

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 2262-01  
Bill No.: SB 568  
Subject: Attorneys; State Attorney General; Contracts and Contractors; Boards,  
Commissions, Committees, Councils; Courts; Liability  
Type: Original  
Date: March 20, 2009

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Bill Summary: The proposal establishes the Recovery Accountability and Transparency Board and creates a state false claims act.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
General Revenue	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
<b>Total Estimated Net Effect on General Revenue Fund</b>	<b>\$0 or (Unknown)</b>	<b>\$0 or (Unknown)</b>	<b>\$0 or (Unknown)</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
Various State Funds	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>\$0 or (Unknown)</b>	<b>\$0 or (Unknown)</b>	<b>\$0 or (Unknown)</b>

Numbers within parentheses: ( ) indicate costs or losses.  
This fiscal note contains 10 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b>			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
<b>Total Estimated Net Effect on FTE</b>	<b>0</b>	<b>0</b>	<b>0</b>

☐ Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).

☐ Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
<b>Local Government</b>	<b>\$0 or (Unknown)</b>	<b>\$0 or (Unknown)</b>	<b>\$0 or (Unknown)</b>

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## FISCAL ANALYSIS

### ASSUMPTION

Officials from the **Department of Agriculture, Coordinating Board for Higher Education, Office of Administration, Department of Economic Development, Department of Transportation, Department of Insurance, Financial Institutions, and Professional Registration, Department of Mental Health, Department of Natural Resources, Department of Health and Senior Services, Department of Labor and Industrial Relations, Department of Revenue, Office of the Governor, Missouri Consolidated Health Care Plan, Missouri Ethics Commission, Public Service Commission, Missouri House of Representatives, Office of the Lieutenant Governor, Office of the State Auditor, Missouri Senate, Office of the State Public Defender, Office of the State Treasurer, St. Louis County, City of Centralia,** and the **City of Kansas City** assume the proposal would have no fiscal impact on their agencies.

Officials from the **Office of the Attorney General** assume any potential costs arising from this proposal can be absorbed within existing resources, but if there is a significant increase in claims over time, the AGO may seek appropriation to adequately enforce the proposal.

Officials from the **Office of State Courts Administrator** assume the proposed legislation would have no fiscal impact on the courts.

Officials from the **Department of Elementary and Secondary Education (DESE)** assume there is no state cost to the foundation formula associated with this proposal. Should the new crimes and amendments to current law result in additional fines or penalties, DESE cannot know how much additional money might be collected by local governments or the DOR to distribute to schools. To the extent fine revenues exceed 2004-2005 collections, any increase in this money distributed to schools increases the deduction in the foundation formula the following year. Therefore, the affected districts will see an equal decrease in the amount of funding received through the formula the following year; unless the affected districts are hold-harmless, in which case the districts will not see a decrease in the amount of funding received through the formula (any increase in fine money distributed to the hold-harmless districts will simply be additional money). An increase in the deduction (all other factors remaining constant) reduces the cost to the state of funding the formula.

**Oversight** assumes any increase or decrease in fine or penalty revenues generated cannot be determined. Therefore, the fiscal note does not reflect any fine or penalty revenues for the local school districts.

ASSUMPTION (continued)

Officials from the **Department of Corrections (DOC)** assume in addition to establishing the Missouri False Claims Act, this bill establishes a cause of action for an employee who is discharged, demoted, suspended, threatened or harassed, “or in any other manner discriminated against in the terms and conditions of employment” by his or her employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under this section, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed. The relief includes reinstatement with two times the amount of back pay, interest on back pay, special damages, including costs and attorney’s fees.

The relief is greater than provided for in other similar employment discrimination, retaliation, or whistle blower statutes (two times back pay/interest/attorney’s fees). The scope is broad and undefined, to include employees “in any other manner discriminated against in the terms and conditions of employment” (necessarily must be something other than discharge, demotion, suspension, threats or harassment, because those are specifically mentioned), and plaintiffs would include not only employees who assisted in an action filed pursuant to the Missouri False Claims Act, but also in an action “to be filed.” Individuals may file actions under the Missouri False Claims Act in the name of the government. Because of the relief, broad scope, and vague terms in this section, this section will likely generate a lot of litigation.

Officials from the **Department of Social Services – Division of Financial and Administrative Services** assume the provisions in RSMo 33.850.6(2) would fiscally impact their agency:

Not later than thirty days after receipt of a recommendation under subdivision (1) of this subsection, an agency shall submit a report to the governor and general assembly, including the senate appropriations committee and house budget committee and the board that states:

- (a) Whether the agency agrees or disagrees with the recommendations; and
- (b) Any actions the agency will take to implement the recommendations.

This process is similar to what happens when the state auditor has a finding or recommendation. The agency role for the Department of Social Services should be able to be accomplished with existing resources.

ASSUMPTION (continued)

The agency is also called to cooperate with any request of the board to provide information the board deems necessary. Again, the process is similar to the process for the State Auditor. As long as the request does not violate any other statute, the Department of Social Services will be able to comply and the process should be able to be accomplished with existing resources.

Officials from the **Department of Social Services – Human Resources Center (DOS)** assume this would duplicate the “Whistleblower” protections that the DOS employees already have under RSMo 105.055; however, it would increase the restitution to effected employees. Employees with regular status may appeal to the Personnel Advisory Board (PAB) whenever they allege that they have been retaliated against (disciplined) for disclosure of prohibited activities.

Under this proposed legislation, any employee who is retaliated against is entitled to all relief necessary to make the employee whole including: reinstatement with the same seniority status the employee would have had but for the discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the retaliation, including litigation costs and reasonable attorneys’ fees, and the employee may bring action in the appropriate circuit court for relief.

This increases the liability to the agency because of the additional restitution to the effected party (for example, currently employees receive back pay not two times the amount of back pay; do not receive interest on the back pay; and they are not entitled to special damages). Additionally, it is noted that no limit is established on the special damages that can be awarded. DOS assumes the cost would be (Unknown).

Officials from the **Department of Public Safety** assume any costs associated with this proposal can be absorbed within existing resources.

Officials from the **Department of Conservation (MDC)** assume the proposed legislation creates the Recovery Accountability and Transparency Board to coordinate and conduct oversight of monies received by the state or any political subdivision under the American Recovery and Reinvestment Act of 2009. Should the MDC be a recipient of such monies, there could be a potential for fiscal impact due to administrative costs required to compile reports and provide testimony.

ASSUMPTION (continued)

Officials from the **Office of Prosecution Services** assume the proposal would have no measurable fiscal impact the Office of Prosecution Services or county prosecutors.

Officials from the **Office of the Secretary of State (SOS)** assume 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 proposal for Administrative Rules is less than \$2,500. The SOS recognizes this is a small amount and does not expect additional funding would be required to meet these costs. However, SOS also recognizes that many such bills may be passed in a given year and that collectively the costs may be in excess of what the SOS can sustain with their core budget. Any additional required funding would be handled through the budget process.

Officials from **Clinton County** responded to Oversight's request, but issued no fiscal impact statement.

**Oversight** assumes the various state agencies and local governmental entities could incur increased administrative costs and increased litigation costs if they receive funds under the American Recovery and Reinvestment Act of 2009. However, if no funds are received, administrative costs and litigation costs will not be incurred. Therefore, Oversight has reflected the costs to the general revenue fund, various state funds, and local government as \$0 or (Unknown).

<u>FISCAL IMPACT - State Government</u>	FY 2010 (10 Mo.)	FY 2011	FY 2012
<b>GENERAL REVENUE FUND</b>			
<u>Costs – Various State Agencies</u>			
Administrative Costs/Litigation Costs	<u>\$0 or</u> <u>(Unknown)</u>	<u>\$0 or</u> <u>(Unknown)</u>	<u>\$0 or</u> <u>(Unknown)</u>
<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>	<u><u>\$0 or</u></u> <u><u>(Unknown)</u></u>	<u><u>\$0 or</u></u> <u><u>(Unknown)</u></u>	<u><u>\$0 or</u></u> <u><u>(Unknown)</u></u>
<b>VARIOUS STATE FUNDS</b>			
<u>Costs – Various State Agencies</u>			
Administrative Costs/Litigation Costs	<u>\$0 or</u> <u>(Unknown)</u>	<u>\$0 or</u> <u>(Unknown)</u>	<u>\$0 or</u> <u>(Unknown)</u>
<b>ESTIMATED NET EFFECT ON VARIOUS STATE FUNDS</b>	<u><u>\$0 or</u></u> <u><u>(Unknown)</u></u>	<u><u>\$0 or</u></u> <u><u>(Unknown)</u></u>	<u><u>\$0 or</u></u> <u><u>(Unknown)</u></u>
 <u>FISCAL IMPACT - Local Government</u>	 FY 2010 (10 Mo.)	 FY 2011	 FY 2012
<b>LOCAL GOVERNMENT</b>			
<u>Costs – Local Government</u>			
Administrative Costs/Litigation Costs	<u>\$0 or</u> <u>(Unknown)</u>	<u>\$0 or</u> <u>(Unknown)</u>	<u>\$0 or</u> <u>(Unknown)</u>
<b>ESTIMATED NET EFFECT ON LOCAL GOVERNMENT</b>	<u><u>\$0 or</u></u> <u><u>(Unknown)</u></u>	<u><u>\$0 or</u></u> <u><u>(Unknown)</u></u>	<u><u>\$0 or</u></u> <u><u>(Unknown)</u></u>

FISCAL IMPACT - Small Business

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

## FISCAL DESCRIPTION

The proposed legislation establishes the Recovery Accountability and Transparency Board within the Office of Administration to prevent fraud, waste, and abuse of the funds received by the state or any political subdivision from the federal American Recovery and Reinvestment Act of 2009. The board will consist of the Commissioner of the Office of Administration, two members of the Senate, and two members of the House. This board will have the power to oversee the reporting of contracts and grants using covered funds, whether competition requirements applicable to contracts and grants have been satisfied, audit covered funds, and refer matters for investigation to the Attorney General or the agency dispersing the funds. The board is required to report annually to the governor and general assembly. The board also has the power to subpoena witnesses.

The proposal also adopts provisions regarding the filing of fraudulent claims for payment with the government. Under these provisions anyone who files false claims with the government, or any public employee or official who commits certain prohibited acts or violates certain criminal statutes, will in most cases be subject to civil penalties of not less than \$10,000 plus three times the amount of damages to the government. With some exceptions, private person can file a lawsuit on behalf of the government. The Attorney General has the authority to intervene and continue the lawsuit, or may allow the private person to continue with the lawsuit. The government may dismiss the action or settle the action, after a hearing before the court. The court may limit the participation of the private person in the lawsuit if the government shows that it would interfere with their civil case or may postpone discovery in the case if it would interfere with a criminal prosecution or other government civil case.

The private person who brings the lawsuit will get a percentage of the money awarded in the lawsuit. If the private person who brought the lawsuit planned or initiated the violation of state law their recovery is reduced. If the private person who brought the lawsuit is criminally convicted based on their role in the violation of state law, they cannot recover any money.

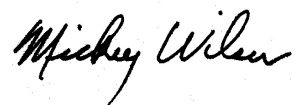
Employees who are discriminated against in the terms and conditions of their employment because of participating in a false claims case are entitled to file a lawsuit to be reinstated to their job, two times the amount of back pay, interest, special damages, litigation costs, and attorneys' fees.

This legislation is not federally mandated and would not require additional capital improvements or rental space. The proposal may duplicate "whistleblower" provisions in Section 105.055, RSMo.



SOURCES OF INFORMATION

Office of the Attorney General  
Department of Agriculture  
Coordinating Board for Higher Education  
Office of Administration  
Office of State Courts Administrator  
Department of Economic Development  
Department of Elementary and Secondary Education  
Department of Transportation  
Department of Insurance, Financial Institutions, and Professional Registration  
Department of Mental Health  
Department of Natural Resources  
Department of Corrections  
Department of Health and Senior Services  
Department of Labor and Industrial Relations  
Department of Revenue  
Department of Social Services  
Department of Public Safety  
Office of the Governor  
Missouri Consolidated Health Care Plan  
Department of Conservation  
Missouri Ethics Commission  
Public Service Commission  
Missouri House of Representatives  
Office of the Lieutenant Governor  
Office of Prosecution Services  
Office of the State Auditor  
Missouri Senate  
Office of the Secretary of State  
Office of the State Public Defender  
Office of the State Treasurer  
Clinton County  
St. Louis County  
City of Centralia  
City of Kansas City

A handwritten signature in black ink, appearing to read "Mickey Wilson". The signature is written in a cursive, flowing style.

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Mickey Wilson, CPA  
Director  
March 20, 2009

BLG:LR:OD (12/02)