

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1077-02
Bill No.: HB 530
Subject: Public Service Accountability Act
Type: Original
Date: March 28, 2001

FISCAL SUMMARY

ESTIMATED NET EFFECT ON STATE FUNDS			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
General Revenue	\$0	(\$185,827)	(\$181,079)
Various	\$0	(Unknown)	(Unknown)
Total Estimated Net Effect on <u>All</u> State Funds*	\$0	(\$185,827)	(\$181,079)

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

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
Federal	\$0	\$0	\$0
Total Estimated Net Effect on <u>All</u> Federal Funds*	\$0	\$0	\$0

***Unknown revenue and costs expected to exceed \$100,000 annually, net to \$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 10 pages.

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of Administration - Division of Purchasing and Materials Management (DPM)** assume this proposed legislation would apply to many professional and general services contracts awarded by DPM. To ensure that all additional requirements of this proposed legislation are met, DPM would need one additional Buyer III position (at \$37,488 annually). The new Buyer III would either prepare the cost estimate of providing the service by public employees or review the cost estimate prepared by state agencies. After bids have been submitted, the Buyer would prepare a comprehensive analysis of the contract costs. Since this legislation is effective for contracts entered into on or after July 1, 2002, no costs were estimated for FY2002.

Officials from the **Office of Administration – Division of Facilities Management (DFM)** assumes the requirements in this proposed legislation would result in a long certification process. The DFM assumes it would need two Contract Specialists to comply, resulting in annual costs of more than \$130,000.

Oversight assumes the DFM will not need additional space for the requested FTE.

Officials from the **Department of Social Services (DOS)** state that their department will be impacted by this proposed legislation due mainly to large contracts with the fiscal agent and managed care health plan contracts, electronic benefits transfer cards, centralized collections, and Medicaid processing. The program divisions may realize an additional fiscal impact to smaller contracts as a result of changing the contract dollar amount to \$25,000 in the proposed legislation (the previous version of this legislation set the contract amount at \$100,000). The proposed legislation could result in difficulties in hiring contractors because of the two-year limitation. The allowance of longer contract time periods usually results in substantial savings by allowing the contractor a greater period of time to recover start-up costs. It also avoids the down time and losses that occur if the contractor changes every two years.

Based on the responses from the prior fiscal year along with consultation with the Division of Medical Services, DOS estimates the fiscal impact to their agency to be unknown greater than \$100,000.

Officials from the **Secretary of State (SOS)** state that this proposal will require all state bodies entering into privatization contracts to publish bids and results of those contracts in the Missouri Register. With no information to establish how many of these bids will occur in a year, there is no way to estimate a cost. If these occur frequently, the cost could be significant. The length of these bids is also unknown. SOS stated that with the information contained in this proposal,
ASSUMPTION (continued)

there is no way to arrive at an estimate that could be supported. The estimated cost of a page in the Missouri Register is \$23.00. So the cost could be minor or very significant depending on the number of pages these bids and results require. A massive increase in pages to the Missouri Register would result in the need for additional staffing in addition to the printing costs of the additional pages.

These costs are estimated. The impact of this proposed legislation in future years is unknown and depends upon the frequency and length of bids and results published.

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 **Department of Natural Resources (DNR)** assume, for purposes of this fiscal note that if they have asked for, or been given the authority, to contract services through the appropriation process that they have complied with the intent of this proposal.

The proposed legislation appears to conflict with the existing statute regarding contracts with concessionaires. Section 253.080 RSMo states "The director may award, by contract to, any suitable person, persons, corporation or association the right to construct, establish and operate public services, privileges, conveniences and facilities on any land, site or object under the department's control for a period not to exceed twenty-five years with a renewal option, and may supervise and regulate any and all charges and fees of operations by private enterprise for supplying services and operating facilities on state park areas."

If this is not the intent of this proposal, the provisions of this proposal may result in the department requesting additional resources.

Officials from the **Office of State Courts Administrator (CTS)** assume the proposed legislation would regulate privatization of governmental services or support operations through contracts with private entities. The CTS has no basis for estimating any increase in civil litigation as a result of the proposal, but there is potential, and the volume is unknown until the proposal has been in place for some time. Any significant increase in the volume of civil litigation would have a corresponding impact on the state and local budget of the judiciary. There is some potential that the proposal could increase administrative and operating costs of future contracts entered into by the judiciary. However, it is not feasible to predict such impacts in advance.

ASSUMPTION (continued)

Officials from the **Department of Transportation (DHT)** assume that if the "Department of

Transportation" includes Missouri Highway Transportation Commission, then this proposal will have no fiscal impact.

Officials from the **Missouri Department of Conservation (MDC)** state that the proposal could have significant administrative and fiscal impact on MDC because of the requirements placed on certain service contracts. MDC states that the fiscal impact of this proposal is unknown.

Officials from the **Coordinating Board for Higher Education (CBH)** state that they have several external contracts in excess of \$25,000. However, these contracts are not impacted by this proposal because they do not encompass services which "are substantially similar to and in lieu of services which have been provided, in whole or in part, by regular employees of a public body." The services for which the CBH contracts have never been provided in whole or in part by regular CBH employees.

Officials from the **Department of Economic Development (DED)** assume that specific budget or statutory authority to contract with entities would override these provisions. DED assumes that they have no contracts that fit the definition of "privatization contracts." If this is subsequently proven to be an erroneous assumption, possible fiscal impact could be incurred by the DED and result in additional budget requests.

DED assumes this proposal does not apply to contracts for services that cannot be provided with state employees. DED also assumes that the proposal would not require compliance if a budget document directed contracting with a specific entity for amounts in excess of \$25,000.

Officials from the **Department of Insurance (INS)** state that they currently contract out the examinations required for licensure. The contract is bid on a three-year cycle through the Office of Administration and the contractor collects the examination fees and the Department does not provide any funds to the contractor. This proposal would have no fiscal impact on the INS, but it would make changes in the Office of Administration bid process for this contract.

Officials from the **Department of Public Safety (DPS)** state that the Office of Administration - Division of Purchasing handles contracts over \$25,000 for their department. Therefore, DPS assumes that the requirements in this proposal will be part of the contract prepared by the Office of Administration - Division of Purchasing.

Officials from the **Department of Mental Health (DMH)** state that their agency does not currently have any privatization contracts nor expects to enter into such a contract in the future. DMH assumes that the exemption to the competitive bid process for Administrative Agents will ASSUMPTION (continued)

not be impacted by this legislation. This proposal would not alter existing personnel practices during the privatization process. Therefore, DMH anticipates no fiscal impact as a result of this

proposed legislation.

Officials from the **Department of Revenue (DOR)** state that the administrative and revenue impact of the proposed legislation is unknown.

Officials from the **Department of Elementary and Secondary Education, Department of Agriculture, Department of Labor and Industrial Relations, Department of Health, and the Office of Administration - Design and Construction** assume the proposed legislation would have either no or minimal fiscal impact on their agencies.

<u>FISCAL IMPACT - State Government</u>	FY 2002	FY 2003	FY 2004
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GENERAL REVENUE FUND

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

Personal Service (1 FTE)	\$0	(\$39,386)	(\$40,370)
Fringe Benefits	\$0	(\$13,127)	(\$13,455)
Expense and Equipment	<u>\$0</u>	<u>(\$4,332)</u>	<u>(\$318)</u>
Total <u>Costs</u> - DPM	<u>\$0</u>	<u>(\$56,845)</u>	<u>(\$54,143)</u>

Costs - Office of Administration (COA)
Division of Facilities Management (DFM)

Personal Service (2 FTE)	\$0	(\$90,312)	(\$94,200)
Fringe Benefits	\$0	(\$30,100)	(\$31,396)
Expense and Equipment	<u>\$0</u>	<u>(\$8,570)</u>	<u>(\$1,340)</u>
Total <u>Costs</u> - DFM	<u>\$0</u>	<u>(\$128,982)</u>	<u>(\$126,936)</u>

**ESTIMATED NET EFFECT ON ALL
 GENERAL REVENUE FUNDS***

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

	<u>\$0</u>	<u>(\$185,827)</u>	<u>(\$181,079)</u>
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VARIOUS STATE FUNDS

<u>Costs - Increased Contract Amounts</u>	<u>\$0</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
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<u>FISCAL IMPACT - State Government</u>	FY 2002	FY 2003	FY 2004
ESTIMATED NET EFFECT ON VARIOUS STATE FUNDS	<u>\$0</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
FEDERAL FUNDS			
<u>Income - DOS</u>			
Medicaid Reimbursements	\$0	Unknown	Unknown
<u>Cost - DOS</u>			
Program Costs	<u>\$0</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT ON FEDERAL FUNDS	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

<u>FISCAL IMPACT - Local Government</u>	FY 2002	FY 2003	FY 2004
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

This proposal could impact small businesses to the extent that those businesses have privatization contracts with the state.

DESCRIPTION

This proposal regulates the use of privatization contracts by the state. The Department of Transportation; municipal fire departments who contract with private companies as contained in Section 85.012, RSMo; and public bodies who contract for architectural services, engineering

services, or land surveying services are not covered. Privatization contracts are agreements or a combination or series of agreements in which a non-governmental person or entity agrees with a public body to provide services valued at \$25,000 or more which could have been provided by regular employees of a public body. The proposal:

- (1) Creates the Public Service Accountability Act and prohibits public bodies from entering into privatization contracts, except under the conditions of the proposal;
- (2) Requires public bodies to prepare a written statement specifically describing the services to be provided under a privatization contract. The public body will solicit competitive sealed bids for privatization contracts based upon this statement and will publish the statement in the Missouri Register no later than thirty business days prior to when bids are due. Bid requirements are outlined in the proposal;
- (3) Requires contractors who enter into privatization contracts to compensate employees at the rate a state employee doing similar work would receive or the average private sector compensation rate, whichever is greater. The compensation must include the value of health insurance and other benefits;
- (4) Limits privatization contracts to two years;
- (5) Requires privatization contracts to contain a provision requiring the contractor to offer available positions to qualified public employees whose employment was terminated due to privatization contracts;
- (6) Requires a nondiscrimination and equal opportunity provision in all privatization contracts;
- (7) Prohibits public funds from being used to support or oppose unionization;
- (8) Requires public bodies to prepare a comprehensive written estimate of the cost of using regular public employees before considering privatization contracts. The estimate must include employee pension, insurance, and other benefits;
- (9) Requires a public body to consider a contractor's past performance and its record of compliance with federal, state, and local laws before awarding the contract;

DESCRIPTION (continued)

- (10) Requires a public body to publicly designate the bidder that it proposes to award the privatization contract to;

(11) Requires a public body to prepare a comprehensive written privatization contract cost analysis;

(12) Requires a public body to certify in writing that all provisions of this law have been followed, the quality of services satisfies fiscal and quality requirements, the cost is 10% less than if the public body had completed the services, and the privatization contract is in the public's best interest;

(13) Prohibits a privatization contractor from subcontracting without the approval of a public body;

(14) Requires privatization contractors and subcontractors to file an annual financial audit with a public body;

(15) Requires that a public body have reasonable access to privatization contractors' project financial records, facilities, and employees;

(16) Requires the privatization contractor to submit at least an annual report detailing progress and quality of the project. The contractor must also submit a report of its compliance with all federal, state, and local laws and citations, complaints, or findings issued by an administrative agency or court;

(17) Allows a public body to seek contractual remedies for any violation of the privatization contract. Other persons or entities are also allowed to bring a claim against a contractor for certain violations of this proposal;

(18) Restricts ownership rights or interest in any public record by a privatization contractor and requires public bodies and contractors to comply with all open records laws;

(19) Restricts the use of privatization contract records and contract records of a public body. The proposal outlines remedies which may be taken for violation of these restrictions;

(20) Prohibits retaliation against any public employee or private contractor employee who, acting in good faith, discloses information or participates in any investigation or proceedings against any governmental entity relating to a violation of a privatization contract. The identity of any employee complaining in good faith to a public body or elected official about a violation of a DESCRIPTION (continued)

privatization contract will be confidential; and

(21) Requires private contractors to post provisions of the privatization contract law and information pertaining to the filing of a charge for the violation of certain provisions of the

proposal.

The proposed legislation has an effective date of July 1, 2002.

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

SOURCES OF INFORMATION

Secretary of State's Office
Department of Agriculture
Department of Conservation
Department of Economic Development
Department of Elementary and Secondary Education
Department of Health
Department of Higher Education
Department of Insurance
Department of Labor and Industrial Relations
Department of Mental Health
Department of Natural Resources
Department of Public Safety
Department of Revenue
Department of Social Services
Department of Transportation
Office of Administration - Design and Construction
Office of Administration - Division of Purchasing and Materials Management
Office of Administration - Division of Facilities Management
Office of the State Courts Administrator

NOT RESPONDING

Attorney General
Department of Corrections
City of Kansas City
City of St. Louis

KLR:LR:OD (12/00)

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City of Springfield
St. Charles County
Greene County
Jackson County

A handwritten signature in black ink, appearing to read "Jeanne Jarrett". The signature is written in a cursive style with a large initial "J".

Jeanne Jarrett, CPA
Director

March 28, 2001