

**MISSOURI STATE AUDITOR'S OFFICE**  
**FISCAL NOTE (06-15)**

**Subject**

Initiative petition from Marc Ellinger regarding a proposed constitutional amendment for Article VI, Section 21, relating to eminent domain and development of floodplains, wetlands and agricultural land, version 2. (Received February 17, 2006)

**Date**

March 8, 2006

**Description**

This initiative petition would amend Article I of the Missouri Constitution by adding Section 21(a). Section 21(a) would state that no city, town, village, county or other political subdivision shall use eminent domain powers to acquire, or to use or allow the use of any economic incentive to acquire, develop or improve any property which is (1) in any 100 year floodplain; (2) wetlands; (3) land which has been used for an agricultural purpose at any time in the last five years. Cities, towns, villages, counties, levee districts and other political subdivisions shall not construct any levee or other flood control structure within the 100 year floodplain, unless at least seventy-five percent of the surface area of such land to be protected by such levee or flood control structure contains structures or streets as of the effective date of this amendment. This section shall not apply to the use of eminent domain for the sole purpose to acquire land for streets and sanitary sewers and the necessary right of way appurtenant thereto, or to the use of economic incentives for development or improvement of agricultural land not in any 100 year floodplain or wetlands, provided that title to such agricultural land is not obtained through the expenditure of any governmental funds or use of any governmental power.

The amendment is to be voted on in November, 2006.

**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 petition would have no fiscal impact.

Officials from the Office of Administration – Division of Budget and Planning indicated the petition would have no fiscal impact to the State of Missouri or any of its political subdivisions.

Officials from the Department of Conservation indicated the proposed language causes some concern. While the Department of Conservation has never used, or has plans to use the power of eminent domain, there is language that may affect the department's use and management of wetlands. It states use eminent domain or "use or allow the use of any economic incentive to acquire, develop or improve property which is (1) in any 100 year floodplain... (2) wetlands as defined by the United States government; or (3) land which has been used for any agricultural purpose at any time in the last five years."

The Department of Conservation feels wetlands and farmland are an important part of the management of fish, forest and wildlife resources in the state of Missouri. For these reasons they have strong reservations over the proposed amendment.

The Department of Natural Resources indicated does not anticipate a significant fiscal impact as a result of this proposal.

The State Tax Commission indicated the petition will not have in their department or the County Assessor's Office.

The Missouri Highway and Transportation Commission does not anticipate a direct fiscal impact from this bill. However, this will reduce the effectiveness of certain innovative financing techniques for developing and operating transportation system facilities. Transportation Development Districts (sections 238.200 – 238.299 RSMo) are political subdivisions of the state and would be potentially impacted by the initiative petition.

Officials from St. Louis County indicated there may be some future loss of potential revenue to St. Louis County due to the elimination of economic incentives to assist in the development of properties in the 100-year flood plain.

St. Louis County still has an extensive area of undeveloped land in the flood plain of the Missouri River, most of which is located in the cities of Bridgeton, Hazelwood and Maryland Heights. Were this land to be developed commercially, St. Louis County would receive additional funding through its 58 cents per \$100 assessed value property tax and potentially from our countywide 1-cent sales tax, depending on the type of development.

However, it is not possible to quantify the amount of potential future revenues that may fail to materialize as a result of this petition.

The continuing inclusion of eminent domain powers for streets and sewers is a necessity for St. Louis County; however, the use of eminent domain for economic development in flood plain and agricultural areas is not.

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.

Officials from the City of Columbia indicated they did not see a fiscal impact at this time.

The State Auditor's Office did not receive a response from Cole County, Greene County, or Jackson County.

### **Fiscal Note Summary**

The fiscal impact to state and local government is unknown.