

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3896S.10P
Bill No.: Perfected SS#3 for SCS for SB 758
Subject: Office of Administration; Contracts and Contractors; Political Subdivisions; Public Officers; State Departments
Type: Original
Date: April 5, 2022

Bill Summary: This proposal modifies various provisions relating to bidding procedures for certain public projects for facilities.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
General Revenue Fund*	\$100,000 - \$300,000	\$100,000 - \$300,000	\$100,000 - \$300,000
Total Estimated Net Effect on General Revenue	\$100,000 - \$300,000	\$100,000 - \$300,000	\$100,000 - \$300,000

*Represents a range of savings from being allowed to advertise on a website instead of a newspaper.

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
Total Estimated Net Effect on FTE	0	0	0

- Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.
- Estimated Net Effect (savings or increased revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Due to time constraints, **Oversight** was unable to receive some agency responses in a timely manner and performed limited analysis. Oversight has presented this fiscal note on the best current information that we have or on information regarding a similar bill(s). Upon the receipt of agency responses, Oversight will review to determine if an updated fiscal note should be prepared and seek approval to publish a new fiscal note.

Section 8.250 – Public Contracts

In response to a previous version, officials from the **Office of Administration - Facilities Management, Design and Construction (OA-FMDC)** stated this section of the proposal would permit OA-FMDC to place invitations to bid for construction projects on its website or MissouriBUYS for a period of ten days or more rather than advertising in the newspaper. On average, for the period from FY19-FY21, FMDC spent \$101,990 per year on newspaper advertising. However, this number is lower than in the past given that many construction projects have been on hold during this timeframe. FMDC's advertising costs averaged around \$300,000 per year in the past when more capital improvement projects were being completed. FMDC expects a saving of \$100,000 to \$300,000 per year from this change.

Oversight does not have any information to the contrary. Therefore, Oversight will reflect the estimated savings provided by OA-FMDC.

Section 8.690 – Public project delivery methods

In response to a previous version of the bill, **OA-FMDC** stated this would have given OA-FMDC the ability to utilize the construction manager-at-risk and design-build procurement methods for design and construction of capital improvement projects. This bill would have given the state the ability to utilize additional modern, industry standard procurement tools for design and construction that are currently used in the private sector as well as by the political subdivisions of the state. This bill would have given the state additional flexibility for the design and construction of state projects, which FMDC anticipated would increase efficiency and reduce risk, administrative costs, and construction timeframes for some projects. This could have been particularly important given the number of American Rescue Plan Act (ARPA) projects that the state will likely need to complete in the coming years.

This bill would have required OA-FMDC to establish new procurement methods and procedures, and create new contract documents for construction management-at-risk and design-build procurement. FMDC estimates that this would have taken approximately 1,500 hours of contract staff time (\$37 per hour totaling \$55,500) and an additional 250 hours of Legal Counsel time

(\$42 per hour totaling \$10,500). FMDC anticipates that these impacts could have been absorbed with existing staff and resources.

Officials from the OA-FMDC assume the cost of this section of the proposal can be absorbed with existing staff and resources. **Oversight** does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these sections.

OA-FMDC also stated that while there would be initial effort by FMDC's Contracts Unit and the OA legal team in the first year or two of implementation, FMDC anticipates that these costs would be offset by time savings within its Project Management Unit and Construction Administration Unit. This would also help FMDC manage capacity issues if a larger number of projects need to be completed in a shorter time frame than what FMDC typically experiences. For example, FMDC currently has the capacity to manage around \$700 million in projects over a four-year period or \$350 million in a two-year period with existing Project Management and Construction Administration staff. If FMDC receives funding for several large projects that bring its project total to \$850 million, FMDC would need an estimated \$3 million for additional staff over the next 4 years. However, because the increased workload is short-term in nature, it would be beneficial for FMDC to have the ability to pay a contractor for these services rather than hiring additional staff or delaying project completion. The actual fiscal impact of this bill is unknown as it will depend upon a number of factors including the number and type of projects FMDC receives funding for, construction prices, and whether these new procurement methods are utilized consistently.

In response to a previous version of the bill, officials from the **Department of Public Safety - Missouri National Guard (MONG)** stated that the biggest fiscal impact to MONG would be if Office of Administration - Facilities Management, Design and Construction (FMDC) could not support a Design-Bid-Build project on the required time-line. MONG will have the option to utilize Design-Build which will potentially allow MONG to obligate funds that might otherwise expire. Other potential impacts could include getting projects completed quicker, allowing termination of leases, or reducing cost of construction.

Reference: Sanvido, V., & Konchar, M. (1999). Selecting Project Delivery Systems: Comparing Design-Build, Design-Bid-Build, and Construction Management at Risk.

- State College, Pennsylvania - The Project Delivery Institute. The study found that Design-Build versus Design-Bid-Build resulted in 6.1% lower unit cost at a 33.5% faster delivery speed; and
- Construction Management at Risk also resulted in 1.6% lower unit cost versus Design-Bid-Build and 13.3% faster delivery speed.

There is no inherent cost in having these additional options (as long as they are just options). These options could enhance MONG's ability to execute projects within the life-span of Federal funds.

Officials from the **Department of Corrections (DOC)** state this proposal modifies various provisions relating to public contracts. It amends the language in chapter 8 (dealing with public construction contracts) and chapter 34 (public procurement), which apply to the department's procurement practices. The bill removes the requirement to post bid opportunities in the newspaper and allows the publication of notice to appear on the public entity's website. The bill also amends the requirements for bidding manager-as-agent and design-build construction contracts. Finally, the bill changes the language of 34.100 to allow the commissioner of OA to delegate single feasible source authority to an agency for contracts totaling \$10,000 and below, instead of \$5,000 and below.

There is a potential unknown cost savings, as these changes could speed up the process for construction and construction projects, as well as potentially increase the efficiency of the procurement and construction processes.

Officials from the **Office of Administration - Budget and Planning** state since there is a "Guaranteed Maximum Price" set when using a Construction Manager-At-Risk model, there could be some cost savings for state projects utilizing this method since the contractor assumes the liability if there are overrunning costs. Similarly, the design-build model could produce cost-savings given the potential for increased efficiency working through one contractor instead of several.

Oversight assumes there would be some positive benefit to the state as a result of modifying various provisions relating to public contracts and public procurement methods in this proposal; however, Oversight notes the language in the proposal is permissive in nature and therefore will not reflect these benefits in the fiscal note.

Bill as a whole

Officials from the **Department of Economic Development**, the **Department of Higher Education and Workforce Development**, the **Department of Health and Senior Services** the **Department of Natural Resources**, the **Department of Corrections**, the **Department of Revenue**, the **Department of Public Safety (Capitol Police, Alcohol & Tobacco Control, Fire Safety, Gaming Commission, Missouri Highway Patrol, Missouri National Guard, State Emergency Management Agency)**, the **Office of the Governor**, the **Missouri Department of Transportation**, the **Missouri Lottery Commission**, the **Missouri Consolidated Health Care Plan**, the **Department of Agriculture**, the **Missouri Department of Conservation**, the **Missouri Department of Conservation**, the **Missouri Ethics Commission**, the **Office of Prosecution Services**, the **Office of Administration (Administrative Hearing Commission)** the **Missouri Senate**, the **Office of the State Public Defender**, the **Missouri House of Representatives**, the **Office of the State Auditor**, and the **State Tax Commission** each assume the proposal will have no fiscal impact on their respective organizations for this proposal.

Officials from the **Kansas City and St. Louis Budget Division** each assume the proposal will have no fiscal impact on their respective organizations. **Oversight** does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these agencies.

Oversight notes that the above mentioned agencies have stated the proposal would not have a direct fiscal impact on their organization. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact on the fiscal note for these agencies.

Officials from the **Department of Commerce and Insurance**, the **Department of Mental Health**, the **Department of Public Safety – Office of the Director** and the **Department of Social Services** defer to the Office of Administration for the potential fiscal impact of this proposal.

In response to a previous version, officials from the **Department of Elementary and Secondary Education** and the **Department of Labor and Industrial Relations** each assumed the proposal would have no fiscal impact on their respective organizations. **Oversight** does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these agencies.

In response to a previous version, officials from the **City of Springfield** assumed the proposal will have no fiscal impact on their organization. **Oversight** does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for this city.

Officials from the **Joint Committee on Administrative Rules** assume this proposal is not anticipated to cause a fiscal impact beyond its current appropriation.

Officials from the **Office of the Secretary of State (SOS)** note many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this fiscal note to the SOS for Administrative Rules is less than \$5,000. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, the SOS also recognizes that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what the office can sustain with its core budget. Therefore, the SOS reserves 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 only reflects the responses received from state agencies and political subdivisions; however, other cities, counties, colleges and universities were requested to respond to this proposed legislation but did not. A listing of political subdivisions included in the Missouri Legislative Information System database is available upon request.

<u>FISCAL IMPACT – State Government</u>	FY 2023 (10 Mo.)	FY 2024	FY 2025
GENERAL REVENUE FUND			
<u>Savings</u> – OA §8.250 p.3 Website (electronic) instead of newspaper advertising	<u>\$100,000-</u> <u>\$300,000</u>	<u>\$100,000-</u> <u>\$300,000</u>	<u>\$100,000-</u> <u>\$300,000</u>
ESTIMATED NET EFFECT TO THE GENERAL REVENUE FUND	<u>\$100,000-</u> <u>\$300,000</u>	<u>\$100,000-</u> <u>\$300,000</u>	<u>\$100,000-</u> <u>\$300,000</u>

<u>FISCAL IMPACT – Local Government</u>	FY 2023 (10 Mo.)	FY 2024	FY 2025
	<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.

FISCAL DESCRIPTION

This proposal modifies various provisions relating to bidding procedures for certain public projects for facilities.

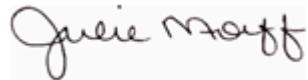
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Department of Commerce and Insurance
 Department of Economic Development
 Department of Elementary and Secondary Education
 Department of Higher Education and Workforce Development
 Department of Health and Senior Services
 Department of Mental Health
 Department of Natural Resources
 Department of Corrections
 Department of Labor and Industrial Relations
 Department of Revenue
 Department of Public Safety

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Department of Social Services
Office of the Governor
Joint Committee on Administrative Rules
Missouri Lottery Commission
Legislative Research
Oversight Division
Missouri Department of Agriculture
Missouri Department of Conservation
Missouri Ethics Commission
Missouri House of Representatives
Missouri Department of Transportation
Missouri Office of Prosecution Services
Office of Administration
Facilities Management, Design and Construction
Office of the State Courts Administrator
Office of the State Auditor
Missouri Senate
Office of the Secretary of State
Office of the State Public Defender
State Tax Commission
City of Springfield
Kansas City
St. Louis Budget Division



Julie Morff
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April 5, 2022