

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0423H.03P
 Bill No.: Perfected HCS for HB 183
 Subject: Education, Elementary and Secondary; Education, Higher; Department of
 Elementary and Secondary Education; Department of Higher Education and
 Workforce Development
 Type: Original
 Date: April 12, 2023

Bill Summary: This proposal establishes guidelines for student participation in athletic contests organized by sex.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2024	FY 2025	FY 2026
General Revenue*	(\$145,692) to Unknown	(\$29,867) to Unknown	(\$30,631) to Unknown
Total Estimated Net Effect on General Revenue	(\$145,692) to Unknown	(\$29,867) to Unknown	(\$30,631) to Unknown

*The fiscal note reflects the potential withholding of funds from school districts and fine revenue from institutions of higher education if the financial penalty provisions of the bill are enacted. For simplicity, Oversight will reflect the potential withheld payments/fine revenue coming from (remaining in) General Revenue. Oversight assumes the payments withheld/fine revenue could exceed the \$250,000 threshold.

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2024	FY 2025	FY 2026
University Funds*	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
Total Estimated Net Effect on <u>Other</u> State Funds	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)

Oversight assumes the cost could exceed \$250,000.

Numbers within parentheses: () indicate costs or losses.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2024	FY 2025	FY 2026
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2024	FY 2025	FY 2026
Total Estimated Net Effect on FTE	0	0	0

- Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.
- Estimated Net Effect (savings or increased revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2024	FY 2025	FY 2026
Local Government	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)

FISCAL ANALYSIS

ASSUMPTION

Sections 163.048 and 173.088 as amended

Officials from the **Department of Elementary and Secondary Education (DESE)** and the **Office of Administration – Information Technology** state it is assumed that every new IT project/system will be bid out because all ITSD resources are at full capacity. This project would have to be prioritized by DESE to be worked among DESE's other projects. ITSD assumes based on the language about withholding district distributions from the monthly funding, the Foundation Formula application/system would be affected, as it handles the calculation that districts receive based on rules and state regulations. This funding being withheld would have to be accounted for in this systems/application to ensure it was held back from disbursement. ITSD estimates the project would take 1,533.60 hours at a contract rate of \$95 for a total cost of \$145,692 with on-going support costs.

Officials from the **Attorney General's Office** assume the proposal will have no fiscal impact on their organization.

In response to the previous version, officials from the **Department of Higher Education and Workforce Development** assumed the proposal would have no fiscal impact on their organization.

In response to the previous version, officials from the **University of Missouri System** stated the fiscal impact on the System could be significant.

In response to the previous version, officials from the **University of Central Missouri** stated there is the potential for an indeterminate fiscal impact.

In response to the previous version, officials from the **St. Charles Community College** indicated this proposal could have a fiscal impact, but did not provide any additional information.

In response to a similar proposal, SB 2 (2023), officials from **Missouri Western State University** stated, if enacted, the impact is zero (not implemented) or up to Missouri Western State University's state appropriations (implemented), including the annual core appropriation (FY23 amount = \$24,315,659) and funds for capital improvements.

Oversight notes transgender student participation in interscholastic sports is regulated by school districts and the Missouri State High School Activities Association (MSHSAA). Per the [MSHSAA Handbook](#) the Board Policy on Transgender Participation is as follows;

“A transgender student must meet the following in order to participate in sex-separated interscholastic sports so long as the athlete’s use of medical/hormone therapy is consistent with current medical standards:

No Medical/Hormone Treatment: Any transgender student-athlete who is not taking medical/hormone treatment related to gender transition may commence and continue interscholastic participation in sex-separated sports in accordance with his or her assigned birth gender.

- A trans male (female to male) student-athlete who is not taking medical/hormone treatment related to gender transition may participate in co-ed sports and may apply to participate in boys sports. Once the student participates in a boys’ sport, he shall participate consistently with that gender for the remainder of his interscholastic eligibility.
- A trans female (male to female) student-athlete who is not taking medical/hormone treatments related to gender transition may not compete on a girls’ team, but may participate in co-ed and boys sports. (See also By-Law 3.20.)

Receiving Medical/Hormone Treatment:

- A trans male (female to male) student-athlete who has commenced medical/hormone treatment with prescribed drugs for diagnosed gender dysphoria and/or transsexualism, may compete on a boys’ team, but is no longer eligible to compete on a girls’ team without changing that team status to a co-ed team. (See also By-Law 3.20.d.)
- A trans female (male to female) student-athlete being treated with hormone suppression medication for diagnosed gender dysphoria and/or transsexualism may continue to compete on a boys’ team but may not compete on a girls’ team, without changing it to a co-ed team, until one calendar year of documented medical/hormone treatment and/or suppression is completed. To maintain eligibility, a trans female student shall thereafter provide continuing medical documentation that the appropriate hormone levels are being maintained.”

Oversight notes transgender student participation in intercollegiate sports is regulated by National Collegiate Athletic Association (NCAA). Per the by-laws of the [NCAA](#):

“The following policies clarify participation of transgender student-athletes undergoing hormonal treatment for gender transition:

- A trans male (FTM) student-athlete who has received a medical exception for treatment with testosterone for diagnosed Gender Identity Disorder or gender dysphoria and/or Transsexualism, for purposes of NCAA competition may compete on a men’s team, but

is no longer eligible to compete on a women’s team without changing that team status to a mixed team.

A trans female (MTF) student-athlete being treated with testosterone suppression medication for Gender Identity Disorder or gender dysphoria and/or Transsexualism, for the purposes of NCAA competition may continue to compete on a men’s team but may not compete on a women’s team without changing it to a mixed team status until completing one calendar year of testosterone suppression treatment.

Any transgender student-athlete who is not taking hormone treatment related to gender transition may participate in sex-separated sports activities in accordance with his or her assigned birth gender.

- A trans male (FTM) student-athlete who is not taking testosterone related to gender transition may participate on a men’s or women’s team.
- A trans female (MTF) transgender student-athlete who is not taking hormone treatments related to gender transition may not compete on a women’s team.”

Oversight assumes this proposal prohibits public or private schools and public or private institutions of postsecondary education from allowing biological males as assigned at birth to play on sports teams designated for women. Entities that violate this proposal must remit a fine equal to a certain proportion of the entities appropriated funds.

Oversight notes the foundation formula payments for school districts are estimated at \$3,561,737,794 for FY 2024 per the DESE Budget Request for FY 2024.

Oversight notes the following appropriations for FY 2023 to public postsecondary institutions:

Institution	Appropriation
Community Colleges	\$174,863,323
State Technical College of Missouri	\$8,494,011
UCM	\$60,711,063
Southeast Missouri State University	\$50,371,167
Missouri State University	\$103,242,970
Lincoln University	\$29,183,697
Truman State University	\$45,734,649
Northwest Missouri State University	\$34,336,363
Missouri Southern State University	\$30,874,099
Missouri Western State University	\$24,640,659
Harris-Stowe State University	\$12,634,137
University of Missouri System	\$463,876,797

*Source: TAFP HB 3003 (2022). Actual appropriations amounts may differ based on withholds.

Oversight assumes there could be a cost/loss to public schools, colleges and universities that fail to comply with the requirements in the proposal. The penalty would be a proportion of moneys appropriated by the general assembly. Based on amounts appropriated, Oversight assumes the

loss could exceed \$250,000. In addition, private postsecondary educational institutions that violate this section are to be fined up to one million dollars per violation.

Oversight will show a gain to the General Revenue fund and a corresponding cost to school districts and institutions of higher education.

Oversight received a limited number of responses from school districts, colleges and universities related to the fiscal impact of this proposal. Oversight has presented this fiscal note on the best current information available. Upon the receipt of additional responses, Oversight will review to determine if an updated fiscal note should be prepared and seek the necessary approval to publish a new fiscal note.

Oversight only reflects the responses received from state agencies and political subdivisions; however, other school districts, colleges and universities were requested to respond to this proposed legislation but did not. A listing of political subdivisions included in the Missouri Legislative Information System (MOLIS) database is available upon request.

House Amendment 2

Oversight notes that this provision may prompt a cause of action against colleges and universities. Oversight notes, in rare circumstances, universities and community colleges can access the state Legal Expense Fund. However, for purposes of this fiscal note, Oversight assumes colleges and universities will bear the cost of any litigation or judgment. Oversight will range the fiscal impact to colleges and universities from \$0 (does not increase litigation) to an unknown cost for damages and court costs.

Rule Promulgation

In response to similar proposals, officials from the **Joint Committee on Administrative Rules** assumed this proposal is not anticipated to cause a fiscal impact beyond its current appropriation.

In response to similar proposals, officials from the **Office of the Secretary of State (SOS)** noted 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 its 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.

<u>FISCAL IMPACT – State Government</u>	FY 2024 (10 Mo.)	FY 2025	FY 2026
GENERAL REVENUE			
<u>Costs</u> - DESE/ITSD – programming for foundation formula modifications - §163.048	(\$145,692)	(\$29,867)	(\$30,631)
<u>Revenue Gain</u> - from funding withheld from school districts and charter schools for violating section §163.048.5	\$0 or Unknown	\$0 or Unknown	\$0 or Unknown
<u>Revenue Gain</u> - from funding withheld from public universities for violating section §173.088.4 (1)	\$0 or Unknown	\$0 or Unknown	\$0 or Unknown
<u>Revenue Gain</u> - from funding withheld from public community colleges for violating section §173.088.4 (1)	\$0 or Unknown	\$0 or Unknown	\$0 or Unknown
<u>Revenue Gain</u> - from fines collected (up to \$1 million per violation) from private postsecondary education institutions - §173.088.4 (2)	\$0 or Unknown	\$0 or Unknown	\$0 or Unknown
ESTIMATED NET EFFECT ON GENERAL REVENUE	(\$145,692) to <u>Unknown</u>	(\$29,867) to <u>Unknown</u>	(\$30,631) to <u>Unknown</u>
UNIVERSITY FUNDS			
<u>Costs</u> - legal costs - §173.088	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>
<u>Loss</u> - funding withheld for violating section §173.088.4 (1)	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>
ESTIMATED NET EFFECT ON UNIVERSITY FUNDS	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>

<u>FISCAL IMPACT – Local Government</u>	FY 2024 (10 Mo.)	FY 2025	FY 2026
LOCAL POLITICAL SUBDIVISIONS			
<u>Loss</u> - School Districts & Charter Schools - funding withheld for violating section §163.048.5	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
<u>Costs</u> – Community Colleges - legal costs - §173.088 (HA2)	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
<u>Loss</u> - Community Colleges - funding withheld for violating section §173.088.4 (1)	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
ESTIMATED NET EFFECT ON LOCAL POLITICAL SUBDIVISIONS	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)

FISCAL IMPACT – Small Business

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

FISCAL DESCRIPTION

This bill defines "sex" as, the two main categories of male and female into which individuals are divided based on an individual's reproductive biology at birth and the individual's genome.

The bill prohibits public school districts and charter schools from allowing students grade six to 12 and public and private postsecondary educational institutions from allowing any student to compete in an athletics competition designated for the opposite sex, as determined by the student's official birth certificate, or if unobtainable, another government record. However, a female student may be allowed to compete in an athletics competition designated for male students if there is no such athletics competition for female students offered. The bill clarifies that biological sex is only correctly stated on birth certificates if it was entered at or near the time of birth or modified to correct scrivener's error.

No public school shall be a member of any statewide athletic organization and shall not compete in athletic events with a private or parochial school that does not have a policy that is substantially similar to the provisions of this bill. No postsecondary educational institution shall allow a student to compete in an athletics competition of any intercollegiate association that does not have a policy that is substantially similar to the provisions of this bill.

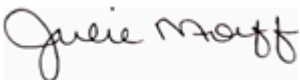
In each school year a school district, charter school, or private school violates the provisions of this bill, the Department of Elementary and Secondary Education shall withhold a percentage of any monthly distribution of state formula funding and any other revenues from the state that are distributed, as described in the bill.

In each fiscal year a public postsecondary educational institution violates the provision of the bill, that institution shall remit a fine in an amount of the postsecondary institution's current fiscal year state operating appropriation, as described in the bill. In each fiscal year a private postsecondary educational institution violates the provision of the bill, that institution shall be fined up to \$1 million as determined by the Coordinating Board of Higher Education.

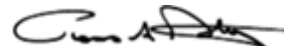
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Department of Elementary and Secondary Education
Department of Higher Education and Workforce Development
Attorney General's Office
Office of the Secretary of State
Joint Committee on Administrative Rules
University of Missouri System
University of Central Missouri
Missouri Western State University
St. Charles Community College



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