,000
- Loss of Federal participation - \$160,000,000
- Total - \$200,450,000

ASSUMPTION (continued)

Under §523.265, if MoDOT was not able to approve 100% of alternate location proposals, and the third party sided with the property owner, MoDOT would not only see transportation projects delayed, but there would also be a negative fiscal impact. If this happened on 10% of the projects with an \$800 million program, \$80 million worth of projects would be delayed. This would result in an increase in construction costs because of a 2% inflation rate per year. If the projects were delayed by two years, \$80 million programmed would result in \$83.2 million expended.

**Oversight** inquired MoDOT further on this legislation. According to MoDOT, the \$40,450,000 represents historical data provided by MHTC on the total projects that could go to condemnation as of 2009. This amount has obviously increased over time. Currently, there are very few condemnation proceedings with the MHTC each year. Based on this information, MoDOT assumes \$0 to \$40,450,000 in State Road Funds per year. MoDOT also assumes that because there would be less federal match received from the FHTA to MoDOT because of property going to condemnation, MoDOT assumes \$0 to \$160,000,000 in federal funds per year.

Officials at the **Office of the Attorney General** assume that any potential costs arising from this proposal can be absorbed with existing resources.

Officials at the **Office of the State Courts Administrator**, the **Department of Natural Resources**, the **Department of Economic Development**, the **Department of Agriculture**, the **Department of Conservation** and the **State Tax Commission** each assume no fiscal impact to their respective agencies from this proposal.

<u>FISCAL IMPACT - State Government</u>	FY 2018 (10 Mo.)	FY 2019	FY 2020
<b>STATE ROAD FUNDS</b>			
<u>Cost - MoDOT - effect of 120%, attorney fees and appraisals</u>	\$0 to <u>(\$40,450,000)</u>	\$0 to <u>(\$40,450,000)</u>	\$0 to <u>(\$40,450,000)</u>
<b>ESTIMATED NET EFFECT ON STATE ROAD FUNDS</b>	<b>\$0 to <u>(\$40,450,000)</u></b>	<b>\$0 to <u>(\$40,450,000)</u></b>	<b>\$0 to <u>(\$40,450,000)</u></b>

**FEDERAL FUNDS**

<u>Loss - MoDOT - on match funds on property going to condemnation</u>	\$0 to <u>(\$160,000,000)</u>	\$0 to <u>(\$160,000,000)</u>	\$0 to <u>(\$160,000,000)</u>
<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>	<b>\$0 to <u>(\$160,000,000)</u></b>	<b>\$0 to <u>(\$160,000,000)</u></b>	<b>\$0 to <u>(\$160,000,000)</u></b>

<u>FISCAL IMPACT - Local Government</u>	FY 2018 (10 Mo.)	FY 2019	FY 2020
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

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

FISCAL DESCRIPTION

This bill establishes a new method for determining just compensation for certain types of property condemned for the purpose of constructing a high-voltage transmission line. The types of property are agricultural or nonagricultural homestead, rental residential property, and both commercial and noncommercial seasonal residential recreational property.

The property owner must have the option to require the utility to condemn a fee interest in any amount of contiguous, commercially viable land that the owner wholly owns in undivided fee. If the utility serves an objection, the circuit court must hold a hearing within 120 days to determine the merits of the objection. The utility has the burden of proof on whether the property selected

FISCAL DESCRIPTION (continued)

by the owner is not commercially viable. The owner is limited to one option and cannot expand or modify the election without the utility's consent. The acquisition of land by a utility under this provision must be deemed an acquisition for a public purpose and for use in the utility's business.

A condemnor must provide written notice to the property owner that the fair market value offer is provided as required by statute. A condemnor also must provide written notice that it has considered and accepted a proposed alternative location.

If a condemnor does not accept any of the proposed alternative locations, the property owner must have the right to have an independent third party appointed by the judge review the evidence supporting the condemnor's conclusions regarding the proposed alternative locations. If the independent third party finds that the condemnor did not act in good faith, the condemnor must lose its right to condemn any property of that property owner.

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

Missouri Department of Transportation  
Department of Agriculture  
Office of the Attorney General  
Department of Economic Development  
Department of Natural Resources  
Office of the State Courts Administrator  
State Tax Commission  
Department of Conservation



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