

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4123S.01I
 Bill No.: SB 848
 Subject: Fees; State Departments
 Type: Original
 Date: January 17, 2024

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

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2025	FY 2026	FY 2027
General Revenue Fund*	\$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)

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

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2025	FY 2026	FY 2027
Other State Funds*	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
Total Estimated Net Effect on <u>Other</u> State Funds	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)

Numbers within parentheses: () indicate costs or losses.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2025	FY 2026	FY 2027
Wagner-Peyser*	\$0 or (\$11,000,000)	\$0 or (\$11,000,000)	\$0 or (\$11,000,000)
Unemployment Insurance Administration*	\$0 or (\$40,800,000)	0 or (\$40,800,000)	0 or (\$40,800,000)
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0 or (\$51,800,000)	\$0 or (\$51,800,000)	\$0 or (\$51,800,000)

*Officials from the Department of Labor and Industrial Relations state the proposal could put Missouri out of federal compliance, and non-conformity with federal law could jeopardize the certification of Missouri’s Unemployment Insurance program.

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2025	FY 2026	FY 2027
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 2025	FY 2026	FY 2027
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Section 536.013 – Fees and Penalties Collection

Officials from the **Department of Labor and Industrial Relations (DOLIR)** state that depending upon future judicial interpretation by the Missouri Courts, this bill could prevent the Division of Employment Security from collecting unemployment benefit overpayments and fraud penalties, as required by federal statute and applicable federal regulations, in cases where the claimant has failed to exhaust his or her administrative remedies. Failure to fulfill this requirement of federal law could create UI conformity or compliance issues.

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 \$40.8 million in federal funds the state receives each year to administer the UI program. Additionally, Missouri could lose the approximately \$11.0 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 \$1.06 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 (\$11,000,000) to

the Wagner-Peyser Federal Fund and \$0 (no conformity issues) or (\$40,800,000) to the Unemployment Insurance Administration as estimated by DOLIR.

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)
- Filed a return late (Section 143.741)
- Failed to pay the tax amount due timely (Section 143.741)

The taxpayer is provided notice of these deficiencies and given information on how to appeal their assessment. DOR's collection division provides numerous notices to the taxpayer before any garnishment, lien or other collective measure is taken. It is unclear how a taxpayer would know how to appeal their violation if they are not notified of the violations and the penalties for the violation.

If this were to require a change in the notices sent by DOR, then DOR would need numerous computer systems and programs updated. This could cost as much as \$100,000 depending on which programs would need the updates.

Based on agency responses, **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**, the **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 **Oversight Division**, the **Legislative Research**, 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 House of Representatives**, the **Department of Transportation**, the **Office of Administration (Administrative Hearing Commission and Budget and Planning)**, the **Office of the State Courts Administrator**, the **Office of the State Auditor**, the **Missouri Senate**, the **Office of the Secretary of State**, the **Office of the State Public Defender**, the **Office of the State Treasurer** and the **State Tax Commission** each assume the proposal will have no fiscal impact on their respective organizations for this proposal.

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.

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 2025 (10 Mo.)	FY 2026	FY 2027
GENERAL REVENUE			
<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>
ESTIMATED NET EFFECT TO THE GENERAL REVENUE FUND	<u>\$0 or</u> <u>(Unknown)</u>	<u>\$0 or</u> <u>(Unknown)</u>	<u>\$0 or</u> <u>(Unknown)</u>
OTHER STATE FUNDS			
<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>
ESTIMATED NET EFFECT TO OTHER STATE FUNDS	<u>\$0 or</u> <u>(Unknown)</u>	<u>\$0 or</u> <u>(Unknown)</u>	<u>\$0 or</u> <u>(Unknown)</u>

FEDERAL FUNDS			
<u>Loss</u> – DOLIR – Potential Wagner-Peyser nonconformity of federal law §536.013 – p.3-4	\$0 or (\$11,000,000)	\$0 or (\$11,000,000)	\$0 or (\$11,000,000)
<u>Loss</u> – DOLIR – Potential Unemployment Insurance Administration nonconformity of federal law §536.013 – p.3-4	\$0 or (\$40,800,000)	\$0 or (\$40,800,000)	\$0 or (\$40,800,000)
ESTIMATED NET EFFECT TO FEDERAL FUNDS	<u>\$0 or</u> <u>(\$51,800,000)</u>	<u>\$0 or</u> <u>(\$51,800,000)</u>	<u>\$0 or</u> <u>(\$51,800,000)</u>

<u>FISCAL IMPACT – Local Government</u>	FY 2025 (10 Mo.)	FY 2026	FY 2027
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT – Small Business

Changes to Missouri’s unemployment insurance laws have the potential to increase or decrease the amount of unemployment taxes small businesses pay depending on the state’s average unemployment rate.

FISCAL DESCRIPTION

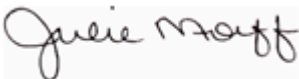
This act prohibits a state agency from instituting any action to collect any administrative penalty or fee, as well as any overpayment or underpayment of any amount due to the state agency, until all administrative remedies have been exhausted.

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
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 House of Representatives
Missouri Department of Transportation
Missouri State Employee's Retirement System
MoDOT & Patrol Employees' Retirement System
Office of Administration
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
Office of the State Treasurer
Public Schools and Education Employee Retirement Systems
State Tax Commission



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January 17, 2024



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