

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1129-01
Bill No.: SB 259
Subject: Higher Education; Sexual Offenses
Type: Original
Date: February 18, 2019

Bill Summary: This proposal implements a process for due process proceedings for Title IX complaints at institutions of higher education.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
General Revenue	(\$80,653)	(\$87,320)	(\$88,190)
Total Estimated Net Effect on General Revenue	(\$80,653)	(\$87,320)	(\$88,190)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
Merchandising Practices Revolving Fund (0631)	\$0 or Could exceed \$250,000	\$0 or Could exceed \$250,000	\$0 or Could exceed \$250,000
College & University Funds	(Could exceed \$1,150,000)	(Could exceed \$1,050,000)	(Could exceed \$1,050,000)
Total Estimated Net Effect on Other State Funds	(Could exceed \$900,000)	(Could exceed \$800,000)	(Could exceed \$800,000)

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 10 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
General Revenue	1 FTE	1 FTE	1 FTE
Total Estimated Net Effect on FTE	1 FTE	1 FTE	1 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 2020	FY 2021	FY 2022
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Oversight notes a request for fiscal impact was sent to the Department of Higher Education on January 16, 2019 and was due back to Oversight by February 1, 2019. Oversight received a response on February 18, 2019. Oversight has presented this fiscal note on the best current information.

Officials from the **Office of the Attorney General (AGO)** assume this proposal would require one Assistant Attorney General (AAG) II to fulfill the duties related to the data collection in section 173.1925.3. While the \$250,000 fine in section 173.1925.2 would benefit one of the AGO's funds, it could not be relied upon as a consistent method for offsetting the AGO's fiscal impact.

Officials from the **Office of Administration - Administrative Hearing Commission (AHC)** assume this proposal will not significantly alter its caseload. If similar bills pass, resulting in more cases, there will be fiscal impact.

Oversight assumes, based on their response, that the AHC will be able to administer this proposal with existing resources; however, should additional bills pass that also increase their responsibilities, the AHC may need additional resources.

Officials from the **Department of Higher Education** and the **Office of the State Courts Administrator** each assume the proposal will have no fiscal impact on their organization.

Officials from the **University of Missouri System** assume this proposal places a significant administrative burden on the University of Missouri and will:

- Require hiring of additional staff on each campus (5 FTE salary & benefits, \$375k)
- Increase the number of cases handled through a hearing, increasing the burden of time spent by all key personnel and hearing panelists, (\$50k)
- Require new and robust training for all investigators, decision makers, hearing panelists, appellate officers, and advisors immediately upon implementation of the bill, (\$50k)
- Incur significant costs associated with the AHC, including the presentation of the cases before the AHC, the expanded discovery mechanics, and general administrative costs with creating an additional layer of oversight, (\$100k)
- Require overhaul of policies and procedures, publications, printed materials, and campus resources (\$50k)

The fiscal impact on the University of Missouri System is expected to be approximately \$625,000.

ASSUMPTION (continued)

Officials from **Missouri State University** assume this proposal as an anticipated negative fiscal impact of approximately \$200,000 per year for the university.

Officials from the **University of Central Missouri** assume this would require universities to essentially duplicate their internal processes at the state administration hearing commission, an additional staff member would need to be added to the Title IX office, at an estimated cost of \$75,000 annually.

Oversight only received responses from a few institutions of higher education, but will show a cost to college and university funds that could exceed \$900,000 in administrative costs in the first year as reported by responding institutions (\$625,000 + \$200,000 + \$75,000) with approximately \$800,000 of those costs recurring on annual basis.

Additionally, Oversight notes section 173.1925.2 states that any institution of higher education that violates a student's due process rights shall be fined \$250,000. Oversight will show a cost to colleges and universities of \$0 (no fine) or could exceed \$250,000. The fine revenue generated from section 173.1925.2 shall be credited to the Merchandising Practices Revolving Fund.

Officials from **State Technical College of Missouri** assume this proposal could have a slight negative fiscal impact on the college. The amount cannot be determined.

Officials from the **Office of the Secretary of State (SOS)** state 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 fiscal note to the SOS for Administrative Rules is less than \$5,000. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, the SOS also recognizes that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what the office can sustain with the core budget. Therefore, the SOS reserves the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the governor.

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 require additional resources.

ASSUMPTION (continued)

Officials from the **Joint Committee on Administrative Rules (JCAR)** assume this proposal is not anticipated to cause a fiscal impact beyond its current appropriation.

Oversight assumes JCAR will be able to administer any rules resulting from this proposal with existing resources.

<u>FISCAL IMPACT - State Government</u>	<u>FY 2020</u> (10 Mo.)	<u>FY 2021</u>	<u>FY 2022</u>
GENERAL REVENUE			
<u>Cost - AGO - Assistant Attorney General</u>			
Personal Service	(\$42,083)	(\$51,005)	(\$51,515)
Fringe Benefits	(\$23,333)	(\$28,153)	(\$28,309)
Equipment and Expenses	<u>(\$15,237)</u>	<u>(\$8,162)</u>	<u>(\$8,366)</u>
<u>Total Cost - AGO</u>	<u>(\$80,653)</u>	<u>(\$87,320)</u>	<u>(\$88,190)</u>
FTE Change - AGO	1 FTE	1 FTE	1 FTE
ESTIMATED NET EFFECT ON GENERAL REVENUE	<u>(\$80,653)</u>	<u>(\$87,320)</u>	<u>(\$88,190)</u>
Estimated Net FTE Change for General Revenue	1 FTE	1 FTE	1 FTE
 MERCHANDISING PRACTICES REVOLVING FUND			
<u>Revenue - AGO - fine for violation of student due process - §173.1925.2</u>	\$0 or Could exceed <u>\$250,000</u>	\$0 or Could exceed <u>\$250,000</u>	\$0 or Could exceed <u>\$250,000</u>
ESTIMATED NET EFFECT ON MERCHANDISING PRACTICES REVOLVING FUND	\$0 or Could exceed <u>\$250,000</u>	\$0 or Could exceed <u>\$250,000</u>	\$0 or Could exceed <u>\$250,000</u>

<u>FISCAL IMPACT - State Government</u> continued	FY 2020 (10 Mo.)	FY 2021	FY 2022
COLLEGE & UNIVERSITY FUNDS			
<u>Cost</u> - violation of student due process fine - §173.1925.2	\$0 or (Could exceed \$250,000)	\$0 or (Could exceed \$250,000)	\$0 or (Could exceed \$250,000)
<u>Cost</u> - administrative costs and staff	(Could exceed <u>\$900,000</u>)	(Could exceed <u>\$800,000</u>)	(Could exceed <u>\$800,000</u>)
ESTIMATED NET EFFECT ON COLLEGE & UNIVERSITY FUNDS	(Could exceed <u>\$1,150,000</u>)	(Could exceed <u>\$1,050,000</u>)	(Could exceed <u>\$1,050,000</u>)

<u>FISCAL IMPACT - Local Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022
	<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 act implements a procedure for due process proceedings for complaints made under Title IX of the Federal Education Amendments, which protects people from discrimination based on sex in education programs.

TITLE IX HEARINGS (Section 173.1898 and 173.1900)

Under this act, any individual in the state of Missouri has the right to defend their character and the right to due process protections guaranteed under the Constitution of Missouri, the United States and the Bill of Rights in any proceeding related to Title IX.

Any student at an institution of higher education may, under this act, request a due process

FISCAL DESCRIPTION (continued)

hearing before the Administrative Hearing Commission with respect to any formal Title IX complaint filed with the institution. The Commission shall assign a commissioner to hear the case within 10 days of receiving notice of the request.

After review of all evidence presented, the commissioner shall issued findings, conclusions, and a decision in the matter and forward the decision to the student and the president of the institution of higher education. A final decision shall be issued by the Commission within 60 days from the conclusion of the hearing.

Any party to a case may request an expedited hearing by the Commission. If a party requests an expedited hearing, the Commission shall assign a commissioner to hold a hearing and render a decision within 60 days of the receipt of the request for an expedited hearing.

APPEALS HEARINGS (Section 173.1905)

Any student at an institution of higher education may request a hearing before the Commission with respect to an appeal of any Title IX case if the student received disciplinary action by the institution in the case. Within 10 days of receiving notice of the request, the Commission shall assign a commissioner to hear the case and shall enter an order staying the disciplinary action until the Commission issues its final decision or order.

After review of all evidence presented, the commissioner shall issue findings, conclusions, and a decision in the matter and forward the written decision to the student and to the president of the institution of higher education. The Commission shall issue a final decision or order within 60 days from the conclusion of the hearing.

A student may request an expedited hearing by the Commission to challenge a disciplinary action that involves suspension or expulsion. If a student requests an expedited hearing to challenge such disciplinary action, the Commission shall assign a commissioner to hold a hearing and render a decision within 60 days of the receipt of the request for an expedited hearing.

MAINTENANCE OF RECORDS (Section 173.1907 and 173.1920)

Under this act, the Commission shall compile relevant statistics on the cases it hears under this act. The Commission shall also promulgate rules to implement this provision, including the requirements for the types of statistics to be compiled.

Any institution that conducts any type of Title IX training shall maintain and publish on its

FISCAL DESCRIPTION (continued)

website any materials used in the training. Such institution shall also maintain and publish on its website information and procedures related to such complaints.

GRIEVANCE PROCEDURES (Section 173.1910)

For all formal Title IX complaints, an institution of higher education shall provide students fair, equitable, and individualized interim measures that avoid depriving any student of his or her education pending the investigation and resolution of the formal complaint. If emergency measures that will deprive any student of his or her education are deemed necessary, the institution is required to provide the affected student with the opportunity for an expedited hearing.

Any institution of higher education that handles formal Title IX complaints shall adopt grievance procedures that provide for a prompt and equitable resolution, and include the opportunity for both the complainant and the respondent to obtain a copy of the complaint within 10 days, that includes sufficient details set forth in the act; a complete copy of the investigation at its conclusion; and the names of any witnesses disclosed by either party.

Grievance procedures shall specify that both parties shall receive any information to be used at the hearing. Such procedures shall also describe the range of possible sanctions and remedies that the institution of higher education may implement following any determination of responsibility. Possible sanctions may include, but not be limited to, loss of certain campus privileges, removal from campus housing, probation, suspension, or expulsion.

The institution of higher education shall inform both parties of the option to use an informal resolution process, and shall use an informal resolution process if both the parties agree to such a process. Resolution processes may include mediation, education, counseling, or restorative justice.

The institution of higher education shall not limit, prohibit, delete, or screen any evidence to be used at any point during the resolution of a formal Title IX complaint. Any person who makes any decision regarding any formal Title IX complaint, and who is an administrator at the institution of higher education or is employed by the office that handles such complaints shall disclose to all parties any prejudicial beliefs or previous experiences that would provide an actual or perceived bias for a decision.

An institution of higher education that handles Title IX complaints shall adopt hearing procedures for the complaint that meets the criteria set forth in the act.

FISCAL DESCRIPTION (continued)

DUE PROCESS (Section 173.1915 and 173.1925)

Any student of an institution of higher education who fails to receive due process shall have a civil cause of action against any employee of the institution who intentionally denied the student such due process. The student shall be entitled to recover from the employee who denied such due process such relief as may be appropriate.

Failure to provide due process to a student in an Title IX complaint shall be considered a breach of contract between the student and the institution, and be considered by the Attorney General as an unlawful act.

If a person makes a false claim or files a false formal Title IX complaint, the person who was the subject of the false claim or complaint has a civil cause of action against the person who made the false claim or complaint and is entitled to recover from any person who made the false claim or complaint such relief as may be appropriate.

The Attorney General shall have the authority to investigate alleged or suspected violations of the grievance procedures set forth in the act.

Any institution that violates a student's due process rights under this act shall be fined \$250,000. All fines collected in accordance with this act shall be credited to and deposited in the Merchandising Practices Revolving Fund.

The Attorney General shall collect information and statistics from institutions of higher education on their procedures and policies for formal Title IX complaints. Information the institution is required to include is set forth in the act.

PUBLIC RECORDS (Section 573.1930)

Any record related to a formal Title IX complaint or investigation at an institution, or at the Commission, which contains personally identifiable information about a party to the formal complaint is not required to be open to the public. The information may be open in the discretion of the public entity.

ACTIONABLE OFFENSE (Section 537.110)

Under this act, a person shall have a cause of action against a person who publishes, falsely and maliciously, that any person has been guilty of sexual assault or rape.

FISCAL DESCRIPTION (continued)

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 the Attorney General
Office of Administration - Administrative Hearing Commission (AHC)
Department of Higher Education
Office of the State Courts Administrator
Joint Committee on Administrative Rules
Office of the Secretary of State
University of Missouri System
Missouri State University
University of Central Missouri
State Technical College of Missouri



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