

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 6745-08
Bill No.: HCS for HB 2671
Subject: State Employees; State Departments; Civil Penalties; Workers Compensation
Type: Original
Date: April 16, 2018

Bill Summary: This proposal adds provisions relating to the payment of certain claims.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
Total Estimated Net Effect on General Revenue	\$0	\$0	\$0

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
Legal Expense Fund	Unknown - (Unknown)	Unknown - (Unknown)	Unknown - (Unknown)
Colleges and Universities	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
Total Estimated Net Effect on <u>Other</u> State Funds	Unknown - (Unknown)	Unknown - (Unknown)	Unknown - (Unknown)

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 10 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
Total Estimated Net Effect on FTE	0	0	0

☐ Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any of the three fiscal years after implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of Administration (OA) - General Service Division** assume the following:

105.711.2 - This legislation decreases the limitation for payment of claims under this section; therefore could decrease the amount paid for claims under the Legal Expense Fund under this section. However, the actual reduction is unknown, because it would depend on the number of claims successfully brought.

173.2750 - This legislation could decrease the amount paid for damages under the Legal Expense Fund. However, the actual reduction is unknown, because it would depend on the number of settlements or judgments successfully brought.

287.121 - This legislation could increase payments made under the Legal Expense Fund for retaliation, because this section appears to conflict with existing legislation in 287.780. The actual increase is unknown because it would depend on the number of cases for which action is taken under 287.121 and where damages are successfully brought under 287.780.

The amount of the potential costs or savings resulting from this legislation cannot be reasonably estimated as this language appears to create new legal standards and limitation, subject to judicial interpretation, and there is no readily available information that could assist in forming a rational basis for estimating cost impact. In addition, the number of potential claims, the severity of those claims, and the ultimate costs associated with any judgment resulting from those claims cannot be forecasted with any degree of assurance to their accuracy.

The state self-assumes its own liability under the State Legal Expense Fund section 105.711 RSMo. It is a self-funding mechanism whereby funds are made available for the payment of any claim or judgment rendered against the state in regard to the waivers of sovereign immunity or against employees and specified individuals. Investigation, defense, negotiation or settlement of such claims is provided by the Office of the Attorney General. Payment is made by the Commissioner of Administration with the approval of the Attorney General.

ASSUMPTION (continued)

Officials from the **Department of Natural Resources (DNR)** assume the following:

Section 105.711.6(1) would subject an employee to a review to determine if such employee shall resign if the employee's act or omission while performing his or her job duty resulted in a judgment or settlement by the state of more than \$250,000 being paid out of the state legal expense fund. The review shall be initiated within 30 days, and resignation shall be within thirty days of the completion of the review, if such a determination is made.

This section substantially eliminates official immunity by resulting in a loss of employment if litigations costs exceed \$250,000 for judgments. Official immunity is intended to provide protection for individual government actors who, despite limited resources and imperfect information, must exercise judgment in the performance of their duties. Davis, 193 S.W.3d at 765. Its goal is to permit public employees to make judgments affecting public safety and welfare without concerns about possible personal liability.

Section 287.121.1. would subject an employee to a review to determine if such employee shall resign if the employee's act or omission for an act while performing his or her job duty resulted in a judgment or settlement in an amount that is more than \$250,000 in the aggregate. The review shall be initiated within 30 days, and resignation shall be within thirty days of the completion of the review, if such a determination is made.

This section substantially eliminates official immunity by resulting in a loss of employment if litigations costs exceed \$250,000 for judgments. Official immunity is intended to provide protection for individual government actors who, despite limited resources and imperfect information, must exercise judgment in the performance of their duties. Davis, 193 S.W.3d at 765. Its goal is also to permit public employees to make judgments affecting public safety and welfare without concerns about possible personal liability.

Section 105.711.6(2) and Section 287.121.2. - Any person who has resigned would not be eligible for employment with the state for ten years after the date of completion of the review.

DNR assumes this proposal would result in an unknown costs due to recruitment and retention difficulties of executive staff and defending retaliation claims at DNR.

ASSUMPTION (continued)

Officials from the **Department of Elementary and Secondary Education (DESE)** assume that current law states, "No officer or employee of the state or any agency of the state shall be individually liable in his or her personal capacity for conduct of such officer or employee arising out of and performed in connection with his or her official duties on behalf of the state or any agency of the state." This contradicts the proposed language.

All payments for the state expense fund must be made by the commissioner of administration with the approval of the attorney general. A court would determine any judgment. The attorney general's office has the sole discretion to determine when and how much will be paid in the settlement of cases that they defend. An official or employee named in litigation or involved in the matter related to the litigation has no statutory authority to decide the amount that will be paid in settlement.

The proposal will create a process whereby an employee will be forced to resign without due process. This would likely result in litigation by the official or employee against the state of Missouri. If the official or employee who is forced to resign prevails, there could be substantial judgments or settlements against the state.

Officials from the **Office of the State Courts Administrator** assume there may be some fiscal impact but there no way to quantify that currently. Any significant changes will be reflected in future budget request.

In response to a previous version, officials from the **Office of the Secretary of State (SOS)** assumed many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this fiscal note to the Secretary of State's Office for Administrative Rules is less than \$2,500. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, we also recognize that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what our office can sustain with our core budget. Therefore, we reserve the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the governor.

ASSUMPTION (continued)

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.

Officials from the **Attorney General's Office (AGO)** assume any potential cost arising from this proposal can be absorbed with existing resources. AGO may seek additional appropriations if the proposal results in a significant increase in cases.

Officials from the **Department of Corrections** defer to the Office of Administration to estimate the fiscal impact of the proposed legislation on their organization.

Officials from the **Joint Committee on Administrative Rules** state this legislation is not anticipated to cause a fiscal impact beyond its current appropriation.

Officials from the **Department of Economic Development, Department of Higher Education, Department of Health and Senior Services, Department of Insurance, Financial Institutions and Professional Registration, Department of Labor and Industrial Relations, Department of Revenue, Department of Public Safety - Division of Alcohol and Tobacco Control, Directors Office, Capitol Police, Fire Safety, Gaming Commission, State Emergency Management Agency, Missouri Veterans Commission, Office of the Governor, Missouri Lottery Commission, Missouri Consolidated Health Care Plan, Department of Transportation, Office of Prosecution Services, Missouri State Employee's Retirement System, Office of Administration - Administrative Hearing Commission, Office of the State Courts Administrator, Office of the State Auditor, Missouri Senate, Office of the State Public Defender, Office of the State Treasurer, State Tax Commission** each assume the proposal will have no fiscal impact on their respective organizations.

In response to a previous version, officials from the **Department of Agriculture, Department of Mental Health, Department of Social Services, Missouri Ethics Commission, Missouri House of Representatives, Office of the Lieutenant Governor and MoDOT & Patrol Employees' Retirement System** each assumed the proposal will have no fiscal impact on their respective organizations.

Oversight notes that the provisions of 105.711.2 would set a cap on claims against health care professionals for judgements based on an act or acts alleged in a single of \$500,000. There is a \$1,000,000 cap on judgements against physicians in current law. This could result in savings to the legal expense fund depending upon the claims successfully brought. Proposed section 173.2750 could, depending upon the number a size of claims successfully brought, make colleges

ASSUMPTION (continued)

and universities liable to pay claims which would currently be paid by the legal expense fund. Savings to the legal expense fund would equal costs to colleges and universities.

Since savings and costs to the legal expense fund vary from year-to-year, **Oversight** will show a fiscal impact to the legal expense fund of Unknown savings to (Unknown) costs. Oversight will costs of \$0 to (Unknown) costs to colleges and universities.

<u>FISCAL IMPACT - State Government</u>	FY 2019 (10 Mo.)	FY 2020	FY 2021
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LEGAL EXPENSE FUND

<u>Savings</u> - Cap on awards arising from a single cause	\$0 to Unknown	\$0 to Unknown	\$0 to Unknown
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<u>Savings</u> - Award amounts paid by colleges and universities	\$0 to Unknown	\$0 to Unknown	\$0 to Unknown
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<u>Costs</u> - OA - Award paid due to retaliation damages	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
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ESTIMATED NET EFFECT ON LEGAL EXPENSE FUND	<u>Unknown to (Unknown)</u>	<u>Unknown to (Unknown)</u>	<u>Unknown to (Unknown)</u>
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COLLEGES AND UNIVERSITIES

<u>Costs</u> - Award amounts paid which would have been paid by Legal Expense Fund	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
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ESTIMATED NET EFFECT ON COLLEGES AND UNIVERSITIES	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>
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<u>FISCAL IMPACT - Local Government</u>	FY 2019 (10 Mo.)	FY 2020	FY 2021
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<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
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FISCAL IMPACT - Small Business

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

FISCAL DESCRIPTION

This bill limits the aggregate amount of payments that can be made from the State Legal Expense Fund to a maximum of \$500,000 per single cause against a health care provider licensed to practice in Missouri under Chapters 330, 332, 334, 335, 337 or 338, RSMo, who is employed by the state or agency of the state under a formal contract.

The bill specifies that if a judgment or settlement of at least \$250,000 is paid out of the State Legal Expense Fund because of an act of a state employee, such employee shall be subject to review by the employing agency or department within 30 days to determine if such employee should resign. If determined that the employee's actions should result in resignation, the employee must resign within 30 days of any review and cannot be employed by the state for 10 years.

Beginning August 28, 2019, if an act or omission of a college or university employee results in a judgment or settlement, such public education institution of higher education will be required to pay 50% of the judgment or settlement amount if the Attorney General represents such institution or 100% of the judgment or settlement amount if the institution represents itself.

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

Attorney General's Office
Department of Agriculture
Department of Economic Development
 Public Service Commission
 Office of the Public Council
 Division of Energy
Department of Elementary and Secondary Education
Department of Higher Education
Department of Health and Senior Services
Department of Insurance, Financial Institutions and Professional Registration
Department of Mental Health
Department of Natural Resources

SOURCES OF INFORMATION (continued)

Department of Corrections
Department of Labor and Industrial Relations
Department of Revenue
Department of Public Safety
 Office of the Director
 Division of Alcohol and Tobacco Control
 Capitol Police
 Fire Safety
 Missouri Gaming Commission
 Missouri Highway Patrol
 State Emergency Management Agency
 Veterans Commission
Department of Social Services
Office of the Governor
Joint Committee on Administrative Rules
Missouri Lottery Commission
Missouri Consolidated Health Care Plan
Missouri Department of Conservation
Missouri Ethics Commission
Missouri House of Representatives
Office of the Lieutenant Governor
Department of Transportation
Office of Prosecution Services
Missouri State Employee's Retirement System
MoDOT & Patrol Employees' Retirement System
Office of the State Courts Administrator
Office of the State Auditor
Missouri Senate
Office of the Secretary of State
Office of the State Public Defender

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SOURCES OF INFORMATION (continued)

Office of the State Treasurer
State Tax Commission

Ross Strobe

A handwritten signature in black ink, appearing to read "Ross Strobe", with a stylized flourish at the end.

Acting Director
April 16, 2018