

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4921-04
Bill No.: HCS for HB 1484
Subject: Contracts and Contractors; Engineers; Architects
Type: Original
Date: March 7, 2014

Bill Summary: This proposal specifies that no public owner, contractor, or subcontractor can withhold retainage on a public works project if the public owner has obtained a bond.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
General Revenue	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
Total Estimated Net Effect on General Revenue Fund	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
University Funds	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
Total Estimated Net Effect on <u>Other</u> State Funds	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)

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

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
Total Estimated Net Effect on FTE	0	0	0

☐ Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).

☐ Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
Local Government	(Unknown)	(Unknown)	(Unknown)

FISCAL ANALYSIS

ASSUMPTION

Officials at the **Office of Administration's Division of Facilities Management, Design and Construction (FMDC)** assume §34.057, as amended by this proposal, reduces retainage for incomplete work value from 200% to 150% of the value of the incomplete work. Retainage is customarily held by the State and other entities employing contractors in order to provide an incentive for contractors to complete the obligations for which they've contracted. Reducing the permissible amount of retainage will therefore affect FMDC's ability to manage construction contracts, and will adversely impact FMDC's ability to close out construction projects.

Changes to §107.170 modifying bonding requirements from \$25,000 to \$50,000 will likely not affect FMDC.

Officials at the **City of Kansas City** assume this proposal would result in additional costs in interest on payments not made to engineers, architects, and land surveyors. The reduction in retainage from 200% to 150% for the remaining items may result in additional costs to the City if the work must be completed by others. They believe that if another contractor comes in to do the work it could easily cost 200%. However at this time exact amounts are unknown.

The City may experience some savings if the contractors actually pass on to the City the savings from having to obtain a bond. However, that savings amount is unknown.

Officials at the **Missouri State University** assume the costs could be significant. Bonding companies do not adequately provide the coverage or leverage an owner has to have projects completed in a timely fashion. Bonding companies' primary concern is no loss of money. Finishing a project is secondary and when an owner needs to get a project completed through the bonding company, the owner loses all control over when a project would be finished.

In response to the previous version of this proposal, officials at the **City of O'Fallon** assumed unknown costs and will need to reevaluate what determines a completed project and withhold payment on individual items of what one would consider in violation or acceptable under the Prompt Payment Act.

Officials at the **University of Missouri** assume this bill would not significantly affect them as they pay very expeditiously for work completed.

ASSUMPTION (continued)

Officials at the **City of Jefferson City**, the **Department of Conservation**, the **Department of Labor and Industrial Relations**, the **Fulton School District**, the **Johnson School District**, the **Linn State Technical College**, the **Missouri Department of Transportation**, the **Missouri Western State University**, **Northwest Missouri State University**, **St. Louis County** and the **University of Central Missouri** each assume there is no fiscal impact to their respective organizations from this proposal.

Officials at the following cities: Ashland, Belton, Bernie, Bonne Terre, Boonville, California, Cape Girardeau, Clayton, Columbia, Dardenne Prairie, Excelsior Springs, Florissant, Frontenac, Fulton, Gladstone, Grandview, Harrisonville, Independence, Joplin, Kearney, Knob Noster, Ladue, Lake Ozark, Lebanon, Lee Summit, Liberty, Louisiana, Maryland Heights, Maryville, Mexico, Monett, Neosho, Pacific, Peculiar, Popular Bluff, Raytown, Republic, Richmond, Rolla, Sedalia, Springfield, St. Charles, St. Joseph, St. Louis, St. Robert, Sugar Creek, Sullivan, Warrensburg, Warrenton, Webb City, Weldon Spring and West Plains did not respond to **Oversight's** request for fiscal impact.

Officials at the following schools: Blue Springs Public Schools, Branson Public Schools, Charleston R-I Schools, Cole R-I Schools, Columbia Public Schools, Fair Grove Schools, Francis Howell Public Schools, Independence Public Schools, Jefferson City Public Schools, Kirksville Public Schools, Kirbyville R-VI Schools, Lee Summit Public Schools, Malden R-I Schools, Malta Bend Schools, Mexico Public Schools, Monroe City R-I Schools, Nixa Public Schools, Parkway Public Schools, Pattonville Schools, Raymore-Peculiar R-III Schools, Raytown School District, Sedalia School District, Sikeston Public Schools, Silex Public Schools, Special School District of St. Louis County, Spickard School District, St Joseph School District, St Louis Public Schools, St. Charles Public Schools, Sullivan Public Schools and Warren County R-III School District did not respond to **Oversight's** request for fiscal impact.

Officials at the following counties: Andrew, Audrain, Barry, Bates, Boone, Buchanan, Callaway, Camden, Cape Girardeau, Carroll, Cass, Clay, Cole, Cooper, DeKalb, Franklin, Greene, Holt, Jackson, Jefferson, Johnson, Knox, Laclede, Lawrence, Lincoln, Marion, Miller, Moniteau, Monroe, Montgomery, New Madrid, Nodaway, Ozark, Perry, Pettis, Phelps, Platte, Pulaski, Scott, St. Charles, St. Francois, Taney, Warren, Wayne and Worth did not respond to **Oversight's** request for fiscal impact.

ASSUMPTION (continued)

Officials at the following colleges: Crowder, East Central Community College, Harris-Stowe, Jefferson College, Kansas City Metro Community College, Lincoln University, Moberly Area Community College, Missouri Southern State University, Southeast Missouri State University, State Fair Community College, St. Charles Community College, St. Louis Community College, Three Rivers Community College and the Truman State University did not respond to **Oversight's** request for fiscal impact.

Oversight assumes it is unclear if projects done by the State and by state colleges and universities would be completed as bid or another contractor would need to be brought in. Oversight will reflect a \$0 (no replacement contractors needed) to Unknown impact to General Revenue for all state projects and to University Funds. Additionally, **Oversight** will reflect costs of Unknown for all local political subdivisions.

<u>FISCAL IMPACT - State Government</u>	FY 2015 (10 Mo.)	FY 2016	FY 2017
GENERAL REVENUE			
<u>Costs</u> - Office of Administration - regarding change in retainage rules	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>
UNIVERSITY FUNDS			
<u>Costs</u> - University Funds - regarding change in retainage rules	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>
ESTIMATED NET EFFECT ON UNIVERSITY FUNDS	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>

FISCAL IMPACT - Local Government

FY 2015
(10 Mo.)

FY 2016

FY 2017

**LOCAL POLITICAL SUBDIVISION
FUNDS**

Costs - Local Political Subdivision -
change in retainage rules

(Unknown)

(Unknown)

(Unknown)

**ESTIMATED NET EFFECT ON
LOCAL POLITICAL SUBDIVISION
FUNDS**

(Unknown)

(Unknown)

(Unknown)

FISCAL IMPACT - Small Business

Small businesses which include contractors, professional engineers, architects, landscape architects or land surveyors could be affected from this proposal.

FISCAL DESCRIPTION

This bill adds professional engineers, architects, landscape architects, and land surveyors to those persons or entities to whom prompt payment must be made under a public works project.

The bill specifies that retainage withheld on a construction contract or subcontract for a public works project cannot exceed 5% of the value of the contract or subcontract. The threshold dollar amount of a public works project that requires a contractor to purchase a security bond is increased from \$25,000 to \$50,000. If the contractor is not required to obtain a bond the public owner may withhold retainage on the project in an amount up to 10% of the value of the contract or subcontract.

The bill changes from 200% to 150% of the value of an item a public owner can withhold from a subcontractor once retainage is released for each minor item the subcontractor needs to complete. The value of each item is determined by the public owner's authorized representatives. The public owner must pay at least 98% of the retainage, less any offsets or deductions authorized by contract or by law, to the contractor, subcontractor, or supplier after substantial completion of the contract work and acceptance by the public owner. If the public owner determines the work is not substantially completed and accepted, the owner must provide a written explanation of why within 14 days. If this explanation is not given, the public body must pay at least 98% of the retainage within 30 days. If at that time there are any remaining minor items to be completed, an amount equal to 150% of the value of each item must be withheld until the item is completed.

JH:LR:OD

FISCAL DESCRIPTION (continued)

The bill specifies that when a contractor receives any payment, he or she must pay each subcontractor and material supplier in proportion to the work each completed less any retention up to 5%. If the public owner rejects specific areas of work and does not release the full payment due, the subcontractors and suppliers involved will not be paid for the rejected work as long as the public owner gives a written explanation to the contractor, subcontractor, and supplier involved of why the work was rejected. Public owners are required to pay any professional engineer, architect, landscape architect, or land surveyor the amount due within 30 days following receipt of an invoice prepared and submitted in accordance with the contract. The contracting public owner also is required to pay interest at the rate of one and one half percent per month calculated from the expiration of the 30 day period until fully paid.

The bill specifies that these provisions must not be construed to require direct payment by a public owner to a subcontractor or supplier, except in the case of default by the contractor on the contract with the public owner where a performance or payment bond is not required or where the surety fails to execute its duties under a bond, as determined by a court.

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

City of Jefferson City
City of Kansas City
City of O'Fallon
Department of Conservation
Department of Labor and Industrial Relations
Fulton School District
Johnson School District
Linn State Technical College
Missouri Department of Transportation
Missouri State University
Missouri Western State University
Northwest Missouri State University

SOURCES OF INFORMATION (continued)

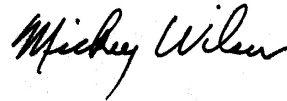
Office of Administration

Division of Facilities Management, Design and Construction

St. Louis County

University of Central Missouri

University of Missouri



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Director

March 7, 2014

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March 7, 2014