

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 2672-01
Bill No.: SB 896
Subject: Bonds - Bail; Law Enforcement Officers and Agencies; Insurance Dept.
Type: Original
Date: February 5, 2004

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
Total Estimated Net Effect on General Revenue Fund	\$0	\$0	\$0

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
Insurance Dedicated	(\$2,812)	\$15,831	\$13,681
Total Estimated Net Effect on <u>All</u> State Funds	(\$2,812)	\$15,831	\$13,681

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 9 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
Local Government	(Unknown)	(Unknown)	(Unknown)

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Economic Development - Division of Professional Registration, Department of Public Safety (DPS) - Missouri State Water Patrol and DPS - Capitol Police** assume the proposal will have no impact on their organizations.

Officials from the **DPS - Missouri State Highway Patrol (MHP)** state the MHP's Training Division assumes that it will not be involved in the training of the agents. Therefore, the MHP anticipates no fiscal impact from the proposal.

Officials from the **Office of Administration - Division of Budget and Planning (BAP)** state the proposal should not result in additional costs or savings to the BAP. The proposal would increase total state revenue.

Officials from the **Office of Prosecution Services (OPS)** assume any costs associated with this proposal would be absorbable within current funding levels.

Officials from the **Department of Corrections (DOC)** state the DOC cannot predict the number of new commitments which may result from the creation of the offenses(s) outlined in this proposal. An increase in commitment depends on the utilization by prosecutors and the actual sentences imposed by the court.

ASSUMPTION (continued)

If additional persons are sentenced to the custody of the DOC due to the provisions of this legislation, the DOC will incur a corresponding increase in operational cost through either incarceration (FY 03 average of \$38.10 per inmate per day or an annual cost of \$13,907 per inmate) or through supervision provided by the Board of Probation and Parole (FY 03 average of \$3.15 per offender, per day or an annual cost of \$1,150 per offender per year).

DOC assumes the narrow scope of the crime will not encompass a large number of offenders. The low felony status of the crime enhances the possibility of plea-bargaining or the imposition of a probation sentence. The probability also exists that offenders would be charged with a similar but more serious offence of which sentences may run concurrent to one another.

Supervision by the DOC through probation or incarceration would result in some additional costs, but it is assumed the impact would be \$0 or a minimal amount that could be absorbed within existing resources.

Officials from the **Office of State Courts Administrator (CTS)** state the proposed legislation would make changes to the bail bondsmen licensing provisions. The legislation would allow recognizance bonds only when the defendant is a local resident, has no prior convictions for failure to appear, and specifies when bonds can be forfeited and remitted to the surety.

Officials state the CTS does not have reliable data on the number of bail bonds. The proposal may cause more work for the clerk to mail out the notice by certified mail. A larger issue is the return of the bond forfeiture to surety. The courts turn the money over to the county treasury, and the treasurers in turn distribute the money to the schools. The courts will not have money two years later to refund back to the surety. In addition, most of the individuals who fail to appear in court are only convicted on the original charge, not on the failure to appear.

The CTS states it is not able to provide an estimate of the possible fiscal impact of this proposal.

Oversight has presented an unknown cost to school districts beginning in FY 05 since the courts could be returning bond forfeiture moneys to the surety agent up to two years after the bond has been received by the courts and distributed to schools.

Officials from the **Department of Insurance (INS)** state Missouri currently has 836 bail bond agents, 80 general bail bond agents and 34 bail bond corporations. If a bail bond agent performs his own fugitive recovery, then they would be required to be licensed as a surety recovery agent. Based on these totals, INS is estimating that approximately 1,000 surety recovery agents may become licensed.

ASSUMPTION (continued)

Based on the anticipated number of surety recovery agents, the Licensing Section would need one (1) additional FTE as a Licensing Tech. I. This position would be responsible for processing applications, reviewing 40 hours of courses taken as part of application, producing licenses, mailing renewals, answering phone and correspondence inquiries, related data entry and other clerical work related to this license. If number of surety recovery agents surpasses this estimate, additional staff may be needed.

The INS is also requesting one (1) Investigator II to investigate complaints against surety recovery agents and to review applications of existing licensees as needed for violations, suspensions or revocations.

The INS assumes that the examination process will be contracted out and the applicant will be responsible for paying the cost of examination directly to contractor. A copy of photo identification is part of application requirements, but the INS assumes a standard license without photo will be issued to licensee.

Application fees and renewals are to be set by the INS. The application and/or renewal fee is estimated to be \$100 per year. This would generate \$100,000 per year if those who do not renew are offset by new applications. Fees will be deposited into the Insurance Dedicated Fund.

Licensing provisions become effective 1/1/05.

Oversight has, for fiscal note purposes only, changed the starting salary for Licensing Tech I and Investigator II to correspond to the second step above minimum for comparable positions in the state's merit system pay grid. This decision reflects a study of actual starting salaries for new state employees for a six month period and the policy of the Oversight Subcommittee of the Joint Committee on Legislative Research.

Officials from the **Office of the Secretary of State (SOS)** state this proposal makes changes to the bail bondsman licensing provisions. The Department of Insurance may promulgate rules to enact this legislation. Based on experience with other divisions, the rules, regulations and forms issued by the Department of Insurance could require as many as 25 pages in the *Code of State Regulations*. For any given rule, roughly one-half again as many pages are published in the *Missouri Register* as are published in the Code because cost statements, fiscal notes and notices are not published in the Code. The estimated cost of a page in the *Missouri Register* is \$23.00. The estimated cost of a page in the *Code of State Regulations* is \$27.00. The actual costs could be more or less than the numbers given. The fiscal impact of this legislation in future years is unknown and depends upon the frequency and length of rules filed, amended, rescinded and withdrawn. The SOS estimates the cost of this legislation to be \$1,550 [(25 pp x \$27) + (38 pp x \$23)].

ASSUMPTION (continued)

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 **Office of State Public Defender (SPD)** did not respond to our request for a statement of fiscal impact. Based on responses from the DOC and OPS, **Oversight** assumes any costs incurred by the SPD would be absorbable within current funding levels.

This proposal would result in an increase in Total State Revenue.

<u>FISCAL IMPACT - State Government</u>	FY 2005 (10 Mo.)	FY 2006	FY 2007
INSURANCE DEDICATED FUND			
<u>Income - Department of Insurance</u>			
Licensing and renewal fees	\$50,000	\$100,000	\$100,000
<u>Costs - Department of Insurance</u>			
Personal Service Costs (2 FTE)	(\$25,873)	(\$53,040)	(\$54,366)
Fringe Benefits	(\$10,711)	(\$21,959)	(\$22,508)
Equipment and Expense	<u>(\$16,228)</u>	<u>(\$9,170)</u>	<u>(\$9,445)</u>
Total <u>Costs</u> - Department of Insurance	<u>(\$52,812)</u>	<u>(\$84,169)</u>	<u>(\$86,319)</u>
ESTIMATED NET EFFECT ON INSURANCE DEDICATED FUND	<u>(\$2,812)</u>	<u>\$15,831</u>	<u>\$13,681</u>
<u>FISCAL IMPACT - Local Government</u>	FY 2005 (10 Mo.)	FY 2006	FY 2007
SCHOOL DISTRICTS			
<u>Loss - School Districts</u>			
Return of Bond Forfeiture Moneys	(Unknown)	(Unknown)	(Unknown)
ESTIMATED NET IMPACT ON SCHOOL DISTRICTS	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>

FISCAL IMPACT - Small Business

The proposal could have an impact on small bail bondsmen and surety recovery businesses.

DESCRIPTION

This proposal creates the "Professional Bail Bondsman and Surety Recovery Agent Licensure Act". No person shall engage in the activities of a bail bond agent or a general bail bond agent without being licensed. Judges, attorneys, court officials, law enforcement officers and public employees cannot be licensed as bail bond agents or general bail bond agents. A licensed bail bond agent cannot execute or issue appearance bonds without a valid appointment from a general bail bond agent and without attaching to the appearance bond an executed and pre-numbered power of attorney referencing the general bail bond agent or insurer. A bail bond agent shall not hold an appointment and execute or issue bonds for more than one general bail bond agent at a time. A bail bond agent must be licensed for four years before being licensed as a general bail bond agent and have at least \$10,000 in liquid assets along with an assignment of \$10,000 to the state. Any person acting as a bail bond agent without a license shall be guilty of a Class A misdemeanor. A person posting a bail bond who receives no fee is not affected by such licensing requirements.

An applicant for a bail bond agent license or a general bail bond agent license shall apply to the Director of the Department of Insurance. The application shall be accompanied by a duly executed general power of attorney issued by the general bail bond agent of the insurer for whom the agent will be acting. The application shall also include proof that the applicant is a Missouri resident or corporation and has the paid annual franchise tax. Applicants must have a high school diploma or GED, be at least 21 years of age and of good moral character, meet the qualifications provided by the Supreme Court rules, and be a citizen of the United States.

Every bail bond agent shall file a power of attorney form with the Department of Insurance and maintain records.

No insurer or licensee, court or law enforcement officer, shall pay a fee or give consideration in order to secure a settlement, compromise, remission or reduction of the amount of any bail bond.

A licensee may accept collateral security from the principal in a fiduciary capacity which collateral shall be returned upon final termination of liability on the bond. The licensee must provide a pre-numbered written receipt and report the acceptance of the collateral to the general bail bond agent.

DESCRIPTION (continued)

This proposal allows the Department of Insurance to grant a license without a written exam to a bail bond agent who was licensed, immediately prior to applying with the Department, in another state if the individual meets certain qualifications. The Department of Insurance may negotiate reciprocal compacts with other states.

This proposal modifies the reasons the Department of Insurance may file a complaint with the administrative hearing commission against a license holder under this act or a person who fails to renew his or her license.

This proposal allows the Director of the Department of Insurance to examine and inquire into all violations of the bail bond law of this state and business transacted by any bail bond agent, general bail bond agent or surety recovery agent. In lieu of formal discipline of a bail bond agent license, the director may enter into agreements for monetary penalties. The director is also given the power to issue a cease and desist order or seek an injunction.

This proposal requires surety recovery agents to be licensed. The Director of the Department of Insurance shall control the licensing process.

Applicants for examination and licensure as a surety recovery agent shall be prescribed by the department and be accompanied by proof that the applicant is a US citizen, is 21 years old, and has a high school diploma or GED. The completion of an approved training course with at least 40 hours of training is required. The proposal lists the areas which persons conducting the training will have expertise in. Licensed bail bond agents performing fugitive recovery must be licensed as a surety recovery agent.

The Director shall issue a license for a period of one year to any surety recovery agent licensed in another jurisdiction whose requirements are similar to those in Missouri. The director may negotiate reciprocal compacts with other states' licensing entities.

This proposal sets out provisions for renewal of licenses.

The Director may cause a complaint to be filed with the Administrative Hearing Commission. In lieu of filing a complaint with the Administrative Hearing Commission, the Director and surety recovery agent may enter into an agreement for a monetary penalty.

A surety recovery agent may detain a subject in a lawful manner and enter upon private or public property in a lawful manner to execute apprehension of the subject if the agent has probable grounds to believe the subject breached the terms of the surety agreement. The agent may detain

DESCRIPTION (continued)

the subject in a lawful manner for no more than 72 hours if travel time is required. The agent may transport the subject from state to state and county to county to a place of authorized surrender.

It is a Class D felony if a person holds himself out to be a licensed surety agent without obtaining a license. While performing fugitive recovery, the agent must display a photo identification card.

A court may forfeit the bond and order an execution hearing between 90 and 150 days after the person fails to appear. If the bail bond agent provides proof that it is physically impossible for the defendant, bail bond agent or surety to satisfy conditions of the bond, the bail bond agent or surety shall be released from liability and all money and property deposited with the court shall be returned within ten days. Upon forfeiture of the bond, the court may order that the defendant's driver's license be suspended until such time as the defendant has satisfied the forfeiture.

The proposal establishes that a defendant shall be surrendered without the return of premium for the bond if the indemnitor attests in writing the desire to be released or if the agent discovers the defendant is guilty of certain activities.

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 Budget and Planning
Office of State Courts Administrator
Department of Economic Development -
 Division of Professional Registration
Department of Corrections
Department of Public Safety -
 Missouri State Highway Patrol
 Missouri State Water Patrol
 Capitol Police
Department of Insurance
Office of Secretary of State
Office of Prosecution Services

NOT RESPONDING: Office of State Public Defender



Mickey Wilson, CPA
Director
February 5, 2004