

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. NO.: 4585-01  
BILL NO.: SB 1041  
SUBJECT: Contracts and Contractors  
TYPE: Original  
DATE: March 6, 2000

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON STATE FUNDS</b>			
FUND AFFECTED	FY 2001	FY 2002	FY 2003
General Revenue	(\$245,840)	(\$287,786)	(\$290,351)
Various	(Unknown)	(Unknown)	(Unknown)
<b>Total Estimated Net Effect on <u>All</u> State Funds*</b>	<b>(\$245,840)</b>	<b>(\$287,786)</b>	<b>(\$290,351)</b>

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

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
FUND AFFECTED	FY 2001	FY 2002	FY 2003
None	\$0	\$0	\$0
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
FUND AFFECTED	FY 2001	FY 2002	FY 2003
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

Numbers within parentheses: ( ) indicate costs or losses  
 This fiscal note contains 8 pages.

---

**FISCAL ANALYSIS**

ASSUMPTION

Officials from the **Office of Administration - Division of Purchasing and Materials Management (DPM)** assume DPM awarded approximately 1,400 contracts in Fiscal Year 1999. Before awarding a contract under this legislation, the buyer would have to ensure that the contractor met the definition of a Missouri based business or had secured participation of Missouri based businesses through subcontracting or other arrangements. A post-award compliance process would need to be implemented to ensure that non-Missouri based contractors were actually following through on their proposed subcontracting arrangements with Missouri businesses. For contracts where less than 30% participation is secured, buyers would need to perform additional market analysis to ensure that no Missouri based businesses were available to supply the product/service. The DPM would require three additional Buyer III positions to perform these duties.

The DPM currently has 113 contracts with MBE/WBEs participating as subcontractors. These contracts require the prime contractor to submit monthly participation reports of payments made to their MBE/WBE subcontractors. To effectively audit the MBE/WBE participation reports, DPM would require one additional Auditor II position. Auditing the participation reports may also require travel to the prime contractors or subcontractors' locations to verify the accuracy of the reports.

It is anticipated that the requirements to secure 30% participation from Missouri based businesses and to award cost-plus contracts to any willing contractor meeting technical specifications would increase the cost of products/services purchased by state agencies. However, the DPM is unable to reasonably estimate the fiscal impact.

Officials from the **Office of Administration - Division of Design and Construction (D&C)** assume the FY 00 - FY 01 Capital improvement appropriation has resulted in the addition of approximately 225 new projects. Additional unprogrammed and emergency projects could bring the number requiring additional analysis to average 125 projects per year. Assuming 25 hours of analysis time per project, this would result in an additional 31,25 hours per year or approximately 1.5 FTE required. The D&C assumes the new FTE would include 1.5 Contracts Specialists (1.5 FTE at \$34,992 per year) to perform product availability analysis.

Officials from the **Office of Administration - Division of Facilities Management (DFM)** assume that based on the assumption its current RFP does not "intentionally prevent" a Missouri-based business from supplying service, there would be no fiscal impact to its Division.

ASSUMPTION (continued)

Officials from the **Department of Health (DOH)** assume they would need to hire one Procurement Officer II (1 FTE at \$46,080 per year) to monitor all purchases for the DOH to determine if Missouri-based firms are utilized, and if so, to ensure the preferences are applied correctly. A database would be designed, developed and maintained by this individual. All contractual language in bids would be reviewed for “intentionally preventing” a Missouri-based business to participate in the bid process. Market research would be required on each and every type of purchase to determine if a Missouri-based business is in existence that could provide the specific type of item required. Annual costs, including salary, fringe and associated expense and equipment would be approximately \$75,000. **Oversight** assumes any additional duties to implement this proposal should be similar in the state agencies, other than the audit responsibilities required by the COA, and therefore, assumes the DOH could absorb any additional workload, as other agencies have assumed. However, if the workload should become significant, the DOH could request additional resources through the normal budget process.

Officials from the **Department of Social Services (DOS)** assume the prohibition against contracts, which intentionally prevents Missouri business from winning the bid, applies to none of the contracts issued by Division of Budget and Finance. Also because DBF has no cost plus contracts in force, the State Auditor review and the open contract provisions would not apply. To be able to purchase from Federal GSA contracts would have no significant cost impact until the DOS was able to shift enough buying onto those contracts to allow a reduction in procurement operations. It is not possible to determine if there would be an increased cost due to the 30 point or 30% Missouri based business preference.

In a similar previous proposal, officials from the **Department of Revenue (DOR)** assume the proposed legislation could result in the DOR not being able to accept the lowest bidder for purchases. The impact, however, is unknown.

Officials from the **Department of Natural Resources (DNR)** assume all additional contract evaluation, audits and prosecution of violators would be borne by the Office of Administration, State Auditor’s Office and the Office of the Attorney General, respectively. The DNR would not be fiscally impacted by these additional duties. There is the potential for savings from the provisions in this bill which allows the use of federal governmental services administration contracts, but the DNR is unable to determine the potential savings. There is no way to determine if there will be any increase in cost due to this proposal.

Officials from the **Coordinating Board for Higher Education (CBH)** assume the CBH has few contracts and none that purposefully exclude Missouri-based businesses. However, the 30% participation mandate for Missouri-based businesses in each contract may create a fiscal impact.

ASSUMPTION (continued)

The main contract that CBH awards is the federal student loan servicing contract. This is a multi-million dollar contract for which only a few companies in the country are capable of bidding. No Missouri-based firms have ever bid on this contract. Yet if one were to arise and the cost was only a few percent higher than the current contract, the impact, if the CBH were required to award to the Missouri company, could still be in the hundreds of thousands of dollars. The reporting requirements would not result in a fiscal impact. Some institutions of higher education that have many external contracts may also realize a fiscal impact.

Changes in purchasing requirements proposed by this legislation and resulting potential state fiscal impact can best be addressed by the Division of Purchasing in the Office of Administration.

Officials from the **Department of Corrections (DOC)** assume that currently, the DOC cannot predict the number of new commitments which may result from the creation of the offense(s) outlined in this proposal. An increase in commitments depends on the utilization by prosecutors and the actual sentences imposed by the court. 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 costs either through incarceration (average of \$35.61 per inmate, per day) or through supervision provided by the Board of Probation and Parole (average of \$2.47 per offender, per day).

The following factors contribute to DOC's minimal assumption:

- ▶ 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 imposition of a probation sentence
- ▶ the probability exists that offenders would be charged with a similar but more serious offense

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

Officials from the **Department of Agriculture (AGR), Office of the State Auditor (SAU), Department of Public Safety (DPS), Missouri Department of Conservation (MDC)** and the **Department of Transportation (DHT)** assume the proposed legislation could have some fiscal impact on their agencies, but it is unknown.

ASSUMPTION (continued)

Officials from the **Department of Mental Health (DMH), Office of the Attorney General (AGO), Office of State Courts Administrator (CTS), Department of Insurance (INS), Department of Elementary and Secondary Education (DES), Department of Economic Development (DED), Missouri Ethics Commission (MEC)** and the **Office of Prosecution Services (OPS)** assume the proposed legislation would have either no or minimal fiscal impact on their agencies that could be absorbed with existing resources.

**Oversight** assumes the component of the proposal relating to the thirty percent participation for Missouri based businesses could result in greater contract costs for state agencies, but the fiscal impact is unknown.

<u>FISCAL IMPACT - State Government</u>	FY 2001 (10 Mo.)	FY 2002	FY 2003
---	---------------------	---------	---------

**GENERAL REVENUE FUND**

Costs - Office of Administration-Division of Purchasing and Materials Management (DPM)

Personal Service (4 FTE)	(\$124,783)	(\$153,483)	(\$157,321)
Fringe Benefits	(38,370)	(47,196)	(48,376)
Expense and Equipment	(19,740)	(5,958)	(6,135)
Total <u>Costs</u> - DPM	(\$182,893)	(\$206,637)	(\$211,832)

Costs - Office of Administration-Division of Design and Construction (D&C)

Personal Service (1.5 FTE)	(\$44,816)	(\$55,145)	(\$56,524)
Fringe Benefits	(13,781)	(16,957)	(17,381)
Expense and Equipment	(4,350)	(9,047)	(4,614)
Total <u>Costs</u> - D&C	(\$62,947)	(\$81,149)	(\$78,519)

**ESTIMATED NET EFFECT TO GENERAL REVENUE FUND**

	<b><u>(\$245,840)</u></b>	<b><u>(\$287,786)</u></b>	<b><u>(\$290,351)</u></b>
--	---------------------------	---------------------------	---------------------------

<u>FISCAL IMPACT - State Government</u> (continued)	FY 2001 (10 Mo.)	FY 2002	FY 2003
--	---------------------	---------	---------

**VARIOUS STATE FUNDS**

Costs-Increased Contract Amounts (\$Unknown) (\$Unknown) (\$Unknown)

<u>FISCAL IMPACT - Local Government</u>	FY 2001 (10 Mo.)	FY 2002	FY 2003
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

This proposal could have a direct fiscal impact on small businesses to the extent there could be an increase in the purchase of products and services from "Missouri based businesses".

DESCRIPTION

This act makes several changes to the Office of Administration with regards to purchasing products and services from Missouri based businesses and prohibits those who have served as chief information officer and have had the capacity to influence computer purchases in that department from receiving gratuities or employment from businesses who contract with the state for a period of two years.

This act makes various changes to the state purchasing law. The act:

- (1) Requires purchasers for the state to enter into, renew, or extend state contracts to Missouri based businesses. If products or services are not available through a Missouri based business, a purchaser may purchase from another source. The Commissioner of Administration must adopt rules for distributing potential bids to Missouri based businesses;
- (2) Requires the State Auditor to annually audit cost-plus contracts to determine if the state is receiving the best price;
- (3) Allows an open contract which is considered to be any contract that is let, renewed, or extended which is based on cost plus a fixed guaranteed profit to be supplied by any willing provider who meets the technical requirements for the product, except in the event of a state disaster emergency;

DESCRIPTION (continued)

- (4) Expands the ability of the Commissioner of Administration to participate in cooperative purchasing agreements and purchase supplies from the federal governmental services

L.R. NO. 4585-01  
BILL NO. SB 1041  
PAGE 7 OF 8  
March 6, 2000

administration;

(5) Expands the purchase preference the Commissioner must give to include products assembled in the state;

(6) Requires the state to give a 30% preference, to Missouri based firms when awarding contracts; and

(7) Requires the Office of Administration to annually audit minority business participation reports.

The act also makes submitting a false report to the state the crime of making a false declaration. The penalty for making a false declaration is increased from a Class B to a Class A misdemeanor. The Attorney General is given authority to prosecute the crime of making a false declaration.

Persons violating this prohibition are guilty of a Class D felony. Entities that have employed or given gifts to the Information Officer over the past 5 years must report all expenditures to the Missouri Ethics Commission by October 1, 2000, or be excluded from the state procurement process.

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

This proposal would not affect Total State Revenues.

#### SOURCES OF INFORMATION

Office of Administration - Division of Purchasing and Materials Management  
Office of Administration - Division of Design and Construction  
Office of Administration - Division of Facilities Management

MLW:LR:OD:005 (9-94)

L.R. NO. 4585-01  
BILL NO. SB 1041  
PAGE 8 OF 8  
March 6, 2000

Department of Health  
Department of Social Services  
Department of Revenue  
Department of Natural Resources  
Coordinating Board for Higher Education  
Department of Corrections  
Department of Agriculture  
Office of the State Auditor  
Department of Public Safety  
Missouri Department of Conservation  
Department of Transportation  
Department of Mental Health  
Office of the Attorney General  
Office of State Courts Administrator  
Department of Insurance  
Department of Elementary and Secondary Education  
Department of Economic Development  
Missouri Ethics Commission  
Office of Prosecution Services



Jeanne Jarrett, CPA  
Director  
March 6, 2000