

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3834S.08P
 Bill No.: Perfected SS for SCS for SB 916
 Subject: Civil Procedure; Contracts and Contractors; Insurance - General; Liability; Political Subdivisions; Sovereign Or Official Immunity; State Departments; Transportation; Department of Transportation
 Type: Original
 Date: April 28, 2026

Bill Summary: This proposal modifies provisions relating to sovereign immunity.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND

FUND AFFECTED	FY 2027	FY 2028	FY 2029
General Revenue*	\$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

*Unknown savings resulting from limiting the liability award could exceed \$250,000 annually.

ESTIMATED NET EFFECT ON OTHER STATE FUNDS

FUND AFFECTED	FY 2027	FY 2028	FY 2029
Other State**	\$0 or Unknown	\$0 or Unknown	\$0 or Unknown
Legal Expense*	\$0	\$0	\$0
State Road	(Unknown, greater than \$250,000)	(Unknown, greater than \$250,000)	(Unknown, greater than \$250,000)
Colleges and Universities**	\$0 or Unknown	\$0 or Unknown	\$0 or Unknown
Total Estimated Net Effect on <u>Other</u> State Funds	Unknown to (Unknown)	Unknown to (Unknown)	Unknown to (Unknown)

*Unknown savings and losses net to \$0.

**Unknown savings resulting from limiting the liability award could exceed \$250,000 annually.

Numbers within parentheses: () indicate costs or losses.

ESTIMATED NET EFFECT ON FEDERAL FUNDS

FUND AFFECTED	FY 2027	FY 2028	FY 2029
Federal*	\$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

*Unknown savings resulting from limiting the liability award could exceed \$250,000 annually.

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)

FUND AFFECTED	FY 2027	FY 2028	FY 2029
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 2027	FY 2028	FY 2029
Local Government*	\$0 or Unknown	\$0 or Unknown	\$0 or Unknown

*Savings from limiting liability award.

FISCAL ANALYSIS

ASSUMPTION

§§537.600 – Immunity for Private Contractors Acting within the Scope of a Government Contract Awarded by MoDOT as Amended by Senate Amendment #1

Officials from the **Missouri Department of Transportation (MoDOT)** state the provisions in this bill establish a new cause of action against the Missouri Department of Transportation (MoDOT). This could limit sovereign immunity in certain circumstances and significantly increase litigation costs for the Missouri Highways and Transportation Commission (MHTC). It would create new matters of litigation that MoDOT would handle and likely increase litigation with its contractors, which could potentially increase contract costs, as well.

The language in §537.600 makes it so that if there is ever an accident that occurs during construction, it would be prohibited for MHTC to tender the claim to the contractor because contractual terms allowing for indemnification and a duty to defend would be barred. Additionally, following a project's acceptance, MHTC would be solely at risk for any claims relating to design and construction unless the MHTC could establish the alleged condition was unknowable; thereby once again involving litigation between the MHTC and its contractors.

This would result in a significant unknown negative fiscal impact to the State Road Fund (1320).

Oversight has no information to the contrary. Therefore, Oversight will present an (Unknown) fiscal impact to the State Road Fund. It is further assumed, based on MoDOT's "significant unknown impact" that the cost would exceed \$250,000 annually.

In response to the previous version, officials from the **Office of Administration (OA)** stated the proposed legislation will require OA Purchasing to revise the contractual language regarding contractor liability including rewriting other general contractual language and provide such language to the state agencies for use as well as update its internal procurement documents.

OA-Purchasing believes that the impact of this bill is less than \$10,000. However, until the FY26 budget is finalized, specific funding sources cannot be identified.

At this time, it is believed the additional staff time and resources can be absorbed by OA-Purchasing. However, if there are multiple pieces of legislation passed where OA-Purchasing has responded that the costs can be absorbed, OA-Purchasing would need to reevaluate to see if additional staff and associated expenses would then be required.

Oversight does not have any information to the contrary. Oversight assumes OA-Purchasing receives core funding to cover minimal expenditures. Oversight further assumes OA-Purchasing can absorb the minimal fiscal impact of this proposal within current appropriations and will present no fiscal impact for this agency for these provisions.

In response to a previous version, officials from the **Office of Attorney General (AGO)** assumed any potential litigation costs arising from this proposal could be absorbed with existing resources. The AGO may seek additional appropriations if the proposal results in a significant increase in litigation or investigation costs.

Oversight does not have any information to the contrary. Therefore, Oversight assumes the AGO will be able to perform any additional duties required by this proposal with current staff and resources and will reflect no fiscal impact to the AGO for fiscal note purposes.

§537.610 - Limitations on Awards for Certain Liability Claims as Amended by Senate Amendment #1

Officials from the **OA-General Services Division (GS)** state §537.610.5 of this proposal could have a potential cost saving to the State Legal Expense Fund by limiting the award to the liability of the year when the accident or occurrence happened.

Oversight notes because this bill could result in a potential savings to the State, Oversight will show a net \$0 direct fiscal impact for the LEF and a possible \$0 or Unknown fiscal impact to General Revenue and other state funds. Oversight notes the potential savings described by OA could also apply to colleges and universities, federal funds, as well as local political subdivisions as the LEF does not cover costs for local political subdivisions or colleges and universities in most cases. For fiscal note purposes only, Oversight will range savings from \$0 or Unknown for all funds.

Oversight does not have any information to suggest the potential cost saving resulting from this proposal. Therefore, for fiscal note purposes, Oversight assumes the unknown impact could reach the \$250,000 threshold.

In response to the previous version, officials from the **Office of the Secretary of State (SOS)** noted 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 received additional information from the SOS. Officials state that although this proposal does not contain rulemaking provisions, language in the proposal provides that the SOS shall publish the information as soon after January first as practicable.

Responses regarding the proposed legislation as a whole as Amended by Senate Amendment #1

Officials from the **Department of Commerce** and **Department of Social Services** 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.

In response to a previous version, officials from the **Department of Labor and Industrial Relations** and **Office of the State Courts Administrator** 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.

<u>FISCAL IMPACT – State Government</u>	FY 2027 (10 Mo.)	FY 2028	FY 2029
GENERAL REVENUE			
<u>Savings</u> – Various State Agencies (§537.610) Reduction in contributions to the Legal Expense Fund to pay liability awards p.4	<u>\$0 or Unknown</u>	<u>\$0 or Unknown</u>	<u>\$0 or Unknown</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE	<u>\$0 or Unknown</u>	<u>\$0 or Unknown</u>	<u>\$0 or Unknown</u>
OTHER STATE FUNDS			
<u>Savings</u> – Various State Agencies (§537.610) Reduction in transfers to the Legal Expense Fund to pay liability awards p.4	<u>\$0 or Unknown</u>	<u>\$0 or Unknown</u>	<u>\$0 or Unknown</u>
ESTIMATED NET EFFECT ON OTHER STATE FUNDS	<u>\$0 or Unknown</u>	<u>\$0 or Unknown</u>	<u>\$0 or Unknown</u>
LEGAL EXPENSE FUND			
<u>Savings</u> – All State Agencies (§537.610) Potential reduction in payouts in liability awards p.4	<u>\$0 or Unknown</u>	<u>\$0 or Unknown</u>	<u>\$0 or Unknown</u>

<u>FISCAL IMPACT – State Government</u>	FY 2027 (10 Mo.)	FY 2028	FY 2029
<u>Loss</u> – (\$537.610) Potential reduction in transfers-in from other funds to cover payouts of liability awards p.4	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>
ESTIMATED NET EFFECT ON THE LEGAL EXPENSE FUND	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
STATE ROAD FUND (1320)			
<u>Cost</u> – MoDOT (\$537.600) Potential increase in litigation costs p.3	(Unknown, greater than <u>\$250,000</u>)	(Unknown, greater than <u>\$250,000</u>)	(Unknown, greater than <u>\$250,000</u>)
ESTIMATED NET EFFECT ON THE STATE ROAD FUND	(Unknown, greater than <u>\$250,000</u>)	(Unknown, greater than <u>\$250,000</u>)	(Unknown, greater than <u>\$250,000</u>)
COLLEGES AND UNIVERSITIES			
<u>Savings</u> - (\$537.610) Potential reduction in liability awards p.4	<u>\$0 or Unknown</u>	<u>\$0 or Unknown</u>	<u>\$0 or Unknown</u>
ESTIMATED NET EFFECT ON COLLEGES AND UNIVERSITIES	<u>\$0 or Unknown</u>	<u>\$0 or Unknown</u>	<u>\$0 or Unknown</u>
FEDERAL FUNDS			
<u>Savings</u> - (\$537.610) Potential reduction in transfers to the Legal Expense Fund to cover costs of payouts in liability awards p.4	<u>\$0 or Unknown</u>	<u>\$0 or Unknown</u>	<u>\$0 or Unknown</u>
ESTIMATED NET EFFECT ON FEDERAL FUNDS	<u>\$0 or Unknown</u>	<u>\$0 or Unknown</u>	<u>\$0 or Unknown</u>

<u>FISCAL IMPACT – Local Government</u>	FY 2027 (10 Mo.)	FY 2028	FY 2029
LOCAL POLITICAL SUBDIVISIONS			
<u>Savings</u> – (§537.610) Potential reduction in payouts in liability awards p.3	<u>\$0 or Unknown</u>	<u>\$0 or Unknown</u>	<u>\$0 or Unknown</u>
ESTIMATED NET EFFECT ON POLITICAL SUBDIVISIONS	<u>\$0 or Unknown</u>	<u>\$0 or Unknown</u>	<u>\$0 or Unknown</u>

FISCAL IMPACT – Small Business

There could be a direct fiscal impact to small businesses who operate under a governmental contract as a result of this proposal.

FISCAL DESCRIPTION

SOVEREIGN IMMUNITY FOR MODOT PRIVATE CONTRACTORS (§537.600)

Currently, public entities are immune from liability for compensatory damages resulting from negligence, except as expressly waived in law. This act modifies the express waivers to include injuries directly resulting from negligence caused by an agent of the Missouri Department of Transportation ("Department") arising out of the operation of motor vehicles within the course of their employment and for injuries caused by the condition of the public entity's property if the negligence of an agent of the Department created the dangerous condition or had actual or constructive notice of the dangerous condition in order to take measures to protect against the dangerous condition.

Furthermore, this act creates a statutory cause of action for damages against an agent of the Department for claims arising from the design, condition, or maintenance of a Department project and abrogates any other common law claims against a private contractor, subcontractor, or engineer, or employee thereof, for such claims. The cause of action is established when the damages occur after execution of a contract to perform work but prior to the commencement of construction activities on the project site and for when construction activities on the project site are approved and accepted by the Department. The Department shall be solely liable for personal injury or death arising out of instances during such periods of time.

The immunity provided by this statutory cause of action shall not apply when:

- (1) The work is so defective that it creates an imminent danger to third parties;
- (2) A defect in the work was concealed and not discoverable by a reasonable inspection by the State Highways and Transportation Commission ("Commission");
- (3) The agent knew of the dangerous condition and did not disclose it to the Commission;

or

(4) The plans or specifications followed were so imperfect or improper that the agent should have known the work to be done would result in an unsafe condition.

Furthermore, the Missouri Standard Specifications for Highway Construction, or its successor, as published by the Commission shall not include provisions requiring a contractor to indemnify or defend the state, the Commission, or employees or agents of the Missouri Department of Transportation. No contractor of the Commission shall be required to agree to an indemnification or a duty to defend provision.

**PURCHASE OF LIABILITY INSURANCE FOR SOVEREIGN IMMUNITY CLAIMS
(§537.610.1)**

As it relates to political subdivisions purchasing liability insurance for tort claims made against the political subdivision, this act defines the term "purchase" to refer only to the direct acquisition of insurance coverage by a governing body and not any indirect action by contract or otherwise.

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 Administration - Budget and Planning
Attorney General's Office
Department of Commerce and Insurance
Department of Labor and Industrial Relations
Department of Social Services
Missouri Department of Transportation
Office of Administration
Office of the State Courts Administrator
Office of the Secretary of State



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