

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1661-03
Bill No.: SB 513
Subject: Public Service Accountability Act
Type: Original
Date: March 23, 2001

FISCAL SUMMARY

ESTIMATED NET EFFECT ON STATE FUNDS			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
General Revenue	\$0	(\$185,827)	(\$181,079)
Various	\$0	(Unknown)	(Unknown)
Total Estimated Net Effect on <u>All</u> State Funds*	\$0	(\$185,827)	(\$181,079)

***Does not include possible increased costs for services and goods.**

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
Federal	\$0	\$0	\$0
Total Estimated Net Effect on <u>All</u> Federal Funds*	\$0	\$0	\$0

***Unknown revenue and costs expected to exceed \$100,000 annually, net to \$0.**

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
Local Government	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 9 pages.

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of Administration - Division of Purchasing and Materials Management (DPM)** assume this proposed legislation would apply to many professional and general services contracts awarded by DPM. To ensure that all additional requirements of this proposed legislation are met, DPM would need one additional Buyer III position (at \$37,488 annually). The new Buyer III would either prepare the cost estimate of providing the service by public employees or review the cost estimate prepared by state agencies. After bids have been submitted, the Buyer would prepare a comprehensive analysis of the contract costs. Since this legislation is effective for contracts entered into on or after July 1, 2002, no costs were estimated for FY2002.

Officials from the **Office of Administration – Division of Facilities Management (DFM)** assumes the requirements in this proposed legislation would result in a long certification process. The DFM assumes it would need two Contract Specialists to comply, resulting in annual costs of more than \$130,000.

Oversight assumes the DFM will not need additional space for the requested FTE.

Officials from the **Department of Social Services (DOS)** state that there are several large contracts in the DOS which might fall into the terms of this proposed legislation. The Divisions may realize an additional fiscal impact to smaller contracts as a result of changing the contract dollar amount to \$25,000 in the proposed legislation. It is very likely that the Division of Budget and Finance will work with the Divisions when these contracts are re-bid and the work required by this proposed legislation would increase the employee time needed to complete these contracts.

Based on the responses from the prior fiscal year along with consultation with the Division of Medical Services, DOS estimates the fiscal impact to their agency to be unknown greater than \$100,000.

Officials from the **Secretary of State (SOS)** state that this proposal will require all state bodies entering into privatization contracts to publish bids and results of those contracts in the Missouri Register. With no information to establish how many of these bids will occur in a year, there is no way to estimate a cost. If these occur frequently, the cost could be significant. The length of these bids is also unknown. With the information we have in this fiscal note there is no way to arrive at an estimate that could be supported. The estimated cost of a page in the Missouri Register is \$23.00. So the cost could be minor or very significant depending on the number of pages these bids and results require. A massive increase in pages to the Missouri Register would

ASSUMPTION (continued)

result in the need for additional staffing in addition to the printing costs of the additional pages.

These costs are estimated. The impact of this proposed legislation in future years is unknown and depends upon the frequency and length of bids and results published.

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 Natural Resources (DNR)** assume, for purposes of this fiscal note that if they have asked for, or been given the authority, to contract services through the appropriation process that they have complied with the intent of this proposal.

The proposed legislation appears to conflict with the existing statute regarding contracts with concessionaires. Section 253.080 RSMo states "The director may award by contract to any suitable person, persons, corporation or association the right to construct, establish and operate public services, privileges, conveniences and facilities on any land, site or object under the department's control for a period not to exceed twenty-five years with a renewal option, and may supervise and regulate any and all charges and fees of operations by private enterprise for supplying services and operating facilities on state park areas."

If this is not the intent of this proposal, the provisions of this proposal may result in the department requesting additional resources.

Officials from the **Office of State Courts Administrator (CTS)** assume the proposed legislation would regulate privatization of governmental services or support operations through contracts with private entities. The CTS has no basis for estimating any increase in civil litigation as a result of the proposal, but there is potential, and the volume is unknown until the proposal has been in place for some time. Any significant increase in the volume of civil litigation would have a corresponding impact on the state and local budget of the judiciary. There is some potential that the proposal could increase administrative and operating costs of future contracts entered into by the judiciary. However, it is not feasible to predict such impacts in advance.

Officials from the **Department of Transportation (DHT)** assume that if the "Department of Transportation" includes Missouri Highway Transportation Commission, then this proposal will have no fiscal impact.

Officials from the **Missouri Department of Conservation (MDC)** stated the proposal could

ASSUMPTION (continued)

have significant administrative and fiscal impact on MDC because of the requirements placed on certain service contracts.

Officials from the **Coordinating Board for Higher Education (CBH)** state that they have several external contracts in excess of \$25,000. However, these contracts are not impacted by this proposal because they do not encompass services which "are substantially similar to and in lieu of services which have been provided, in whole or in part, by regular employees of a public body." The services for which the CBH contracts have never been provided in whole or in part by regular CBH employees.

Officials from the **Department of Economic Development (DED)** assume that specific budget or statutory authority to contract with entities would override these provisions. DED assumes that they have no contracts that fit the definition of "privatization contracts." If this is subsequently proven to be an erroneous assumption, possible fiscal impact could be incurred by the DED and result in additional budget requests.

DED assumes this proposal does not apply to contracts for services that cannot be provided with state employees. DED also assumes that the proposal would not require compliance if a budget document directed contracting with a specific entity for amounts in excess of \$25,000.

Officials from the **Department of Insurance (INS)** state that they currently contract out the examinations required for licensure. The contract is bid on a three-year cycle through the Office of Administration and the contractor collects the examination fees and the Department does not provide any funds to the contractor. This proposal would have no fiscal impact on the INS, but it would make changes in the Office of Administration bid process for this contract.

Officials from the **Department of Revenue (DOR)** state that the administrative and revenue impact of the proposed legislation is unknown.

Officials from the **Department of Public Safety, Department of Elementary and Secondary Education, Department of Mental Health, Department of Agriculture, Department of Labor and Industrial Relations, Department of Health, and the Office of Administration - Design and Construction** assume the proposed legislation would have either no or minimal fiscal impact on their agencies.

FISCAL IMPACT - State Government FY 2002 FY 2003 FY 2004

GENERAL REVENUE FUND

Costs - Office of Administration (COA)

Division of Purchasing and Materials

Management (DPM)

Personal Service (1 FTE)	\$0	(\$39,386)	(\$40,370)
Fringe Benefits	\$0	(\$13,127)	(\$13,455)
Expense and Equipment	\$0	(\$4,332)	(\$318)
Total <u>Costs</u> - DPM	<u>\$0</u>	<u>(\$56,845)</u>	<u>(\$54,143)</u>

Costs - Office of Administration (COA)

Division of Facilities Management (DFM)

Personal Service (2 FTE)	\$0	(\$90,312)	(\$94,200)
Fringe Benefits	\$0	(\$30,100)	(\$31,396)
Expense and Equipment	\$0	(\$8,570)	(\$1,340)
Total <u>Costs</u> - DFM	<u>\$0</u>	<u>(\$128,982)</u>	<u>(\$126,936)</u>

**ESTIMATED NET EFFECT ON ALL
 GENERAL REVENUE FUNDS***

	<u>\$0</u>	<u>(\$185,827)</u>	<u>(\$181,079)</u>
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*Does not include possible increased costs
 for services and goods.

VARIOUS STATE FUNDS

<u>Costs - Increased Contract Amounts</u>	<u>\$0</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
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**ESTIMATED NET EFFECT ON
 VARIOUS STATE FUNDS**

	<u>\$0</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
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FEDERAL FUNDS

Income - DOS

Medicaid Reimbursements	\$0	Unknown	Unknown
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<u>FISCAL IMPACT - State Government</u>	FY 2002	FY 2003	FY 2004
<u>Cost - DOS</u>			
Program Costs	<u>\$0</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT ON FEDERAL FUNDS	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

<u>FISCAL IMPACT - Local Government</u>	FY 2002	FY 2003	FY 2004
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

This proposal could impact small businesses to the extent that those businesses have privatization contracts with the state.

DESCRIPTION

This legislation creates the "Public Service Accountability Act" which regulates contracts between public bodies and private contractors.

State entities entering into private contracts for services over \$25,000 are required to follow these provisions. Local participating political subdivisions choose to follow these provisions regulating contracts between private and political subdivisions. Both state entities and participating political subdivisions are included in the definition of public body (with the exception of the Department of Transportation and any public body contracting for architectural, engineering, and land surveying services, as defined in section 8.287 RSMo).

The public body will prepare a written statement specifically describing the services to be provided under a privatization contract and the state entity will file it with the Secretary of State and the statement will be published in the Missouri Register no later than thirty business days prior to when bids are due or the participating political subdivision will file it with the clerk of the county where the political subdivision is located and be published in a newspaper of general circulation no later than thirty business days prior to when bids are due.

Every bid received from a private entity must include the following:

- (1) Without disclosing employees' names, employee job history with the private entity will be provided;

DESCRIPTION (continued)

- (2) Annual rate of staff turnover;
- (3) Hours of training planned for employees who would provide public services; and
- (4) Any legal complaints issued by an enforcement agency for alleged violations of federal, state or local rules, regulations or laws.

Compensation for employees pursuant to a privatization contract will be the greater of the wage rate paid at step one of the grade or classification of a public employee with similar duties, plus the cash value of health and other benefits provided to such public employees, or the average private sector compensation rate plus the value of health and other benefits as determined by the Department of Labor and Industrial Relations.

The term of any privatization contract shall not exceed two years and no amendment shall be valid if it serves to avoid any requirements of this proposal. Every privatization contract shall contain provisions requiring the contractor to offer positions pursuant to the contract to qualified public employees of the public body whose employment is terminated because of the privatization contract. Funds of the public body shall not be used to support or oppose unionization.

The public body that is considering entering into a privatization contract will prepare an estimate of the costs for public employees to provide the services. Before the due date to receive sealed bids, any public employee organization may propose amendments to any relevant collective bargaining agreement. Such amendments will only become effective if they reduce the cost estimate below the contract cost. The estimate will be confidential until after the due date for sealed bids and then the estimate will become a public record.

Upon making a decision, the public body will publicly designate the bidder that won the contract. The public body must certify compliance with these sections and that the contract costs will be ten percent less than the estimated cost for the services to be completed by public employees. Any privatization contract will be subject to Chapter 610, RSMo, which pertains to Missouri public records law.

The contractor may not award a subcontract without approval of the head of the public body. Each subcontractor contract will be subject to Chapter 610, RSMo.

Proposed legislation also lists reporting requirements for the contractors. Public body may seek contractual remedies for violation of the privatization contract.

Various limitations exist on the contractor or subcontractor regarding ownership rights. The

DESCRIPTION (continued)

public body and contractor or subcontractor will be jointly and severally liable to comply with Chapter 610, RSMo.

In addition to the remedies provided in Chapter 610, RSMo, the following remedies are also available, damages, restitution, civil penalty of not more than fifty thousand dollars (\$50,000). Legal action that may be brought pertaining to public records under this proposal must be brought within three years after the occurrence of such violation.

This proposal prevents persons from retaliating against any employee who discloses information in good faith about the services provided by the private contractor.

Private contractors must provide notice of the contract to provide public services at the worksite.

This proposal will apply to all privatization contracts entered into on or after July 1, 2002.

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

SOURCES OF INFORMATION

Secretary of State
Department of Agriculture
Department of Conservation
Department of Economic Development
Department of Elementary and Secondary Education
Department of Health
Department of Higher Education
Department of Insurance
Department of Labor and Industrial Relations
Department of Mental Health
Department of Natural Resources
Department of Public Safety
Capitol Police
Director's Office
Fire Safety
Highway Safety
Liquor Control
State Emergency Management Agency
Veteran's Commission
Water Patrol

SOURCES OF INFORMATION (continued)

Department of Revenue
Department of Transportation
Office of Administration - Design and Construction
Office of the State Courts Administrator

NOT RESPONDING

Attorney General
Department of Corrections
Office of Prosecution Services
City of Kansas City
City of St. Louis
City of Springfield
St. Charles County
Greene County
Jackson County



Jeanne Jarrett, CPA
Director

March 23, 2001