

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1479-02
Bill No.: HB 795
Subject: Utilities
Type: Original
Date: April 4, 2017

Bill Summary: This proposal changes the law regarding condemnation for utility services.

FISCAL SUMMARY

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

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2018	FY 2019	FY 2020
State Road Fund	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
Conservation Commission Fund	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
Total Estimated Net Effect on Other State Funds	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 6 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2018	FY 2019	FY 2020
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

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

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

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

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Transportation (MoDOT)** assume the new language in subsection 523.039.3 defines just compensation to include construction damages. Under existing case law in Missouri, damages caused to the property during construction are admissible assuming the damages were reasonably ascertainable at the time of taking and not the result of tortious conduct. This new language could be interpreted to permit evidence of construction damages in a condemnation case without showing reasonable ascertainment and non-tortious conduct. In the event of such an interpretation, this new language would have an adverse fiscal impact that will depend on how the construction impacts a particular parcel.

MoDOT assumes the new section 523.263 appears to substantially impair the ability of an entity to acquire new utility easements. The size and scope of the fiscal impact to MoDOT will depend on how often utility easements are acquired for utility companies and to what extent project costs are increased because existing utility facilities cannot be moved due to the hurdles created by this proposed language.

Removing the authority to condemn could cause the Missouri Highway and Transportation Commission (MHTC) to settle for a much higher mutually-agreed upon amount to deliver STIP projects on time. MHTC could experience a 3% increase in construction costs per year.

MoDOT assumes a negative unknown cost to the State Road Fund.

Officials from the **Missouri Department of Conservation (MDC)** assume this proposal changes the law regarding condemnation for utility services. The MDC estimates the proposed legislation could potentially have a negative fiscal impact on Department funds of more than \$100,000 annually.

For fiscal note purposes, **Oversight** will show a range of cost from \$0 (the proposal does not cause an increase in cost to acquire new utility easements) to a negative unknown (the proposal does cause an increase in cost to acquire new utility easements) to both the State Road Fund and the Conservation Commission Fund.

Officials from the **Department of Economic Development (Public Service Commission, Office of Public Counsel and the Division of Energy)**, the **Department of Natural Resources** and the **State Tax Commission** each assume the proposal will have no fiscal impact on their respective organizations.

ASSUMPTION (continued)

Officials from the **Attorney General's Office** did not respond to our request for fiscal impact.

<u>FISCAL IMPACT - State Government</u>	FY 2018 (10 Mo.)	FY 2019	FY 2020
STATE ROAD FUND			
<u>Cost - MoDOT</u>	\$0 or	\$0 or	\$0 or
New procedure for utility related condemnations	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT ON THE STATE ROAD FUND	<u>\$0 or (Unknown)</u>	<u>\$0 or (Unknown)</u>	<u>\$0 or (Unknown)</u>
CONSERVATION COMMISSION FUND			
<u>Cost - MDC</u>	\$0 or	\$0 or	\$0 or
New procedure for utility related condemnations	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT ON THE CONSERVATION COMMISSION FUND	<u>\$0 or (Unknown)</u>	<u>\$0 or (Unknown)</u>	<u>\$0 or (Unknown)</u>
 <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

Currently, a public utility or rural cooperative may only condemn property for utility services if such power is necessary for the public purpose of utility services, and if the condemnation will not impair or interfere with the current land use. Alternative condemnation routes may also be proposed by a landowner within 30 days of receiving a condemnation notice when condemnation does not apply to an entire parcel of land. This bill repeals those provisions and establishes a new procedure for utility related condemnations.

If an existing easement for the same type of utility already exists that can cover most or part of the distance requested by the utility then the existing easement must be upgraded and offer mutually agreed-upon compensation for the landowner and if the requesting utility does not hold the easement, then the utility shall instead collocate with any entity holding the easement.

All routing for easements shall follow section and property boundary lines unless an alternative route is freely negotiated with the affected landowner. Easements shall be limited to the initial structure type and use unless renegotiation with the landowner occurs. If a route cannot be agreed upon then the project shall be abandoned and the requesting utility may reapply for condemnation at least five years later.

Any utility seeking condemnation using the aforementioned steps must also obtain a written easement agreement from at least sixty percent of impacted landowners before taking action on an acquiring an easement.

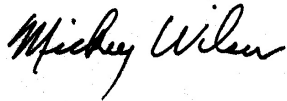
The bill also requires mutually agreed-upon consideration for any upgrade or addition to an existing easement between a entity and a property owner.

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

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SOURCES OF INFORMATION

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



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April 4, 2017

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