

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 600-01
Bill No.: HB 306
Subject: Attorney General's Office; Agricultural Producer Protection Act
Type: Original
Date: February 14, 2001

FISCAL SUMMARY

ESTIMATED NET EFFECT ON STATE FUNDS			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
General Revenue	(\$68,249)	(\$73,395)	(\$75,289)
Total Estimated Net Effect on <u>All</u> State Funds	(\$68,249)	(\$73,395)	(\$75,289)

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
None	\$0	\$0	\$0
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
Local Government	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 5 pages.

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of State Public Defender, Office of Prosecution Services** and the **Office of State Courts Administrator** assume the proposed legislation would have no fiscal impact on their agencies.

Officials from the **Department of Agriculture** (AGR) assume the proposed legislation would have no fiscal impact on their agency. Officials noted that grain marketing contracts are currently subject to review and approval by the AGR's Grain Regulatory Services program.

Officials from the **Office of Secretary of State** assume the Attorney General may promulgate rules to implement this proposal. Based on experience with other divisions, the rules, regulations and forms issued by the Attorney General could require as many as 20 pages in the *Code of State Regulations*. For any given rule, roughly half again as many pages are published in the *Missouri Register* as in the *Code* because cost statements, fiscal notes and the like are not repeated in *Code*. These costs are estimated. 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. Therefore, the estimated costs for FY 02 are \$1,230. The actual cost could be more or less than the numbers given. The impact of this legislation in future years is unknown and depends upon the frequency and length of rules filed, amended, rescinded or withdrawn.

Officials from the **Office of Attorney General** assume they would need one Assistant Attorney General III to review the contracts.

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.

Oversight notes that language in the proposal in reference to lien statements indicates that "The Secretary of State shall charge a fee of not more than ten dollars for filing the statement". This language conflicts with the collection of fees as stated in the Uniform Commercial Code. Oversight assumes the Secretary of State's Office will continue to collect fees as stated in the Uniform Commercial Code.

FISCAL IMPACT - State Government

FY 2002
(10 Mo.)

FY 2003

FY 2004

GENERAL REVENUE FUND

AK:LR:OD (12/00)

<u>FISCAL IMPACT - State Government</u>	FY 2002 (10 Mo.)	FY 2003	FY 2004
<u>Cost - Office of Attorney General</u>			
Personal Service (1 FTE)	(\$37,500)	(\$46,125)	(\$47,278)
Fringe Benefits	(\$12,499)	(\$15,373)	(\$15,758)
Expense and Equipment	(\$18,250)	(\$11,897)	(\$12,253)
Estimated Net Effect on GENERAL REVENUE FUND	<u>(\$68,249)</u>	<u>(\$73,395)</u>	<u>(\$75,289)</u>
<u>FISCAL IMPACT - Local Government</u>	FY 2002 (10 Mo.)	FY 2003	FY 2004
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

Small businesses could be affected by the provisions of this proposal.

DESCRIPTION

This proposal applies to production contracts that relate to the production of a commodity owned by an active contractor and produced by a contract producer at the contract producer's operation. An agricultural contract imposes an obligation of good faith, as defined in the Uniform Commercial Code, on all parties with respect to performance and enforcement of the contract.

The proposal requires agricultural contracts to be written in plain understandable language and be accompanied by a cover sheet that includes a written statement of the material risks faced by the producer, a statement advising the producer to read the contract, and an index of the key parts of the contract. Contracts may be certified by the Attorney General's Office for compliance with these requirements. A contract producer is given a three-day right to review and cancel a contract, and inclusion of confidentiality provisions is prohibited.

The proposal establishes a first-priority lien for a producer for amounts due under a production contract involving livestock, raw milk, or crops to be enforced against the commodity, the cash proceeds of the sale of the commodity, or the property of the contractor. The duration of the lien

DESCRIPTION (continued)

and the process for filing and enforcing the lien are provided in the proposal.

A contractor not claiming breach of contract by the producer cannot terminate the contract unless the producer is given 90 days notice and pays damages to the producer. Calculation of damages is to be based on the value of the remaining useful life of the facilities, machinery, or equipment. A contractor claiming the producer breached the production contract may not terminate the contract until the producer is given 45 days notice of the alleged breaches and the producer fails to remedy the breaches within 30 days of receipt of the notice. The contractor is exempted from these provisions if the producer has abandoned the contract or has been convicted of fraud against the contract.

A contractor may not require a producer to make capital investments in addition to investment requirements included in the original contract unless the contract producer receives fair compensation.

The proposal establishes the following unfair practices for agricultural contracts:

- (1) A contractor or processor may not take action to coerce, retaliate, or discriminate against a producer for joining a producer organization, joining a production association, or being a whistle blower;
- (2) A contractor or processor may not provide the producer false information about producer rights or about producer associations;
- (3) A contractor may not refuse to provide a contract producer information used to determine compensation or to allow a contract producer to observe weighing used to determine compensation; and
- (4) A contractor may not use tournament compensation programs.

Agricultural contracts are to contain language providing for resolution of disputes through mediation. Both parties are required to go through mediation and receive a mediation release prior to going to court. Contractors or processors in violation of the provisions of the proposal are subject to both civil and criminal penalties. A right of private action for producers and awards for attorney fees to prevailing plaintiff producers is created by the proposal.

Provisions of the proposal are prospective and apply to certain preexisting contracts. All preexisting contracts when materially changed are to be treated as new contracts.

DESCRIPTION (continued)

This legislation is not federally mandated and would not require additional capital improvements

or rental space. Although this legislation would not specifically duplicate another program, in part it does duplicate and conflict with Chapter 276, RSMo, as noted by the AGR. The AGR's Grain Regulatory Services program is charged with enforcement of Chapter 276, RSMo which addresses grain marketing contracts.

SOURCES OF INFORMATION

Department of Agriculture
Office of Attorney General
Office of Prosecution Services
Office of Secretary of State
Office of State Courts Administrator
Office of State Public Defender

NOT RESPONDING: Department of Corrections



Jeanne Jarrett, CPA
Director

February 14, 2001