

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 1493S.01I  
Bill No.: SB 389  
Subject: Fees; State Departments  
Type: Original  
Date: March 22, 2023

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Bill Summary: This proposal prohibits state agencies from collecting fees or penalties until all administrative remedies have been exhausted.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
<b>FUND AFFECTED</b>	<b>FY 2024</b>	<b>FY 2025</b>	<b>FY 2026</b>
General Revenue Fund*	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
<b>Total Estimated Net Effect on General Revenue</b>	<b>\$0 or (Unknown)</b>	<b>\$0 or (Unknown)</b>	<b>\$0 or (Unknown)</b>

\*Oversight assumes the potential fiscal impact could reach the \$250,000 threshold.

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

Numbers within parentheses: () indicate costs or losses.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2024</b>	<b>FY 2025</b>	<b>FY 2026</b>
Wagner-Peyser	\$0 or (\$11,300,000)	\$0 or (\$11,300,000)	\$0 or (\$11,300,000)
Unemployment Insurance Administration	\$0 or (\$50,300,000)	\$0 or (\$50,300,000)	\$0 or (\$50,300,000)
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0 or (\$61,600,000)</b>	<b>\$0 or (\$61,600,000)</b>	<b>\$0 or (\$61,600,000)</b>

<b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b>			
<b>FUND AFFECTED</b>	<b>FY 2024</b>	<b>FY 2025</b>	<b>FY 2026</b>
<b>Total Estimated Net Effect on FTE</b>	<b>0</b>	<b>0</b>	<b>0</b>

- 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.

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2024</b>	<b>FY 2025</b>	<b>FY 2026</b>
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

## FISCAL ANALYSIS

### ASSUMPTION

#### Section 536.013 – Fees and Penalties Collection

Officials from the **Department of Labor and Industrial Relations (DOLIR)** state after a review of this bill, DOLIR has identified an issue that may affect certification of Missouri's unemployment insurance (UI) program. If this bill is interpreted to prohibit the Division of Employment Security from complying with federal regulations, promulgated by any federal agency, that govern the Federal-State Unemployment Insurance (UI) program, it could raise a conformity issue with federal law.

Based on interpretation, Division of Employment Security (DES) could be prevented from collecting benefit overpayments or assessing and collecting fraud penalties if an individual fails to exhaust administrative remedies. If an alleged employer fails to exhaust administrative remedies, DES could be prevented from collecting unpaid contributions or assess and collect the associated penalties. The federal and state governments jointly are responsible for the administering of the UI program. State administrative grants are needed to operate the UI program, and for employers to qualify for certain tax credits.

Each year, on October 31, the Secretary of Labor certifies the state unemployment insurance programs that conform and comply substantially with federal law. (26 U.S.C. § 3304.) If, and only if, a state's unemployment insurance program is certified to be in conformity with Federal requirements, employers within the state are eligible to receive a credit against their Federal Unemployment Tax Act (FUTA) taxes. (26 U.S.C. § 3302.)

Non-conformity with federal law could jeopardize the certification of Missouri's UI program. If the program fails to be certified, Missouri could lose approximately \$50.3 million in federal funds the state receives each year to administer the UI program. Additionally, Missouri could lose the approximately \$11.3 million in federal funds each year the Department of Higher Education and Workforce Development uses for Wagner-Peyser reemployment services.

The FUTA imposes a 6.0% payroll tax on employers. Most employers never actually pay the total 6.0% due to credits they receive for the payment of state unemployment taxes and for paying reduced rates under an approved experience rating plan. FUTA allows employers tax credits up to a maximum of 5.4% against the FUTA payroll tax if the state UI law is approved by the Secretary of Labor. However, if this bill causes Missouri's program to be out of compliance or out of conformity, Missouri employers would pay the full 6.0%, or approximately an additional \$1.034 billion per year.

The Division of Employment Security (DES) has no way of knowing what rules or regulations may be promulgated by any federal agency. But if such a rule were promulgated and failure to

follow it were to result in lack of conformity with federal unemployment program requirements, then federal funding to DES for its administration of Missouri's UI program, Department of Higher Education and Workforce Development Wagner-Peyser funds, and Missouri employer tax credits will be at risk.

Since it is unknown if this legislation will create a conformity issue with federal law, **Oversight** will reflect the potential loss of federal funds as \$0 (no conformity issues) or (\$11,300,00) to the Wagner-Peyser Federal Fund and \$0 (no conformity issues) or (\$50,300,000) to the Unemployment Insurance Administration.

Officials from the **Department of Commerce and Insurance (DCI)** assume this bill would add a new section 536.013 prohibiting a state agency from instituting "any action ... to otherwise collect any administrative penalty or fee, or any alleged overpayment or underpayment of an amount due to the state agency by a person, until such time as all administrative remedies for challenging such penalty, fee, overpayment or underpayment provided under this chapter or any other provision of law have been exhausted."

If "administrative penalty or fee" and "overpayment or underpayment" include Department of Commerce and Insurance (DCI) fees and penalties, the proposed language would prohibit the department from taking action to collect unpaid items, such as licensing fees, penalties, unpaid premium tax, penalties for late tax payments, producer consent order voluntary forfeitures that are agreed to but not paid, etc. until the licensee/company has exhausted their administrative remedies for challenging the penalty or fee. Whether or not a licensee/company exhausts its administrative remedies is not something the department can control. As such, this bill would have an unknown fiscal impact on the department.

Officials from the **Department of Corrections (DOC)** assume this legislation prohibits state agencies from collecting fees or penalties until all administrative remedies have been exhausted.

It is unclear if Intervention Fees would be considered an administrative fee under the proposed legislation. If Intervention Fees were considered an administrative fee, there may be an unknown amount of money needed to make changes to DOC's collection system. The Department also receives lawful orders to collect restitution and child support from offenders. It is unclear if these would be considered under this legislation and what responsibility the department would have when DOC is collecting fees on behalf of another entity therefore, the impact is unknown.

Officials from the **Office of the State Courts Administrator (OSCA)** state 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 **Department of Revenue (DOR)** assume this proposal will prohibit DOR from instituting any action for garnishment or other action to collect any administrative penalty or fee until a taxpayer has exhausted all administrative remedies for challenging such penalty,

fee, overpayment or underpayment. This has the potential to greatly impact DOR processes and potentially put us in violation of other statutes.

This proposal specifically mentions penalties and fees. DOR notes that most of DOR's assessments are interest and additions to tax. DOR is unsure if this proposal would impact the assessment of the interest and additions to tax.

Currently, per statutes DOR is to provide notice to a taxpayer of the following situations and inform them of any penalties or additions owed because of these situations:

- Failed to file a tax return that is owed (Section 143.611),
- Filed a return in which they have incorrectly reported the tax owed, (Section 143.611)
- Mathematical error on the return (Section 143.681)
- Failed to pay the whole tax amount due, (Section 143.741)
- Failure to submit withholding tax (Section 143.251)

Since it is unknown what other what policies and procedures must take place for all other administrative remedies for challenges, **Oversight** assumes this legislation could put certain agencies out of compliance or in violation of other laws or could delay the timeliness of collecting certain penalties, fees, overpayments or underpayments as mentioned by the DOLIR, DCI, DOC and DOR. For fiscal note purposes, Oversight will reflect a \$0 or (Unknown) fiscal impact to General Revenue and Other State Funds.

Officials from the **Department of Economic Development**, the **Department of Elementary and Secondary Education**, the **Department of Higher Education and Workforce Development**, the **Department of Health and Senior Services**, the **Department of Mental Health**, the **Department of Natural Resources**, **Department of Public Safety (Office of the Director, Capitol Police, Alcohol & Tobacco Control, Fire Safety, Gaming Commission, Missouri Highway Patrol, Missouri National Guard, State Emergency Management Agency and Veterans Commission)**, the **Department of Social Services**, the **Office of the Governor**, the **Joint Committee on Administrative Rules**, the **Joint Committee on Public Employee Retirement**, the **Missouri Lottery Commission**, the **Missouri Consolidated Health Care Plan**, the **Department of Agriculture**, the **Missouri Department of Conservation**, the **Missouri Ethics Commission**, the **Missouri House of Representatives**, the **Department of Transportation**, the **Office of Prosecution Services**, the **Office of Administration (Administrative Hearing Commission and Budget and Planning)**, the **Office of the State Auditor**, the **Missouri Senate**, the **Office of the Secretary of State**, the **Office of the State Public Defender**, and the **State Tax Commission** each assume the proposal will have no fiscal impact on their respective organizations.

**Oversight** notes that the above mentioned agencies have stated the proposal would not have a direct fiscal impact on their organization. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact on the fiscal note for these agencies.

<u>FISCAL IMPACT – State Government</u>	FY 2024 (10 Mo.)	FY 2025	FY 2026
<b>GENERAL REVENUE</b>			
<u>Loss</u> Nonconformity/ violation of current law or delay in collection of fees or penalties	<u>\$0 or</u> <u>(Unknown)</u>	<u>\$0 or</u> <u>(Unknown)</u>	<u>\$0 or</u> <u>(Unknown)</u>
<b>ESTIMATED NET EFFECT TO THE GENERAL REVENUE FUND</b>	<b><u>\$0 or</u></b> <b><u>(Unknown)</u></b>	<b><u>\$0 or</u></b> <b><u>(Unknown)</u></b>	<b><u>\$0 or</u></b> <b><u>(Unknown)</u></b>
<b>OTHER STATE FUNDS</b>			
<u>Loss</u> Nonconformity/ violation of current law or delay in collection of fees or penalties	<u>\$0 or</u> <u>(Unknown)</u>	<u>\$0 or</u> <u>(Unknown)</u>	<u>\$0 or</u> <u>(Unknown)</u>
<b>ESTIMATED NET EFFECT TO OTHER STATE FUNDS</b>	<b><u>\$0 or</u></b> <b><u>(Unknown)</u></b>	<b><u>\$0 or</u></b> <b><u>(Unknown)</u></b>	<b><u>\$0 or</u></b> <b><u>(Unknown)</u></b>
<b>FEDERAL FUNDS</b>			
<u>Loss – DOLIR – Potential Wagner-Peyser nonconformity of federal law §536.013 – p.3-4</u>	<u>\$0 or</u> <u>(\$11,300,000)</u>	<u>\$0 or</u> <u>(\$11,300,000)</u>	<u>\$0 or</u> <u>(\$11,300,000)</u>
<u>Loss – DOLIR – Potential Unemployment Insurance Administration nonconformity of federal law §536.013 – p.3-4</u>	<u>\$0 or</u> <u>(\$50,300,000)</u>	<u>\$0 or</u> <u>(\$50,300,000)</u>	<u>\$0 or</u> <u>(\$50,300,000)</u>
<b>ESTIMATED NET EFFECT TO FEDERAL FUNDS</b>	<b><u>\$0 or</u></b> <b><u>(\$61,600,000)</u></b>	<b><u>\$0 or</u></b> <b><u>(\$61,600,000)</u></b>	<b><u>\$0 or</u></b> <b><u>(\$61,600,000)</u></b>

<u>FISCAL IMPACT – Local Government</u>	FY 2024 (10 Mo.)	FY 2025	FY 2026
	<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

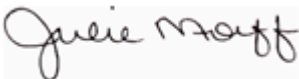
This act prohibits a state agency from instituting any action to collect any administrative penalty or fee, as well as any overpayment or underpayment of any amount due to the state agency, until all administrative remedies have been exhausted.

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

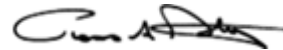
SOURCES OF INFORMATION

- Department of Commerce and Insurance
- Department of Economic Development
- Department of Elementary and Secondary Education
- Department of Higher Education and Workforce Development
- Department of Health and Senior Services
- Department of Mental Health
- Department of Natural Resources
- Department of Corrections
- Department of Labor and Industrial Relations
- Department of Revenue
- Department of Public Safety
  - Office of the Director
  - Division of Alcohol and Tobacco Control
  - Capitol Police
  - Fire Safety
  - Missouri Gaming Commission
  - Missouri Highway Patrol
  - Missouri National Guard
  - State Emergency Management Agency
  - Missouri Veterans Commission
- Department of Social Services

Office of the Governor  
Joint Committee on Public Employee Retirement  
Joint Committee on Administrative Rules  
Missouri Lottery Commission  
Legislative Research  
Oversight Division  
Local Government Employees Retirement System  
Missouri Consolidated Health Care Plan  
Missouri Department of Agriculture  
Missouri Department of Conservation  
Missouri Ethics Commission  
Missouri House of Representatives  
Office of the Lieutenant Governor  
Missouri Department of Transportation  
Missouri State Employee's Retirement System  
MoDOT & Patrol Employees' Retirement System  
Missouri Office of Prosecution Services  
Office of Administration  
    Administrative Hearing Commission  
    Budget and Planning  
Facilities Management, Design and Construction  
Office of the State Courts Administrator  
Office of the State Auditor  
Missouri Senate  
Office of the Secretary of State  
Office of the State Public Defender  
Public Schools and Education Employee Retirement Systems  
State Tax Commission



Julie Morff  
Director  
March 22, 2023



Ross Strobe  
Assistant Director  
March 22, 2023