

**MISSOURI STATE AUDITOR'S OFFICE  
FISCAL NOTE (08-37)**

**Subject**

Initiative petition from Tim Asher and the Missouri Civil Rights Initiative regarding a proposed constitutional amendment to Article I, Section 34. (Received November 6, 2008)

**Date**

November 26, 2008

**Description**

This proposal would amend Article I of the Missouri Constitution by adding Section 34.

The amendment is to be voted on in November, 2010.

**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 Economic Development** indicated this petition would have no impact on their agency.

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

The **Department of Health and Senior Services** indicated no impact for their department.

The **Department of Insurance, Financial Institutions and Professional Registration** indicated passage of this initiative will have no cost or savings to their department.

Officials from the **Department of Mental Health** indicated they do not currently provide preferential treatment based on these factors and therefore indicates the implementation of this legislation would have no fiscal impact to the department.

Officials from the **Department of Corrections** indicated the impact of the initiative petition is unknown. The department stated that passage of this proposed amendment would affect the state's current purchasing practices, as minority and racial preferences are given in certain instances when awarding contracts. The department deferred to the Office of Administration-Purchasing to address procurement issues and any resulting fiscal impact on behalf of state agencies.

The **Department of Labor and Industrial Relations** indicated this petition has no fiscal impact on their department.

The **Department of Revenue** indicated this petition will have no impact on their agency.

The **Department of Public Safety** indicated there is no fiscal impact for this petition on their department.

Officials from the **Department of Social Services** indicated no fiscal impact on their agency as a result of this initiative petition. The department Human Resource Center indicated that no fiscal impact is expected as a result of the employment provisions in this proposal. The department further indicated that it abides by all state and federal laws relating to discrimination in employment and has a policy in place that prohibits discrimination in the workplace. Therefore, no cost is anticipated.

Also, the department expects no fiscal impact from the public education provision.

With respect to public contracting, there could be a fiscal impact to the department if this

proposal were interpreted to negate Executive Order 05-30, which is related to Minority Business Enterprise/Women Business Enterprise (MBE/WBE) participation. Current requests for proposals allow potential vendors to receive up to 10 bonus points if 51% or more of the vendor's employees are certified as minority and/or women. The department indicated that it would look to the Office of Administration for direction on how to manage existing contracts with MBE/WBE participation if the initiative petition passed.

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 has no fiscal impact to the operations budget of their organization.

The **Department of Conservation** indicated that no fiscal impact to the department would be expected as a result of this proposal.

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

Officials from the **Department of Transportation** indicated no impact on their agency as a result of this initiative petition. Further, they stated this proposal will not prohibit actions that must be taken to establish or maintain eligibility for any federal program if ineligibility would result in the loss of federal funds. To the extent that the department gave contracting or employment preferences based on race or gender, those would be prohibited unless Federal Highway Administration and federal monies require such preferences. They do not believe federal dollars are tied to the department following a Diversified Business Enterprises program. While the department does submit a diversity plan to the Federal Highway Administration annually, they are not aware that federal dollars are tied to its implementation, or even its submittal.

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 this initiative appears to have 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 2009, at the August and November elections, there were 5 statewide Constitutional Amendments or ballot propositions that cost \$1.36 million to publish (an average of \$272,000 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.

The **City of Jefferson** indicated that it does not anticipate any fiscal impact should this 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..." 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 each year 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 3.1% total sales tax, this additional income would have generated an additional \$2.6 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 approximately \$11 million per year, based on incomes at the time of the 2000 census.

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 **Rockwood R-VI School District** indicated they do not believe there would be any financial cost or benefit 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 petition would have no fiscal impact on their organization.

The **University of Missouri** indicated this initiative petition will have no identifiable fiscal impact on their organization.

The State Auditor's Office did not receive a response from the **Department of Agriculture**, the **Department of Elementary and Secondary Education**, the **Department of Natural Resources**, the **Missouri Lottery**, the **Missouri Public Service Commission**, the **State Treasurer's Office**, **Boone County**, **St. Louis County**, **Greene County**, the **City of Cape Girardeau**, the **City of Kansas City**, **Cape Girardeau 63 School District**, **Hannibal School District #60**, 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.