

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0223-01
Bill No.: SB 95
Subject: Bonds - Surety; Crimes and Punishment; Health Dept.; Housing; Insurance -
 Property; Property, Real and Personal; Waste - Hazardous
Type: Original
Date: January 18, 2005

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
General Revenue	Unknown*	Unknown*	Unknown*
Total Estimated Net Effect on General Revenue Fund	Unknown*	Unknown*	Unknown*

* Unknown revenue assumed to be less than \$100,000 annually.

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
MoPHS	\$0 to \$5,000	\$0 to \$5,000	\$0 to \$5,000
Lead Abatement Loan	\$0 to \$15,000	\$0 to \$15,000	\$0 to \$15,000
Total Estimated Net Effect on <u>Other</u> State Funds	\$0 to \$20,000	\$0 to \$20,000	\$0 to \$20,000

Numbers within parentheses: () indicate costs or losses.
 This fiscal note contains 8 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
Local Government	(Unknown)*	(Unknown)*	(Unknown)*

* **Unknown loss due to fines assumed to be under \$100,000 annually.**

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of State Public Defender, Office of Administration (COA) - Administrative Hearing Commission, COA - Division of Design and Construction, Office of State Treasurer, Office of State Courts Administrator, Department of Insurance and Office of Prosecution Services** assume the proposal will have no fiscal impact to their organizations.

Officials from the **COA - Division of Budget and Planning (BAP)** state there should be no added cost to the BAP as a result of this proposal. However, there will be an increase in total state revenue.

Officials from the **City of St. Louis** stated the proposal would have no direct impact on their organization although it would increase requirements and fines for contractors. These requirements and fines could make it more difficult to hire approved contractors.

Officials from the **Office of Attorney General (AGO)** assume any potential costs arising from the proposal could be absorbed with existing resources. Additional staff and expenses are not being requested with this single proposal, but if multiple proposals pass during the legislative session that create additional duties, the AGO will need to request additional staff to handle the increase in workload.

ASSUMPTION (continued)

Officials from the **Department of Social Services (DOS) - Children's Division (CD)** state in Section 701.303, the provision which states: "Any local community, government agency, or quasi-government agency issuing grants or loans for lead abatement projects must provide written notification to the department no later than ten days prior to the onset of the lead abatement project" could potentially relate to a very small portion of Start Up/Expansion funding that DOS passes to the Community Partnerships. If the proposal were enacted, CD would comply with these provisions with no significant fiscal cost.

Officials from the **Department of Health and Senior Services (DOH)** state Article 1, Section 31 of the Missouri Constitution states that no commission, bureau, board or other administrative agency has the authority to make any rule fixing a fine or imprisonment as punishment for its violation. However, if the Missouri Constitution were changed, the DOH makes the following assumptions:

Section 701.309.2 - Because the DOH would only find out if a lead abatement contractor failed to notify DOH of a project if a homeowner complained, it is difficult to estimate the fine revenue that would be generated by this proposal. The DOH assumes that a vast majority of contractors would be compliant in reporting their projects. Therefore, DOH estimates that there will be five or fewer contractors who fail to notify the department of a project in a given fiscal year, and if a contractor is fined for their first offense, they will likely notify the DOH of future projects, resulting in no second-offense fines. Fine revenue is ranged from \$0 to \$5,000 annually (5 contractors X \$1,000) and would be deposited into the **Missouri Public Health Services Fund (MoPHS)**.

The DOH assumes that the courts would agree to take an action against a licensed lead abatement contractor to collect civil penalties. It is assumed that penalties would be assessed for numerous, frequent and/or more egregious violations (such as creation of lead hazards, improper containment of lead debris, using prohibited work practices, no supervisor on site, unlicensed workers or supervisors on site, etc.). It is further assumed that these types of violations of state statutes and regulations would be identified approximately 15 times per year. The fine revenue of \$0 to \$15,000 (15 violators X \$1,000) would be deposited in the **MO Lead Abatement Loan Fund**.

At this time, the DOH is not sure if it is possible to levy fines against local government agencies and therefore, is not sure of the fiscal impact of section 701.313.

ASSUMPTION (continued)

Oversight assumes if the DOH is able to levy fines against local government agencies the funds will be deposited into the General Revenue Fund. **Oversight** also assumes any fine revenue levied against local governments would be less than \$100,000 annually as any agency fined for failure to notify the DOH, would do so in the future.

Officials from the **Department of Corrections (DOC)** did not respond to our request for a statement of fiscal impact.

However, in response to lead abatement legislation from the prior session containing similar penalty provisions, the DOC stated it cannot predict the number of new commitments which may result from the creation of the offenses(s) outlined in the proposal. An increase in commitment depends on the utilization by prosecutors and the actual sentences imposed by the court. If additional persons were sentenced to the custody of the DOC due to the provisions of the legislation, the DOC would incur a corresponding increase in operational cost through either incarceration (FY 03 average of \$38.10 per inmate per day or an annual cost of \$13,907 per inmate) or through supervision provided by the Board of Probation and Parole (FY 03 average of \$3.15 per offender, per day or an annual cost of \$1,150 per offender per year).

The DOC assumed the narrow scope of the crime would not encompass a large number of offenders. The low felony status of the crime enhances the possibility of plea-bargaining or the imposition of a probation sentence. The probability also exists that offenders would be charged with a similar but more serious offence of that sentences may run concurrent to one another. Supervision by the DOC through probation or incarceration would result in some additional costs, but it is assumed the impact would be \$0 or a minimal amount that could be absorbed within existing resources.

Oversight assumes, based on DOC's responses to prior-year lead abatement proposals containing similar penalty provisions, the DOC would incur \$0 to minimal costs that would be absorbed within existing resources.

Officials from the **City of Kansas City** and **St. Louis County** did not respond to our request for a statement of fiscal impact.

This proposal could result in an increase in total state revenue.

<u>FISCAL IMPACT - State Government</u>	FY 2006 (10 Mo.)	FY 2007	FY 2008
GENERAL REVENUE FUND			
<u>Income - Department of Health and Senior Services</u>			
Fine revenue from local governments	<u>Unknown*</u>	<u>Unknown*</u>	<u>Unknown*</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>Unknown*</u>	<u>Unknown*</u>	<u>Unknown*</u>
* Fine revenue from local governments assumed to be less than \$100,000 annually.			
MoPHS FUND			
<u>Income - Department of Health and Senior Services</u>			
Fine revenue	<u>\$0 to \$5,000</u>	<u>\$0 to \$5,000</u>	<u>\$0 to \$5,000</u>
ESTIMATED NET EFFECT ON MoPHS FUND	<u>\$0 to \$5,000</u>	<u>\$0 to \$5,000</u>	<u>\$0 to \$5,000</u>
LEAD ABATEMENT LOAN FUND			
<u>Income - Department of Health and Senior Services</u>			
Fine revenue	<u>\$0 to \$15,000</u>	<u>\$0 to \$15,000</u>	<u>\$0 to \$15,000</u>
ESTIMATED NET EFFECT ON LEAD ABATEMENT LOAN FUND	<u>\$0 to \$15,000</u>	<u>\$0 to \$15,000</u>	<u>\$0 to \$15,000</u>

FISCAL IMPACT - Local Government FY 2006 FY 2007 FY 2008
(10 Mo.)

LOCAL GOVERNMENTS

Loss - Local Governments

Fines (Unknown)* (Unknown)* (Unknown)*

ESTIMATED NET EFFECT ON

LOCAL GOVERNMENTS (Unknown)* (Unknown)* (Unknown)*

*** Fines paid by local governments to the DOH assumed to be less than \$100,000 annually.**

FISCAL IMPACT - Small Business

Contractors which are small businesses could be affected by this proposal. The proposal would cause them to be fined if they do not notify the Department of Health and Senior Services prior to conducting lead abatement projects. Lead abatement contractors will be required to purchase and maintain liability insurance in an amount of not less than \$300,000.

DESCRIPTION

This proposal modifies various provisions relating to lead poisoning.

New language allows the Director of the Department of Health and Senior Services to levy fines pursuant to Sections 701.300 to 701.348. All fines shall be deposited into the Public Health Services Fund. Owners of single family homes in areas of commercial lead production shall not be fined or required to pay for any type of lead remediation (Section 701.304).

The Department of Health and Senior Services shall provide on its Internet website educational materials that explain the rights and responsibilities of the property owners, tenants, lead inspectors, risk assessors, and lead abatement contractors (Section 701.305).

Any lead abatement contractor that fails to notify the Department prior to starting a lead abatement project will be fined one thousand dollars for the first identified offense, two thousand dollars for the second identified offense, and thereafter fines will be doubled for each identified offense. Written notification shall include disclosure of any potential lead hazards to the owners and tenants of a dwelling by the licensed risk assessor, who conducted the initial risk assessment. Once the abatement has been completed, the lead abatement contractor must submit written notification and the final clearance inspection report to the Department (Section 701.309).

DESCRIPTION

The Director shall require lead abatement contractors to purchase and maintain liability insurance. Licensees or applicants for licensure must provide evidence of their ability to indemnify any person that may suffer damage from lead-based paint activities to which they may be liable. The licensee or applicant for licensure may provide proof of liability insurance in an amount to be determined by the Department, which shall not be less than \$300,000 dollars (Section 701.312).

Local community organizations, government agencies, and quasi-government agencies that issue grants or loans for lead abatement projects must provide written notification to the Department no later than ten days prior to the onset of a project. The failure to provide written notification will result in a fine of \$250 dollars to be levied by the Department. In emergency situations, the community organization, government agency, or quasi-government agency must notify the Department within twenty-four hours of the onset of a lead abatement project and provide written notification to the Department within five days (Section 701.313).

Current law specifies that any violation of sections 701.308, 701.309, 701.310, 701.311 and 701.316 is a Class A misdemeanor. New language states that any subsequent violation of these sections will be a Class D felony (Section 701.320).

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

SOURCES OF INFORMATION

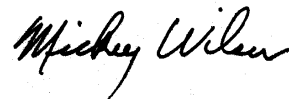
Office of Attorney General
Office of Administration -
 Division of Budget and Planning
 Administrative Hearing Commission
 Division of Design and Construction
Office of State Courts Administrator
Department of Health and Senior Services
Department of Social Services
Department of Insurance
Office of Prosecution Services
Office of State Public Defender
City of St. Louis
Office of State Treasurer

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SOURCES OF INFORMATION (continued)

NOT RESPONDING:

**City of Kansas City
Department of Corrections
St. Louis County**



Mickey Wilson, CPA
Director
January 18, 2005