

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1047S.01I
 Bill No.: SB 42
 Subject: Department of Elementary and Secondary Education; Education, Elementary and Secondary; General Assembly
 Type: Original
 Date: January 23, 2023

Bill Summary: This proposal modifies provisions regarding elementary and secondary education.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2024	FY 2025	FY 2026
General Revenue	\$0 or Unknown to (Could exceed \$75,584)	\$0 or Unknown to (Could exceed \$80,550)	\$0 or Unknown to (Could exceed \$81,353)
Total Estimated Net Effect on General Revenue	\$0 or Unknown to (Could exceed \$75,584)	\$0 or Unknown to (Could exceed \$80,550)	\$0 or Unknown to (Could exceed \$81,353)

*The fiscal note reflects the potential withholding of funds from public schools if the financial penalty provisions of the bill are enacted. Oversight is uncertain how many school districts would be non-compliant; therefore, Oversight assumes the net impact to General Revenue could be less than the costs estimated for other provisions in this proposal. Oversight assumes this gain to General Revenue could exceed \$250,000.

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2024	FY 2025	FY 2026
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2024	FY 2025	FY 2026
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2024	FY 2025	FY 2026
General Revenue	0 to Could exceed 1 FTE	0 to Could exceed 1 FTE	0 to Could exceed 1 FTE
Total Estimated Net Effect on FTE	0 to Could exceed 1 FTE	0 to Could exceed 1 FTE	0 to Could exceed 1 FTE

- Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.
- Estimated Net Effect (savings or increased revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2024	FY 2025	FY 2026
Local Government	(Unknown, Could be substantial)	(Unknown, Could be substantial)	(Unknown, Could be substantial)

FISCAL ANALYSIS

ASSUMPTION

Section 160.2550 - Divisive Concepts

Oversight assumes this proposal limits the use of certain curriculums (including the 1619 Project) in school districts. If a school district fails to comply with this proposal, DESE is to withhold fifty percent of the monthly distribution of state formula funding.

Oversight notes, per an [article](#) in the St. Louis Post-Dispatch, the University City School District utilized the 1619 Project in an Advanced Placement language arts class curriculum. Oversight notes the following monthly payment of state monies to the University City School District in the table below.

Month	Monthly Payment	50% of Monthly Payment
July 2020	\$199,257	\$99,629
August 2020	\$426,874	\$213,437
September 2020	\$422,551	\$211,276
October 2020	\$377,927	\$188,964
November 2020	\$398,805	\$199,403
December 2020	\$428,030	\$214,015
January 2021	\$423,515	\$211,758
February 2021	\$417,779	\$208,890
March 2021	\$546,821	\$273,411
April 2021	\$541,073	\$270,537
May 2021	\$412,021	\$206,011
June 2021	\$387,105	\$193,553
Total	\$4,782,501	\$2,391,251

*Source: Department of Elementary and Secondary Education payment transmittal.

Additionally, an [article](#) in the Missouri Independent, identified two other schools districts (the Kansas City School District and the Hazelwood School District) that utilized either the 1619 Project or critical race theory in their curriculum based on a survey conducted by the Department of Elementary and Secondary Education.

Oversight notes the total foundation formula payments for school districts is estimated at \$3,561,737,794 for FY 2024 per the DESE Budget Request for FY 2024.

Oversight is uncertain how many school districts might violate the provisions of this proposal. Therefore, Oversight will show a range of impact of \$0 (no violations) to an unknown gain

(savings) to General Revenue and an unknown loss to school districts. Oversight assumes this gain to General Revenue could exceed \$250,000.

In addition, **Oversight** assumes there could be costs for school districts for staff training or curriculum and compliance with the other requirements of this proposal.

Section 161.856 - Sunlight in Learning Act

Officials from the **Department of Elementary and Secondary Education** assume the proposal will have no fiscal impact on their organization. Provisions included such as the collection and publishing of all professional development materials, bios of speakers, assessment results, biometric data and, instructional materials may cause a burden to service providers. These materials change frequently which may lead to service providers requesting more grant funding to cover staff costs required to maintain this information.

Section 161.56.2 states, “The department of elementary and secondary education shall ensure that the following information is displayed on each school and charter school website...” This could potentially have a cost to the schools for added website capabilities but DESE is unable to estimate those costs. DESE can ensure the information is included through current school audits, accreditation processes and attestations completed by schools. If multiple items of legislation pass that require additional duties to require additional FTE DESE will seek those FTE through the appropriations process.

Oversight assumes this proposal requires DESE to ensure certain information is displayed on each school and charter school website. This information includes staff training and policies. In addition, the information includes a full text or copy of learning materials defined to include textbooks, videos, instructional handouts and worksheets, presentations, etc. Oversight notes the information is to be displayed online prior to the first instance of training or instruction or within fourteen days after the training or instruction.

Oversight notes there are 68,380 full time teachers at over 515 school districts in Missouri. If 10% of school districts (51) uploaded a new instructional handout each day, it would take approximately 4 hours to review each districts website for the handout assuming 5 minutes per review. Oversight is uncertain if these requirements could be absorbed by existing staff.

However, Oversight is uncertain to what extent DESE is required to ensure compliance with this proposal. If DESE can ensure compliance through existing reviews, audits or attestations, no additional FTE may be required.

Oversight will show a range of impact of \$0 (costs to review school district information can be absorbed by existing staff at DESE) to a cost that could exceed one program analyst with an annual salary of (\$43,344) to conduct reviews of instructional materials and other information at the district level.

In response to a somewhat similar proposal, HB 2008 (2022), officials from **Hazelwood School District** stated it is difficult to assess the additional amount of time that would be required, and the resulting labor costs, to organize all materials in the manner being proposed. The district has approximately 1,200 teachers. Gathering individual lesson plans and then posting them in the manner described would be an enormous task. Additional staff would have to be hired just to coordinate such a requirement.

Oversight assumes this proposal requires school districts to display the required information on the district or charter school website in an easily and publicly accessible location. Oversight assumes this could have substantial IT costs and/or FTE costs for school districts.

Oversight notes if 10% of school districts hired a secretary or administrative assistant, the cost is estimated at \$1,872,000 (52 districts X an average salary of \$36,000 per MERIC-OEWS Data). Oversight will show an unknown cost that could be substantial for school districts to implement this provision.

Section 161.1140 - Parents' Bill of Rights

Oversight notes Section 161.1140 states DESE may withhold up to fifty percent of the state aid payments to school districts for violations of this section. Oversight will show a range of impact of \$0 (no violations) to an unknown gain to General Revenue and an unknown loss to school districts. Oversight assumes this gain to General Revenue could exceed \$250,000.

Oversight notes the total foundation formula payments for school districts is estimated at \$3,561,737,794 for FY 2024 per the DESE Budget Request for FY 2024.

Oversight assumes there could be administrative costs to provide information to parents and legal costs for violations of section 161.1140. Oversight will show a range of impact of \$0 (could absorb costs) to an unknown cost to school districts.

Section 167.177 - Sports Participation by Gender

Oversight notes transgender student participation in interscholastic sports is regulated by school districts and the Missouri State High School Activities Association (MSHSAA). Per the [MSHSAA Handbook](#) the Board Policy on Transgender Participation is as follows;

“A transgender student must meet the following in order to participate in sex-separated interscholastic sports so long as the athlete’s use of medical/hormone therapy is consistent with current medical standards:

No Medical/Hormone Treatment: Any transgender student-athlete who is not taking medical/hormone treatment related to gender transition may commence and continue interscholastic participation in sex-separated sports in accordance with his or her assigned birth gender.

A trans male (female to male) student-athlete who is not taking medical/hormone treatment related to gender transition may participate in co-ed sports and may apply to participate in boys sports. Once the student participates in a boys' sport, he shall participate consistently with that gender for the remainder of his interscholastic eligibility.

- A trans female (male to female) student-athlete who is not taking medical/hormone treatments related to gender transition may not compete on a girls' team, but may participate in co-ed and boys sports. (See also By-Law 3.20.)

Receiving Medical/Hormone Treatment:

- A trans male (female to male) student-athlete who has commenced medical/hormone treatment with prescribed drugs for diagnosed gender dysphoria and/or transsexualism, may compete on a boys' team, but is no longer eligible to compete on a girls' team without changing that team status to a co-ed team. (See also By-Law 3.20.d.)

- A trans female (male to female) student-athlete being treated with hormone suppression medication for diagnosed gender dysphoria and/or transsexualism may continue to compete on a boys' team but may not compete on a girls' team, without changing it to a co-ed team, until one calendar year of documented medical/hormone treatment and/or suppression is completed. To maintain eligibility, a trans female student shall thereafter provide continuing medical documentation that the appropriate hormone levels are being maintained.”

Oversight assumes this proposal prohibits public schools from knowingly allowing a student of the male sex to play on sports teams designated for the female sex. Entities that violate this proposal are to have 50% of any state revenue withheld until they achieve compliance with this proposal.

Oversight notes the total foundation formula payments for school districts is estimated at \$3,561,737,794 for FY 2024 per the DESE Budget Request for FY 2024.

Response to the Legislation as a Whole

Officials from the **Office of the State Courts Administrator, Missouri Office of Prosecution Services, Office of the State Auditor** and the **Joint Committee on Education** each assume the proposal will have no fiscal impact on their respective organizations. **Oversight** does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these agencies.

Officials from the **Gordon Parks Elementary Charter School** assume the proposal will have no fiscal impact on their organization. **Oversight** does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note.

Officials from the **Attorney General's Office (AGO)** noted that to the extent that the enacting of this proposal would result in increased litigation, the AGO could absorb the costs associated with that increased litigation using existing resources.

Oversight notes the AGO currently has 20 job openings on their website, 7 of which are openings for Assistant Attorneys General. Oversight is uncertain if the AGO can absorb the additional duties of this proposal. For purposes of this fiscal note, Oversight assumes the AGO may investigate or initiate a suit against a school district at their discretion. Therefore, Oversight will adopt the AGO's assumption that they can absorb these additional duties.

Oversight received a limited number of responses from public schools related to the fiscal impact of this proposal. Oversight has presented this fiscal note on the best current information available. Upon the receipt of additional responses, Oversight will review to determine if an updated fiscal note should be prepared and seek the necessary approval to publish a new fiscal note.

Oversight only reflects the responses received from state agencies and political subdivisions; however, other school districts, colleges and universities were requested to respond to this proposed legislation but did not. A listing of political subdivisions included in the Missouri Legislative Information System (MOLIS) database is available upon request.

Rule Promulgation

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

Officials from the **Office of the Secretary of State (SOS)** note 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 its 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.

<u>FISCAL IMPACT – State Government</u>	FY 2024 (10 Mo.)	FY 2025	FY 2026
GENERAL REVENUE			
<u>Costs - DESE - to conduct reviews of school district staff training and learning materials - §161.856</u>	\$0 or Could exceed	\$0 or Could exceed	\$0 or Could exceed
Personnel Service	(\$36,120)	(\$43,777)	(\$44,215)
Fringe Benefits	(\$23,606)	(\$28,485)	(\$28,644)
Expense & Equipment	(\$15,858)	(\$8,288)	(\$8,494)
<u>Total Costs - DESE</u>	(\$75,584)	(\$80,550)	(\$81,353)
FTE Change	0 or Could exceed 1 FTE	0 or Could exceed 1 FTE	0 or Could exceed 1 FTE
<u>Revenue Gain - from funding withheld from school districts and charter schools for violating sections §160.2550, §161.1140 & §167.177</u>	<u>\$0 or Unknown</u>	<u>\$0 or Unknown</u>	<u>\$0 or Unknown</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE	\$0 or Unknown to (Could exceed \$75,584)	\$0 or Unknown to (Could exceed \$80,550)	\$0 or Unknown to (Could exceed \$81,353)
Estimated Net FTE Change on General Revenue	0 or Could exceed 1 FTE	0 or Could exceed 1 FTE	0 or Could exceed 1 FTE

<u>FISCAL IMPACT – Local Government</u>	FY 2024 (10 Mo.)	FY 2025	FY 2026
LOCAL POLITICAL SUBDIVISIONS			
<u>Costs</u> - for staff training and curriculum related to divisive concepts - §160.2550	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
<u>Costs</u> - costs for collection and display of learning material as well as staff time and training - §161.856 & §161.1140	(Unknown, Could be substantial)	(Unknown, Could be substantial)	(Unknown, Could be substantial)
<u>Costs</u> - for attorney’s fees and other legal costs - §160.2550, §161.856, §161.1140 & §167.177	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
<u>Loss</u> - funding withheld for violating sections §160.2550, §161.1140 & §167.177	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
ESTIMATED NET EFFECT ON LOCAL POLITICAL SUBDIVISIONS	(Unknown, Could be substantial)	(Unknown, Could be substantial)	(Unknown, Could be substantial)

FISCAL IMPACT – Small Business

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

FISCAL DESCRIPTION

This act modifies provisions relating to elementary and secondary education.

Under this act, school districts are prohibited from teaching about The 1619 Project or any successor theory or concept, critical race theory or any successor theory or concept, and any divisive concepts, as such term is defined in the act. Districts are also prohibited from certain actions listed in the act relating to curriculum and instruction.

In adopting the essential knowledge and skills for the social studies for each grade level from kindergarten through 12th grade, each school district shall adopt knowledge and skills that develop each student's civic knowledge as set forth in the act.

School districts shall not accept private funding for the purposes of teaching any curriculum substantially similar to critical race theory or The 1619 Project.

The Attorney General may investigate school districts for compliance with the act. Any school district that violates the provisions of the act shall have 50% of the district's state aid withheld until the district presents evidence to the Department of Elementary and Secondary Education that the district is no longer in violation of this section. (Section 160.2250).

This act establishes the "Sunlight in Learning Act", which requires certain training, instructional, and curricular materials posted on a school website.

This act requires the Department of Elementary and Secondary Education to ensure schools and charter schools publicly display instructional and training materials for teachers and learning materials and activities used for students on the school website.

The website shall include the title, author, organization and any website associated with the material or activity. The website shall also include the identity of the teacher or other person who created the learning material. Any activity that involves service-learning, internships or outside organizations, shall be included on the website, as outlined in the act.

All procedures for the documentation, review or approval of materials used for staff or faculty training or student learning shall be included on the website. A listing of available resources in the library shall be included on the website.

The information required on the website shall be displayed online prior to the first instance of training or instruction, or, at the latest, fourteen days after the training or instruction. The information shall be organized by school, grade, teacher, and subject, and be displayed on the website for at least two years.

Schools may use a collaborative online document or spreadsheet software to update the listing on the website. The listing shall be created and displayed in searchable or sortable electronic formats.

A school with fewer than twenty enrolled students and whose materials and activities are selected independently by instructors is not required to post a list of learning materials and activities on a website.

The Attorney General, Commissioner of Education, State Auditor, prosecuting attorney, or resident of a school district, may initiate a suit against the school district, public school, or public charter school or other governmental entity responsible for educational oversight if a violation of this act occurs.

Courts shall not entertain complaints unless complainants have first worked to remedy the situation by contacting school officials, who have fifteen days to resolve the situation, or by contacting the school board, who have forty-five days to resolve the situation.

No school officials shall purchase or contract copyrighted learning materials, including renewal of subscription-based materials where students are provided login credentials or access via electronic personal devices, unless provisions are made to allow parents and guardians of students to review the materials within thirty days of the submission of a written request to the school. (Section 161.856)

This act creates the "Parents' Bill of Rights Act of 2023." Under this act, no school district shall deny to the parent or guardian of a minor child certain rights. Such rights includes the ability to fully review the curricula, books, and other educational materials used by the school attended by their child; the ability to access information on teachers, guest lecturers, and outside presenters who engage with students at the school; the ability to access information on third party individuals and organizations that receive contracts; the right to visit their child at school during school hours; the right to access all records generated by the school that concern their child; the ability to access information pertaining to the collection and transmission of data regarding their child; the right to be heard at school board meetings; the right to be notified of situations affecting the safety of their child at school; and the right to object to certain materials that the parent finds inappropriate to be taught to their child.

Any person denied one of these rights may bring a civil action for injunctive relief. Further, the attorney general may also bring a civil action for injunctive relief. If a school district is found to have violated this act, the Department of Elementary and Secondary Education may withhold up to fifty percent of the state aid for such district. (Section 161.1140)

Upon adoption by a school district and approval of the residents of the school district, no public school shall knowingly allow a student of the male sex who is enrolled in such public school to participate in a school-sponsored athletic team that is exclusively for students of the female sex. Beginning July 1, 2024, the Joint Committee on Education shall study exclusively male or female athletic events and the impact of a policy that prohibits participation in those events by individuals of the opposite sex. By January 1, 2025, the Committee shall report its findings to the General Assembly.

The Attorney General may investigate any school district alleged to be in violation of this provision. Any school district found to be in violation of this provision shall have fifty percent of any state moneys withheld until the school district provides evidence to the Department of Elementary and Secondary Education that it is in compliance with this provision. (Section 167.177)

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

L.R. No. 1047S.011

Bill No. SB 42

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SOURCES OF INFORMATION

Department of Elementary and Secondary Education

Office of the Secretary of State

Joint Committee on Administrative Rules

Joint Committee on Education

Attorney General's Office

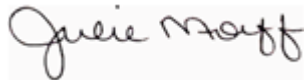
Office of the State Auditor

Office of the State Courts Administrator

Missouri Office of Prosecution Services

Gordon Parks Elementary Charter School


Hazelwood School District



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