

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1779-01
Bill No.: SB 383
Subject: Contracts and Contractors; Public Buildings
Type: Original
Date: April 5, 2013

Bill Summary: This proposal modifies the Missouri Public Prompt Payment Act and the law relating to public works projects.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
Total Estimated Net Effect on General Revenue Fund	\$0	\$0	\$0

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
University Funds	(Unknown over \$100,000)	(Unknown over \$100,000)	(Unknown over \$100,000)
Total Estimated Net Effect on <u>Other</u> State Funds	(Unknown over \$100,000)	(Unknown over \$100,000)	(Unknown over \$100,000)

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

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
Total Estimated Net Effect on FTE	0	0	0

Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).

Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
Local Government	(Unknown over \$100,000)	(Unknown over \$100,000)	(Unknown over \$100,000)

FISCAL ANALYSIS

ASSUMPTION

Officials at the **Office of Administration - Division of Facilities Management, Design and Construction** assume this proposal would have no fiscal impact on the Division. However, due to the many unknown variables of the elimination of contract retainage; the provisions of this proposal could affect our ability to assure that contractors satisfy their obligations to complete a construction project.

Officials at the **Office of Administration - Division of Purchasing & Materials Management** assume this would require them to state in the bid solicitation documents the payment process for public works projects. This could be absorbed with existing resources.

Officials at the **Department of Economic Development, Department of Labor and Industrial Relations, Lincoln University, Linn State Technical College, Metropolitan Community College, Missouri Department of Transportation, Missouri Western State University, Office of Administration - Division of General Services, Special School District, St. Louis County** and the **University of Central Missouri** each assume there is no fiscal impact to their organization from this proposal.

Officials at the **Department of Conservation** assume the impact is unknown depending on the clarification of the bonding requirements.

Officials at the **University of Missouri** assume this proposal would eliminate retainage from University construction contracts. The elimination of retainage from construction contracts will have a negative effect on the University's ability to enforce completion and manage claims. The cost of this change is difficult to estimate but given the volume of construction the University performs could easily cost more than \$100,000 per year in delay costs and settlement of closeout claims.

Our experience is that sureties may provide payment and performance bonds, however in practice they are in the business of protecting their own interests, not the interests of the owner or University. The university has an exemplary record of prompt payment of its contractors and intervening on behalf of workers and subcontractors who have not been paid promptly. Without retainage we will no longer be able to do this.

Officials at the **City of Kansas City** assume this proposal eliminates the ability of the public body to withhold retainage on a project. If there are no retainage amounts available on a project

ASSUMPTION (continued)

the only recourse a City may have is to declare default and rely on a surety to complete the project. This can be a costly and cumbersome process with no guarantee that the surety will live up to its obligations. Furthermore, some projects cannot wait to be completed until the surety resolution process runs its course. Consequently the City will be forced to appropriate additional funds to complete a project; essentially paying twice for the same work.

There are also costs associated with the surety resolution process. Additional internal staff time has to be devoted to the resolution process, thus driving up administrative costs for each project. In some cases, where complex issues are involved, the City may look to outside legal counsel to assist in the resolution process. Again driving up the administrative costs of the construction process.

Officials at the **City of Columbia** assume this would ease the City's requirement for making payments as they would no longer have to calculate retainage.

Officials at the **Parkway School District** assume this could have significant but unknown impact for a variety of reasons. If a project is delayed, the start of school might be delayed or rental space may be needed.

Officials at the **Northwest Missouri State University** assume there would be minor savings on projects between \$25,000 and \$50,000.

Officials at the **Missouri State University** assume the impact could be significant as the bonds do not protect the owner or provide any leverage needed by the public owner to complete a project.

Officials at the following cities: Ashland, Belton, Bernie, Bonne Terre, Boonville, California, Cape Girardeau, Clayton, Dardenne Prairie, Excelsior Springs, Florissant, Frontenac, Fulton, Gladstone, Grandview, Harrisonville, Independence, Jefferson City, Joplin, Kearney, Knob Noster, Ladue, Lake Ozark, Lebanon, Lee Summit, Liberty, Louisiana, Maryland Heights, Maryville, Mexico, Neosho, O'Fallon, Pacific, Peculiar, Popular Bluff, Raytown, Republic, Richmond, Rolla, Sedalia, Springfield, St. Charles, St. Joseph, St. Louis, St. Robert, Sugar Creek, Sullivan, Warrensburg, Warrenton, Webb City, Weldon Spring and West Plains did not respond to **Oversight's** request for fiscal impact.

Officials at the following schools: Blue Springs Public Schools, Branson Public Schools, Columbia Public Schools, Fair Grove Schools, Francis Howell Public Schools, Independence Public Schools, Jefferson City Public Schools, Kirksville Public Schools, Lee Summit Public

ASSUMPTION (continued)

Schools, Mexico Public Schools, Nixa Public Schools, Raytown School District, Sedalia School District, Sikeston Public Schools, Silex Public Schools, Spickard School District, St Joseph School District, St Louis Public Schools, St. Charles Public Schools, and Sullivan Public Schools did not respond to **Oversight's** request for fiscal impact.

Officials at the following counties: Andrew, Audrain, Barry, Bates, Boone, Buchanan, Callaway, Camden, Cape Girardeau, Carroll, Cass, Clay, Cole, Cooper, DeKalb, Franklin, Greene, Holt, Jackson, Jefferson, Johnson, Knox, Laclede, Lawrence, Lincoln, Marion, Miller, Moniteau, Monroe, Montgomery, New Madrid, Nodaway, Ozark, Perry, Pettis, Phelps, Platte, Pulaski, Scott, St. Charles, St. Francois, Taney, Warren, Wayne and Worth did not respond to **Oversight's** request for fiscal impact.

Officials at the following colleges: Crowder, Harris-Stowe, Jefferson College, Southeast Missouri State University, State Fair Community College, St. Charles Community College, Three Rivers Community College and Truman State University did not respond to **Oversight's** request for fiscal impact.

Oversight will reflect in the fiscal note, costs of Unknown over \$100,000 for all political subdivisions funds and University funds.

<u>FISCAL IMPACT - State Government</u>	FY 2014 (10 Mo.)	FY 2015	FY 2016
UNIVERSITY FUNDS			
<u>Cost</u> - Universities - no longer withholding retainage	(Unknown over <u>\$100,000</u>)	(Unknown over <u>\$100,000</u>)	(Unknown over <u>\$100,000</u>)
ESTIMATED NET EFFECT ON UNIVERSITY FUNDS	(Unknown over <u>\$100,000</u>)	(Unknown over <u>\$100,000</u>)	(Unknown over <u>\$100,000</u>)

<u>FISCAL IMPACT - Local Government</u>	FY 2014 (10 Mo.)	FY 2015	FY 2016
LOCAL POLITICAL SUBDIVISIONS			
<u>Cost</u> - Local Political Subdivisions - no longer withhold retainage	(Unknown over <u>\$100,000</u>)	(Unknown over <u>\$100,000</u>)	(Unknown over <u>\$100,000</u>)
ESTIMATED NET EFFECT ON LOCAL POLITICAL SUBDIVISIONS	(Unknown over <u>\$100,000</u>)	(Unknown over <u>\$100,000</u>)	(Unknown over <u>\$100,000</u>)

FISCAL IMPACT - Small Business

Small businesses may be impacted in how they are paid.

FISCAL DESCRIPTION

This act modifies the Missouri Public Prompt Payment Act and the law relating to public works projects.

Currently, a public owner may retain 5% of the value of a public works contract or up to 10% if it is determined by the public owner and the architect or engineer determine that a higher rate is required to ensure performance. This act repeals these provisions and does not allow retainage if the public owner has obtained a bond. Retainage of up to 5% is allowed by the public owner if the public owner is not required to obtain a bond. Contractors are not allowed to retain amounts owed to subcontractors.

Under current law, retainage may be adjusted prior to completion when work is proceeding satisfactorily and retainage is paid after substantial completion of the contract or per contract terms. In such cases, 200% of the value of the remaining work is withheld until completion. This act repeals this provision.

Under current law, the contractor or subcontractor may withhold certifications to the owner or contractor for payment to the subcontractor or material supplier for many reasons including that the contract cannot be completed for the amount of retainage. This provision is repealed.

Currently, in contracts which provide for payments to the contractor based upon estimates of materials and work performed rather than certifications, the public owner may retain 5% from the amount due. This act repeals this provision.

FISCAL DESCRIPTION (continued)

Currently, public entities making contracts on public works projects are obligated to require contractors to furnish a bond when the estimated cost of the project exceeds \$25,000. This act changes that amount to \$50,000.

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

City of Columbia
City of Kansas City
Department of Conservation
Department of Economic Development
Department of Labor and Industrial Relations
Lincoln University
Linn State Technical College
Metropolitan Community College
Missouri Department of Transportation
Missouri State University
Missouri Western State University
Northwest Missouri State University
Officials at the
 Division of Facilities Management, Design and Construction
 Division of General Services
 Division of Purchasing & Materials Management
Parkway School District
Special School District
St. Louis County
University of Central Missouri
University of Missouri



Ross Strope

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Acting Director
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