

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. NO.: 3003-02  
BILL NO.: SB 732  
SUBJECT: Civil Procedure; State Attorney General; Contracts and Contractors  
TYPE: Original  
DATE: January 18, 2000

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON STATE FUNDS</b>			
FUND AFFECTED	FY 2001	FY 2002	FY 2003
General Revenue	Unknown	Unknown	Unknown
Whistleblower Reward and Protection Fund	\$0	\$0	\$0
<b>Total Estimated Net Effect on <u>All</u> State Funds</b>	<b>Unknown</b>	<b>Unknown</b>	<b>Unknown</b>

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
FUND AFFECTED	FY 2001	FY 2002	FY 2003
None			
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
FUND AFFECTED	FY 2001	FY 2002	FY 2003
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

Numbers within parentheses: ( ) indicate costs or losses  
This fiscal note contains 5 pages.

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**FISCAL ANALYSIS**

ASSUMPTION

Officials from the **Office of State Courts Administrator (CTS)** assume the proposed legislation would appear to simplify the process and make it easier to seek recovery for false claims. As a result, there may be an increase in the number of cases filed; however, CTS does not expect the volume to be significant. CTS assumes any increase in costs should not be significant to the budget of the judiciary.

Officials from the **Office of Administration**, the **Department of Public Safety**, the **Office of the State Auditor**, and the **State Tax Commission** assume the proposed legislation would have no fiscal impact on their agencies.

Officials from the **Department of Transportation (DHT)** assume the proposal would provide that the balance of funds recovered in false claims suits be transmitted to the State Treasurer and deposited into general revenue. Assuming such an action would be brought as a result of a claim made against the Missouri Highway Transportation Commission or one actually paid, it could be one of the following: contractor claims, claims arising from purchase of materials or services by General Services, claims arising from condemnation as to the value of property, or claims for personal injury in a general liability/fleet vehicle liability case. If the claim is one by a contractor on a construction project that is federally funded and some of that payment is later recovered, then DHT could be obligated to repay to the Federal Highway Administration a portion of the recovery equal to the federal share percentage for construction of the project. Overall, DHT assumes the proposal would have an unknown fiscal impact on their agency.

In response to a similar proposal, officials from the **Department of Revenue** assumed there would be no fiscal impact on their agency.

In response to a similar proposal, officials from the **Office of the Attorney General** assumed that the costs could be absorbed with existing resources.

In response to a similar proposal, the **Office of the State Treasurer (STO)** assumed a new accounting fund would be created in the state treasury known as the "Whistleblower Reward and Protection Fund." STO assumed there would be a slight increase in the number of accounting transactions processed through their accounting system with a corresponding increase in the funds available for investment. However, STO assumed their agency would absorb any costs associated with the increased accounting transactions and investments through current appropriations.

<u>FISCAL IMPACT - State Government</u>	FY 2001 (10 Mo.)	FY 2002	FY 2003
<b>GENERAL REVENUE FUND</b>			
<u>Income</u> - Transfers from Whistleblower Reward and Protection Fund	Unknown	Unknown	Unknown
<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
<b>WHISTLEBLOWER REWARD AND PROTECTION FUND</b>			
<u>Income</u> -- Settlements of claims	Unknown	Unknown	Unknown
<u>Costs</u> – Distributions to Attorney General and Highway Patrol	(Unknown)	(Unknown)	(Unknown)
<u>Costs</u> – Transfer to General Revenue	(Unknown)	(Unknown)	(Unknown)
<b>ESTIMATED NET EFFECT ON WHISTLEBLOWER REWARD AND PROTECTION FUND</b>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
 <u>FISCAL IMPACT - Local Government</u>	 FY 2001 (10 Mo.)	 FY 2002	 FY 2003
	\$0	\$0	\$0

FISCAL IMPACT - Small Business

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

DESCRIPTION

The proposed legislation would create a civil action to recover fraud committed against the state, commonly known as Qui Tam in the Federal False Claims Act. Sections 33.850 to 33.868 would codify portions of the current federal false claims law into Missouri law. The proposal would

DESCRIPTION (continued)

also authorize filing of suit by the attorney general or citizen plaintiffs on behalf of the state for false or fraudulent claims against the state. The state would retain independent rights over a citizen plaintiff, including the right to exclude the citizen from participation. Citizen plaintiffs would receive 15% to 25% of recovery if the state would take over the case; 25% to 30% if the citizen brought the action alone; and nothing if the citizen was convicted of a crime in relation to the case. Section 33.862 would also allow a payment of up to 10% for informers.

Section 33.865 would limit who could bring a suit when they have special inside knowledge, including various state officials, or when the information of fraudulent claims is commonly known. It would also establish protections for whistleblowers. The proposal would also contain procedural aspects for subpoena service, statute of limitations, burden of proof, and estoppel of defendants found guilty in criminal trials from denying the essential elements of the case. Civil investigative demands (CID) would be authorized by Section 33.871, with the procedures governed by existing Missouri law. CID's would provide for greater discovery authority by the Attorney General in civil cases. In general, it would be the power of the Attorney General to investigate a civil case using discovery devices not available normally until after suit is filed. Oral testimony could also be taken in a CID under Section 33.880. The procedures for the custodian to keep CID documents, their release and return, including being deemed a closed record would be detailed in Sections 33.883 to 33.889. The whistleblower fund and procedures for distribution of any recovery would be set forth in Section 33.895. Any financial recovery would not directly reimburse the state or the department that was the victim of the fraudulent claim, but would be disbursed to the Attorney General, the State Highway Patrol, citizen plaintiffs and witnesses, and to the cost of investigation. Any remaining funds would be transferred to the General Revenue Fund.

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

This proposal could affect Total State Revenues.

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SOURCES OF INFORMATION

Office of State Courts Administrator  
Office of Administration  
Department of Public Safety  
Office of the State Auditor  
State Tax Commission  
Department of Transportation  
Department of Revenue  
Office of the Attorney General  
Office of the State Treasurer



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