

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 2753-01
Bill No.: SB 717
Subject: Contracts and Contractors; State Departments
Type: Original
Date: January 28, 2002

FISCAL SUMMARY

ESTIMATED NET EFFECT ON STATE FUNDS			
FUND AFFECTED	FY 2003	FY 2004	FY 2005
General Revenue	\$0	(\$189,304 to Unknown)	(\$184,686 to Unknown)
Various	\$0	(Unknown)	(Unknown)
Total Estimated Net Effect on <u>All</u> State Funds*	\$0	(\$189,304 to Unknown)	(\$184,686 to Unknown)

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

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2003	FY 2004	FY 2005
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 2003	FY 2004	FY 2005
Local Government	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 10 pages.

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of the Attorney General, City of Kansas City, Jackson County, St. Louis County, St. Charles County, and Greene County** did not respond to our fiscal impact request.

Officials from the **Departments of Public Safety, Transportation, Labor and Industrial Relations, Health and Senior Services, Elementary and Secondary Education, Agriculture, Revenue, Higher Education, and the Office of Administration - Divisions of Design and Construction** and the **Deputy Commissioner's Office** assume the proposed legislation would have no fiscal impact on their agencies.

Officials from the **City of Springfield** assume the proposal would have no fiscal impact since participation is optional.

Officials from the **City of St. Louis (STL)** note the regulations proposed are applied prospectively to potential future contracts and therefore it is not possible to provide a specific fiscal impact. STL states they already have, through charter and ordinances, a process for receiving bids for contracted services and assumes to the extent that the proposal would enact further restrictions and/or costs to prospective bidders the proposal would reduce the savings potential of the contract option and result in a negative fiscal impact.

Officials from the **Office of Prosecution Services** defer to the Office of Administration (COA) because they go through COA for contracts over \$25,000.

Officials from the **Department of Mental Health (DMH)** state they do not currently have any privatization contracts nor expects to enter into such a contract in the future. DMH assumes the proposal would not alter existing personnel practices during the privatization process and, therefore, anticipates no fiscal impact.

Officials from the **Department of Insurance (INS)** state that they currently contract out the examinations required for licensure. The contract is bid through the Office of Administration and the contractor collects the examination fees and the Department does not provide any funds to the contractor. INS assumes the proposal would have no fiscal impact on their agency, but notes it would make changes in the Office of Administration bid process for this contract. INS notes the proposal would increase paperwork and reporting for any agency and contractor involved in privatization of services.

ASSUMPTION (continued)

Officials from the **Department of Conservation** assume the proposal could have significant administrative and fiscal impact on their agency because of the requirements placed on certain service contracts, and state the amount of fiscal impact is unknown.

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." DED notes if this is subsequently proven to be an erroneous assumption, possible fiscal impact could be incurred by the DED and would 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 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.

DNR notes the proposal 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."

DNR states 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. CTS states they have 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. CTS assumes any significant increase in the volume of civil litigation would have a corresponding impact on the state and local budget of the judiciary. CTS notes there is some potential that the proposal could increase administrative and operating costs of future contracts entered into by the judiciary. CTS states it is not feasible to predict such fiscal impacts in advance.

ASSUMPTION (continued)

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. SOS states 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. SOS estimates the cost of a page in the Missouri Register to be \$23.00 and notes the cost could be minor or very significant depending on the number of pages the bids and results require. SOS also notes that a massive increase in pages to the Missouri Register would result in the need for additional staffing in addition to the printing costs of the additional pages. SOS assumes the impact of this proposal 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 proposals 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 Social Services (DOS)** state that there are several large contracts (e.g. contracts with their fiscal agent, managed care health plan contracts) in the DOS which might fall into the terms of the proposal. DOS divisions may realize an additional fiscal impact to smaller contracts as a result of changing the contract dollar amount to \$25,000. DOS assumes the Division of Budget and Finance will work with the other divisions when these contracts are re-bid and the work required by the proposal would increase the employees' time needed to complete these contracts. DOS estimates the fiscal impact to their agency to be unknown greater than \$100,000.

Officials from the **Department of Corrections (DOC)** anticipate a significant fiscal impact from passage of the proposal. DOC notes that they enter into professional and service contracts that would be affected by the components of this proposal, not the least of which is the medical services contract. DOC states the costs associated with this effect are unknown, but express the following concerns: 1) limiting a contract to two years could result in bidders proposing significantly higher cost for requested services or deciding to not even bid on state contracts. This would reduce the competitive field, therefore resulting in increased costs for the state; 2) the time frame stipulated for advertising the RFP is too restrictive and would further hinder those who could not bid within the allowed time period; and 3) privatization is, at times, much more cost-effective in the ratio of quality to cost than trying to provide a professional service by state employees who cannot be hired/retained due to low salaries for professional and semi-professional positions. DOC expects that passage of the proposal would cause fiscal impact in excess of \$100,000 annually.

Officials from the **Office of Administration - Division of Purchasing and Materials Management (DPMM)** assume the proposed legislation would apply to many professional and general services
ASSUMPTION (continued)

contracts awarded by DPMM. DPMM assumes that it would need one additional Buyer III to ensure that all additional requirements of the proposal are met. DPMM notes 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.

Officials from the **Office of Administration – Division of Facilities Management (DFM)** assume the requirements in the proposal would result in a long certification process. 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 FTEs.

Oversight is showing costs to local governments as zero (\$0) because participation for political subdivisions is optional.

<u>FISCAL IMPACT - State Government</u>	FY 2003 (10 Mo.)	FY 2004	FY 2005
GENERAL REVENUE			
<u>Costs - Office of Administration</u>			
<u>Division of Purchasing and Materials Management (DPMM)</u>			
Personal Service (1 FTE)	\$0	(\$39,386)	(\$40,370)
Fringe Benefits	\$0	(\$14,183)	(\$14,537)
Expense and Equipment	<u>\$0</u>	<u>(\$4,332)</u>	<u>(\$318)</u>
Total <u>Costs</u> - DPM	<u>\$0</u>	<u>(\$57,901)</u>	<u>(\$55,225)</u>
 <u>Costs - Office of Administration</u>			
<u>Division of Facilities Management (DFM)</u>			
Personal Service (2 FTEs)	\$0	(\$90,312)	(\$94,200)
Fringe Benefits	\$0	(\$32,521)	(\$33,921)
Expense and Equipment	<u>\$0</u>	<u>(\$8,570)</u>	<u>(\$1,340)</u>
Total <u>Costs</u> - DFM	<u>\$0</u>	<u>(\$131,403)</u>	<u>(\$129,461)</u>

<u>FISCAL IMPACT - State Government</u>	FY 2003 (10 Mo.)	FY 2004	FY 2005
---	---------------------	---------	---------

<u>Costs - Increased Contract Letting Costs*</u> *Expected to exceed \$100,000 annually.	\$0	(Unknown)	(Unknown)
---	-----	-----------	-----------

ESTIMATED NET EFFECT ON ALL GENERAL REVENUE FUNDS* *Does not include possible increased costs for services and goods.	<u>\$0</u>	<u>(\$189,304 to Unknown)</u>	<u>(\$184,686 to Unknown)</u>
--	------------	-----------------------------------	-----------------------------------

VARIOUS STATE FUNDS

<u>Costs - Increased Contract Letting Costs</u>	\$0	(Unknown)	(Unknown)
---	-----	-----------	-----------

ESTIMATED NET EFFECT ON VARIOUS STATE FUNDS	<u>\$0</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
--	------------	------------------	------------------

FEDERAL FUNDS

<u>Income - DOS</u> Medicaid Reimbursements	\$0	Unknown	Unknown
--	-----	---------	---------

<u>Cost - DOS</u> Program Costs	\$0	(Unknown)	(Unknown)
------------------------------------	-----	-----------	-----------

ESTIMATED NET EFFECT ON FEDERAL FUNDS	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
--	------------	------------	------------

<u>FISCAL IMPACT - Local Government</u>	FY 2003 (10 Mo.)	FY 2004	FY 2005
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

Small businesses that want to enter into privatization contract with a state agency or political subdivision may be negatively impacted by increased paperwork and being restricted to two-year contract periods.

DESCRIPTION

This proposal 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. The state entity will file it with the Secretary of State no later than sixty business days before the bids are due and the statement will be published in the Missouri Register 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; (2) Annual rate of staff turnover; (3) Hours of training planned for employees who would provide public services; and (4) Any legal complaints issued or received 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 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. If the amendments reduce costs below the public body's comprehensive written estimate
DESCRIPTION (continued)

it will be the lowest and best bid. 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.

The proposed legislation also lists reporting requirements for the contractors. Public bodies may seek contractual remedies for violation of the privatization contract.

Various limitations exist on the contractor or subcontractor regarding ownership rights. The 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, 2003.

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 Conservation
Department of Economic Development
Department of Natural Resources
Department of Social Services
Department of Insurance
Department of Mental Health
Department of Public Safety
Department of Transportation
Department of Revenue
Department of Higher Education
Department of Labor and Industrial Relations
Department of Health and Senior Services
Department of Elementary and Secondary Education
Department of Agriculture
Department of Corrections
Office of Administration
 Design and Construction
 Deputy Commissioner's Office
 Purchasing and Materials Management
 Facilities Management
Office of the State Courts Administrator
Secretary of State's Office
Office of Prosecution Services
City of Springfield
City of St. Louis

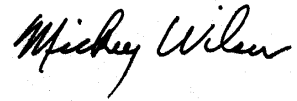
NOT RESPONDING

Office of the Attorney General
City of Kansas City
Jackson County
St. Louis County

KLR:LR:OD (12/01)

L.R. No. 2753-01
Bill No. SB 717
Page 10 of 10
January 28, 2002

St. Charles County
Greene County

A handwritten signature in black ink that reads "Mickey Wilson". The signature is written in a cursive style with a large initial "M".

Mickey Wilson, CPA
Acting Director

January 29, 2002