

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4082S.02I
 Bill No.: SB 693
 Subject: Education, Elementary and Secondary; Education, Higher; Employee - Employers; Health Care; Department of Health and Senior Services; Health, Public; State Employees; Unemployment Compensation
 Type: Original
 Date: January 31, 2022

Bill Summary: This proposal modifies provisions relating to COVID-19 vaccines.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
General Revenue Fund*	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
Total Estimated Net Effect on General Revenue	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)

*Oversight notes this proposal could possibly create exposure for the state government and/or local political subdivisions.

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
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</u> State Funds	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)

Numbers within parentheses: () indicate costs or losses.

*LEF will net to zero.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
Various 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)

*The potential “(Unknown)” fiscal impact to various state agencies could be quite substantial, depending upon decisions by the courts and actions taken by the federal government.

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
All State and Federal	Unknown to (Unknown)	Unknown to (Unknown)	Unknown to (Unknown)
Total Estimated Net Effect on FTE	Unknown to (Unknown)	Unknown to (Unknown)	Unknown to (Unknown)

- 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 2023	FY 2024	FY 2025
Local Political Subdivisions	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
Local Government	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Health and Senior Services (DHSS)** note:

Section 191.234.4 of the proposed legislation would require the Department of Health and Senior Services to develop an exemption form and make the form available to employers and employees to use when requesting an exemption for vaccination against COVID-19. A Public Health Program Specialist would need two hours to develop an exemption form. The annual average salary for a Public Health Program Specialist for 2021 is \$53,230, which would result in a cost of \$51.18 one-time [$\25.59×2].

A Lead Administrative Support Assistant would need to request a quote from the State Printing Center to typeset the exemption form. Once the quote is received a Production Request form and an Office of Public Information (OPI) Project Request form would need to be completed. These duties take, on average, 1 hour per request. The average annual salary for a Lead Administrative Support Assistant for 2021 is \$32,893, which would result in a cost of \$31.62 ($\15.81×2). After the request form has been drafted and approved by the division, the requests will be sent to the Office of Public Information or the State Printing Center. The department assumes the form once completed would then be placed online for employers or employees to access electronically, and therefore no printing costs would be incurred.

The department anticipates being able to absorb these costs. However, until the FY 2023 budget is final, the department cannot identify specific funding sources.

Oversight notes that DHSS assumes this proposal will have a direct impact on the organization, but the costs can be absorbed. However; **Oversight**, for purpose of this proposal, assumes DHSS is provided with core funding to handle a certain amount of activity each year. **Oversight** assumes DHSS could absorb the costs related to this proposal. If multiple bills pass which require additional staffing and duties at substantial costs, DHSS could request funding through the appropriation process.

Officials from the **Department of Mental Health (DMH)** assume this provision does not define how causation from immunization to injury will be traced. Further, the provision does not identify which entity is responsible for determining whether an injury was caused by an immunization, which could implicate workers compensation. Further clarification is needed in the proposed language to address these issues. Due to the vulnerable population served in the

Department of Mental Health (DMH) congregate care inpatient settings, when DMH deems it necessary, all employees are required to test regardless of vaccination status.

In addition, due to the uncertainty surrounding a federal vaccination mandate, the DMH cannot calculate a fiscal impact on the Department at this stage; therefore, the fiscal impact to the Department is unknown at this time.

Officials from the DMH assume the proposal will have direct fiscal impact on their organization. **Oversight** does not have any information to the contrary. Therefore, Oversight will reflect an Unknown impact to a Federal Funds in the fiscal note.

Official from the **Department of Public Safety – Veterans Commission (MVC)** noted:

MVC received approximately \$59 million in per diem payments through the VA State Veterans Homes Per Diem Grant Program during state fiscal year 21. If MVC does not comply with federal regulations, MVC would lose all of its federal funding and may lose its Recognition and Certification as a VA State Skilled Care Home.

MVC currently holds contracts with entities that require COVID vaccinations for their employees. Any company MVC hires which also receives reimbursement from CMS will be subject to vaccination requirements. For example, MVC pharmacy vendor, skilled therapy vendor, dietary service vendor, wound care vendor, hospice vendors, lab vendors, etc. MVC also has agreements in place with the US Department of Veterans Affairs to provide care and service; they also require vaccinations for employment. If MVC were prohibited from contracting healthcare services with these vendors the MVC would assume financial responsibility for hiring/contracting qualified independent professionals to perform these necessary services who are not affiliated with or receiving reimbursement from CMS. MVC would have to close Veterans Homes if it could not contract the services listed above. This Fiscal impact could exceed \$75M.

CFR 59.110 “Recapture Provisions” allows the VA to recover the federal construction grant funds if the facility does not maintain services previously specified in the construction Memorandum of Understanding between VA and MVC for 20 years.

Most projects take 2 years from start of design to end of construction. The 5 previous projects total \$28.7 million in federal dollars. The average revenue received over a 3 year period is \$9.55 million. An average calculation over the previous 20 years is \$191 million.

In addition, the cost of the original construction of facilities constructed since 2000 is approximately \$68.8 million. Included in this number is the construction of all 5 Veterans cemeteries, the Mt. Vernon Veterans Home, and the Warrensburg Veterans Home.

The language as it relates to the construction grant program could cost MVC in excess of \$260 million in “Recapture Provisions”.

Oversight notes that officials from the DPS-MVC assume the proposal will have a direct fiscal impact on their organization. **Oversight** does not have any information to the contrary. Therefore, Oversight will reflect DPS-MVS's potential reduction in Federal Revenues from \$0 to (Unknown) in the fiscal note.

Officials from the **Office of Administration (OA)** assume the proposal has the potential to increase costs to the state Legal Expense Fund (LEF) for actions alleging discrimination against a state employee in connection with their official duties on behalf of the state, due to the addition of an unlawful discriminatory practice.

The state self-assumes its own liability under the LEF, Section 105.711 RSMo. It is a self-funding mechanism whereby funds are made available for the payment of any claim or judgment rendered against the state in regards to the waivers of sovereign immunity or against employees and specified individuals. Investigation, defense, negotiation or settlement of such claims is provided by the Office of the Attorney General. Payment is made by the Commissioner of Administration with the approval of the Attorney General.

Oversight notes officials from OA assume this provision may prompt causes of action against various state agencies throughout the state. If the state is found liable, there may be additional payouts from the State Legal Expense Fund.

Therefore, **Oversight** notes the fiscal impact to the Legal Expense Fund will net to \$0 due to transfer in from General Revenue, Federal Funds, and Other State Funds for various state agencies.

Officials from the **University of Missouri System** noted:

If the federal mandate is upheld by the courts and this bill prohibits compliance with the federal mandate, the university would lose in excess of \$76 million of federal contracts. If the federal mandate is upheld as a condition of participation in Medicare and Medicaid and this bill prohibits compliance with the federal mandate, it could result in a loss of \$547.4 million annually.

Oversight notes that officials from the University of Missouri System assume the proposal will have a direct fiscal impact on their organization. **Oversight** does not have any information to the contrary. Therefore, Oversight will reflect University of Missouri's potential reduction in Federal Revenues \$0 to (Unknown) in the fiscal note.

Officials from the **University of Central Missouri** assume the proposal will have direct indeterminate fiscal impact due to uncertainty of application.

Oversight notes that this provision may prompt causes of action against the colleges and universities throughout Missouri for violations of this proposal. If the state is found liable, there may be additional payouts from the State Legal Expense Fund.

Officials from the **Attorney General's Office, Office of Administration - (Administrative Hearing Commission and Budget and Planning), Department of Commerce and Insurance, Department of Economic Development, Department of Elementary and Secondary Education, Department of Higher Education and Workforce Development, Department of Natural Resources, Department of Corrections, Department of Labor and Industrial Relations, Department of Revenue, Department of Public Safety (Division of Alcohol and Tobacco Control, Capitol Police, Fire Safety, Office of the Director, Missouri Gaming Commission, Missouri Highway Patrol, National Guard, and State Emergency Management Agency), Missouri Department of Agriculture, Missouri Department of Conservation, Missouri Ethics Commission, Missouri Department of Transportation, MoDOT & Patrol Employees' Retirement System, Petroleum Storage Tank Insurance Fund, Office of the State Public Defender, Office of the Governor, Office of the State Auditor, Office of the State Treasurer, Missouri Senate, Missouri House of Representatives, Joint Committee on Administrative Rules, Joint Committee On Education, Joint Committee on Public Employee Retirement, Legislative Research, Oversight Division, Missouri Senate, Missouri Lottery Commission, Missouri Consolidated Health Care Plan, Missouri Higher Education Loan Authority, Missouri State Employee's Retirement System** and the **State Tax Commission** each assume 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.

Officials from the **Department of Commerce and Insurance (DCI)** defer to the OA for the potential fiscal impact of this proposal.

Officials from the **City of Kansas City** assume the proposal could have a negative fiscal impact on the City of Kansas City, Missouri, in an indeterminate amount if it increases Kansas City's exposure to liability.

Oversight notes that this provision may prompt cause of action against various political subdivisions throughout the Missouri for violations of this proposal. If the organizations are found liable, there may be additional payouts from local governments.

Therefore, **Oversight** will range the cost to political subdivisions from \$0 (does not increase litigation) to an Unknown cost (increased claims related to unlawful practices) for the various political subdivisions in the fiscal note.

Officials from the **City of Springfield, Phelps County Sheriff, Kansas City Police Department, Springfield Police Department**, and the **Saint Louis Police Department** each assume the proposal will have no fiscal impact on their respective organizations.

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 (SOS)** note many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS 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 the SOS for Administrative Rules is less than \$5,000. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, the SOS also recognizes 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 the office can sustain with its core budget. Therefore, the SOS reserves 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 SOS is provided with core funding to handle a certain amount of activity each year. **Oversight** assumes SOS could absorb the costs related to this proposal. Therefore, Oversight will reflect zero fiscal impact on the fiscal note for above agency.

<u>FISCAL IMPACT – State Government</u>	FY 2023 (10 Mo.)	FY 2024	FY 2025
GENERAL REVENUE			
<u>Cost</u> - Potential increase in payments to Legal Expense Fund for increase in claims (p.5)	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>
ESTIMATED NET EFFECT TO GENERAL REVENUE FUND	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>
OTHER STATE FUNDS			
<u>Cost</u> - Potential increase in payments to Legal Expense Fund for increase in claims (p.5)	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>
ESTIMATED NET EFFECT TO OTHER STATE FUNDS	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>
<u>FISCAL IMPACT – State Government (continued)</u>	FY 2023 (10 Mo.)	FY 2024	FY 2025
FEDERAL FUNDS			
<u>Loss of Revenue</u> DMH – Medicaid & Medicare Funds (p.3,4)	(Unknown)	(Unknown)	(Unknown)
<u>Loss of Revenue</u> - DPS-MVC– Recapture Provisions (p.5)	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>
<u>Loss of Revenue</u> Medicaid & Medicare Funds - University Missouri System (p.5)	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>
<u>Cost</u> - Potential increase in LEF claims	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>

ESTIMATED NET EFFECT TO FEDERAL FUNDS	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
LEGAL EXPENSE FUND (0692)			
<u>Transfer In</u> - from GR, Federal, and Other State Funds Potential increase in claims	\$0 or Unknown	\$0 or Unknown	\$0 or Unknown
<u>Transfer Out</u> - payment of discrimination claims	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
ESTIMATED NET EFFECT TO THE LEGAL EXPENSE FUND	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
COLLEGES AND UNIVERSITIES			
<u>Cost</u> - Colleges and Universities Potential increase in claims (p.5)	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
ESTIMATED NET EFFECT ON COLLEGES AND UNIVERSITIES	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
<u>FISCAL IMPACT – Local Government</u>	FY 2023 (10 Mo.)	FY 2024	FY 2025
LOCAL POLITICAL SUBDIVISIONS			
<u>Cost</u> Potential increase in claims (p.6)	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
ESTIMATED NET EFFECT TO LOCAL POLITICAL SUBDIVISIONS	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)

FISCAL IMPACT – Small Business

Small businesses servicing state agencies, colleges, universities, and political subdivisions will be required to comply with revised sections. If a small business fails to comply, they could be held liable for those actions as a result of this proposal.

FISCAL DESCRIPTION

This act modifies the current law prohibiting political subdivisions from requiring a COVID-19 vaccination to access transportation systems, services, or public accommodations. Under this act, no public or private entity receiving public funds or any other public accommodation shall require documentation of a COVID-19 vaccination to access transportation systems, facilities, services, or public accommodations, as defined in the act.

No student shall be required, as a condition of school attendance or participation in school-sponsored extracurricular activities, to be immunized against COVID-19 or to undergo any testing policy as an alternative to a COVID-19 vaccination. No public institution of higher education shall require a COVID-19 vaccine or COVID-19 diagnostic testing for a student to access facilities, services, or activities, including in-class attendance. No child attending any day care center, pre-school, or nursery school shall be required to receive a COVID-19 vaccine as a condition of attendance.

Under this act, no employer shall require employees to receive a COVID-19 vaccination as a condition of employment without permitting employees to be exempted for religious, philosophical, medical reasons, including pregnancy, or previous exposure to and recovery from COVID-19. The employer shall not require the employee to provide any explanations or proof regarding his or her religious or philosophical beliefs or medical conditions relating to requesting the vaccination exemption. The Department of Health and Senior Services shall develop and make available to employers and employees a form that employees may use to request an exemption. No employer shall require an employee to undergo testing as an alternative to a COVID-19 vaccination.

No employer shall terminate, fail to promote, discipline, retaliate, or otherwise discriminate against an employee or prospective employee who requests a vaccination exemption. A prospective, current, or former employee may bring a civil action against the employer for violations of this act and shall be entitled to relief as described in the act, including back pay or reinstatement, damages, injunctive relief, and reasonable attorney's fees and costs.

Finally, this act provides that failing to receive a vaccination against COVID-19 shall not be considered misconduct on the part of an employee under the employment security law if receiving the vaccination would violate the employee's religious or philosophical beliefs or if the vaccine is medically contraindicated for the employee. Additionally, the act provides that any claimant for unemployment compensation benefits shall not be ineligible for such benefits if the claimant is unemployed due to being discharged from employment for failure to receive a vaccination against COVID-19 if the claimant failed to receive the vaccination because doing so would violate the claimant's religious or philosophical beliefs or if the vaccine is medically contraindicated for the claimant.

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
Office of Administration
 Administrative Hearing Commission
 Budget and Planning
Department of Commerce and Insurance
Department of Economic Development
Department of Elementary and Secondary Education
Department of Higher Education and Workforce Development
Department of Health and Senior Services
Department of Natural Resources
Department of Corrections
Department of Revenue
Department of Public Safety
 Division of Alcohol and Tobacco Control
 Capitol Police
 Fire Safety
 Office of the Director
 Missouri Gaming Commission
 Missouri Highway Patrol
 State Emergency Management Agency
Missouri Department of Agriculture
Missouri Department of Conservation
Missouri Ethics Commission
Missouri Department of Transportation
MoDOT & Patrol Employees' Retirement System
Office of Administration
Petroleum Storage Tank Insurance Fund
Office of the State Public Defender
Office of the Governor
Office of the State Auditor
Office of the State Treasurer
Missouri Senate
Missouri House of Representatives
Joint Committee on Education
Joint Committee on Public Employee Retirement
Legislative Research
Oversight Division
Missouri Lottery Commission
Missouri Consolidated Health Care Plan
Missouri Higher Education Loan Authority
Missouri State Employee's Retirement System

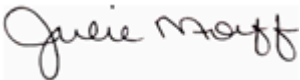
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State Tax Commission
Missouri University System
Central Missouri University
City of Springfield
Phelps County Sheriff
Kansas City Police Department
St. Louis County Police Department



Julie Morff
Director
January 31, 2022



Ross Strobe
Assistant Director
January 31, 2022