

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3581-01
Bill No.: SB 1247
Subject: Counties; Law Enforcement Officers and Agencies; Liability
Type: Original
Date: March 8, 2004

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
Total Estimated Net Effect on General Revenue Fund	\$0	\$0	\$0

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
State Legal Expense	(Unknown) to \$421,053	(Unknown) to \$520,422	(Unknown) to \$536,035
Highway	Unknown	Unknown	Unknown
Conservation	(Unknown)	(Unknown)	(Unknown)
Total Estimated Net Effect on <u>Other</u> State Funds	(Unknown) to More than \$421,053	(Unknown) to More than \$520,422	(Unknown) to More than \$536,035

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 7 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of Administration – Administrative Hearing Commission, – Division of Budget and Planning, Department of Health and Senior Services, Department of Revenue, Department of Social Services,** and the **University of Missouri** assume the proposed legislation would have no fiscal impact on their agencies.

Officials from the **Office of State Courts Administrator** assume the proposed legislation would have no fiscal impact on the courts.

Officials from the **Office of the Attorney General (AGO)** assume the proposal would result in additional litigation defending covered lawyers against claims for malpractice. The AGO is also required to promulgate rules. A significant number of new claims against the Legal Expense Fund could require additional staff, but the AGO assumes costs could be absorbed within existing resources.

ASSUMPTION (continued)

Officials from the **Office of Administration – Risk Management (OA)** assume §105.711.2(5) provides liability coverage under the State Legal Expense Fund to attorneys providing services without compensation to non profit community social centers or through legal clinics operated by public or private schools of law or through any agency of any federal, state, or local government. The aggregate of payments shall be limited to \$500,000 for all claims arising out of the same act and \$500,000 for any one claimant.

The changes to §105.711.6 would limit payments under all provisions of the State Legal Expense Fund to \$500,000 for any one claimant. Over the past 6.5 years, OA has paid on 9 claims (totaling \$7,784,218) that exceeded \$500,000 for any one claimant. The excess over \$500,000 on these 9 claims totals \$3,284,218. This amount averaged over the 6.5 years would constitute a savings of \$505,264 annually, assuming a 3% inflation factor. OA presumes the plaintiffs would not file suit in such a fashion and the court not consider multiple claims, incidents, and defendants in a manner that may circumvent the proposed \$500,000 limitation.

The OA notes that while the proposed changes to §105.711.6 limit payments made under the State Legal Expense Fund to \$500,000 to any one claimant, the state would still be exposed to the liability for a judgment that might exceed \$500,000 in federal causes of action. Payments from the State Legal Expense fund would not be authorized to meet the full obligation of the state that would exceed the \$500,000 limitation.

The OA contacted the Bar Plan Mutual Insurance Company, which insures individual attorneys and law firms across the state, regarding the proposed changes to §105.711.2(5). Applying a \$500,000 per claim limit, with a standard \$1,000 deductible, \$1.5 million aggregate per year, the annual base rate for an individual attorney would be \$2,421 in premium cost. The Missouri Bar reports there are approximately 18,000 attorneys in Missouri with approximately 73% giving some free legal assistance. However, it is unclear that the “free legal assistance” is limited to the services as described in §105.711.2(5) and the 73% may be an overestimation for purposes of the fiscal note. While this coverage likely would have a fiscal impact on the state, costs cannot be determined and remain unknown.

Oversight has adjusted the savings in FY 05 to reflect 10 months.

ASSUMPTION (continued)

Officials from the **Office of Secretary of State (SOS)** assume the proposal would give the Attorney General's Office the authority to adopt rules to implement the provisions of this act. These rules would be published in the Missouri Register and the Code of State Regulations. These rules could require as many as 8 pages in the Code of State Regulations and half again as many pages in the Missouri Register, as cost statements, fiscal notes, and the like are not repeated in the Code. The estimated cost of a page in the Missouri Register is \$23 and the estimated cost of a page in the Code of State Regulations is \$27. Based on these costs, the estimated cost of the proposal is \$492 in FY 05 and unknown in subsequent years. The actual cost could be more or less than the numbers given. The impact of this legislation in future years is unknown and depends upon the frequency and length of rules filed, amended, rescinded, or withdrawn.

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

Officials from the **Department of Transportation (MoDOT)** assume Section 105.711.6 would limit the payments from the State Legal Expense Fund to any one claimant to \$500,000 total. By limiting the payments to \$500,000 total, the amount recoverable against MoDOT employees would be limited. This is a positive benefit. However, the language is not clear regarding claims against the state entity, in this case Missouri Highways and Transportation Commission (MHTC) and MoDOT. MoDOT and MHTC maintain a self-insurance fund for paying tort liability claims against MoDOT and MHTC. The provisions in Section 105.711 apply only to payments from the State Legal Expense Fund. Therefore, potentially a claimant could recover up to \$500,000 against a MoDOT employee and up to the statutory limit in Section 537.610 against MHTC (approximately \$321,000+), resulting in total potential recovery of \$821,000.

The elimination of the exclusive remedy language to protect MHTC and MoDOT employees from individual liability not subject to sovereign immunity caps would be advantageous to MHTC. However, an accurate estimate would be impossible to determine as the benefit of these revisions would depend upon the number of cases impacted, the potential liability of MHTC in such cases and other related factors. Therefore, the impact of this legislation is a positive unknown.

Officials from the **Department of Conservation (MDC)** assume, as the MDC contributes to the legal expense fund, this proposed legislation could have a negative impact on MDC funds.

<u>FISCAL IMPACT - State Government</u>	FY 2005 (10 Mo.)	FY 2006	FY 2007
STATE LEGAL EXPENSE FUND			
<u>Savings</u> – Office of Administration Payment limits	\$421,053	\$520,422	\$536,035
<u>Costs</u> – Office of Administration Liability coverage	(Unknown)	(Unknown)	(Unknown)
ESTIMATED NET EFFECT ON STATE LEGAL EXPENSE FUND	<u>(Unknown) to \$421,053</u>	<u>(Unknown) to \$520,422</u>	<u>(Unknown) to \$536,035</u>
HIGHWAY FUNDS			
<u>Savings</u> – Department of Transportation Payment limits	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
ESTIMATED NET EFFECT ON HIGHWAY FUNDS	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
CONSERVATION FUND			
<u>Costs</u> – Department of Conservation Liability coverage	(Unknown)	(Unknown)	(Unknown)
ESTIMATED NET EFFECT ON CONSERVATION FUND	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
<u>FISCAL IMPACT - Local Government</u>	FY 2005 (10 Mo.)	FY 2006	FY 2007
	<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.

DESCRIPTION

The proposed legislation would modify the state legal expense fund to include any licensed attorney in this state that practices law for no compensation at or through a tax exempt nonprofit community social services center. The aggregate of any payments from the legal expense fund would be limited to a maximum of \$500,000 for all claims based upon the same act or acts alleged in a single cause and would not exceed \$500,000 for any one claimant. All payments from insurance policies purchased by the state relating to the legal expense fund would also be limited to \$500,000. For purposes of this act, all individuals and entities asserting a wrongful death claim would be considered one claimant. Payment from the fund resulting from a claim against an individual would preclude execution of a judgment against the individual for tort actions committed by the individual.

Any claim or judgment against such an attorney would be paid by the legal expense fund to the extent damages are allowed in tort actions for improper health care. Liability or malpractice insurance possessed by an attorney would not be considered available for payment of a claim to the extent that the legal expense fund is required to make payment. However, an attorney could obtain liability or malpractice insurance for coverage of claims or judgments for amounts that exceed the maximum coverage of the legal expense fund.

The Attorney General would promulgate rules regarding contract procedure and the documentation of legal practice for attorneys covered by this proposal.

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

Office of the Attorney General
Office of Administration

- Administrative Hearing Commission
- Division of Budget and Planning
- Risk Management

Office of State Courts Administrator
Department of Transportation
Department of Health and Senior Services
Department of Revenue
Department of Social Services
Department of Conservation
Office of the Secretary of State
University of Missouri



Mickey Wilson, CPA
Director
March 8, 2004