

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 5004-01
Bill No.: SB 750
Subject: Civil Penalties; Crimes and Punishments; County Officials; Secretary of State
Type: #Updated
Date: February 7, 2018
Updated to include revised information from the Office of the Secretary of State

Bill Summary: This proposal creates the offense of filing false documents.

FISCAL SUMMARY

| ESTIMATED NET EFFECT ON GENERAL REVENUE FUND | | | |
|---|-------------------|-------------------|-------------------|
| FUND AFFECTED | FY 2019 | FY 2020 | FY 2021 |
| #General Revenue | (\$15,515) | (\$37,981) | (\$58,111) |
| #Total Estimated Net Effect on General Revenue | (\$15,515) | (\$37,981) | (\$58,111) |

| ESTIMATED NET EFFECT ON OTHER STATE FUNDS | | | |
|---|------------|------------|------------|
| FUND AFFECTED | FY 2019 | FY 2020 | FY 2021 |
| #Technology Trust Fund | \$0 | \$0 | \$0 |
| Total Estimated Net Effect on <u>Other</u> State Funds | \$0 | \$0 | \$0 |

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 7 pages.

| ESTIMATED NET EFFECT ON FEDERAL FUNDS | | | |
|---|----------------|----------------|----------------|
| FUND AFFECTED | FY 2019 | FY 2020 | FY 2021 |
| | | | |
| | | | |
| Total Estimated Net Effect on <u>All</u> Federal Funds | \$0 | \$0 | \$0 |

| ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE) | | | |
|---|----------------|----------------|----------------|
| FUND AFFECTED | FY 2019 | FY 2020 | FY 2021 |
| #General Revenue Fund | 0 FTE | 0 FTE | 0 FTE |
| | | | |
| #Total Estimated Net Effect on FTE | 0 FTE | 0 FTE | 0 FTE |

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 2019 | FY 2020 | FY 2021 |
| Local Government | \$0 | \$0 | \$0 |

FISCAL ANALYSIS

ASSUMPTION

#Officials from the **Office of the Secretary of State (SOS)** assume the proposal will have no fiscal impact on their organization.

#**Oversight** notes that in a previous response from the Office of the Secretary of State, they anticipated a one time IT cost of \$80,000 to the Technology Trust Fund as well as a need of two new FTEs at \$29,000 annually per year each. SOS anticipated a fiscal impact in FY19 of \$80,668, in FY20 of \$97,554, and in FY21 of \$98,314 to the General Revenue Fund. Oversight has updated this fiscal note to include the revised 'no impact' statement from the SOS.

Officials from the **Department of Corrections (DOC)** assume this proposal removes a Class E felony for filing false documents in RSMo 400.9-501 and replaces it with a Class D/Class C felony in the newly created RSMo 570.095. The language in the newly created section is more specific than that in the current statute, and allows for a Class D felony for first time offenders, with an enhancement to class C for repeat offenders or offenses against certain government officials, police, fire fighters, etc. While this change makes the legislation more clear, it does not appear that any new actions would be considered a crime under these changes.

The current legislation found in RSMo 400.9-501 was modified in 2014 to introduce the criminal penalty. No charge code was ever created for this statute, and the legislation is still quite new, meaning that good data for the current impact is unknown. Thus, this will be treated as a new offense; further, as this offense is expected to be quite rare, only the D felony version will be considered. Under this situation, 3 individuals will be sentenced to prison and 5 to probation in each fiscal year. For incarcerated individuals, the average sentence is 4.8 years, with a total of 2.9 years in prison and 1.9 years on parole; the probationers serve a 3.0 year term.

If this impact statement has changed from statements submitted in previous years, it is because the DOC has changed the way probation and parole daily costs are calculated to more accurately reflect the way the Division of Probation and Parole is staffed across the entire state.

In December 2017, the DOC reevaluated the calculation used for computing the Probation and Parole average daily cost of supervision and revised the cost calculation to be used for 2018 fiscal notes. The new calculation estimates the increase/decrease in caseloads at each Probation and Parole district due to the proposed legislative change. For the purposes of fiscal note calculations, the DOC averaged district caseloads across the state and came up with an average caseload of 51 offender cases per officer. The new calculation assumes that an increase/decrease of 51 cases in a district would result in a change in costs/cost avoidance equal to the cost of one

ASSUMPTION (continued)

FTE staff person in the district. Increases/decreases smaller than 51 offenders are assumed to be absorbable.

In instances where the proposed legislation would only affect a specific caseload, such as sex offenders, the DOC will use the average caseload figure for that specific type of offender to calculate cost increases/decreases.

The DOC cost of incarceration is \$17.003 per day or an annual cost of \$6,206 per offender. The DOC cost of probation or parole is determined by the number of P&P Officer II positions that would be needed to cover the new caseload.

| | # to prison | Cost per year | Total Costs for prison | | # to probation & parole | Cost per year | Total cost for probation and parole | Grand Total - Prison and Probation (includes and 2% inflation) |
|---------|-------------|---------------|-------------------------------|--|-------------------------|---------------|--|--|
| Year 1 | 3 | (\$6,206) | (\$15,515) | | 5 | absorbed | \$0 | (\$15,515) |
| Year 2 | 6 | (\$6,206) | (\$37,981) | | 10 | absorbed | \$0 | (\$37,981) |
| Year 3 | 9 | (\$6,206) | (\$58,111) | | 15 | absorbed | \$0 | (\$58,111) |
| Year 4 | 9 | (\$6,206) | (\$59,273) | | 18 | absorbed | \$0 | (\$59,273) |
| Year 5 | 9 | (\$6,206) | (\$60,458) | | 21 | absorbed | \$0 | (\$60,458) |
| Year 6 | 9 | (\$6,206) | (\$61,667) | | 21 | absorbed | \$0 | (\$61,667) |
| Year 7 | 9 | (\$6,206) | (\$62,901) | | 21 | absorbed | \$0 | (\$62,901) |
| Year 8 | 9 | (\$6,206) | (\$64,159) | | 21 | absorbed | \$0 | (\$64,159) |
| Year 9 | 9 | (\$6,206) | (\$65,442) | | 21 | absorbed | \$0 | (\$65,442) |
| Year 10 | 9 | (\$6,206) | (\$66,751) | | 21 | absorbed | \$0 | (\$66,751) |

Officials from the **Office of the State Public Defender (SPD)** assume for the purpose of the proposed legislation, and as a result of excessive caseloads, the Office of the State Public Defender cannot assume existing staff will provide competent, effective representation for any new cases where indigent persons are charged with the proposed new crime of intentionally filing a fraudulent financing statement or any financing statement with the Secretary of State with the intent to harass or defraud any other person. This offense would be a new Class D Felony, unless the offense meets other circumstances, then it becomes a new Class C Felony. The Missouri State Public Defender System is currently providing legal representation in caseloads in excess of recognized standards.

ASSUMPTION (continued)

While the number of new cases may be too few or uncertain to request additional funding for this specific bill, the Office of the State Public Defender will continue to request sufficient appropriations to provide competent and effective representation in all cases where the right to counsel attaches.

Officials from the **Attorney General's Office** assume that any potential costs arising from this proposal can be absorbed with existing resources. Attorney General's Office may seek additional appropriations if there is a significant increase in litigation.

Officials from the **Office of State Courts Administrator (OSCA)** assume there may be some impact but there is no way to quantify that currently. Any significant changes will be reflected in future budget requests.

Officials from the **Office of Prosecution Services** assume no measurable fiscal impact. The creation of a new crime creates additional responsibilities for county prosecutors which may in turn result in additional costs which are difficult to determine.

Oversight assumes the OSCA and SPD can absorb the additional caseload that may result from this proposal.

Officials from the **Department of Insurance, Financial Institutions and Professional Registration** and **Department of Public Safety-Missouri State Highway Patrol** assume the proposal will have no fiscal impact on their respective organizations.

| <u>FISCAL IMPACT - State Government</u> | FY 2019 (10 Mo.) | FY 2020 | FY 2021 |
|---|--------------------------|--------------------------|--------------------------|
| GENERAL REVENUE FUND | | | |
| <u>#Costs</u> - SOS - to implement the provisions of the proposal | \$0 | \$0 | \$0 |
| <u>Cost</u> - DOC - increased incarceration costs for creation of offense of filing false documents | <u>(\$15,515)</u> | <u>(\$37,981)</u> | <u>(\$58,111)</u> |
| #ESTIMATED NET EFFECT ON GENERAL REVENUE FUND | <u>(\$15,515)</u> | <u>(\$37,981)</u> | <u>(\$58,111)</u> |

| <u>FISCAL IMPACT - Local Government</u> | FY 2019 (10 Mo.) | FY 2020 | FY 2021 |
|---|---------------------|------------|------------|
| | <u>\$0</u> | <u>\$0</u> | <u>\$0</u> |

FISCAL IMPACT - Small Business

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

FISCAL DESCRIPTION

This proposal creates the offense of filing false documents. For the first offense, filing a false document is a Class D felony, but can be a Class C felony in certain specified instances. Any person who is found guilty of filing a false document shall be ordered to make full restitution to any person or entity that has sustained any actual losses as a result of the filing.

The proposal specifies that any agency of the state, a county or the City of St. Louis shall create a system in which suspicious filings are logged, and outlines the process for petitioning a court when a person has probable cause to believe a filing is fraudulent. The system shall be created by January 1, 2019.

If a filing or record is deemed invalid in a civil action brought under this act, the prevailing party shall be awarded all reasonable costs and fees incurred by that party in the action.

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 Corrections
Office of the Secretary of State
Office of the State Public Defender
Attorney General's Office
Office of State Courts Administrator
Office of Prosecution Services
Department of Insurance, Financial Institutions and Professional Registration
Department of Public Safety-Missouri State Highway Patrol

Ross Strope

A handwritten signature in black ink, appearing to read "Ross Strope", with a stylized flourish at the end.

Acting Director
February 7, 2018