

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3641-01
Bill No.: SB 734
Subject: Administrative Rules; Employees-Employers; Merit System; Public Officers;
 State Employees; Teachers
Type: Original
Date: January 17, 2006

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2007	FY 2008	FY 2009
General Revenue *	(Unknown)	(Unknown)	(Unknown)
Total Estimated Net Effect on General Revenue Fund *	(Unknown)	(Unknown)	(Unknown)

* expected to exceed \$100,000.

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2007	FY 2008	FY 2009
Various *	(Unknown)	(Unknown)	(Unknown)
Total Estimated Net Effect on Other State Funds *	(Unknown)	(Unknown)	(Unknown)

* expected to exceed \$100,000.

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 11 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2007	FY 2008	FY 2009
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2007	FY 2008	FY 2009
Local Government			
*	(Unknown)	(Unknown)	(Unknown)

* expected to exceed \$100,000 per year.

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Missouri House of Representatives, the Office of the Governor, the Office of the State Auditor, the Office of State Courts Administrator, the Joint Committee on Public Employee Retirement, the Department of Public Safety, Missouri Gaming Commission, Missouri Army Reserve National Guard, and Missouri State Highway Patrol, St. Charles Community College, St. Louis Community College, the Department of Economic Development, Division of Business and Community Services, and Public Service Commission, the State Tax Commission, the Missouri Ethics Commission, the Department of Labor and Industrial Relations, the Office of Administration, Administrative Hearing Commission, and Division of Budget and Planning, the Department of Revenue, the Department of Transportation and Highway Patrol Employees Retirement System, and the Missouri Consolidated Health Care Plan** assume this proposal would have no fiscal impact on their organizations.

Officials from the **Department of Public Safety, Missouri Veterans Commission,** assume this proposal could result in unknown additional costs to their organization.

ASSUMPTION (continued)

Officials from the **Office of the Attorney General** (AGO) assume this proposal would expand remedies available to government employees. Current law gives merit system employees and others certain rights including access to hearing and judicial process. AGO anticipates there would be some increase in litigation caseload and would need 1.0 FTE AAG I. AGO provided an estimated cost including the additional employee, benefits, and expense amounting to \$57,597 for FY 2007, \$61,241 for FY 2008, and \$62,832 for FY 2009.

Oversight assumes that any additional costs to the AGO would be minimal and could be absorbed with existing resources. If unanticipated costs are incurred or if additional legislation is passed increasing the caseload of the AGO, additional resources could be requested through the budget process.

Officials from the **Office of the Secretary of State** (SOS) assume the proposal would revise provisions concerning public employees and appointed officials and would establish the Public Employee Due Process Act. The State Board of Mediation within the Department of Labor and Industrial Relations could promulgate rules. SOS would publish those rules in the Missouri Register and the Code of State Regulations. Based on experience with other divisions the rules, regulations and forms issued by the State Board of Mediation within the Department of Labor and Industrial Relations could require approximately 6 pages in the Code of State Regulations. The estimated cost of a page in the Code of State Regulations is \$27. For any given rule, roughly one-half again as many pages are published in the Missouri Register as are published in the Code because of cost statements, fiscal notes and notices that are not published in the Code. The estimated cost of a page in the Missouri Register is \$23. The impact of this legislation in future years is unknown and depends upon the frequency and length of rules filed, amended, rescinded, and withdrawn. $((6 \times \$27) + 9 \times \$23) = \$308$.

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 from the **Department of Elementary and Secondary Education** (DESE) assumes this proposal could create additional costs for school districts for teacher termination hearings. DESE estimates the additional costs to be in excess of \$100,000 per year.

ASSUMPTION (continued)

Officials from the **Columbia School District** assume this proposal could result in additional costs to defend teacher termination proceedings, and estimate those costs could be approximately \$50,000 per year.

Officials from the **Department of Social Services** (DOS) assume this proposal would provide a set of mandatory procedures to be used in the discipline and termination of employees.

Using data from FY 2003, 2004 and 2005, there was an average of 72 personnel actions that were appealable under existing law. In addition, there was an average of 57 personnel actions that would qualify for appeal under the proposed legislation. The assumption is made that all 57 individuals will take advantage of appeal rights if offered to them. All 129 potential appeals were considered when figuring the fiscal impact.

To handle the increased workload associated with the provisions in SB 0734, at least one additional legal counsel and one clerical staff for that legal counsel would be needed. A Human Resource Manager would be required to develop, implement, and monitor remediation plans and to provide assistance to managers and supervisors involved in these actions.

The proposed legislation requires that the public body bear the cost of the hearing officer not to exceed \$500 per day plus travel-related expenses. It is estimated that each hearing would last on average 3 days. Based on 129 personnel actions, this would cost, at a minimum, \$193,500 annually.

The cost of providing court-reporting services would be approximately \$367,650. This figure was arrived at by estimating the cost of \$950 per day for court reporting services. As stated above, it is estimated that each hearing would last an average of 3 days.

It is also estimated that at least \$32,262 would be spent for wages of staff required to attend the hearing as witnesses. It is estimated that an average of five witnesses appear at each hearing and take at least 8 hours away from work to do so. Because staff of all levels are called to testify, an average hourly rate of \$14.15 was used in this calculation. Only the 57 potential actions were considered in this calculation, as we currently incur witness costs for existing appeals. Without knowing the location from which these witnesses would travel, we were unable to estimate their travel expenses. However, if implemented, the agency would incur additional travel expenses for employees to attend hearings.

DOS provided an estimated cost including the additional employees, benefits, and expense

amounting to \$674,755 for FY 2007, \$811,636 for FY 2008, and \$835,031 for FY 2009.

ASSUMPTION (continued)

Officials from the **Department of Corrections** (DOC) assume this proposal would significantly alter the manner in which DOC appointing authorities discipline unclassified employees. There would be a potential for considerable but unknown additional expense associated with the hearing process.

Officials from the **Department of Health and Senior Services** (DHSS) assume this proposal would provide for due process for employees who currently do not have this. All employees must receive a 4-month work plan if they are incompetent, inefficient or insubordinate. Employees covered by this bill and are dismissed would have the right to a hearing, with the department paying the cost of the hearing.

DHSS does not maintain any data on this type of event; therefore the cost cannot accurately be estimated. It is assumed that anticipated costs would be less than \$100,000 per year.

Officials from the **Department of Higher Education** (DHE) assume the costs of this legislation on DHE are unknown, as the number and length of hearings required annually is unknown.

Court Reporters have a state contract rate of \$3.10 per page and \$20 per hour. The contract also includes transcript copies at a rate of \$1.15 per page. Assuming an average of 40 pages per hour the cost of three transcripts for one three-hour hearing is \$414. The cost of the court reporter is \$432. The number of hours required of the hearing officer is largely unknown, and will vary from case to case. If we assume an eight hour average per case at an estimated cost of \$150 per hour, the cost of the hearing officer is \$1,200. In this example, the total cost for DHE would be \$2,046.

Officials from the **Department of Mental Health** (DMH) assume the proposal would create appeal rights for non-merit, non-policymaking employees who are terminated, demoted or disciplined. The employer is responsible for paying for the cost of the transcript for all parties and the hearing officer and is also responsible for paying the hearing officer's per diem fee up to \$500, and expenses.

The potential number of appeals and the costs associated as a result of the proposed changes in the legislation is difficult to determine. The Department of Mental Health has no system in place for formally tracking costs related to appeals; however, a rough approximation of \$2,000 per case would be a fair estimate. This is based on the \$500 per diem for a hearing officer and an average of three days per case, plus meals/travel expenses. In addition, it may be necessary to

add at least one more attorney to cover these proceedings. The potential fiscal impact to the Department is estimated to be in excess of \$100,000.

ASSUMPTION (continued)

Officials from the **Department of Transportation** (MODOT) assume this proposal would give the employees of state government the right to have any discipline, demotion or termination outlined in written charges with the employee having the right to a hearing on the proposed disciplinary action. The public employer is responsible for the costs of the mediator/hearing officer as well as the costs of a transcript of the record. Every disciplinary action could result in a hearing and appeal involving attorneys. The fiscal impact is unknown, but is expected to exceed \$100,000.

Officials from the **Office of the State Public Defender** stated the proposal would have an uncertain impact on their organization.

Officials from **Lincoln University** (LU) assume this proposal could result in significant additional legal expense for the University. LU estimates the cost of legal fees, court reporters, and staff time could exceed \$40,000 per year.

Officials from the **Department of Conservation** assume this proposal would result in an unknown fiscal impact due to the unknown increase in the number and cost of disciplinary proceedings.

Officials from **Missouri State University, Truman State University, and the University of Missouri** noted they were unable to estimate the potential cost of this proposal for their organizations.

Officials from **Metropolitan Community College** assume the proposal would have a negative fiscal impact on their organization of about \$60,000 per year for an average of one hearing per month at \$5,000 per hearing.

Officials from **Moberly Area Community College** assume the proposal would result in additional costs to their organization of approximately \$1,500 - \$2,000 per termination.

Officials from **Jasper County** assume the proposal would add unknown additional costs to county governments.

Officials from **Jefferson County** assume the proposal would add costs of approximately \$3,000 per termination for an average ten terminations per year, for a total additional cost of \$30,000 per

year.

ASSUMPTION (continued)

Officials from the **City of Kansas City** assume the proposal would add costs of \$247,500 per year to their organization for hearing officers and transcripts.

Officials from the **City of Springfield** assume the cost to comply with the proposal is unknown but would exceed \$100,000.

Officials from the **City of West Plains** assume the proposal would add unknown costs to their organization.

Oversight assumes the proposal would result in unknown additional costs for the General Revenue Fund and various other state funds, and for local governments. Oversight assumes the cost would exceed \$100,000 per year.

<u>FISCAL IMPACT - State Government</u>	FY 2007 (10 Mo.)	FY 2008	FY 2009
GENERAL REVENUE FUND			
Cost - remediation plans and termination hearings *	(Unknown)	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND *	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
VARIOUS STATE FUNDS			
Cost - remediation plans and termination hearings *	(Unknown)	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT ON VARIOUS STATE FUNDS	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
* expected to exceed \$100,000 per year.			

<u>FISCAL IMPACT - Local Government</u>	FY 2007 (10 Mo.)	FY 2008	FY 2009
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LOCAL GOVERNMENTS

Cost - remediation plans and termination hearings *	(Unknown)	<u>(Unknown)</u>	<u>(Unknown)</u>
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ESTIMATED NET EFFECT ON LOCAL GOVERNMENTS *	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
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* expected to exceed \$100,000 per year.

FISCAL IMPACT - Small Business

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

DESCRIPTION

This proposal would revise state law concerning public employees and would establish a Public Employees Due Process Act.

- When a public body intends to terminate, discipline, or demote an employee, it would serve written charges on the employee that specify the grounds for the proposed action. The written charges would include notice that the matter may be heard by a hearing officer if requested by the employee.
- If a hearing is requested by the employee or the public body, the hearing would take place not less than sixty days after the notice was served on the employee, or at a time mutually agreed to by the employee and the public body.
- A public body could not charge an employee with incompetence, inefficiency, or insubordination in the line of duty, except after the public body has provided the employee with a written remediation plan of at least four months duration.
- The parties would select a hearing officer and notify the board of the name of the hearing officer selected. The parties would contact the hearing officer to schedule the hearing.

DESCRIPTION (continued)

- Prior to the hearing, each party would provide the other with the name, address, and telephone number of each witness it intends to call at the hearing. The public body would provide to the employee, prior to the hearing, copies of all documents and other information upon which it based its charges. The hearing officer would issue subpoenas for the taking of depositions prior to the hearing for the purpose of discovery or the preservation of testimony.
- The employee and the public body could be represented by counsel or by representatives who are not attorneys. Each party could call and examine witnesses, introduce exhibits, cross-examine witnesses, impeach any witness regardless of which party first called the witness, and rebut the evidence against it.
- A stenographer or court reporter would be present at the hearing and make a record of the proceedings of the hearing and within ten days after the conclusion of the hearing or such other time mutually agreed to by the parties, furnish the hearing officer and each party with a copy of the certified transcript of the record.
- The public body would pay the cost of the transcript of the record, including copies for the hearing officer the employee, and the fees and expenses of the hearing officer. Each party would be responsible for its other expenses, including attorney fees, costs associated with depositions and subpoenas, witness fees, and other costs associated with the case.
- The state board of mediation would promulgate rules for the conduct of the hearing and matters related directly to hearings.
- The hearing officer would issue a decision, including findings of fact and conclusions of law, within thirty days after the filing of posthearing briefs or proposed findings of fact and conclusions of law by the parties. The hearing officer would send a copy of the decision to each of the parties.
- The decision of the hearing officer would be based on the doctrine of just cause, and the public body would have the burden of proving that there is just cause to terminate, discipline, or demote the employee or to terminate the employment contract of the employee.

DESCRIPTION (continued)

- The decision of the hearing officer would be final, unless one of the parties seeks a review of the decision, which would be conducted pursuant to chapter 536, RSMo.
- No rule or portion of a rule could take effect unless it was promulgated pursuant to chapter 536, RSMo.

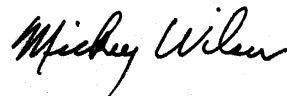
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Missouri House of Representatives
Office of the Governor
Office of the Attorney General
Office of the State Auditor
Office of the Secretary of State
Office of State Courts Administrator
Office of Administration
 Administrative Hearing Commission
 Division of Budget and Planning
Department of Corrections
Department of Economic Development
 Division of Business and Community Services
 Public Service Commission
Department of Elementary and Secondary Education
Department of Health and Senior Services
Department of Higher Education
Department of Labor and Industrial Relations
Department of Public Safety
 Missouri Gaming Commission
 Missouri Army Reserve National Guard
 Missouri Veterans Commission
 Missouri State Highway Patrol

SOURCES OF INFORMATION (continued)

Department of Revenue
Department of Social Services
Department of Transportation
State Tax Commission
Office of the State Public Defender
Missouri Ethics Commission
Missouri Consolidated Health Care Plan
Joint Committee on Public Employee Retirement
Department of Transportation and Highway Patrol Employees Retirement System
Lincoln University
Missouri State University
Truman State University
University of Missouri
Metropolitan Community College
Moberly Area Community College
St. Charles Community College
St. Louis Community College
Jasper County
Jefferson County
City of Kansas City
City of Springfield
City of West Plains
Columbia Public Schools



Mickey Wilson, CPA
Director
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