

**MISSOURI STATE AUDITOR'S OFFICE
FISCAL NOTE (07-11)**

Subject

Initiative petition from Tim Asher and the Missouri Civil Rights Initiative regarding a proposed constitutional amendment to Article I, Section 34. (Received June 15, 2007)

Date

July 5, 2007

Description

This proposal would amend Article I of the Constitution of Missouri by adding Section 34 to establish the Missouri Civil Rights Initiative. It provides that the state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.

The amendment is to be voted on in November, 2008.

Public comments and other input

The State Auditor's Office requested input from the **Attorney General's Office, the Department of Agriculture, the Department of Economic Development, the Department of Elementary and Secondary Education, the Department of Higher Education, the Department of Health and Senior Services, the Department of Insurance, Financial Institutions and Professional Registration, the Department of Mental Health, the Department of Natural Resources, the Department of Corrections, the Department of Labor and Industrial Relations, the Department of Revenue, the Department of Public Safety, the Department of Social Services, the Governor's Office/Office of Administration, the Missouri House of Representatives, the Missouri Lottery, the Department of Conservation, the Office of State Courts Administrator, the Department of Transportation, the Missouri Public Service Commission, the Office of the State Public Defender, the Missouri Senate, the Secretary of State's Office, the State Tax Commission, the State Treasurer's Office, Boone County, St. Louis County, Greene County, the City of Cape Girardeau, the City of Jefferson, the City of Kansas City, the City of St. Louis, Cape Girardeau 63 School District, Hannibal School District #60, Rockwood R-VI School District, Linn State Technical College, Metropolitan Community Colleges, the University of Missouri, and St. Louis Community College.**

Assumptions

Officials from the **Attorney General's Office** indicated that any potential costs directly relating to this proposal can be absorbed with existing resources.

Officials from the **Department of Agriculture** indicated the initiative petition will have no fiscal impact on their agency.

Officials from the **Department of Economic Development** indicated this petition should have no administrative or fiscal impact on their agency.

The **Department of Elementary and Secondary Education** indicated no impact on their agency as a result of this initiative petition.

Officials from the **Department of Higher Education** indicated this initiative would have no foreseeable fiscal impact on their agency.

The **Department of Insurance, Financial Institutions and Professional Registration** indicated that they follow Office of Administration guidelines for procurement and hiring of personnel and will continue to do so. The department assumes any costs associated with this proposal, if passed by the voters, could be absorbed with existing resources.

Officials from the **Department of Mental Health** indicated they do not give preference in employment or contracting to any individual or group on the basis of race, sex, color, ethnicity, or national origin and therefore reports no impact as a result of this petition.

Officials from the **Department of Corrections** indicated the initiative petition would have no impact on their agency.

The **Department of Revenue** indicated this petition will not have a fiscal impact on their agency.

The **Department of Public Safety** indicated there is no fiscal impact for this petition on the director's office.

Officials from the **Department of Social Services** indicated no fiscal impact on their agency as a result of this initiative petition.

Officials from the **Governor's Office/Office of Administration** indicated there would not be any fiscal impact on their agencies as a result of this amendment. However, the Office of Administration would eliminate its Minority and Women Owned Business Program established as part of the criteria in awarding state contracts. They have no way of estimating whether this would reduce or increase future contract costs.

Officials from the **Missouri House of Representatives** indicated that the initiative petition does not have a fiscal impact on their organization.

The **Department of Conservation** indicated that it does not appear that the proposed amendment would have a fiscal impact on their agency.

The **Office of State Courts Administrator** indicated that this initiative petition should not have a fiscal impact on the judiciary.

The **Missouri Public Service Commission** reported no costs or savings to their agency from this measure.

Officials from the **Office of the State Public Defender** indicated this petition will have no significant impact on their agency.

Officials from the **Missouri Senate** indicated no fiscal impact on their agency.

Officials from the **Secretary of State's Office** indicated their office is required to pay for publishing in local newspapers the full text of each statewide ballot measure as directed by Article XII, Section 2(b) of the Missouri Constitution and Section 116.230-116.290, RSMo. The Secretary of State's office is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. Funding for this item is adjusted each year depending upon the election cycle with \$1.6 million historically appropriated in even numbered fiscal years and \$100,000 appropriated in odd numbered fiscal years to meet these requirements. The appropriation has historically been an estimated appropriation because the final cost is dependent upon the number of ballot measures approved by the General Assembly and the initiative petitions certified for the ballot. In FY 2007, at the August and November elections, there were 6 statewide Constitutional Amendments or ballot propositions that cost \$1.2 million to publish (an average of \$193,000 per issue). Therefore, the Secretary of State's office assumes, for the purposes of this fiscal note, that it should have the full appropriation authority it needs to meet the publishing requirements.

The **State Tax Commission** indicated this petition will not impact their organization.

Officials from the **State Treasurer's Office** indicated that there is no fiscal impact on their agency as a result of this petition.

The **City of Jefferson** indicated that it does not anticipate any fiscal impact should this initiative petition become law.

The **City of St. Louis** indicated this initiative petition would result in a significant fiscal impact to the City for the following reasons.

The language the petition proposes to insert into the Missouri Constitution would prohibit the “granting of preferential treatment to any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education or public contracting” by the state and “any political subdivision and any

department, agency, commission, board, or other unit of a political subdivision...” and is to be implemented “to the maximum extent that federal law and the United States Constitution permit.” Remedies for violation of this section shall be the same as or otherwise available for violations of then-existing Missouri antidiscrimination law.

As you may or may not be aware, a variety of contracting processes in the City of St. Louis operate pursuant to Mayor’s Executive Order #28, as extended. This Executive Order sets forth goals for minority and women’s business participation in work related to City contracts for services, supplies and development incentives, and processes that ensure maximum utilization of minority and women’s businesses in performance pursuant to these contracts.

The purpose of this Executive Order is to provide a narrowly tailored remedy for historic discrimination against minority and women business owners.

In addition, the City is contemplating the adoption of legislation that would require minimum percentages of employment of minorities and women on City public works projects.

The purpose of the contemplated legislation is to provide a narrowly tailored remedy for historic discrimination against minority and women individuals.

Our interpretation of the proposed amendment is that it would (a) prohibit the City from operating pursuant to the Executive Order—e.g., it would prohibit us from setting goals for minority and women’s business participation and from using processes designed to ensure maximum utilization of such businesses, and (b) prohibit us from adopting and implementing any ordinance that required contractors to include percentages of minorities in City public works engagements.

The prohibitions set forth in the proposed amendment would significantly and negatively impact the City’s economy and fiscal health in the following ways.

As you may or may not be aware, more than 50% of the City’s population is comprised of members of minority groups. It is widely if not universally believed that these minority group members—in particular African-Americans—have been victims of discrimination. This belief is supported by fact: objective evidence demonstrates that minority group members have lower incomes and net worth than non-minority group members, that minority group owners are under-represented in the regional business community, that businesses owned by minority group members have lower earnings than businesses owned by non-minority group members, and that, unless prompted to do so by some sort of government encouragement, non-minorities in a position to offer opportunities to businesses do not typically offer these opportunities to minority businesses. Thus, minority group members in the St. Louis region do not have the same opportunities for either quality jobs or for successful business ownership as do non-minority group members, and this lack of opportunities translates into lower incomes for minority group members.

Since a majority of the City's population is comprised of minority group members, the lack of such opportunities impacts the City's economy and revenues in a significant way. Lower earning potential for individuals means lower disposable incomes, which in turn means lower payroll-based tax revenues and purchase-based sales tax revenues for the City.

At the time of the 2000 Census, the average income of a Caucasian household in the City of St. Louis was approximately \$33,500; the average income of an African-American household in the City was approximately \$21,000. Thus, an average African-American household in the City had an income of approximately \$12,500—or 37%—less than an average Caucasian household. Had this disparity not existed and if these incomes were equalized, the 66,300 African-American households in the City would have had an additional \$835 million in income. This additional \$835 million in income would be subject to the 1% City earnings tax, generating an additional \$8.35 million in City revenue. Further, if we conservatively assume that 10% of this additional income would have been spent on goods purchased in the City and subject to the City's 2.6% total sales tax, this additional income would have generated an additional \$2.2 million in City sales tax revenue. If the constitutional amendment passes, it will no longer be possible for the City to use narrowly tailored race-based preferences to address this disparity. Failure to eradicate this disparity will result in a loss of future City revenue. Thus, we estimate the long-term fiscal impact of the proposed constitutional amendment at more than \$10.5 million per year.

For the past decade, the City has implemented narrowly tailored policies that are intended to remedy this discrimination. But this discrimination is firmly rooted and systemic and has existed for centuries rather than decades and cannot be remedied in a few short years. Further, the City is continually fine-tuning these narrowly tailored policies in an effort to achieve more success. We still have a long way to go in equalizing the earning power and opportunities available to our minority citizens. If the proposed initiative petition is successful, the City and other political subdivisions throughout the state would no longer be able to use the power of their governments to address issues of fairness and discrimination in our societies. Discrimination and its economic consequences would continue, jeopardizing the economic and fiscal future of the City and its citizens.

Officials from **Hannibal School District #60** reported no costs or savings for their organization as a result of this initiative petition.

Officials from **Rockwood R-VI School District** indicated they do not believe there would be costs or savings related to this petition.

Officials from **Linn State Technical College** indicated there appears to be no fiscal impact on their organization as a result of this initiative petition.

Metropolitan Community Colleges indicated this constitutional revision has no significant direct fiscal impact on their organization.

The **University of Missouri** indicated they are unable to quantify any fiscal impact this petition may have on their organization.

The State Auditor's Office did not receive a response from the **Department of Health and Senior Services**, the **Department of Natural Resources**, the **Department of Labor and Industrial Relations**, the **Missouri Lottery**, the **Department of Transportation**, **Boone County**, **St. Louis County**, **Greene County**, the **City of Cape Girardeau**, the **City of Kansas City**, **Cape Girardeau 63 School District**, and **St. Louis Community College**.

Fiscal Note Summary

The total cost or savings to state and local governmental entities is unknown. Most state governmental entities estimate no costs or savings, however, costs or savings related to future contracts are unknown. Some local governments estimate no costs or savings, but prohibition of certain municipal policies may result in unknown costs.