

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1122S.02I
 Bill No.: SB 165
 Subject: Athletics; Education, Elementary and Secondary; Education, Higher; Liability
 Type: Original
 Date: January 30, 2023

Bill Summary: This proposal creates the "Save Women's Sports Act" and provisions regarding usage of school locker rooms.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2024	FY 2025	FY 2026
General Revenue*	\$0 or Unknown	\$0 or Unknown	\$0 or Unknown
Total Estimated Net Effect on General Revenue	\$0 or Unknown	\$0 or Unknown	\$0 or Unknown

*The fiscal note reflects the potential withholding of funds from school districts and institutions of higher education if the financial penalty provisions of the bill are enacted. For simplicity, Oversight will reflect the potential withheld payments coming from (remaining in) General Revenue. Oversight assumes the savings could exceed \$250,000.

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2024	FY 2025	FY 2026
University Funds*	Unknown or (Unknown)	Unknown or (Unknown)	Unknown or (Unknown)
Total Estimated Net Effect on <u>Other</u> State Funds	Unknown or (Unknown)	Unknown or (Unknown)	Unknown or (Unknown)

*Oversight assumes the loss of state funding to Universities could exceed \$250,000.

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
Total Estimated Net Effect on FTE	0	0	0

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 or (Unknown)	Unknown or (Unknown)	Unknown or (Unknown)

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Elementary and Secondary Education, Attorney General's Office** and **Department of Higher Education and Workforce Development** each assume the proposal will have no fiscal impact on their respective organizations.

In response to a similar proposal, SB 2 (2023), officials from **Missouri Western State University** stated, if enacted, the impact is zero (not implemented) or up to Missouri Western State University's state appropriations (implemented), including the annual core appropriation (FY23 amount = \$24,315,659) and funds for capital improvements.

Officials from the **University of Central Missouri** state there is the potential for an indeterminate fiscal impact.

Officials from the **Northwest Missouri State University** and **St. Charles Community College** each assume the proposal will have no fiscal impact on their respective organizations.

In response to a similar proposal, SB 2 (2023), officials from the **Northwest Missouri State University** state the proposal will have no fiscal impact on their organization but it could have political/social implications because of the fallout of not allowing a transgender athlete, but financially this bill would prohibit it.

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 notes transgender student participation in intercollegiate sports is regulated by National Collegiate Athletic Association (NCAA). Per the by-laws of the [NCAA](#):

“The following policies clarify participation of transgender student-athletes undergoing hormonal treatment for gender transition:

- A trans male (FTM) student-athlete who has received a medical exception for treatment with testosterone for diagnosed Gender Identity Disorder or gender dysphoria and/or Transsexualism, for purposes of NCAA competition may compete on a men's team, but is no longer eligible to compete on a women's team without changing that team status to a mixed team.
- A trans female (MTF) student-athlete being treated with testosterone suppression medication for Gender Identity Disorder or gender dysphoria and/or Transsexualism, for the purposes of NCAA competition may continue to compete on a men's team but may not compete on a women's team without changing it to a mixed team status until completing one calendar year of testosterone suppression treatment.

Any transgender student-athlete who is not taking hormone treatment related to gender transition may participate in sex-separated sports activities in accordance with his or her assigned birth gender.

- A trans male (FTM) student-athlete who is not taking testosterone related to gender transition may participate on a men's or women's team.
- A trans female (MTF) transgender student-athlete who is not taking hormone treatments related to gender transition may not compete on a women's team.”

Oversight assumes this proposal prohibits public or private schools and public or private institutions of postsecondary education from allowing biological males as assigned at birth to play on sports teams designated for women. Entities that violate this proposal are not eligible for moneys appropriated by the general assembly.

Oversight notes the 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 notes the following appropriations for FY 2023 to postsecondary institutions:

Institution	Appropriation
Community Colleges	\$174,863,323
State Technical College of Missouri	\$8,494,011
UCM	\$60,711,063
Southeast Missouri State University	\$50,371,167
Missouri State University	\$103,242,970
Lincoln University	\$29,183,697
Truman State University	\$45,734,649
Northwest Missouri State University	\$34,336,363
Missouri Southern State University	\$30,874,099
Missouri Western State University	\$24,640,659
Harris-Stowe State University	\$12,634,137
University of Missouri System	\$463,876,797

*Source: TAFP HB 3003 (2022). Actual appropriation amounts may differ based on withholds.

Oversight assumes there could be a loss to public schools, colleges and universities that fail to comply with the requirements in the proposal. The penalty would be any moneys appropriated by the general assembly. Based on amounts appropriated, Oversight assumes the loss could exceed \$250,000.

Oversight assumes students, schools and institutions of higher education can seek injunctive relief, damages and other relief available under the law.

Additionally, **Oversight** assumes this proposal states a public or private school may provide alternative accommodations to locker rooms and shower rooms. Oversight notes this provision is permissive and would be done at the discretion of the school; therefore, Oversight will not show a cost for this provision.

Oversight received a limited number of responses from school districts, colleges and universities 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 MOLIS database is available upon request.

<u>FISCAL IMPACT – State Government</u>	FY 2024 (10 Mo.)	FY 2025	FY 2026
GENERAL REVENUE			
<u>Revenue Gain</u> - from funding withheld from school districts and charter schools for violating section §167.169.4	\$0 or Unknown	\$0 or Unknown	\$0 or Unknown
<u>Revenue Gain</u> - from funding withheld from colleges and universities for violating section - §167.169.4	\$0 or Unknown	\$0 or Unknown	\$0 or Unknown
<u>Revenue Gain</u> - from funding withheld from community colleges for violating section §167.169.4	<u>\$0 or Unknown</u>	<u>\$0 or Unknown</u>	<u>\$0 or Unknown</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE	<u>\$0 or Unknown</u>	<u>\$0 or Unknown</u>	<u>\$0 or Unknown</u>
UNIVERSITY FUNDS			
<u>Income</u> - from damages and other relief - §167.169.7	\$0 or Unknown	\$0 or Unknown	\$0 or Unknown
<u>Costs</u> - damages and legal costs - §167.169	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
<u>Loss</u> - funding withheld for violating section §167.169.4	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
ESTIMATED NET EFFECT ON UNIVERSITY FUNDS	<u>Unknown or (Unknown)</u>	<u>Unknown or (Unknown)</u>	<u>Unknown or (Unknown)</u>

<u>FISCAL IMPACT – Local Government</u>	FY 2024 (10 Mo.)	FY 2025	FY 2026
LOCAL POLITICAL SUBDIVISIONS			
<u>Income</u> - School Districts, Charter Schools & Community Colleges - from damages and other relief - §167.169.7	\$0 or Unknown	\$0 or Unknown	\$0 or Unknown
<u>Costs</u> - School Districts, Charter Schools & Community Colleges - damages and legal costs - §167.169	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
<u>Loss</u> - School Districts, Charter Schools & Community Colleges - funding withheld for violating section - §167.169.4	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
ESTIMATED NET EFFECT ON LOCAL POLITICAL SUBDIVISIONS	Unknown or (Unknown)	Unknown or (Unknown)	Unknown or (Unknown)

FISCAL IMPACT – Small Business

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

FISCAL DESCRIPTION

This act creates the "Save Women's Sports Act". Every interscholastic or intramural athletic team sponsored by certain public or private elementary, secondary and postsecondary schools shall be expressly designated as male, female, or coeducational. No athletic team designated for females shall be open to students of the male sex as assigned at birth. No government entity, accrediting or licensing organization, or athletic association shall entertain a complaint against a school for maintaining separate athletic teams.

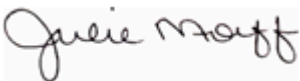
Any student that is deprived of an athletic opportunity or suffers harm as a result of a violation of this act, or is subject to retaliation or adverse action by a school as a result of reporting a violation, shall have a cause of action for injunctive relief and damages as described in the act. Any school that suffers harm as a result of a violation of this act shall have a private cause of action for injunctive relief and damages as described in the act against the government entity, accrediting or licensing organization, or athletic association. Any action brought under this act shall be initiated within two years after the harm has occurred. (Section 167.169)

In every public school setting in which a student may be in a state of undress in the presence of other students, this act requires school personnel to provide separate, distinct areas designated for use by students based on their biological sex to ensure the personal privacy and safety of students. Every public school locker room and shower room which is accessible by multiple students at the same time shall be designated for and used only by students of the same biological sex. A student that asserts that his or her gender is different from his or her biological sex shall be provided with an alternative locker room or shower room as provided in the act. (Section 167.172)

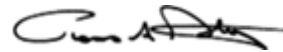
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Department of Elementary and Secondary Education
Department of Higher Education and Workforce Development
Office of Administration - Budget and Planning
Attorney General's Office
University of Missouri System
University of Central Missouri
Missouri Western State University
Northwest Missouri State University
St. Charles Community College



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