

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

LR No.: 0885-05
Bill No.: Perfected SS for SB 220
Subject: Transportation: Sovereign Immunity
Type: Original
Date: April 20, 2005

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
Total Estimated Net Effect on General Revenue Fund	\$0	\$0	\$0

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
Road	\$833,333	\$1,000,000	\$1,000,000
State Legal Expense	Unknown to (Unknown)	Unknown to (Unknown)	Unknown to (Unknown)
Conservation	Unknown	Unknown	Unknown
Total Estimated Net Effect on <u>Other</u> State Funds	\$833,333 to (Unknown)	\$1,000,000 to (Unknown)	\$1,000,000 to (Unknown)

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	Unknown to (Unknown)	Unknown to (Unknown)	Unknown to (Unknown)

FISCAL ANALYSIS

ASSUMPTION

Officials of the **Office of Attorney General (AGO)** assumes that there could be potential cost savings in that it establishes sovereign immunity for certain compact organizations. AGO officials assumes that any cost savings would be less than \$100,000.

Officials of the **Missouri Department of Transportation (MoDOT)** stated that this proposal will have a positive fiscal impact on MHTC/MoDOT. In the case of Cottey v. Schmitter and State Highway and Transportation Commission of Missouri, 24 S.W. 3d 126 (Mo. App. W.D. 2000), the court held that the sovereign immunity cap established in section 637.610, RSMo, did not apply to direct claims against Missouri Department of Transportation (MoDOT) employees for negligent operation of vehicles, and that a plaintiff could, in effect, recover unlimited damages from the State Legal Expense Fund (SLEF), section 105.711, et seq., RSMo. Section 105.716, RSMo, requires the Missouri Highways and Transportation Commission (MHTC) to reimburse SLEF for all amounts paid by the SLEF on behalf of MHTC or MoDOT employees. The practical effect of the Cottey decision is that there are no sovereign immunity cap limitations on claims against state employees.

ASSUMPTION (continued)

Officials assume "by providing that a remedy against a public entity is exclusive of any action against its public employees, this would eliminate the dual recoveries currently allowed under state law as interpreted in the above-mentioned Cottey decision. By limiting plaintiffs options to recover unlimited damages against MHTC/MoDOT employees, **this legislation will have a positive fiscal impact to MHTC/MoDOT of approximately \$1 million annually**".

Officials of the **Missouri Department of Conservation** stated this proposal could have a positive impact on MDC funds due to limitations on suits against public agencies. The exact amount of impact is unknown.

Officials of the **Office of Administration - Deputy Commissioner, Budget and Planning Division, and Purchasing and Management Division**, assume no fiscal impact to their divisions.

The following state agencies, offices, commissions, assume no fiscal impact:

Officials of the **Department of Health and Senior Services, Department of Revenue, Department of Insurance, Office of Lt. Governor, Office of State Auditor, Department of Labor and Industrial Relations, Department of Agriculture, Department of Economic Development, Missouri Ethics Commission, Department of Public Safety, Missouri Consolidated Health Care Plan, Office of State Courts Administrator, Committee on Legislative Research, Department of Elementary and Secondary Education, Department of Social Services, House of Representatives, Department of Social Services, Office of Administration - All Divisions, Department of Natural Resources, Mosers, Department of Mental Health,**

Officials of the **Office of Secretary of State - Administrative Rules** stated that this proposal gives authority to the Department of Health and Senior Services and the Attorney General to promulgate rules relating to civil liability and payment of claims. These rules would be published in the Missouri Register and the Code of State Regulations. Based on experience with other divisions, the rules, regulations and forms issued by the Department of Health and Senior Services and the attorney general could require as many as 4 pages in the Code of State Regulations. For any given rule, roughly half again as many pages are published in the Missouri Register as in the Code because cost statements, fiscal notes and the like are not repeated in the Code. These costs are estimated. The estimated cost of a page in the Missouri Register is \$23.00. The estimated cost of a page in the Code of State Regulations is \$27.00. The actual cost could be more or less than the numbers given. The impact of this legislation in future years is

ASSUMPTION (continued)

unknown and depends upon the frequency and length of rules filed, amended, rescinded or withdrawn.

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. Any decisions to raise fees to defray costs would likely be made in subsequent fiscal years.

Officials of the **Office of Administration - Risk Management Division** stated that “the proposed legislation has the potential for significant savings to the State Legal Expense Fund. There have been settlements or verdicts in four cases totaling over 9 million dollars against State employees in the past four years that would be limited to the limits of sovereign immunity. Included in this amount is a recent settlement of \$4 million against the Department of Natural Resources that would have been limited to just over \$300,000 under the proposed legislation. Exempting the St. Louis Police Board would provide an estimated savings to the State Legal Expense Fund of \$1-2 million annually and we anticipate equally or slightly less savings from similar cases from the Kansas City Police Board.”

Extending Legal Expense Fund coverage to the part-time medical providers to county jails has the potential of costs to the Fund. Information is not available to determine costs at this time.

Oversight assumes annual costs or savings to the State Legal Expense Fund in indeterminate due to not knowing the number of cases that might be filed against medical providers annually, and the number of claims that might be filed against the state annually. **Oversight** will show fiscal impact as a positive unknown to a negative unknown.

Officials of the **Office of Administration - Division of Purchasing and Materials Management** stated that “currently, DPMM requires the professionals listed in 105.711 item 3 to maintain their own professional liability insurance in these types of service contracts. This bill would require DPMM to remove this requirement from any new bid solicitations. Also, this bill would require the State to assume the liability risks that are currently imposed upon the contractor.”

Officials of the **Department of Higher Education** assume the fiscal impact is unknown. Officials assume that revising the levels of liability on state employees and higher education employees and the nature of future litigation cannot be determined. Officials indicated that fiscal impact would be positive.

ASSUMPTION (continued)

Oversight assumes if claims against the St. Louis Police Employees and the Kansas City Police Employees are excluded from the State Legal Expense Fund as stated in Section 105.726.3, then there would be savings to the State Legal Expense Fund and costs to the City of St. Louis and Kansas City. Oversight assume cost and savings are indeterminable and will be shown as unknown.

In response to similar legislation Officials of the **Kansas City Area Transportation Authority (KCATA)** stated that in case of serious, catastrophic accident this proposal would limit fiscal impact to KCATA and the State of Missouri.

St. Louis Metro officials did not respond.

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<u>FISCAL IMPACT - State Government</u>	FY 2006	FY 2007	FY 2008
	(10 Mo.)		

OTHER STATE FUNDS

STATE LEGAL EXPENSE FUND

<u>Savings</u> to Legal Expense Fund			
From inclusion in sovereign immunity and exemption of St. Louis Police Board	Unknown *	Unknown *	Unknown *
<u>Cost</u> to Legal Expense Fund			
From extending coverage to medical providers to county jails.	(Unknown)	(Unknown)	(Unknown)
<u>Cost</u> to Legal Expense Fund			
From change in service contracts liability risks.	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
Estimated Net Effect to State Legal Expense Fund	<u>Unknown to (Unknown)</u>	<u>Unknown to (Unknown)</u>	<u>Unknown to (Unknown)</u>

<u>FISCAL IMPACT - State Government</u>	FY 2006	FY 2007	FY 2008
	(10 Mo.)		

CONSERVATION FUND

<u>Savings</u> to Conservation Fund from limiting suits	Unknown	Unknown	Unknown
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ROAD FUND

<u>Savings</u> to State Road Fund from limiting suits	<u>\$833,333</u>	<u>\$1,000,000</u>	<u>\$1,000,000</u>
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ESTIMATED NET EFFECT TO OTHER STATE FUNDS	<u>\$833,333 to Unknown</u>	<u>\$1,000,000 to Unknown</u>	<u>\$1,000,000 to Unknown</u>
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<u>FISCAL IMPACT - Local Government</u>	FY 2006 (10 Mo.)	FY 2007	FY 2008
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LOCAL GOVERNMENT

<u>Savings</u> to certain local government limiting damages in suits	Unknown	Unknown	Unknown
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<u>Cost</u> to St. Louis and Kansas City Excluding claims against police employees from the State Legal Expense Fund	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
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ESTIMATED NET EFFECT TO LOCAL GOVERNMENT	<u>Unknown to (Unknown)</u>	<u>Unknown to (Unknown)</u>	<u>Unknown to (Unknown)</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.

DESCRIPTION

This act modifies various provisions relating to the civil liability of state agencies, public entities, and their employees.

1. STATE EMPLOYEE LIABILITY PROTECTION ACT - Under this act, no state employee shall be personally liable in any civil action, in either their individual or official capacities, for conduct arising out of and in connection with their official duties on behalf of the state, unless the employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner. The exclusive remedy for any cause of action against a state employee for acts committed within the scope of their official duties shall be an action against the state of Missouri.

Under the act, the Attorney General must be promptly notified of any claim or suit filed against an employee for actions arising from their official duties. To be certified that the employee was acting within the scope of his or her official duties, the employee must cooperate fully with the attorney general in the defense of the claim. If the attorney general or a circuit court certifies that the defendant employee was acting within the scope of his or her official duties at the time the claim arose, any civil action or proceeding commenced upon such claim shall be deemed an action against the state of Missouri. Upon certification, the action or proceeding shall proceed in the same manner as any action against the state of Missouri filed under the sovereign immunity law and shall be subject to the limitations and exceptions applicable to the sovereign immunity law. The legal expense fund shall not be liable if the employee is determined to have acted outside the course and scope of his or her official duties.

EXCLUSION OF ST. LOUIS AND KANSAS CITY POLICE BOARDS FROM LEGAL DEFENSE FUND COVERAGE - This act excludes the St. Louis Police Board and the Kansas City Police Board and their employees from coverage under the Legal Expense Fund and establishes that the intent of the General Assembly in Chapter 84, RSMo, was to include the costs of claims in the expenses to be reimbursed by the St. Louis and Kansas City. The legal expense fund may provide coverage for the St. Louis and Kansas Police Boards if the claim arose prior to the effective date of this act and the claim is tendered to the Attorney General's Office promptly.

This act restores sovereign immunity to Bi-State Metropolitan Development District (Metro) and the Kansas City Area Transportation District Authority (KCATA). In addition, this act provides that the remedy against a public entity under the sovereign immunity statutes for injuries, death or property damage arising from negligent acts or omissions of its public employees is exclusive of any other civil action or proceeding for money damages by reason of the same subject matter against the employee or the employee's estate. Any other civil action relating to the same subject matter against the civil employee is precluded without regard to when the act or omission

DESCRIPTION (continued)

occurred.

STATE LEGAL EXPENSE FUND COVERAGE FOR CERTAIN HEALTH CARE PROVIDERS - This act explicitly provides coverage under the State Legal Expense Fund for health care providers who are under contract to provide services to patients or inmates at county jails (Section 105.711).

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

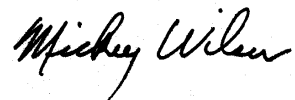
Office of Secretary of State- Administrative Rules
Office of Attorney General
Office of State Auditor
Office of Lt. Governor
Office of Administration
 Budget and Planning
 Purchasing and Materials Management
 Risk Management
Missouri Department of Transportation
Department of Labor and Industrial Relations
Missouri Department of Conservation
Department of Health and Senior Services
Department of Revenue
Department of Insurance
Department of Agriculture
Department of Economic Development
Missouri Ethics Commission
Department of Public Safety
Office of State Courts Administrator
Department of Elementary and Secondary Education
Missouri Consolidated Health Plan
Committee on Legislative Research
Department of Social Services

SOURCES OF INFORMATION

House of Representatives

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Department of Natural Resources
Department of Mental Health
Department of Higher Education
Kansas City Area Transportation Authority

A handwritten signature in black ink that reads "Mickey Wilson". The signature is written in a cursive style with a large initial "M".

Mickey Wilson, CPA
Director
April 20, 2005