

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 0096H.01I  
 Bill No.: HB 125  
 Subject: Labor And Management; Employees - Employers; Ethics  
 Type: Original  
 Date: January 5, 2021

Bill Summary: This proposal modifies provisions of the "Whistleblower's Protection Act".

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
General Revenue*	\$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>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
Other State Funds*	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
Legal Expense Fund*	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
Colleges and Universities*	\$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>

\*"Unknown" represents the potential for additional litigation against the state and other governmental entities resulting from this proposal.

Numbers within parentheses: () indicate costs or losses.  
 This fiscal note contains 10 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2022</b>	<b>FY 2023</b>	<b>FY 2024</b>
Federal Funds*	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0 or (Unknown)</b>	<b>\$0 or (Unknown)</b>	<b>\$0 or (Unknown)</b>

<b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b>			
<b>FUND AFFECTED</b>	<b>FY 2022</b>	<b>FY 2023</b>	<b>FY 2024</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 \$100,000 in any of the three fiscal years after implementation of the act.

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2022</b>	<b>FY 2023</b>	<b>FY 2024</b>
<b>Local Government*</b>	<b>\$0 or (Unknown)</b>	<b>\$0 or (Unknown)</b>	<b>\$0 or (Unknown)</b>

\*“Unknown” represents the potential for additional litigation against the state and other governmental entities resulting from this proposal.

**FISCAL ANALYSIS**

**ASSUMPTION**

Officials from **Office of Administration - Budget & Planning (B&P)** assume this provision does not directly impact TSR/18(e). However, this provision may allow a cause of action against the state for violations of the Whistleblower's Protection Act. If the state is found liable, there may be additional payouts from the State Legal Defense Fund.

**Oversight** notes that in response to a similar proposal, HB 2393 (4871H.011) (2020), **Office of Administration Risk Management (OARM)** noted that most Legal Expense Fund (LEF) costs are reimbursed from the General Revenue Fund (GR). GR has paid for the majority of payments from the LEF since payments on LEF cases for agencies with designated reimbursable funds have been relatively small. According to OARM, broader budget authority to transfer from Federal and Other Funds beginning in FY 18 allowed for an increase of percentage of payments from Federal and Other Funds. Table 1 below shows LEF costs broken down for GR versus Federal Funds/Other Funds.

	<b>GR</b>	<b>Fed/Other</b>	<b>Total</b>	<b>GR %</b>	<b>Fed/Other %</b>
<b>FY 15</b>	\$9,197,461	\$661,555	\$9,859,016	93%	7%
<b>FY 16</b>	\$11,386,339	\$600,489	\$11,986,828	95%	5%
<b>FY 17</b>	\$19,983,784	\$4,217,582	\$24,201,366	83%	17%
<b>FY 18</b>	\$18,625,000	\$9,649,513	\$28,274,513	66%	34%
<b>Total</b>	\$59,192,584	\$15,129,139	\$74,321,723	80%	20%

*Table 1 Source information provided by Office of Administration Risk Management (OARM)*

OARM provided Oversight with claim payment data from FY 2015 to FY 2018. Based on the data provided, Oversight estimated the number of claims and amount paid by claim type shown in table 2 below. Motor vehicle claims accounted for 69% of the total number of claims but only 11% of the value of claims. Claims related to discrimination accounted for 8% of the total number of claims but 25% of the value of claims paid.

ASSUMPTION (continued)

Table 2: Payment data **by type** of claim

Type of Claim	Number of Claims	Cost of Claims
Discrimination	67	\$19.6 million
Wrongful Death	5	\$11.9 million
Motor Vehicle	583	\$8.6 million
Medical Malpractice	10	\$8.3 million
STL & KC Police	5	\$5.4 million
Tort	10	\$4.6 million
Harassment	3	\$4.3 million
Personal Injury	10	\$3.6 million
Class Action Law Suit	1	\$2.6 million
Dangerous Condition of Property	96	\$1.6 million

*Source - OARM: Includes motor vehicle and dangerous condition of property claims.*

Officials from the **Department of Natural Resources (DNR)** assume the proposal, specifically Section 285.575 would have negative fiscal impact ranging from \$0 to “Unknown”.

There is no way to know how many whistleblower cases the department would have or if any of those cases would be in favor of the plaintiff. If the case was in favor of the plaintiff, the Department could have the following costs: back pay, reimbursement of medical bills directly related to a violation and reasonable attorney fees.

Officials from the **Missouri Department of Conservation (MDC)** assume the proposal would have negative “Unknown” fiscal impact but less than \$100,000 to meet potential investigative and legal requirements.

**Oversight** does not have any information to the contrary in regards to OA=s, MDC=s, and DNR=s assumptions; therefore, Oversight will range the fiscal impact from \$0 (does not increase litigation) to an Unknown@ cost (increased claims related to unlawful practices based on whistle blower protection) on the fiscal note.

Officials **from Secretary Of State (SOS)** Many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The Secretary of State’s office is provided with core funding to handle a certain amount

ASSUMPTION (continued)

of normal activity resulting from each year's legislative session. The fiscal impact for this fiscal note to Secretary of State's office for Administrative Rules is less than \$5,000. The Secretary of State's office recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, we also recognize 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 our office can sustain with our core budget. Therefore, we reserve 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.

**Oversight** assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation process.

Officials from **Department of Labor and Industrial Relations (DOLIR), Department of Health and Senior Services (DHSS), Department of Revenue (DOR), and Department of Public Safety – Director's Office** each defer to the Office of Administration to estimate the fiscal impact of the proposed legislation on their respective organizations.

Officials from the **Attorney General's Office, Office of Administration - AHC, Department of Commerce and Insurance, Department of Elementary and Secondary Education, Department of Higher Education and Workforce Development, Department of Mental Health, Department of Corrections, Department of Public Safety - Alcohol and Tobacco Control, Capital Police, Fire Safety, Gaming Commission, Highway Patrol, Veterans Commission, Department of Agriculture, Department of Social Services, Missouri Ethics Commission, Department of Transportation, Department of Transportation - Patrol Employees' Retirement System, Office of the State Public Defender, Missouri House of Representatives, Joint Committee on Administrative Rules, Joint Committee On Education, Joint Committee on Public Employee Retirement, Legislative Research, Oversight Division, Missouri Lottery, Missouri Consolidated Health Care Plan, Missouri Higher Education Loan Authority, Office of the State Courts Administrator, State Tax Commission, Economic & Policy Analysis Research Center, and Missouri Senate** each assume the proposal will have no fiscal impact on their respective organizations.

Officials from the **City of O'Fallon** assume if proposal passes, it could increase the City's liability by widening the definition of a whistle-blower and opens the City up to additional litigation. The potential cost would be the City's self-insured retention (deductible) which for FY2021 will be \$250,000 per occurrence.

Officials from the **City of Gordonville** assume the proposal would have negative fiscal impact on their Local Government.

ASSUMPTION (continued)

Officials from the **City of Kansas City** assume the proposal could have a negative fiscal impact on the City because it will increase Kansas City=s exposure to liability.

Officials from the **Missouri State University** assume the proposal would have negative fiscal impact of undetermined amount to the organization.

**Oversight** assumes the proposal will require additional expenditures due to the increased exposure and liability for some colleges, universities, and Local Government organizations. Therefore, Oversight will range a negative fiscal impact from \$0 (no lawsuit was brought against above organizations) or unknown (lawsuit increased exposure to liability to above organizations) on the fiscal note.

Officials from **City of Ballwin, Corder, Hale, Minden Mines, Springfield, Sugar Creek, Saint Louis – Budget Division, Malta Bend R-V School, Northwest Missouri State University, State Technical College Of Missouri, and University Of Central Missouri** each assume the proposal would not have direct fiscal impact on their respective organization.

<u>FISCAL IMPACT – State Government</u>	FY 2022 (10 Mo.)	FY 2023	FY 2024
<b>GENERAL REVENUE</b>			
<u>Cost</u> - Potential increase in payments to Legal Expense Fund for increase in claims	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>
<b>ESTIMATED NET EFFECT TO GENERAL REVENUE FUND</b>	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>

<u>FISCAL IMPACT – State Government (Continue)</u>	FY 2022 (10 Mo.)	FY 2023	FY 2024
<b>OTHER STATE FUND</b>			
<u>Cost - Potential increase in payments to LEF for increase in claims</u>	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>
<b>ESTIMATED NET EFFECT TO OTHER STATE FUNDS</b>	<b>\$0 or <u>(Unknown)</u></b>	<b>\$0 or <u>(Unknown)</u></b>	<b>\$0 or <u>(Unknown)</u></b>
<b>FEDERAL FUNDS</b>			
<u>Cost - Potential increase in claims</u>	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>
<b>ESTIMATED NET EFFECT TO FEDERAL FUNDS</b>	<b>\$0 or <u>(Unknown)</u></b>	<b>\$0 or <u>(Unknown)</u></b>	<b>\$0 or <u>(Unknown)</u></b>
<b>LEGAL EXPENSE FUND (0692)</b>			
<u>Transfer In - from GR, Federal, and Other State Funds Potential increase in claims</u>	\$0 or Unknown	\$0 or Unknown	\$0 or Unknown
<u>Transfer Out - payment of discrimination claims</u>	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>
<b>ESTIMATED NET EFFECT TO THE LEGAL EXPENSE FUND</b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>

<u>FISCAL IMPACT – State Government (Continue)</u>	FY 2022 (10 Mo.)	FY 2023	FY 2024
<b>COLLEGES AND UNIVERSITIES</b>			
Cost - Colleges and Universities Potential increase in claims	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>
<b>ESTIMATED NET EFFECT ON COLLEGES AND UNIVERSITIES</b>	<b>\$0 or <u>(Unknown)</u></b>	<b>\$0 or <u>(Unknown)</u></b>	<b>\$0 or <u>(Unknown)</u></b>

<u>FISCAL IMPACT – Local Government</u>	FY 2022 (10 Mo.)	FY 2023	FY 2024
<b>LOCAL POLITICAL SUBDIVISIONS</b>			
Cost Potential increase in claims	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>
<b>ESTIMATED NET EFFECT TO LOCAL POLITICAL SUBDIVISIONS</b>	<b>\$0 or <u>(Unknown)</u></b>	<b>\$0 or <u>(Unknown)</u></b>	<b>\$0 or <u>(Unknown)</u></b>

FISCAL IMPACT – Small Business

Small businesses will be required to comply with revised sections. If a small business fails to comply, it could be held liable for those actions as a result of this proposal.



### FISCAL DESCRIPTION

This bill amends the definition of an "employer" so that the state of Missouri, its agencies, and political subdivisions are considered employers for the purposes of the Whistleblower's Protection Act.

The bill also amends the definition of "protected person". Currently, employees in supervisory or managerial positions who report unlawful acts or serious misconduct that concerns matters upon which that employee is required to report on or provide a professional opinion on are not considered protected persons. Neither are employees who report unlawful acts or violations of a clear mandate of public policy to the person the employee claims to have committed the act. The bill removes these exceptions from the definition of "protected person".

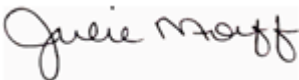
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

### SOURCES OF INFORMATION


Department of Labor and Industrial Relations  
Office of Administration – Budget & Planning  
Missouri Department of Conservation  
Department of Natural Resources  
Attorney General’s Office, Office of Administration – AHC  
Department of Commerce and Insurance  
Department of Elementary and Secondary Education  
Department of Higher Education and Workforce Development  
Department of Mental Health  
Department of Corrections  
Department of Public Safety  
Department of Agriculture  
Department of Social Services  
Missouri Ethics Commission  
Department of Transportation  
Department of Transportation - Patrol Employees’ Retirement System  
Office of the State Public Defender  
Missouri House of Representatives  
Joint Committee on Administrative Rules  
Joint Committee on Education  
Joint Committee on Public Employee Retirement  
Legislative Research, Oversight Division, Missouri Lottery  
Missouri Consolidated Health Care Plan  
Missouri Higher Education Loan Authority  
Office of the State Courts Administrator

SOURCES OF INFORMATION (continued)

State Tax Commission  
Economic & Policy Analysis Research Center  
Missouri Senate  
Department of Health and Senior Services  
Department of Revenue  
City of O'Fallon  
City of Kansas City  
City of Gordonville  
City of Ballwin  
City of Corder  
City of Hale  
City Minden Mines  
City of Springfield  
City of Sugar Creek  
City of Saint Louis – Budget Division  
City of Sugar Creek  
Malta Bend R-V School  
Northwest Missouri State University  
State Technical College of Missouri  
University Of Central Missouri  
University Of Missouri



Julie Morff  
Director  
January 5, 2021



Ross Strobe  
Assistant Director  
January 5, 2021