

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 5036-01
Bill No.: HB 1756
Subject: Employees-Employers; Labor and Industrial Relations, Department of; Labor and Management; Taxation and Revenue-General.
Type: Original
Date: January 19, 2016

Bill Summary: This proposal establishes the Employee Reclassification Act.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
General Revenue	(\$438,760)	(\$359,417)	(\$363,582)
Total Estimated Net Effect on General Revenue	(\$438,760)	(\$359,417)	(\$363,582)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
Workers' Compensation	(\$502,778)	(\$502,778)	(\$502,778)
Second Injury	(\$3,016,669)	(\$3,016,669)	(\$3,016,669)
Total Estimated Net Effect on Other State Funds	(\$3,519,447)	(\$3,519,447)	(\$3,519,447)

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 8 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
UI Administration Fund	\$0 or (\$38,000,000)	\$0 or (\$38,000,000)	\$0 or (\$38,000,000)
Wagner Peysner Fund	\$0 or (\$12,000,000)	\$0 or (\$12,000,000)	\$0 or (\$12,000,000)
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0 or (\$50,000,000)	\$0 or (\$50,000,000)	\$0 or (\$50,000,000)

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
DOLIR	4 FTE	4 FTE	4 FTE
Total Estimated Net Effect on FTE	4 FTE	4 FTE	4 FTE

Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any of the three fiscal years after implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials at the **Department of Labor and Industrial Relations (DOLIR)** assume this proposal could have a significant negative impact on their organization. DOLIR stated the United States Department of Labor (USDOL) has determined it raises several conformity issues with federal law.

Oversight assumes the proposed language may result in conformity issues with federal law. Oversight will show the loss of federal funds as \$0 (the proposal would be implemented in a way that does not conflict with federal technical requirements) or the amount estimated by DOLIR, \$38 million (Missouri fails to comply with federal regulations) to the Unemployment Insurance Administration Fund and \$0 or \$12 million to the Wagner Peyser Fund.

DOLIR's Division of Employment Security states this bill enacts Section 285.080, known as the "Employee Reclassification Act", which creates a presumption that funds paid to certain workers are funds paid to independent contractors. The bill also adds a new section 285.517, which requires the Department to afford employers the same relief provisions afforded to employers under Section 530 of the Internal Revenue Code of 1978 (Safe Harbor).

The impact to the Workers' Compensation program is uncertain. The reduction in the number of workers which would be classified as covered employees is unknown. Any decrease in the number of covered workers would result in a decrease to the premium base. This would result in a corresponding decrease in state revenues collected as a percentage of the premium base. For the purpose of this fiscal estimate, DOLIR assumes the premium base would decrease 3%, or \$50,277,816. Based on this amount, the Admin Tax collected would decrease by \$502,778 and the Second Injury Surcharge collections would decrease by \$3,016,669. The total loss in state funding would be an estimated \$3,519,447.

In addition to these issues, this bill would also pose several administrative challenges to DOLIR. First, subsection 285.080.3 of this bill allows an individual or employer to request an opinion letter regarding whether a particular individual should be classified as an employee or an independent contractor. The DOLIR currently does not have a process for the creation of opinion letters. This bill would require the DOLIR to conduct an investigation prior to providing an opinion letter to an employer. It is unclear how this process would work when a business requests an 'opinion' prior to actually bringing on workers.

ASSUMPTION (continued)

Costs are included for an additional 1.0 FTE Legal Counsel and 3.0 FTE Auditor IIs with related one-time and ongoing expenditures to review documentation to determine if employees are properly classified and provide opinion letters. If only .2 percent of the 150,290 business in Missouri request a classification review this would result in approximately 300 reviews annually. It is assumed that one auditor would be able to complete approximately 100 case reviews per year. If the number or complexity of the cases changed or the number of businesses requesting a classification review was significantly different than the assumptions stated, the impact could be more or less than the costs shown on the fiscal worksheet. It is also assumed the costs for this function will be funded by General Revenue since conformity issues have eliminated all federal funds available for this program.

Second, this bill does not provide for situations in which the relationship has changed since the opinion letter was issued. Thus, under this bill, the DOLIR could issue an opinion letter based upon application of the law at that time and determine employment at a later date based upon a new investigation/audit. In this situation, the DOLIR would be obligated to forgive any additional tax, interest, etc. owed as a result of misclassification.

Third, subsection 285.080.5 of this bill requires that interest and fine accrual be tolled if the determination is appealed for the period that the issue is under appeal. Under current law, a determination is considered legally binding until such time that it is amended or reversed. Employers continue to be billed in accordance with the determination that is in place and are expected to report in accordance with the determination. This change will require significant computer programming to implement.

In summary, DOLIR assumes a need for 4 FTE plus related expenses, totaling \$439,927 in FY 2017 and approximately \$360,000 each year thereafter.

Although it is uncertain how many fewer workers would be classified as worker's compensation covered employees, any decrease in the premium base would result in a corresponding decrease in state revenues. For fiscal note purposes, **Oversight** will use DOLIR estimates of a 3% loss in the premium base of \$453,734 to the Workers' Compensation Fund and a loss of \$2,722,406 to the Second Injury Fund.

Based on DOLIR's assumptions, Oversight will show a cost to the General Revenue for DOLIR's estimated administrative cost required to provide for the implementation of the changes in this proposal.

ASSUMPTION (continued)

DOLIR also assumes this proposal would result in the loss of all federal funding available for the administration of the Unemployment Insurance (UI) program, the Information Technology Services Division (ITSD) estimated costs of \$109,209.60, which would be incurred, are not included under the Fiscal Impact since there would be no funding for the UI it would cease to exist.

Officials at the **Department of Revenue** and the **Office of Administration - Personnel** each assume this proposal will not have a fiscal impact on their respective organizations.

<u>FISCAL IMPACT - State Government</u>	FY 2017 (10 Mo.)	FY 2018	FY 2019
GENERAL REVENUE FUND			
<u>Costs - DOLIR</u>			
Personal Service	(\$164,655)	(\$199,563)	(\$201,557)
Fringe Benefits	(\$78,624)	(\$94,888)	(\$95,433)
Expense and Equipment	<u>(\$195,481)</u>	<u>(\$64,967)</u>	<u>(\$66,592)</u>
Total Cost - DOLIR	<u>(\$438,760)</u>	<u>(\$359,417)</u>	<u>(\$363,582)</u>
 FTE Change - DOLIR	 4 FTE	 4 FTE	 4 FTE
 ESTIMATED NET EFFECT TO GENERAL REVENUE FUND	 <u>(\$438,760)</u>	 <u>(\$359,417)</u>	 <u>(\$363,582)</u>
 Net FTE Change on General Revenue	 4 FTE	 4 FTE	 4 FTE
 WORKERS' COMPENSATION FUND			
<u>Loss - DOLIR</u>			
Lower WC premium collections (1% decrease in premium base)	<u>(\$502,778)</u>	<u>(\$502,778)</u>	<u>(\$502,778)</u>
 ESTIMATED NET EFFECT TO THE WORKERS' COMPENSATION FUND	 <u>(\$502,778)</u>	 <u>(\$502,778)</u>	 <u>(\$502,778)</u>

<u>FISCAL IMPACT - State Government</u> (continued)	FY 2017 (10 Mo.)	FY 2018	FY 2019
SECOND INJURY FUND			
<u>Loss - DOLIR</u>			
Lower WC premium collections (1% decrease in premium base)	<u>(\$3,016,669)</u>	<u>(\$3,016,669)</u>	<u>(\$3,016,669)</u>
ESTIMATE NET EFFECT TO THE SECOND INJURY FUND	<u>(\$3,519,447)</u>	<u>(\$3,519,447)</u>	<u>(\$3,519,447)</u>
UNEMPLOYMENT ADMINISTRATION FUND			
<u>Loss - DOLIR</u>			
Potential non-conformity with federal law	\$0 or <u>(\$38,000,000)</u>	\$0 or <u>(\$38,000,000)</u>	\$0 or <u>(\$38,000,000)</u>
ESTIMATED NET EFFECT TO THE UNEMPLOYMENT ADMINISTRATION FUND	\$0 or <u>(\$38,000,000)</u>	\$0 or <u>(\$38,000,000)</u>	\$0 or <u>(\$38,000,000)</u>
WAGNER PEYSER FUND			
<u>Loss - DOLIR</u>			
Potential non-conformity with federal law	\$0 or <u>(\$12,000,000)</u>	\$0 or <u>(\$12,000,000)</u>	\$0 or <u>(\$12,000,000)</u>
ESTIMATED NET EFFECT TO THE WAGNER PEYSER FUND	\$0 or <u>(\$12,000,000)</u>	\$0 or <u>(\$12,000,000)</u>	\$0 or <u>(\$12,000,000)</u>

<u>FISCAL IMPACT - Local Government</u>	<u>FY 2017</u> <u>(10 Mo.)</u>	<u>FY 2018</u>	<u>FY 2019</u>
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

A direct negative fiscal impact to small businesses would be expected as a result of this proposal.

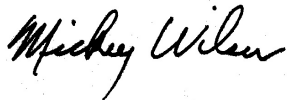
FISCAL DESCRIPTION

This bill specifies that for a taxpayer undergoing an audit by the Department of Labor and Industrial Relations regarding classification of an individual as an independent contractor or employee, if the taxpayer has been granted relief from the imposition of federal employment taxes under Section 530 of the federal Revenue Act of 1978, as amended, for an individual, with the result that the taxpayer can continue to classify the individual as an independent contractor for purposes of federal employment taxes, the department must allow the taxpayer to classify the individual as an independent contractor for purposes of Missouri employment taxes. These provisions terminate the employer's liability for the Missouri employment taxes but must have no effect on the worker whose status is at issue.

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 Labor and Industrial Relations
Office of Administration - Personnel
Department of Revenue



Mickey Wilson, CPA
Director
January 19, 2016

Ross Strope
Assistant Director
January 19, 2016

L.R. No. 5036-01
Bill No. HB 1756
Page 8 of 8
January 19, 2016

CL:LR:OD