

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 0333-01  
Bill No.: SB 7  
Subject: Children and Minors; Health Dept.; Health, Public; Medicaid; Property, Real and Personal; Social Services Dept.; Waste - Hazardous  
Type: Original  
Date: January 25, 2005

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
General Revenue	(\$62,234 to \$63,484)	\$0 to \$1,250	\$0 to \$1,250
<b>Total Estimated Net Effect on General Revenue Fund</b>	<b>(\$62,234 to \$63,484)</b>	<b>\$0 to \$1,250</b>	<b>\$0 to \$1,250</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
MO Lead Abatement Loan	\$0 to \$15,000	\$0 to \$15,000	\$0 to \$15,000
Childhood Lead Testing	Unknown	Unknown	Unknown
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>Unknown to exceeding \$15,000</b>	<b>Unknown to exceeding \$15,000</b>	<b>Unknown to exceeding \$15,000</b>

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

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

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2006</b>	<b>FY 2007</b>	<b>FY 2008</b>
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**FISCAL ANALYSIS**

**ASSUMPTION**

Officials from the **Office of State Courts Administrator, Department of Public Safety (DPS) - Director's Office, DPS - Missouri State Highway Patrol, Department of Economic Development - Division of Professional Registration, Missouri Department of Transportation, Missouri Consolidated Health Care Plan, Department of Natural Resources, Department of Social Services - Children's Division, Missouri Department of Conservation, Office of State Treasurer, St. Louis County - Department of Health and Office of State Public Defender** assume the proposal will have no fiscal impact on their organizations.

Officials from the **Office of Administration (COA) - Administrative Hearing Commission** assume the proposal will not significantly alter its caseload and, therefore, will have no fiscal impact on its organization.

Officials from the **Office of Attorney General (AGO)** assume this proposal may create additional costs as it permits the Department of Health and Senior Services (DOH) to petition the court for authorization to re-enter a dwelling or facility for a lead-abatement status check and levy fines for violations of the section. The AGO assumes that it would be required to review petitions and represent the DOH in proceedings. The proposal further states that the DOH may request the AGO or the AGO may independently bring an injunction against any lead abatement practitioner in violation of the section.

ASSUMPTION (continued)

The AGO further assumes that any potential costs arising from this proposal would be minimal and 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.

Officials from the **COA - Division of Budget and Planning (BAP)** state the proposal would not result in additional costs or savings for the BAP. However, the BAP defers to the Department of Revenue and Department of Health and Senior Services for specific impacts of the proposal.

Officials from the **Department of Revenue (DOR)** state the Taxation Division would have to modify the corporate and individual income tax systems to allow for the check off to be added to the tax returns and for the accountability of the contributions. DOR estimates it will take 1,384 hours to program the individual income tax system at a cost of \$43,170 (1,384 hours X \$33.36/hour) and 519 hours of programming for the corporate tax system at a cost of \$17,314 (519 hours X \$33.36/hour) for total programming costs of \$63,484 in FY 06.

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** does not specify where the fines generated by this section are to be placed. 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. It is assumed the fine revenue of \$1,250 (5 contractors X \$250) in this section would be deposited into the **General Revenue Fund**.

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

ASSUMPTION (continued)

statutes and regulations would be identified approximately 15 times per year. It is assumed that the fine revenue of \$15,000 (15 violators X \$1,000) would be deposited in the **MO Lead Abatement Loan Fund**.

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.

Officials from the **Office of Secretary of State (SOS)** state SB 7 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 approximately 10 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 \$615 [(10 pgs. X \$27) + (15 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.

<u>FISCAL IMPACT - State Government</u>	FY 2006 (10 Mo.)	FY 2007	FY 2008
<b>GENERAL REVENUE</b>			
<u>Income - Department of Health and Senior Services</u>			
Fines	\$0 to \$1,250	\$0 to \$1,250	\$0 to \$1,250
<u>Costs - Department of Revenue</u>			
Programming Costs	(\$63,484)	\$0	\$0
<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>	<b><u>(\$62,234 to \$63,484)</u></b>	<b><u>\$0 to \$1,250</u></b>	<b><u>\$0 to 1,250</u></b>
<b>MO LEAD ABATEMENT LOAN FUND</b>			
<u>Income - Department of Health and Senior Services</u>			
Fines and penalties	<u>\$0 to \$15,000</u>	<u>\$0 to \$15,000</u>	<u>\$0 to \$15,000</u>
<b>ESTIMATED NET EFFECT ON MO LEAD ABATEMENT LOAN FUND</b>	<b><u>\$0 to \$15,000</u></b>	<b><u>\$0 to \$15,000</u></b>	<b><u>\$0 to \$15,000</u></b>
<b>CHILDHOOD LEAD TESTING FUND</b>			
<u>Income - Department of Health and Senior Services</u>			
Tax contributions	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
<b>ESTIMATED NET EFFECT ON CHILDHOOD LEAD TESTING FUND</b>	<b><u>Unknown</u></b>	<b><u>Unknown</u></b>	<b><u>Unknown</u></b>
<u>FISCAL IMPACT - Local Government</u>			
	FY 2006 (10 Mo.)	FY 2007	FY 2008
	<b><u>\$0</u></b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>

### FISCAL IMPACT - Small Business

This proposal could directly impact small business lead abatement contractors if they incur fines or penalties.

### DESCRIPTION

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

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 143.603).

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).

Section 701.306 clarifies that written notification shall include options that are appropriate for reducing lead hazards.

Representatives of the Department, local government or health departments have the authority to re-enter a dwelling or a child-occupied facility to determine if the required actions have been taken. If the representative does not have consent to enter, they may petition the court for an order to enter the premises. An order shall be granted upon a showing that the representative attempted to notify the dwelling's owner in writing and forty-eight hours in advance of the time and purpose of the re-entry (Section 701.308).

Any lead abatement contractor that fails to notify the Department prior to starting a lead abatement project will be fined two hundred and fifty dollars for the first identified offense, five hundred dollars for the second identified offense, and thereafter fines will be double for each identified offense. The lead abatement contractor shall inform the owners and tenants of a dwelling that information regarding potential lead hazards can be accessed on the Department's internet website. 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).

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

DESCRIPTION (continued)

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).

Injunctions may be brought by the Department or the Attorney General in Circuit court until substantial compliance with sections 701.300 to 701.338 is achieved. All actions may be placed at the head of the docket and hearings shall be held within fifteen days of filing. Individuals cited with a violation of sections 701.300 to 701.338, by clear and convincing evidence, shall be fined up to one thousand dollars for the first violation and five thousand dollars for subsequent violations. The fines shall be deposited into the "Missouri Lead Abatement Loan Fund" (Section 701.317).

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.

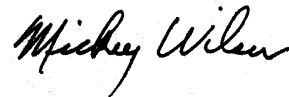
SOURCES OF INFORMATION

Office of Attorney General  
Office of Administration -  
    Division of Budget and Planning  
    Administrative Hearing Commission  
Office of State Courts Administrator  
Department of Economic Development -  
    Division of Professional Registration  
Department of Natural Resources  
Department of Corrections  
Department of Health and Senior Services  
Department of Revenue  
Department of Social Services  
Missouri Department of Transportation  
Department of Public Safety -  
    Director's Office  
    Missouri State Highway Patrol

SOURCES OF INFORMATION (continued)

Missouri Consolidated Health Care Plan  
Missouri Department of Conservation  
St. Louis County -  
    Department of Health  
Office of Secretary of State  
Office of State Public Defender  
Office of State Treasurer

**NOT RESPONDING: City of Kansas City, Office of Prosecution Services, and St. Louis City**



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Director  
January 25, 2005