

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0202-02
Bill No.: HCS for HB 573
Subject: Higher Education; Administrative Law; Federal - State Relations
Type: Original
Date: March 25, 2019

Bill Summary: This proposal creates new provisions relating to rights of accused college students in Title IX proceedings.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
General Revenue	(\$93,736 to Unknown)	(\$87,320 to Unknown)	(\$88,190 to Unknown)
Total Estimated Net Effect on General Revenue	(\$93,736 to Unknown)	(\$87,320 to Unknown)	(\$88,190 to Unknown)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
Legal Expense Fund*	\$0	\$0	\$0
College & University Funds	(Unknown, Could exceed \$700,000)	(Unknown, Could exceed \$600,000)	(Unknown, Could exceed \$600,000)
Total Estimated Net Effect on <u>Other</u> State Funds	(Unknown, Could exceed \$700,000)	(Unknown, Could exceed \$600,000)	(Unknown, Could exceed \$600,000)

Transfers-in and distributions net to zero.

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 10 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
General Revenue	1 FTE	1 FTE	1 FTE
Total Estimated Net Effect on FTE	1 FTE	1 FTE	1 FTE

☒ 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 2020	FY 2021	FY 2022
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of the Attorney General (AGO)** assume this proposal would require one Assistant Attorney General (AAG) II to fulfill the duties related to the data collection in section 173.1925.3.

Officials from the **Office of Administration - Administrative Hearing Commission (AHC)** assume this proposal will not significantly alter its caseload. If similar bills pass, resulting in more cases, there will be fiscal impact.

Oversight assumes, based on their response, that the AHC will be able to administer this proposal with existing resources; however, should additional bills pass that also increase their responsibilities, the AHC may need additional resources.

Officials from the **Department of Higher Education** and the **Office of the State Courts Administrator** each assume the proposal will have no fiscal impact on their organization.

Officials from the **University of Missouri System** assume this proposal places a significant administrative burden on the University of Missouri and will:

- Require hiring of additional staff on each campus (5 FTE salary & benefits, \$375k)
- Increase the number of cases handled through a hearing, increasing the burden of time spent by all key personnel and hearing panelists, (\$50k)
- Require new and robust training for all investigators, decision makers, hearing panelists, appellate officers, and advisors immediately upon implementation of the bill, (\$50k)
- Incur significant costs associated with the AHC, including the presentation of the cases before the AHC, the expanded discovery mechanics, and general administrative costs with creating an additional layer of oversight, (\$100k)
- Require overhaul of policies and procedures, publications, printed materials, and campus resources (\$50k)

The fiscal impact on the University of Missouri System is expected to be approximately \$625,000.

Officials from the **University of Central Missouri** assume this would require universities to essentially duplicate their internal processes at the state administrative hearing commission, an additional staff member would need to be added to the Title IX office, at an estimated cost of \$75,000 annually.

ASSUMPTION (continued)

Officials from **Missouri State University** assume this proposal as an anticipated negative fiscal impact of an undetermined amount on the university.

Officials from **Northwest Missouri State University** state several aspects of this proposal could have a negative fiscal impact on the university and other Missouri colleges and universities.

1. Hearings Before the Administrative Hearing Commission

The first aspect of the bill that could have a negative fiscal impact on the University is the hearings before the administrative hearing commission. The use of trial-like hearings in front of a commissioner from the State's Administrative Hearing Commission (AHC) for resolving University Title IX complaints and challenging the University's investigation and resolution of a Title IX complaint could prove costly for the University.

If passed, the bill would allow a student to request a "due process hearing before the administrative hearing commission with respect to any appeal arising under [Title IX]." The bill purports to reduce costs to universities by shifting the burden of handling Title IX appeals to the AHC. The result of the proposed legislation, however, will undoubtedly increase the costs to universities to resolve sexual misconduct complaints, in addition to causing delayed resolution of sexual misconduct complaints. Rather than utilize the internal process that the University has implemented to resolve such matters, either party to a complaint will have the opportunity to request that the matter be heard and decided by the AHC.

AHC Commissioners decide cases using trial-like hearings to which the University would be party. The University will have to prepare for and participate in half-day to full-day proceedings when a student requests such a hearing. Preparing for these hearings would require significant time on the part of University personnel and involve legal counsel. For less severe allegations—notably the proposed bill does not limit AHC hearings to cases of sexual assault—estimated costs could easily reach \$10,000. In cases with more severe allegations like sexual assault, or involving multiple parties or witnesses, costs incurred could be as high as \$100,000.

ASSUMPTION (continued)

Furthermore, all decisions of the AHC are subject to judicial review. Thus, the University could continue to incur costs related to a matter as students continue their claims through state circuit and appeals courts, again requiring costs associated with preparation and legal representation.

2. Costs of Increased Training for Hearing Panel Members or Use of Outside Trained Panel Members

The University currently uses a panel process to resolve disputed issues of fact only. The bill requires a more trial-like process, allowing parties to present evidence and testimony from witnesses, cross examine parties and witnesses, and be represented by an attorney. Managing such hearing panels will require increased training for internal panel members or the use of outside trained panel members.

3. State Cause of Action Alleging Due Process Violations

The bill includes a “civil cause of action against any institution of higher education that intentionally failed to comply with the provisions of sections 173.1898 to 173.1930.” Under this cause of action, a university could be responsible for actual damages, punitive damages, and attorney’s fees and litigation costs. The bill does not clearly explain how an intentional due process violation will be determined. Additionally, the cost of counsel to defend lawsuits of this nature could be exorbitant for Missouri colleges and universities.

Oversight only received responses from a few institutions of higher education, but will show a cost to college and university funds that could exceed \$700,000 in administrative costs in the first year as reported by responding institutions (\$625,000 + \$75,000) with approximately \$600,000 of those costs recurring on annual basis.

Upon further inquiry, the **AGO** stated it is possible there could be an increase in due process claims against colleges and universities, but that the AGO has no way of estimating how many there might be. Due process claims against public colleges and universities would likely impact the Legal Expense Fund.

Oversight assumes this proposal could result in an increase in due process violation claims against colleges and universities which could impact the Legal Expense Fund. Oversight will show a range of impact of \$0 (no increase in claims) to an unknown cost to the Legal Expense Fund with a corresponding transfer-out from General Revenue.

ASSUMPTION (continued)

In addition, Oversight will show a range of impact of \$0 (no increase in claims) to an unknown cost to colleges and universities from an increase in due process violation claims that are not submitted to the Legal Expense Fund for payment.

Oversight only reflects the responses that we have received from state agencies and political subdivisions; however, other colleges and universities were requested to respond to this proposed legislation but did not. For a general listing of political subdivisions included in our database, please refer to www.legislativeoversight.mo.gov.

In response to a previous version, HB 573 (2019), officials from **State Technical College of Missouri** assume this proposal could have a slight negative fiscal impact on the college. The amount cannot be determined.

Officials from the **Office of the Secretary of State (SOS)** state 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 SOS for Administrative Rules is less than \$5,000. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, the SOS also recognizes 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 the office can sustain with the core budget. Therefore, the SOS reserves 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.

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 require additional resources.

Officials from the **Joint Committee on Administrative Rules (JCAR)** assume this proposal is not anticipated to cause a fiscal impact beyond its current appropriation.

Oversight assumes JCAR will be able to administer any rules resulting from this proposal with existing resources.

<u>FISCAL IMPACT - State Government</u>	FY 2020	FY 2021	FY 2022
GENERAL REVENUE			
<u>Transfer Out</u> - to Legal Expense Fund	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
<u>Cost</u> - AGO - Assistant Attorney General			
Personal Service	(\$50,500)	(\$51,005)	(\$51,515)
Fringe Benefits	(\$27,999)	(\$28,153)	(\$28,309)
Equipment and Expenses	(\$15,237)	(\$8,162)	(\$8,366)
<u>Total Cost</u> - AGO	(\$93,736)	(\$87,320)	(\$88,190)
FTE Change - AGO	1 FTE	1 FTE	1 FTE
ESTIMATED NET EFFECT ON GENERAL REVENUE	(\$93,736 to <u>Unknown</u>)	(\$87,320 to <u>Unknown</u>)	(\$88,190 to <u>Unknown</u>)
Estimated Net FTE Change for General Revenue	1 FTE	1 FTE	1 FTE
LEGAL EXPENSE FUND			
<u>Transfer In</u> - from General Revenue	\$0 or Unknown	\$0 or Unknown	\$0 or Unknown
<u>Cost</u> - increase in due process violation claims	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
ESTIMATED NET EFFECT ON THE LEGAL EXPENSE FUND	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

<u>FISCAL IMPACT - State Government</u>	FY 2020	FY 2021	FY 2022
continued			

COLLEGE & UNIVERSITY FUNDS

<u>Cost</u> - increase in due process violations claims (not paid by the Legal Expense Fund)	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
<u>Cost</u> - administrative costs and staff	(Could exceed <u>\$700,000</u>)	(Could exceed <u>\$600,000</u>)	(Could exceed <u>\$600,000</u>)
ESTIMATED NET EFFECT ON COLLEGE & UNIVERSITY FUNDS	(Unknown, Could exceed <u>\$700,000</u>)	(Unknown, Could exceed <u>\$600,000</u>)	(Unknown, Could exceed <u>\$600,000</u>)

<u>FISCAL IMPACT - Local Government</u>	FY 2020	FY 2021	FY 2022
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

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

FISCAL DESCRIPTION

This bill provides, students in higher education, due process protections and allows students to request that Federal Title IX procedural hearings be heard before the Administrative Hearing Commission (Section 173.1898 RSMo).

This bill allows any students in an institution of higher education who have received a disciplinary action in a Title IX case to appeal to the Administrative Hearing Commission (Section 173.1905).

The Administrative Hearing Commission shall compile relevant statistics on the cases it hears (Section 173.1907).

FISCAL DESCRIPTION (continued)

This bill provides institutions of higher education guidance for Title IX formal complaints. This guidance includes interim measures that avoid depriving any student of an education during investigation and resolution of the formal complaint. Notice of the right to request a hearing before the Administrative Hearing Commission must be provided.

This bill sets forth hearing procedures for Title IX formal complaints.

To reach a determination of responsibility, the decisionmaker or decisionmakers shall apply either the preponderance of the evidence standard or the clear and convincing evidence standard. However, the preponderance of the evidence standard may only be used if it is also used in all other discriminatory harassment complaints involving faculty (Section 173.1910).

The bill specifies that failure to provide due process for a Title IX proceeding will entitle students to a civil cause of action. It will be considered a breach of contract for the institution of higher education and be considered an illegal act by the Attorney General for purposes of investigation (Section 173.1915).

This bill authorizes the Attorney General to investigate alleged or suspected violations and outlines information that should be collected regarding procedures and policies for formal complaints (Section 173.1925).

The bill defines "exempt record" and "personally identifiable information," and provides that any record related to a Title IX formal complaint or investigation would be considered an exempt record (Section 173.1930).

The bill contains an emergency clause.

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 the Attorney General
Office of Administration - Administrative Hearing Commission (AHC)
Department of Higher Education
Office of the State Courts Administrator
Joint Committee on Administrative Rules
Office of the Secretary of State

SOURCES OF INFORMATION (continued)

University of Missouri System
Missouri State University
University of Central Missouri
State Technical College of Missouri
Northwest Missouri State University



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March 25, 2019

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