

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3533-01
Bill No.: SB 911
Subject: Contracts - Contractors; Architects; Engineers; Property, Real and Personal
Type: Original
Date: January 28, 2002

FISCAL SUMMARY

ESTIMATED NET EFFECT ON STATE FUNDS			
FUND AFFECTED	FY 2003	FY 2004	FY 2005
None			
Total Estimated Net Effect on <u>All</u> State Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2003	FY 2004	FY 2005
None			
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$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 4 pages.

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of Administration - Division of Design and Construction, Department of Transportation, Department of Conservation, and the Office of the State Courts Administrator** assume the proposed legislation would have no fiscal impact on their office.

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

This proposal would have direct fiscal impact on small businesses operating as contractors or subcontractors, or small businesses utilizing contractors.

DESCRIPTION

This proposal allows owners in private building contracts to retain a portion of payment due to a contractor in order to ensure the proper performance of the contract. Such retainage shall not exceed 5% of the payment due pursuant to the contract or agreement unless the contractor's performance is not in accordance with the contract, in which case the owner may retain additional sums in any amount. Contractors may tender substitute security to an owner, after which the contractor may receive cash payments of retainage already withheld or may avoid withholding of retainage. Subcontractors may likewise tender substitute security to the contractor and either recover or avoid withheld retainage. Acceptable substitute security shall include CDs from a bank within Missouri, a retainage bond, or an irrevocable and unconditional letter of credit from a Missouri bank.

A contractor may not withhold retainage from subcontractor in a percentage greater than their own

DESCRIPTION (continued)

retainage unless the performance is not in accordance with the subcontract. Upon a release of retainage, contractors are to promptly pay subcontractors their ratable share of the retainage released.

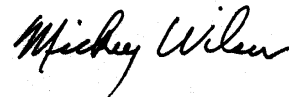
If a subcontractor's performance is satisfactorily completed, the subcontractor may be released prior to substantial completion of the entire project. Within 30 days of reaching substantial completion, all retainage must be released by the owner less 150% of the cost of remaining items to complete. Thereafter the contractor must pay subcontractors within seven days. Substantial completion is defined as the earlier of the issuance of a certificate of completion; the date an occupancy permit is issued; or the date the owner begins or could have begun use of the project for its intended purpose.

Construction contracts will be unenforceable to the extent that they are inconsistent with the requirements of the proposal. If retainage is withheld wrongfully, a court may award interest on the amount at 1 1/2% per month plus attorney's fees. Contracts for the construction of residential buildings with four or fewer units are exempt from the proposal.

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

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



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Acting Director

February 27, 2002

