

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1321H.07C
 Bill No.: HCS for SS for SCS for SB 289
 Subject: Licenses - Miscellaneous; Law Enforcement Officers and Agencies; Workers Compensation; Fire Protection; Labor and Management; Employees - Employers
 Type: Original
 Date: April 29, 2021

Bill Summary: This proposal modifies provisions relating to certain employees.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
General Revenue* **	\$0 or could exceed (\$5,000,000)	\$0 or (Unknown)	\$0 or (Unknown)
Total Estimated Net Effect on General Revenue	\$0 or could exceed (\$5,000,000)	\$0 or (Unknown)	\$0 or (Unknown)

*Subsection 320.400.6 allows a pool to apply to the State Fire Marshal (Department of Public Safety – Division of Fire Safety) for a grant for the purpose of establishing a voluntary firefighter cancer benefits pool. This subsection expires on June 30, 2023. Oversight notes there is currently (4/29/21) a \$5 million appropriation in SCS for HCS for HB 8 for FY 2022 (8.160). Therefore, Oversight will utilize the \$5 million amount for possible grants from the State Fire Marshall to establish these pools.

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

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

***Transfers in and costs net to \$0.

Numbers within parentheses: () indicate costs or losses.

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

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
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 2022	FY 2023	FY 2024
Local Government	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)

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

FISCAL ANALYSIS

ASSUMPTION

Oversight was unable to receive some of the agency responses in a timely manner due to the short fiscal note request time. Oversight has presented this fiscal note on the best current information that we have or on prior year information regarding a similar bill. Upon the receipt of agency responses, Oversight will review to determine if an updated fiscal note should be prepared and seek the necessary approval to publish a new fiscal note.

§285.575 – Whistleblower’s Protection Act

In response to similar legislation from this year (HB 125), officials from **Office of Administration - Budget & Planning (B&P)** assumed 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.

	GR	Fed/Other	Total	GR %	Fed/Other %
FY 15	\$9,197,461	\$661,555	\$9,859,016	93%	7%
FY 16	\$11,386,339	\$600,489	\$11,986,828	95%	5%
FY 17	\$19,983,784	\$4,217,582	\$24,201,366	83%	17%
FY 18	\$18,625,000	\$9,649,513	\$28,274,513	66%	34%
Total	\$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.

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 a 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.

In response to similar legislation from this year (HB 125), officials from the **Missouri Department of Conservation (MDC)** assumed 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 AUnknown@ cost (increased claims related to unlawful practices based on whistle blower protection) on the fiscal note.

Officials from the **Department of Public Safety – Director’s Office** defer to the Office of Administration to estimate the fiscal impact of the proposed legislation on their organization.

In response to similar legislation from this year (HB 125), officials from **Department of Labor and Industrial Relations** deferred to the Office of Administration to estimate the fiscal impact of the proposed legislation on their organization.

In response to similar legislation from this year (HB 125), officials from the **Department of Public Safety - Capital Police, Fire Safety, Gaming Commission, Office of the State Public Defender, and Economic & Policy Analysis Research Center** each assumed the proposal will have no fiscal impact on their respective organizations.

In response to similar legislation from this year (HB 125), officials from the **City of O’Fallon** assumed 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.

In response to similar legislation from this year (HB 125), officials from the **City of Gordonville** assumed the proposal would have negative fiscal impact on their Local Government.

In response to similar legislation from this year (HB 125), officials from the **Missouri State University** assumed 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.

In response to similar legislation from this year (HB 125), officials from **City of Ballwin, Hale, Minden Mines, 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 assumed the proposal would not have direct fiscal impact on their respective organization.

§320.400 – Firefighters who have contracted certain types of cancer

Officials from the **City of Kansas City** assume the provisions of section 320.400.02(11) could have a negative fiscal impact on Kansas City by treating cancer as an on the job injury not covered by workers compensation.

Officials from the **City of Springfield** state if the City of Springfield chooses to participate in the voluntary benefits for firefighters program, the City estimates the bill will impose additional costs of at least \$500,000 per year, although based on the draft language of the bill, the City cannot make a firm determination. Further, it is not clear how the proposed fund will interact with a political subdivision's insurers.

Oversight assumes this proposal creates new provisions relating to certain firefighters who have contracted certain types of cancer as a result of employment as a firefighter and allows local political subdivisions to set up a voluntary firefighter cancer benefits pool to make contributions into. A board of trustees (board) will oversee the administration of the pool. Oversight assumes actions by the board could result in unknown costs to local political subdivisions. Oversight assumes the local political subdivision would only establish a pool to benefit certain firefighters and the proposal could be absorbed within their current appropriations. Therefore, Oversight will assume a negative fiscal impact to local political subdivisions and will range the fiscal impact from \$0 (no trust established – bill is permissive) to an unknown cost (contributions into and administration of pool).

In response to similar legislation from 2021 (HB 760), officials from the **Department of Labor and Industrial Relations** assumed the proposal will have no fiscal impact on their organization.

Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for that agency.

Oversight notes that according to subsection 6 of §320.400, the State Fire Marshall may set up a grant for the purpose of establishing a voluntary firefighter cancer benefits pool. This would be subject to appropriations by the General Assembly and the State Fire Marshall would disburse grants to the trust upon receipts of applications. This subsection will expire on June 30, 2023. Oversight notes there is a \$5,000,000 appropriation in SCS for HCS for HB 8 which was approved by the Senate on April 28, 2021. Therefore, for FY 2022, Oversight will reflect a potential cost to the state of \$0 or Up to (\$5,000,000). Oversight will also reflect a potential unknown cost for grants in FY 2023 (§320.400.6 expires June 30, 2023).

In response to similar legislation from 2021 (SB 45), officials from the cities of **Ballwin, Bland,** and **O'Fallon** and the **Rolla Rural Fire Protection District** each assumed the proposal will have no fiscal impact on their organizations.

Officials from the **Office of Administration - Budget and Planning (B&P)** state this proposal establishes the "Voluntary Firefighter Cancer Benefits Pool". This provision will impact General Revenue (GR) expenditures to the extent the General Assembly appropriates existing GR dollars to the fund. B&P defers response to DPS on the impact.

In response to similar legislation from 2021 (SS SB 45), officials from the **Department of Public Safety's Fire Safety** and the **Office of the State Treasurer** each assumed the proposal will have no fiscal impact on their respective organizations.

Officials from the **Fruitland Area Fire Protection District** responded to the legislation but did not provide a fiscal impact.

Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these agencies.

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** note 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 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, they 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 their office can sustain within their core budget. Therefore, they 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.

§590.030 – Peace officer licensure

In response to a previous version, officials from the **Department of Public Safety – Capitol Police** and the **Missouri Department of Conservation** each assumed the proposal will have no fiscal impact on their respective organizations.

Officials from the **Department of Public Safety - Missouri Highway Patrol (MHP)** assume the proposal will have no fiscal impact on their organization.

In response to similar legislation from 2021 (HCS HB 839), the **MHP** stated there is no cost associated with law enforcement agency Rap Back Program enrollment, nor for law enforcement officer fingerprint submission.

In response to a previous version (SCS SB 289), officials from the **Crestwood Police Department** and the **Walnut Grove Police Department** each assumed the proposal will have no fiscal impact on their respective organizations.

Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these agencies.

Bill as a Whole

Officials from the **Attorney General's Office**, the **Office of Administration - Administrative Hearing Commission**, the **Department of Commerce and Insurance**, the **Department of Corrections**, the **Department of Elementary and Secondary Education**, the **Department of Health and Senior Services**, the **Department of Higher Education and Workforce Development**, the **Department of Revenue**, the **Department of Public Safety – (Alcohol and Tobacco Control and State Emergency Management Agency)**, the **Department of Social Services**, the **Legislative Research**, the **Missouri Department of Agriculture**, the **Missouri Department of Transportation**, the **MoDOT & Patrol Employees' Retirement System**, the **Missouri Consolidated Health Care Plan**, the **Missouri Senate**, the **Office of the Governor**, the **Office of the State Auditor**, the **Joint Committee on Education**, the **Joint Committee on Public Employee Retirement**, the **Oversight Division**, the **Missouri Ethics Commission**, the **Missouri Higher Education Loan Authority**, the **Missouri House of Representatives**, the **Missouri Lottery**, the **Missouri Office of Prosecution Services**, the **Missouri State Employees Retirement System**, the **Office of the State Courts Administrator**, the **State Tax Commission**, the **Petroleum Storage Tank Insurance Fund**, the **City of Claycomo**, the **City of Corder**, the **Kansas City Police Department**, the **St. Joseph Police Department**, and the **St. Louis County Police Department** each assume the proposal will have no fiscal impact on their respective organizations.

Officials from the **Department of Public Safety – Missouri Veterans Commission** defer to the AGO as to the fiscal impact to the State.

Officials from the **Department of Mental Health** defer to the Office of Administration to estimate the fiscal impact of the proposed legislation on their organization.

Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these agencies.

Oversight only reflects the responses that we have received from state agencies and political subdivisions; however, other police and sheriff's departments, cities, counties, fire protection districts, schools, and colleges were requested to respond to this proposed legislation but did not. A general listing of political subdivisions included in our database is available upon request.

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<u>FISCAL IMPACT – State Government</u>	FY 2022 (10 Mo.)	FY 2023	FY 2024
GENERAL REVENUE FUND			
<u>Costs</u> - Potential increase in payments to Legal Expense Fund for increase in claims (\$285.575) p. 3-5	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
<u>Transfer Out</u> – Potential appropriation of funds to DPS/DFS to set up a grant to establish a voluntary firefighter cancer benefits pools (\$320.400) p. 6	\$0 or Up to (\$5,000,000)	\$0 or (Unknown)	\$0
ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND	<u>\$0 or could exceed (\$5,000,000)</u>	<u>\$0 or (Unknown)</u>	<u>\$0 or (Unknown)</u>
OTHER STATE FUNDS			
<u>Costs</u> - Potential increase in payments to LEF for increase in claims (\$285.575) p. 3-5	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
ESTIMATED NET EFFECT TO OTHER STATE FUNDS	<u>\$0 or (Unknown)</u>	<u>\$0 or (Unknown)</u>	<u>\$0 or (Unknown)</u>
<u>FISCAL IMPACT – State Government</u> (continued)	FY 2022 (10 Mo.)	FY 2023	FY 2024

FEDERAL FUNDS			
<u>Costs</u> - Potential increase in claims (§285.575) p. 3	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>
ESTIMATED NET EFFECT TO FEDERAL FUNDS	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>
LEGAL EXPENSE FUND (0692)			
<u>Transfer In</u> - from GR, Federal, and Other State Funds p. 3-5 Potential increase in claims (§285.575)	\$0 or Unknown	\$0 or Unknown	\$0 or Unknown
<u>Transfer Out</u> - payment of discrimination claims (§285.575) p. 3-5	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>
ESTIMATED NET EFFECT TO THE LEGAL EXPENSE FUND	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
COLLEGES AND UNIVERSITIES			
<u>Costs</u> - Potential increase in claims (§285.575)	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>
ESTIMATED NET EFFECT TO COLLEGES AND UNIVERSITIES	<u>\$0 or (Unknown)</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>

<u>FISCAL IMPACT – Local Government</u>	FY 2022 (10 Mo.)	FY 2023	FY 2024
LOCAL FIRE DEPARTMENT FUNDS			
<u>Transfer In</u> – Grants received for a voluntary firefighter cancer benefits pool fund (§320.400) p. 6	\$0 or Up to \$5,000,000	\$0 or Unknown	\$0
<u>Costs</u> - Potential increase in claims (§285.575) p. 3-5	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
<u>Costs</u> – May establish a pool to benefit certain firefighters who have certain types of cancer (§320.400) p. 6	\$0 or Could exceed (\$5,000,000)	\$0 or (Unknown)	\$0 or (Unknown)
<u>Costs</u> – Disbursement of funds (§320.400) p. 6	<u>\$0 or (Unknown)</u>	<u>\$0 or (Unknown)</u>	<u>\$0 or (Unknown)</u>
ESTIMATED NET EFFECT ON LOCAL FIRE DEPARTMENTS	<u>\$0 or (Unknown)</u>	<u>\$0 or (Unknown)</u>	<u>\$0 or (Unknown)</u>

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. (Section 285.575)

FISCAL DESCRIPTION

WHISTLEBLOWER’S PROTECTION ACT (Section 285.575)

This bill amends the definition of an "employer" 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".

VOLUNTARY FIREFIGHTER CANCER BENEFITS POOL (Section 320.400)

This act allows for the creation of a Voluntary Firefighter Cancer Benefits Pool by three or more political subdivisions. Under the act, any political subdivision may make contributions to a Voluntary Firefighter Cancer Benefits Pool. The board of trustees of any pool created for the purposes of this act is subject to the Sunshine Law. The pool is allowed to make payments to covered individuals based upon the type of cancer with which the covered individual was diagnosed.

Benefits may be reduced by 25% if the covered individual used a tobacco product within the 5 years immediately preceding the cancer diagnosis.

If any individual that receives benefits under this act thereafter receives workers' compensation benefits for the same injury, then the workers' compensation benefits or death benefits shall be reduced 100% by any benefits received from the pool under this act.

Furthermore, the employer in any workers' compensation claim shall be subrogated to the right of the employee or to the dependent or domestic partner to receive benefits from the pool and such employer may recover any amounts which such employee or the dependent or domestic partner would have been entitled to recover from the pool under this act. Any receipt of benefits from the pool under this act shall be treated as an advance payment by the employer, on account of any future installments of workers' compensation benefits.

Any pool created for the purposes of this act may accept or apply for grants or donations from any private or public source. Furthermore, any such pool may apply for grants from the state fire marshal. This provision expires June 30, 2023.

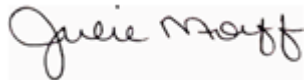
The act also amends a provision of law relating to disbursement of grants to volunteer fire protection association workers' compensation insurance premiums for volunteer firefighters. Current law requires the State Fire Marshal to disburse such grants to any applying association. This act permits such disbursement.

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

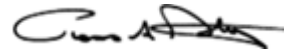
SOURCES OF INFORMATION

Attorney General's Office
Department of Commerce and Insurance
Department of Corrections
Department of Elementary and Secondary Education
Department of Health and Senior Services
Department of Higher Education and Workforce Development
Department of Labor and Industrial Relations
Department of Mental Health
Department of Natural Resources
Department of Public Safety
Department of Revenue
Department of Social Services
Economic & Policy Analysis Research Center
Joint Committee on Administrative Rules
Joint Committee on Education
Joint Committee on Public Employee Retirement
Legislative Research
Oversight Division
Missouri Department of Agriculture
Missouri Department of Conservation
Missouri Department of Transportation
Missouri Lottery
Missouri Consolidated Health Care Plan
Missouri Higher Education Loan Authority
MoDOT & Patrol Employees' Retirement System
Missouri House of Representatives
Missouri Ethics Commission
Missouri Senate
Missouri State Employees Retirement System
Office of Administration
Office of the Governor
Office of the Secretary of State
Office of the State Public Defender
Office of the State Treasurer
Petroleum Storage Tank Insurance Fund
State Tax Commission
City of Ballwin
City of Bland
City of Claycomo
City of Corder
City of Gordonville
City of Hale

City of Kansas City
City of Minden Mines
City of O'Fallon
City of Springfield
City of Sugar Creak
City of St. Louis
Rolla Rural Fire Protection District
Fruitland Area Fire Protection District
Crestwood Police Department
Kansas City Police Department
St. Joseph Police Department
St. Louis County Police Department
Walnut Grove Police Department
Malta Bend R-V School
Northwest Missouri State University
State Technical College of Missouri
University Of Central Missouri
University Of Missouri



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