

MISSOURI STATE AUDITOR'S OFFICE
FISCAL NOTE (06-12)

Subject

Initiative petition from Patrick Tuohey regarding a proposed constitutional amendment for Article I, Section 26, relating to eminent domain, version 2. (Received February 9, 2006)

Date

March 1, 2006

Description

This initiative petition would amend Article I of the Missouri Constitution by modifying Section 26. Private property shall not be taken nor shall the rights to use, sell or possess private property be encumbered nor damaged if, at the time of such taking or interference, the public body taking such action, or its designee, intends to convey any interest in the property to a private party. This would not apply to property used for the distribution of illegal narcotics or an existing condition of the property which is a common law nuisance condition that impairs the use, enjoyment or value of adjoining property, property necessary for transportation, cable television and telecommunication transmission facilities and utility facilities, conveyances by a public body of interests less than fee title to a privately owned business for the incidental provision of retail services in a public facility, or private ways or easements of necessity.

Public use of property shall not include the redevelopment of property by a non-government entity for any commercial use. If the right to use, possess, sell or improve any private property is impaired by any land use regulation or statute, the owner shall be entitled to just compensation for the reduction in the fair market value of such property.

An affected owner may make a written demand for just compensation to the public body enacting the land use regulation or statute up to four years from the effective date of any such law or regulation damaging private property. If the public body does not provide the just compensation, permanent recorded notice of the abandonment of the taking, or other relief acceptable to the property owner within 120 days after receipt of a written demand, the owner shall have a cause of action for just compensation, and shall be entitled to attorney fees, costs, and expenses incurred in the prosecution of the action.

An owner of real property affected by a regulatory taking may seek just compensation, by the application for a permit to use or develop property in a manner consistent with the permissible uses of the property in existence on October 7, 2006 or the date upon which the owner acquired their record title in the property, whichever is later.

The amendment is to be voted on in November, 2006, or at a special election called by the governor. The effective date of the amendment will be January 1, 2007.

Public comments and other input

The State Auditor's Office received input from the Department of Economic Development, the Office of Administration, the Department of Conservation, the Department of Natural Resources, the Governor's Office, the State Tax Commission, the Missouri Highway and Transportation Commission, Cole County, Greene County, Jackson County, St. Louis County, the City of Kirkwood, and the City of Columbia.

Assumptions

Officials from the Department of Economic Development indicated the initiative petition would have no fiscal impact on their office.

According to officials with the Office of Administration, responding on behalf of the Governor's Office, it appears this amendment will restrict powers of eminent domain to elected officials of the State of Missouri or elected officials of any political subdivision of the State of Missouri. Furthermore, this amendment prohibits the taking of property with the intent of conveying any interest in the property to a private party; provides exemption provisions for law enforcement, public utilities, cable companies, and transportation takings; redefines the definition of property for public use to exclude any property used for redevelopment by a non-government entity for any commercial use other than as specified, and includes provisions for just compensation and provisions for compensation resulting from actions that lower the fair market value of property as a regulator taking. This amendment should have no fiscal impact to the state of Missouri or to any political subdivision of the state.

Officials from the Department of Conservation indicated two areas of concern. First, (2)(a) speaks to the "nuisance condition." The vagueness of the proposed language could create the ability for local ordinances to create liens on land deemed to be a public nuisance, regardless if on private or public land. Many Conservation Department activities such as hunting or shooting ranges could fall within a possible determination of nuisance. The Department of Conservation questions whether the immunity granted to firearm ranges in state statutes would protect in this situation. The possible number of varying regulations statewide is numerous. However, the language speaks to private property only.

The second and major area of concern lies in (4). In addition to eminent domain, this section calls for compensation (including attorney fees, costs and expenses) to any private property owner who experiences a reduction in fair market value of their property due to a "land use regulation" as broadly defined in (6). This could mean that any change to the *Wildlife Code* that impacts any property value creates a financial liability to the Conservation department for up to four years. As the Department works to fulfill its mission, situations involving steps to address a disease concern, invasive species or population management issue could arise that cause the Commission to modify or eliminate harvest opportunities at any time. Thus, based on proposed language, changes

in the *Wildlife Code* would now constitute a taking and compensation responsibilities could arise. Proposed language in (5) relating to "public's health and safety" does not appear adequate to cover *Wildlife Code* regulations.

Officials from the Department of Natural Resources indicated they do not anticipate a significant fiscal impact as a result of the proposal.

Officials from the State Tax Commission indicated that the initiative petition would not have a fiscal impact to their agency or the county assessor's office.

Officials from the Missouri Highway and Transportation Commission (MHTC) indicated that if the initiative petition were to pass, MHTC could no longer use eminent domain to acquire private property and convey the real property interest acquired in either fee ownership or lease to a transportation corporation or to a private partner under a public private partnership.

This would eliminate these forms of innovative transportation financing tools for public transportation projects.

Section 26 (4) of the proposal provides that "In addition to any right of compensation provided in the aforementioned provisions of this section, if the right to use, possess, sell or improve any property is impaired by any land use regulation or statute enacted after October 7, 2006 and the date upon which the owner acquires their record title in the property, and such law or regulation reduces the fair market value of the property, the owner shall be entitled to just compensation for the reduction in the fair market value of such property under this section as a regulatory taking." If regulatory takings would include changes in access right of way we already own (crossovers, etc.) or access being denied for safety reasons under police powers the cost to MoDOT would be substantial and fewer projects would be able to be constructed.

The MHTC estimates the fiscal impact to be at least \$100,000 to unknown.

The City of Kirkwood indicated they were unable to provide a fiscal impact because it would depend upon what was being proposed. The impact could range from zero to significant.

The State Auditor's Office did not receive a response from Cole County, Greene County, Jackson County, St. Louis County, or the City of Columbia.

Fiscal Note Summary

The total fiscal impact to state government is unknown, but estimated to exceed \$100,000. The fiscal impact to local government is unknown.