

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1308-01
Bill No.: HB 493
Subject: Auditor, State; State Departments; State Employees
Type: Original
Date: March 15, 2005

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
General Revenue*	(Unknown exceeding \$71,401)	(Unknown exceeding \$112,829)	(Unknown exceeding \$115,024)
Total Estimated Net Effect on General Revenue Fund	(Unknown exceeding \$71,401)	(Unknown exceeding \$112,829)	(Unknown exceeding \$115,024)

*** Subject to Appropriation**

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
State Employee Whistleblower*	\$0*	\$0*	\$0*
Total Estimated Net Effect on <u>Other</u> State Funds	\$0*	\$0*	\$0*

*** Subject to Appropriation**

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

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Agriculture, Office of Administration (COA) - Division of Budget and Planning, Department of Higher Education, Office of Information Technology, Office of State Courts Administrator, Bi-State Development, Department of Economic Development, Public Service Commission, Department of Elementary and Secondary Education, Department of Natural Resources, Department of Corrections, Department of Revenue, Department of Public Safety, Missouri Gaming Commission, Missouri State Highway Patrol, State Emergency Management Agency, Missouri Veterans' Commission, Missouri Consolidated Health Care Plan, Department of Insurance, Joint Committee on Public Employee Retirement, Committee on Legislative Research, Office of Lieutenant Governor, Missouri Department of Conservation, Missouri Health Facilities Review Committee, Missouri House of Representatives, Missouri State Employees Retirement System, Office of Prosecution Services, MoDOT and Patrol Employee's Retirement System, Missouri Senate, Office of Secretary of State, Office of State Public Defender, and Office of State Treasurer** assume the proposal will have no fiscal impact on their organizations.

Officials from the **Department of Health and Senior Services (DOH)** state the proposal would not be expected to fiscally impact the operations of the DOH. If an impact were to result, funds to support the program would be sought through the appropriations process.

ASSUMPTION (continued)

Officials from the **Missouri Department of Transportation (DOT)** state the legislation proposes to repeal the state employee whistleblower law and enact new provisions. The new provisions greatly expand the current law and give the State Auditor's Office expansion of powers. It also expands the provisions to dramatically benefit the suing plaintiff. Although this legislation could result in an increase in the number of requests for DOT records and in staff time spent responding to State Auditor's requests, the Missouri Highway Transportation Commission/DOT assumes no fiscal impact. Costs for administering the proposed legislation are to be paid from the "State Employee Whistleblower Fund", which will consist of funds appropriated from the state's General Revenue Fund.

Officials from the **Department of Labor and Industrial Relations (DOL)** state the proposal will have an impact on the DOL's Commission on Human Rights based on the following language in the proposal, "Any person who is a whistleblower and who has been subjected to workplace reprisal or retaliatory action is presumed to have established a cause of action for the remedies provided under chapter 213, RSMo." The DOL is uncertain of the meaning of section 105.1312 as it relates to chapter 213, RSMo. As a result, the DOL is unable to determine if there is a fiscal impact.

Officials from the **COA - Division of Accounting** state it is difficult to estimate the cost of an independent audit, but estimate the cost would be approximately \$25,000 annually.

Officials from the **Department of Mental Health (DMH)** assume one (1) FTE Auditor II would be required to meet the 60 working day turnaround for investigation of potential complaints of "improper governmental actions" by the DMH. This FTE would be housed in the central office in existing space, with support from existing clerical staff and, for the most part, existing equipment. In-state travel would be required. Both the DMH Office of Audit Services and the Investigations Unit consistently have backlogs of requested audits and investigations with the current staffing levels. In order to sustain the volume of audits and investigations currently conducted from requests from internal department management and also be able to respond to the State Auditor to conduct investigations as this proposal introduces, at least one additional FTE may be needed.

With most financial investigations, it takes a long period of time to collect, review, and analyze records and documents in order to substantiate any improper governmental action. A 60-day turnaround time for a financial investigation will be very difficult to meet. In reality, two auditors would most likely have to be assigned to review a complaint of improper governmental action and conduct a financial investigation in order to provide detailed findings back to the State Auditor within 60 days. The DMH could absorb the duties of the second auditor utilizing existing staff.

ASSUMPTION (continued)

The DMH estimates FY 06 expenses of \$51,891; FY 07 expenses of \$63,838; and FY 08 expenses of \$65,447.

Oversight assumes if the DMH were to incur limited inquiries/investigations do to the whistleblower provisions of this proposal, the additional work could be performed with existing staff. If the DMH were to experience more than a limited number of inquiries/investigations, the DMH could request additional funding through the appropriations process.

Officials from the **Department of Social Services (DOS)** this proposal will impact the job duties and the workloads of many DOS employees. Although the statute defines "improper governmental action" as actions that are not employee grievances, dismissals from employment, violation of the merit system (Chapter 36), etc., the statute also states that the auditor's office is to determine whether "other avenues are available for addressing" allegations and whether the allegations are "already be[ing] investigated or [are] in litigation." Accordingly, the auditor's office will likely seek consultation with DOS human resource employees to determine the answers to those questions. Additionally, section 105.1309.5(4) allows the auditor to forward allegations of improper governmental action to DOS so that DOS can investigate the matters and report back to the auditor within sixty days. Although this section acknowledges that the auditor will do so upon DOS's consent, DOS, for a myriad of reasons, may feel the need to consent to the request of a sister state agency. These investigations and reports (which must be completed within two months) will add to the workload of DOS investigators, human resource officers, and/or attorneys.

DOS employees, particularly human resource officers, may spend more time out of the office due to their subpoenaed presence at auditor's office hearings (Section 105.1309.9). This may create an increased staffing and coverage burden, particularly for supervisors and managers who routinely provide testimony in Personnel Advisory Board hearings.

Considering the information given above and without the ability to estimate the number of inquiries/investigations that would occur, a fiscal impact of unknown has been estimated.

Officials from the **Office of Attorney General (AGO)** anticipate that, depending on the number of investigations opened by the State Auditor and referred to the AGO for further action, there could be some additional costs to the AGO. However, because there is no way to estimate the number of cases referred, the AGO assumes costs are unknown, but less than \$100,000 per year.

Officials from the **Office of State Auditor (SAU)** state that in order to comply with the audit requirements of the proposal, the SAU will require two (2) additional staff auditor Is. The SAU estimates FY 06 costs of \$76,770; FY 07 costs of \$94,425; and FY 08 costs of \$96,786.

ASSUMPTION (continued)

Oversight has, for fiscal note purposes only, changed the starting salary for the Staff Auditor Is 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.

<u>FISCAL IMPACT - State Government</u>	FY 2006 (10 Mo.)	FY 2007	FY 2008
GENERAL REVENUE FUND			
<u>Transfer-Out - State Employee Whistleblower Fund</u>			
Costs of program operation	<u>(Unknown exceeding \$71,401)</u>	<u>(Unknown exceeding \$112,829)</u>	<u>(Unknown exceeding \$115,024)</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND*	<u><u>(Unknown exceeding \$71,401)</u></u>	<u><u>(Unknown exceeding \$112,829)</u></u>	<u><u>(Unknown exceeding \$115,024)</u></u>

* SUBJECT TO APPROPRIATION

<u>FISCAL IMPACT - State Government</u>	FY 2006 (10 Mo.)	FY 2007	FY 2008
STATE EMPLOYEE WHISTLEBLOWER PROGRAM FUND			
<u>Transfer-In - General Revenue Fund</u>			
Funds to cover State Employee Whistleblower program costs	Unknown exceeding \$71,404	Unknown exceeding \$112,829	Unknown exceeding \$115,024
<u>Costs - Office of Attorney General</u>			
Investigation/litigation costs	(Unknown less than \$100,000)	(Unknown less than \$100,000)	(Unknown less than \$100,000)
<u>Costs - Office of Administration</u>			
Performance audit costs	\$0	(\$25,000)	(\$25,000)
<u>Costs - Department of Labor and Industrial Relations</u>			
Whistleblower program costs	(Unknown)	(Unknown)	(Unknown)
<u>Costs - Department of Social Services</u>			
Whistleblower program costs	(Unknown)	(Unknown)	(Unknown)
<u>Costs - Office of State Auditor</u>			
Personal service costs (2 FTE)	(\$50,052)	(\$61,565)	(\$63,104)
Fringe benefits	<u>(\$21,352)</u>	<u>(\$26,264)</u>	<u>(\$26,920)</u>
Total <u>Costs</u> - Office of State Auditor	<u>(\$71,404)</u>	<u>(\$87,829)</u>	<u>(\$90,024)</u>
ESTIMATED NET EFFECT ON STATE EMPLOYEE WHISTLEBLOWER PROGRAM FUND*	<u>\$0*</u>	<u>\$0*</u>	<u>\$0*</u>

* SUBJECT TO APPROPRIATION

FISCAL IMPACT - Local Government

FY 2006
(10 Mo.)

FY 2007

FY 2008

\$0

\$0

\$0

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

DESCRIPTION

This proposal clarifies the whistleblower law as it applies to state employees. An employee may confidentially report alleged improper governmental action to the State Auditor. An employee will only be disciplined for knowingly providing false information. The State Auditor will determine whether to initiate an investigation based on the assertions received. The State Auditor will provide written notice of the nature of the assertions including relevant facts known at the time to the subject of the investigation and the agency head when further investigation is necessary. The State Auditor may issue subpoenas, administer oaths, examine witnesses, and receive evidence. The report of the State Auditor's investigation and findings will be sent to the whistleblower within one year after the initial information was filed.

If the State Auditor determines that there is reasonable cause to believe a state employee has engaged in improper governmental action, the State Auditor will report the activities to the Attorney General or other authority as the State Auditor determines is appropriate. Once appropriate action has been taken to resolve the identified activity, the State Auditor will notify the whistleblower, the agency head, and the subject of the investigation.

The State Employee Whistlerblower Fund is created to fund the whistleblower program.

The provisions of the proposal will expire six years from the effective date.

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 Attorney General
Department of Agriculture
Department of Higher Education
Office of Administration -
 Division of Budget and Planning
 Division of Accounting
Office of Information Technology
Office of State Courts Administrator
Bi-State Development
Department of Economic Development -
 Public Service Commission
Department of Elementary and Secondary Education
Department of Mental Health
Department of Natural Resources
Department of Corrections
Department of Health and Senior Services
Missouri Health Facilities Review Committee
Department of Labor and Industrial Relations
Department of Revenue
Department of Social Services
Missouri Department of Transportation -
 MoDOT and Patrol Employees Retirement System
Department of Public Safety -
 Division of Alcohol and Tobacco Control
 Director's Office
 Division of Fire Safety
 Missouri State Highway Patrol
 Missouri State Water Patrol
Missouri Gaming Commission
State Emergency Management Agency
Missouri Consolidated Health Care Plan
Department of Insurance
Joint Committee on Public Employee Retirement
Committee on Legislative Research
Missouri Lieutenant Governor
Missouri Department of Conservation
Missouri House of Representatives
Missouri State Employees Retirement System

SOURCES OF INFORMATION (continued)

Office of Prosecution Services
Missouri Veterans' Commission
Office of State Auditor
Missouri Senate
Office of Secretary of State
Office of State Public Defender
Office of State Treasurer

A handwritten signature in black ink that reads "Mickey Wilson". The signature is written in a cursive, flowing style.

Mickey Wilson, CPA
Director
March 15, 2005