COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1699-01
Bill No.: SB 491
Subject: Transportation Dept.; Contracts and Contractors
Type: Original
Date: March 2, 2003

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
Total Estimated Net Effect on General Revenue Fund	**$0**	**$0**	**$0**

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
Total Estimated Net Effect on Other State Funds	**$0**	**$0**	**$0**

Numbers within parentheses: ( ) indicate costs or losses.
This fiscal note contains 4 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
Total Estimated Net Effect on All Federal Funds	**$0**	**$0**	**$0**

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
Local Government	**$0**	**$0**	**$0**

FISCAL ANALYSIS

ASSUMPTION

Officials with the **Office of State Courts Administrator** assume this proposal would have no fiscal impact on their agency.

Officials with the **Department of Transportation (MoDOT)** assume this proposal could provide that in any case against MoDOT, as defendant, arising from a contract awarded pursuant to Section 226.130.1(9) and involving a dispute or controversy in excess of $25,000 must - upon the request of any party - be settled by arbitration and that judgment on the award of the arbitrator may be entered in the Circuit Court of Cole County, MO.

ASSUMPTION (continued)

Officials with MoDOT assume this proposal would have an unknown negative impact for the following reasons:

-MoDOT assumes this proposal could interfere with the MHTC claims process to reach a final state transportation agency (STA) decision. Such a decision and the authority to make a final decision is a requirement of 23 CFR §1.3 to have a program which complies and thus be eligible for federal participation. Final decision authority specifically on contractor claims for contract adjustments is also clearly contemplated as a required part of MHTC's program by the provisions of 23 CFR §635.124, Participation in contract claim awards and settlements.

However, the bill could be read to say that, "Anytime MHTC is made a defendant to a case concerning construction contract, if the dispute exceeds $25,000, there can be a demand made for binding arbitration." In other words, a contractor could simply file a suit making MHTC a defendant to a case and then file a demand for arbitration, ignoring the claims process entirely. If allowed that would violate the federal program requirements because there would be no requirement to reach a final MHTC decision on an issue before review by suit or arbitration.

-If this bill divests MHTC of the authority it is required to have by federal law to receive federal-aid highway funding, MHTC could lose all of its federal-aid highway funding. As such, the bill would also conflict with Section 226.150, which directs MHTC/MoDOT to comply with federal regulations in order to fully receive its federal money. In addition, the arbitration of substantially more project disputes and controversies would result in increased cost and project delay, thereby delaying the completion of projects and reducing the number of highway construction and improvement projects MHTC could undertake.

-This proposal may be in violation of 23 CFR 635.124, because an award by an arbitration panel may not satisfy justification of federal participation. Therefore, MoDOT would lose federal funding due to these arbitration awards.

-Additionally, construction disputes will be resolved by an arbitration board rather than through the court system. Currently, MoDOT has a very good track record on resolving disputes. Since the contractor would not have to pay for court expenses if the dispute goes to arbitration, MoDOT believes that there will be an increase in frivolous claims.

Oversight assumes the potential unknown negative impact addressed by MoDOT is speculative in nature. The response addressed the possible secondary effects of the proposal, however, no direct fiscal impact was indicated.

EJ:LR:OD (12/02)

FISCAL IMPACT - State Government	FY 2004 (10 Mo.)	FY 2005	FY 2006
	$0	**$0**	**$0**

FISCAL IMPACT - Local Government	FY 2004 (10 Mo.)	FY 2005	FY 2006
	$0	**$0**	**$0**

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

DESCRIPTION

This proposal could require the Department of Transportation to submit to arbitration in certain contract disputes.

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 Transportation
Office of State Courts Administrator

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