

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0363-05
Bill No.: SCS for SB 37
Subject: Attorneys; Civil Procedure; Judges; General Assembly; Courts
Type: Original
Date: February 27, 2015

Bill Summary: This proposal awards attorney's fees and court costs in cases where a settlement offer was previously rejected and when the court rules on a motion to dismiss for failure to state a claim.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
Total Estimated Net Effect on General Revenue	\$0	\$0	\$0

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
State Legal Expense Fund	(Less than \$100,000)	(Less than \$100,000)	(Less than \$100,000)
Total Estimated Net Effect on Other State Funds	(Less than \$100,000)	(Less than \$100,000)	(Less than \$100,000)

Numbers within parentheses: () indicate costs or losses.
 This fiscal note contains 7 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
Total Estimated Net Effect on FTE	0	0	0

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 2016	FY 2017	FY 2018
Local Government	(Greater than \$100,000)	(Greater than \$100,000)	(Greater than \$100,000)

FISCAL ANALYSIS

ASSUMPTION

§514.075 - Motion to dismiss for failure to state a claim

Officials at the **Office of Administration (OA)** assume the state self-assumes its own liability under the state Legal Expense Fund ("LEF"), Section 105.711 RSMo. It is a self-funding mechanism whereby funds are made available for the payment of any claim or judgment rendered against the state in regard to the waivers of sovereign immunity or against employees and specified individuals. Investigation, defense, negotiation or settlement of such claims is provided by the Office of the Attorney General. Payment is made by the Commissioner of Administration with the approval of the Attorney General.

Generally, costs cannot be assessed against the state or a state agency unless a statute or rule specifically allows such costs to be assessed against the state. See, e.g., *Client Services, Inc. v. Missouri Coordinating Bd. For Higher Ed.*, 30 S.W.3d 194, 196 (Mo. App. E.D. 2000) ("It is well-settled that attorney's fees are not assessable as costs against the state in the absence of a statute that explicitly provides for such assessment."). Therefore, OA-General Services assumes that the proposal will not permit courts to assess costs against the state or a state agency. However, it is less clear whether costs might be imposed pursuant to the proposal against a state employee covered by the LEF, and thus OA-General Services assumes, solely for purposes of responding to this fiscal note request, that such assessment of costs may be possible.

Oversight inquired OA about the LEF over the last 5 years. OA states the following information:

	Number of Reported Claims	Total Expenditures	Number of Payments Made	Average Payment Amount
FY10	925	\$ 9,832,577	915	\$10,746
FY11	974	\$10,558,886	864	\$12,221
FY12	888	\$16,452,973	721	\$22,820
FY13	845	\$11,545,538	656	\$17,600
FY14	918	\$ 4,655,869	573	\$ 8,125

The OA assumes the number of claims reported above includes files that were created during the fiscal year and not necessarily claims on which payments were made. The number of payments made above are payments that were paid during the fiscal year. The average payment is the total expenditures divided by the number of payments made in each fiscal year.

ASSUMPTION (continued)

While the average payment amount over the last 5 years has not been significant, there still could be a potential cost. **Oversight** will assume a fiscal impact of less than \$100,000 from this proposal.

Legislation as a whole

Officials at the **City of Kansas City** assume from §511.800 attorney's fees, costs and expert fees would be paid for cases brought against City employees, agencies, commissions, boards, bi-state compact entities as they are not covered under the "Governmental Unit" exemption found at §511.800 (4). As such, there would be increased costs to the City for payment of these items. The annual amounts are unknown.

As to §514.075, the payment of costs and attorney's fees that are assessed to the non-winning party would be an increase in costs to the City for payment of these items. The annual amounts are unknown.

Officials at **St. Louis County** assume it is not possible to accurately forecast how many instances and to what extent this bill may apply. The costs may approach \$100,000 to \$250,000 per year for each of the fiscal years 2016, 2017 and 2018.

Officials at the **Office of the Attorney General** assume that any potential costs arising from this proposal can be absorbed with existing resources.

Officials at the **Missouri Department of Transportation**, the **Department of Natural Resources**, the **Department of Labor and Industrial Relations**, the **Department of Health and Senior Services**, the **Department of Social Services**, the **Office of the State Public Defender**, the **Missouri House of Representatives**, the **Office of Prosecution Services** and the **Office of the State Courts Administrator** each assume no fiscal impact to their respective agencies from this proposal.

In response to a previous version, officials at the **Missouri State Senate** assumed no fiscal impact from this proposal.

In response to a previous version, officials at the **City of Jefferson**, the **City of Columbia**, the **St. Louis County Board of Election Commission** and the **Platte County Board of Election Commission** each assumed no fiscal impact to their respective organizations from this proposal.

ASSUMPTION (continued)

Officials at the following cities: Ashland, Belton, Bernie, Bonne Terre, Boonville, California, Cape Girardeau, Clayton, Dardenne Prairie, Excelsior Springs, Florissant, Frontenac, Fulton, Gladstone, Grandview, Harrisonville, Independence, Joplin, Kearney, Knob Noster, Ladue, Lake Ozark, Lee Summit, Liberty, Louisiana, Maryland Heights, Maryville, Mexico, Monett, Neosho, O’Fallon, Pacific, Peculiar, Pineville, Popular Bluff, Raytown, Republic, Richmond, Rolla, Sedalia, Springfield, St. Charles, St. Louis, St. Robert, Sugar Creek, Sullivan, Warrensburg, Warrenton, Webb City, Weldon Spring and West Plains did not respond to **Oversight’s** request for fiscal impact.

Officials at the following counties: Andrew, Atchison, Audrain, Barry, Bollinger, Boone, Buchanan, Callaway, Camden, Cape Girardeau, Carroll, Cass, Clay, Cole, Cooper, DeKalb, Dent, Franklin, Greene, Holt, Jackson, Jefferson, Johnson, Knox, Laclede, Lawrence, Lincoln, Marion, McDonald, Miller, Moniteau, Monroe, Montgomery, New Madrid, Nodaway, Ozark, Perry, Pettis, Phelps, Platte, Pulaski, Scott, Shelby, St. Charles, St. Francois, Taney, Warren, Wayne and Worth did not respond to **Oversight’s** request for fiscal impact.

<u>FISCAL IMPACT - State Government</u>	FY 2016 (10 Mo.)	FY 2017	FY 2018
STATE LEGAL EXPENSE FUND			
<u>Costs</u> - OA state employees covered by LEF in cases where there is a motion to dismiss for failure to state a claim (\$514.075)	(Less than \$100,000)	(Less than \$100,000)	(Less than \$100,000)
ESTIMATED NET EFFECT ON STATE LEGAL EXPENSE FUND	(Less than \$100,000)	(Less than \$100,000)	(Less than \$100,000)

<u>FISCAL IMPACT - Local Government</u>	FY 2016 (10 Mo.)	FY 2017	FY 2018
LOCAL POLITICAL SUBDIVISIONS			
<u>Costs</u> - Local Political Subdivisions recovery of litigation costs in court cases	(Greater than \$100,000)	(Greater than \$100,000)	(Greater than \$100,000)
ESTIMATED NET EFFECT ON LOCAL POLITICAL SUBDIVISIONS	(Greater than \$100,000)	(Greater than \$100,000)	(Greater than \$100,000)

FISCAL IMPACT - Small Business

A direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

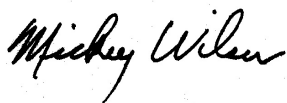
This act provides that when a settlement offer, which meets the requirements specified in the act, is rejected and the judgment rendered is significantly less favorable to the rejecting party than what was offered by the settlement then the offering party shall recover litigation costs from the rejecting party. Litigation costs include court costs, reasonable fees of no more than two testifying experts, and reasonable attorney's fees. The offering party may only recover litigation costs incurred after the date that the rejecting party rejected the settlement.

The act also provides that when a court rules on a motion to dismiss for failure to state a claim the court may award costs and reasonable attorney's fees to the prevailing party that the court determines are equitable and just. The Missouri Supreme Court must submit by February first of each year an annual report to the General Assembly which includes the number of such cases dismissed and the dollar amounts involved.

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

City of Kansas City
St. Louis County
Missouri Department of Transportation
Office of Administration
Office of the Attorney General
Office of the State Public Defender
Office of Prosecution Services
Office of the State Courts Administrator
City of Jefferson
City of Columbia
St. Louis County Board of Election Commission
Platte County Board of Election Commission
Missouri House of Representatives
Department of Natural Resources
Department of Labor and Industrial Relations
Department of Health and Senior Services
Department of Social Services
Missouri State Senate



Mickey Wilson, CPA
Director
February 27, 2015

Ross Strobe
Assistant Director
February 27, 2015