

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0223-10
Bill No.: HCS for SS for SB 95
Subject: Bonds - Surety; Crimes and Punishment; Health Dept.; Insurance - Property;
 Property, Real and Personal; Waste - Hazardous
Type: Original
Date: April 26, 2005

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
Total Estimated Net Effect on General Revenue Fund	\$0	\$0	\$0

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
Missouri Lead Abatement Loan	\$2,500	\$2,500	\$2,500
Childhood Lead Testing	Unknown	Unknown	Unknown
Total Estimated Net Effect on <u>Other</u> State Funds	Unknown exceeding \$2,500	Unknown exceeding \$2,500	Unknown exceeding \$2,500

Numbers within parentheses: () indicate costs or losses.
 This fiscal note contains 9 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	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of State Courts Administrator, Office of Prosecution Services, Office of State Treasurer and Office of Administration (COA) - Division of Facilities Management, Design and Construction** assume the proposal will have no fiscal impact on their organizations.

Officials from the **COA - Administrative Hearing Commission** assume the proposal will not significantly alter its caseload and, therefore, will have no fiscal impact.

Officials from the **COA - Division of Budget and Planning (BAP)** assume the proposal would have no fiscal impact on their organization. However, this proposal will increase total state revenues. The BAP has no basis for estimating the amount of contributions to the Childhood Lead Testing Fund or the Missouri Lead Abatement Loan Fund.

Officials from the **Department of Revenue (DOR)** state as the legislation is currently written with “the tax credit to be clearly and unambiguously printed on the first page of each income tax return form provided by this state” will either force DOR to decrease the font (making it hard to read for taxpayers) or increase the number of pages in the return, thus making the return longer and appear more complicated.

ASSUMPTION (continued)

To decrease the cost to implement this proposal and to avoid having to decrease font or increase the size of the 1040 return, the Division of Taxation is highly recommending that language similar to Section 143.1005 be adapted for this proposal and be inserted into the proposal instead of the clearly and unambiguously language.

However, if this is not changed, Taxation will have to decrease the font size of the return, thus making the return harder to read for the taxpayers. An additional line will have to be placed on the return and the department's mainframe system will have to be modified to allow for this implementation.

The Division of Taxation will have internal costs estimated to be \$69,255 associated with the implementation of the proposal as written; however, the division believes it can manage these costs at current appropriation levels unless there is a material change in the division's other responsibilities.

Officials from the **Department of Health and Senior Services (DOH)** state because the department would only find out if a lead abatement contractor failed to notify the DOH of a project if a homeowner complained, it is difficult to estimate the fine revenue that would be generated by section 701.309.3. The DOH assumes that a vast majority of contractors would be compliant in reporting their projects. Therefore, the DOH estimates that there would be five (5) or fewer contractors who fail to notify the department of a project in any given fiscal year, and if a contractor is fined for their first offense, they will likely notify DOH of future projects, resulting in no second-offense fines. Anticipated revenue is \$1,250 (5 X \$250) to the Missouri Lead Abatement Loan Fund.

DOH officials also state because the department would only find out if a local community organization, government agency, or quasi-governmental agency failed to notify DOH of a project if a homeowner complained, it is difficult to estimate the fine revenue that would be generated by section 701.313. The DOH estimates that there will be five (5) or fewer such agencies who fail to notify the department of a project in any given fiscal year. Anticipated revenue is \$1,250 to the Missouri Lead Abatement Loan Fund.

Officials from the **Office of Attorney General (AGO)** state, based upon the DOH's assumption that five (5) or fewer contractors would fail to notify the department of a project in any given year, the AGO assumes 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 **Office of Secretary of State (SOS)** state the proposal modifies various provisions relating to lead poisoning. Based on experience with other divisions, the rules, regulations and forms issued by the Department of Health and Senior Services could require as many as 12 pages in the Code of State Regulations. For any given rule, roughly one-half again as many pages are published in the Missouri Register as are published in the Code because of cost statements, fiscal notes and notices that are not published in the Code. The estimated cost of a page in the Missouri Register is \$23. The estimated cost of a page in the Code of State Regulations is \$27. The actual cost could be more or less than the numbers given. The impact of this legislation in future years is unknown and depends upon the frequency and length of rules, filed, amended, rescinded, and withdrawn. The SOS estimates the cost of the proposal to be \$738 [(12 pgs. X \$27) + (18 pgs. X \$23)] for FY 06.

Oversight assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation process. Any decisions to raise fees to defray costs would likely be made in subsequent fiscal years.

Officials from the **Department of Corrections (DOC)** state the DOC cannot predict the number of new commitments which may result from the creation of the offenses(s) outlined in this proposal. An increase in commitment depends on the utilization by prosecutors and the actual sentences imposed by the court.

If additional persons are sentenced to the custody of the DOC due to the provisions of this legislation, the DOC will incur a corresponding increase in operational cost through either incarceration (FY 04 average of \$38.37 per inmate per day or an annual cost of \$14,005 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).

DOC assumes the narrow scope of the crime will 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.

ASSUMPTION (continued)

Officials from the **Office of State Public Defender (SPD)** did not respond to our request for a statement of fiscal impact. However, in response to similar proposals introduced this session, the SPD assumed the proposal would have no fiscal impact on their organization.

Officials from the **City of St. Louis** did not respond to our request for a statement of fiscal impact. However, in response to similar proposals from the current session, officials assumed the proposal would have no direct fiscal impact on the City of St. Louis.

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 will result in an increase in total state revenue.

<u>FISCAL IMPACT - State Government</u>	FY 2006 (10 Mo.)	FY 2007	FY 2008
MISSOURI LEAD ABATEMENT LOAN FUND			
<u>Income - Department of Health and Senior Services</u>			
Administrative Penalty Revenues	<u>\$2,500</u>	<u>\$2,500</u>	<u>\$2,500</u>
ESTIMATED NET EFFECT ON MISSOURI LEAD ABATEMENT LOAN FUND	<u>\$2,500</u>	<u>\$2,500</u>	<u>\$2,500</u>
CHILDHOOD LEAD TESTING FUND			
<u>Income - Department of Revenue</u>			
Donations from Income Tax Returns	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
ESTIMATED NET EFFECT ON CHILDHOOD LEAD TESTING FUND	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>

<u>FISCAL IMPACT - Local Government</u>	FY 2006 (10 Mo.)	FY 2007	FY 2008
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
<u>FISCAL IMPACT - Small Business</u>			

Contractors which are small businesses could be affected by this proposal. The proposal would cause them to incur administrative penalties 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 and errors and omissions insurance.

DESCRIPTION

This proposal modifies the law relating to lead abatement and lead poisoning.

SECTION 143.603 - A one dollar check-off on the Missouri income tax return is created and the money designated by the check-off will be deposited into the Childhood Lead Testing Fund. The check-off of one dollar is primarily for taxpayers who are to receive a refund. However, taxpayers who owe taxes may also contribute to the fund and any taxpayer may elect to contribute more than one dollar.

SECTION 701.305 - 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 701.308 - A representative of the department, or a representative of a unit of local government or health department is authorized to re-enter a dwelling or child-occupied facility to determine if the owner has taken the required actions for abating or establishing interim controls for the lead hazard. If consent is not granted, the representative of the department may petition the court for an order to enter the premises to determine if the owner has taken the required actions for abating or establishing interim controls for the lead hazard. The court shall grant the order upon a showing by the department that the department has attempted to notify the dwelling's owner.

In commercial lead production areas, if the department identifies lead hazards due to paint, mini-blinds, or other household products/sources in a property where a child has been identified with an elevated blood level, the owner shall comply with the requirement for abating or establishing interim controls for the above stated hazards, in a manner consistent with the recommendations described by the department and within the applicable time period.

DESCRIPTION (continued)

If the residential property owner is owned by a commercial lead production or transport company, which has not taken the required actions for abating or establishing interim controls for the lead hazard in a manner consistent with the options provided by the department, the commercial lead production or transport company shall be deemed to be in violation of the provisions of this proposal.

SECTION 701.309 - Any lead abatement contractor that fails to notify the Department prior to starting a lead abatement project will be subject to an administrative penalty of two and fifty dollars for the first identified offense, five hundred dollars for the second identified offense, and thereafter administrative penalties 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.

Lead abatement contractors and public agencies, organizations issuing grants and loans for lead abatement projects or interim controls to inform owners and tenants of dwellings that information regarding lead hazards can be accessed on the department Internet website.

SECTION 701.311 - The director of the department may, instead of shall as in current law, issue notices of violation to property owners or persons responsible. The notice shall contain an outline of corrective action which is required to effect compliance.

This proposal provides that nothing in the proposal shall be construed as requiring the department to issue a notice of violation, but rather gives the department discretion to do so when the department believes that the public interest will be adequately served.

However, the department shall develop, publish, and post on its website an enforcement manual that delineates the categories of violation for which the department shall issue a notice of violation or for which the department may either issue a notice of violation or issue a suitable written notice or warning.

SECTION 701.312 - The Director shall require lead abatement contractors to purchase and maintain liability and error and omissions 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.

SECTION 701.313 - Local community organizations, government agencies, and quasi-government agencies that issue grants or loans for lead abatement projects must provide

DESCRIPTION (continued)

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 an administrative penalty 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 701.314 - The director shall have the power to issue notices of violation, written notices and letters of warning in the area of training for lead inspectors, risk assessors, lead abatement supervisors, lead abatement workers and project designers.

SECTION 701.317 - The department will have the power to elect to impose administrative penalties or to request the Attorney General's office or prosecutor to seek civil penalties in court.

SECTION 701.320 - Any lead inspector, risk assessor, lead abatement supervisor, lead abatement worker, project designer, or lead abatement contractor who engages in a lead abatement project while such person's license, issued by the department for such work, is under suspension or revocation is guilty of a class D felony.

SECTION 701.328 - The department may release, without consent, information to federal employees and agents as well as to state or local agencies for the employees to perform their public duties.

SECTION 701.337 - Any administrative penalties collected from this provision shall be deposited in the "Missouri Lead Abatement Loan Fund".

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 -
 Administrative Hearing Commission
 Division of Budget and Planning
 Division of Facilities Management, Design and Construction
Office of State Courts Administrator
Department of Corrections
Department of Health and Senior Services
Department of Revenue
Office of Prosecution Services
Office of Secretary of State
Office of State Treasurer

NOT RESPONDING: Office of State Public Defender, City of Kansas City, City of St. Louis and St. Louis County



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Director
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