

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 4349-01  
Bill No.: SB 938  
Subject: Transportation; Transportation Dept.; Roads and Highways; Fees  
Type: Original  
Date: January 30, 2006

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**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
<b>FUND AFFECTED</b>	<b>FY 2007</b>	<b>FY 2008</b>	<b>FY 2009</b>
<b>Total Estimated Net Effect on General Revenue Fund</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2007</b>	<b>FY 2008</b>	<b>FY 2009</b>
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</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 2007</b>	<b>FY 2008</b>	<b>FY 2009</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 2007</b>	<b>FY 2008</b>	<b>FY 2009</b>
<b>Local Government</b>		<b>\$0</b>	<b>\$0\$0</b>

**FISCAL ANALYSIS**

**ASSUMPTION**

Officials from the **Department of Corrections, House of Representatives, Office of State Courts Administrator, Department of Revenue, Office of Administration - Division of Accounting, Missouri Highway Patrol, Department of Labor** assume no fiscal impact to their agency.

Officials from the **Office of Administration - Division of Budget and Planning** assume the proposal should not result in additional or savings. It is not known at this time whether the proposal will have an impact on Total State Revenue or the General Revenue budget.

Officials from the **Department of Transportation (MoDOT)** assume this proposal would provide MoDOT with an alternative method to fund and build a new Mississippi River bridge that is much needed. There would be no fiscal impact on MoDOT from this proposal until MoDOT decides to pursue the Missouri Public-Private Patnrership.

Officials from the **Secretary of State's Office** assume many bill considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The Secretary of State's office is provided with core funding to handle a

ASSUMPTION (continued)

certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this fiscal note to the Secretary of State's office for Administrative rules is less than \$1,500 dollars. The Secretary of State's office recognizes that this is a small amount and doesnot expect that additional funding would be required to meet these costs. However, we also recognize that man such bills may be passed by the General Assembly in a give year and that collectively the costs may be in excess of what our office can sustain with our core budget. Therefore, we reserve the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the governor.

**Oversight** assumes the SOS could absorb the costs of printing and distributing packets and sections of the State Manual related to this proposal. If multiple bills pass which require the printing and distribution of packets at substantial costs, the SOS could request funding through the appropriation process.

<u>FISCAL IMPACT - State Government</u>	FY 2007 (10 Mo.)	FY 2008	FY 2009
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

<u>FISCAL IMPACT - Local Government</u>	FY 2007 (10 Mo.)	FY 2008	FY 2009
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

DESCRIPTION

This act creates the "Missouri Public-Private Partnerships Transportation Act." The act allows the Missouri Highways and Transportation Commission to contract with a private developer to finance, develop and operate a bridge located in the city of St. Louis which connect the state of Missouri and the state of Illinois.

DESCRIPTION (continued)

**PROCESS FOR SUBMITTING PROJECT PROPOSALS** - Under the act, any potential private partner may submit a request for approval to the commission to finance, develop and/or operate the project. The commission shall use a competitive procurement process to form a public private partnership. The act requires the commission to publish a public notice of its request for proposals. The commission shall include in such notice a deadline by which responses to such requests for proposals must be submitted.

**APPROVAL OF PROJECT** - The commission may approve the project if it determines the bridge will improve and is a needed addition to the state highway system. The commission may grant tentative approval of the potential private partner whose request for approval or response to a request for proposal provides the best value to the state for financing, developing and/or operating the project. The commission shall establish criteria for making its determination including: the potential private partner's preliminary estimate of project cost and its financing plan; the general reputation, qualifications, industry experience, and financial capacity of the potential private partner; the proposed plans for developing and/or operating the project; and, other criteria that the commission deems appropriate.

**FINAL APPROVAL OF PRIVATE PARTNER/COMPREHENSIVE AGREEMENT** - Prior to granting its final approval of the private partner to finance, develop and operate the project, the commission shall review and approve a comprehensive agreement that will provide for: the start date for construction of the project and any other dates the commission deems necessary to develop and/or operate the project; review and approval by the commission of the final plans and specifications for the development and operation of the project to ensure that such plans and specifications conform to the standards acceptable to the commission; a final financing plan; and any other provisions that the commission and the private partner deem appropriate.

**TERMINATION OF NEGOTIATIONS WITH PRIVATE PARTNER** - If the commission is not satisfied with the results of negotiations with a potential private partner for an agreement, the commission may terminate negotiations with the potential private partner. The commission may reject any and all requests for approval and responses to a request for proposals.

**SUNSHINE LAW APPLICABILITY** - All information of any kind submitted by a potential private partner to the commission pursuant to a request for approval as provided in section shall be a closed record. After the private partner and the commission execute the comprehensive agreement, information provided by the private partner, the interim agreement and the comprehensive agreement shall be an open record as provided for by Missouri's sunshine law.

**PRIVATE PARTNER GENERAL POWERS** - The act delineates the powers of the private

DESCRIPTION (continued)

partner. The powers include contracting with governmental bodies, leasing or acquiring the right to operate the project, collect user fees in connection with the use of the project by the traveling public, and borrow money for project purposes.

REQUIREMENTS OF PRIVATE PARTNER - The private partner shall, in connection with the financing, development and operation of the project, provide the following:

- (1) Security and warranties in the forms and amounts satisfactory to the commission;
- (2) An annual financial statement audited by an independent certified public accountant and such other financial reports and information as required by the commission;
- (3) A summary of any and all compensation from all sources for the project to the private partner;
- (4) Evidence that the private partner has obtained general commercial liability insurance and worker's compensation insurance, if applicable.

The commission may also require the private partner to provide bonds.

AUTHORITY TO IMPOSE AND COLLECT USER FEES AND TOLLS - The commission may impose user fees for the project. The comprehensive agreement shall provide the rate of such user fees as may be established by agreement of the commission and the private partner. Such user fees should be set in an amount that takes into account any lease payments, reasonable costs of financing, development and operation. A rate schedule of the current user fees imposed and collected for use of the project shall be made available by the private partner or the commission to any member of the public on request. The commission may authorize the private partner to collect and enforce user fees for the project.

GOVERNMENT AND PRIVATE SECTOR ASSISTANCE FOR THE PROJECT - The commission may take any action to obtain federal, state or local government or private sector assistance for the project and may enter into any contracts required for such assistance. In the comprehensive agreement, the commission may agree to loan funds received from any federal, state or local government or the private sector to the private partner for the development and operation of the project from time to time.

INDEBTEDNESS, BONDS AND TAX EXEMPT STATUS - The commission and the private partner may use any and all revenues that may be available to them and may, to the fullest extent permitted by applicable law, issue debt, equity, or other securities or obligations. The private

DESCRIPTION (continued)

partner may issue corporate bonds, private activity bonds, refunding bonds, notes and other obligations, and may secure any of such obligations by mortgage, pledge, or deed of trust of any or all of the property and income of the private partner. The private partner shall not mortgage, pledge or give a deed of trust on any real property or interests obtained by eminent domain acquired from the state of Missouri or any agency or political subdivision thereof. Bonds, notes and other obligations shall exclusively be the responsibility of the private partner payable solely out of its funds and property and shall not constitute debt or liability of the commission or the state of Missouri or any other agency or political subdivision of the state. Neither the private partner nor the commission shall be obligated to pay such bonds, notes or other obligations with any funds other than those specifically pledged to repayment. Any private partner bonds issued, the interest thereon, or any proceeds from such bonds shall be exempt from taxation for all purposes except the state estate tax.

**PROJECT DELIVERY AND PROCUREMENT** - The commission may authorize or require a private partner to use any project delivery method for the efficient development and/or operation of the project, including design-build contracts.

**DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION** - The private partner shall provide the commission a detailed disadvantaged business enterprise participation plan that conforms to commission reporting requirements for the federal disadvantaged business enterprise program pursuant to federal law and regulations on federal-aid highway projects. The plan shall also provide information describing the experience of the private partner in meeting disadvantaged business enterprise participation goals, how the private partner will meet the departments disadvantaged business participation goal and such other qualifications that the commission considers to be in the best interest of the state.

**LEASE** - The commission may lease to or for the use of a private partner the project or such right-of-way or other easement in such real estate as the commission deems necessary for the development and/or operation of the project.

**COMMISSION CONDEMNATION AUTHORITY** - The commission may condemn lands for the project in the name of the state of Missouri.

**COLLECTION AND ENFORCEMENT OF USER FEES AND TOLLS** - The private partner may use any toll tickets, barrier toll facilities, billing accounts, commuter passes and electronic recording or identification devices. An owner of a motor vehicle who fails to pay the required toll is guilty of an infraction and upon conviction thereof, shall be required to pay both the amount of the toll as well as pay a fine in an amount to be determined by the court.

DESCRIPTION (continued)

**TORT LIABILITY LIMITATIONS FOR PRIVATE PARTNER** - Under the act, tort liability caps are established for the private partner and its employees and agents. The tort liability caps shall be a per person cap and a per occurrence cap and shall be in amounts identical to the tort liability caps established in the sovereign immunity statutes (Section 537.610). Commercial general liability insurance policies purchased by the private partner shall not be used to expand the tort liability caps.

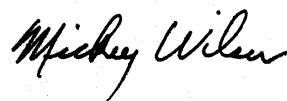
**MATERIAL DEFAULT/REMEDIES** - The act requires the commission to provide notice of material defaults to the private contractor and give the private partner the opportunity to cure such defaults. After such notice, the commission may exercise a variety of remedies delineated in the act.

**ANNUAL REPORT TO JOINT COMMITTEE ON TRANSPORTATION OVERSIGHT** - The act requires the commission to make an annual status report to the joint transportation oversight committee. The annual report shall assess the advantages and disadvantages of the public-private partnership method of financing, developing and/or operating the project.

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

Department of Transportation  
Secretary of State's Office  
Office of Administration -  
    Division of Accounting  
    Division of Budget and Planning  
Department of Labor  
Missouri Highway Patrol  
Department of Corrections  
Department of Public Safety  
Department of Revenue  
Missouri House of Representatives  
State Courts Administrator



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Mickey Wilson, CPA

Director  
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