

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 0815S.06P  
 Bill No.: Perfected SS No. 2 for SB 39  
 Subject: Education, Elementary and Secondary; Entertainment, Sports and Amusements;  
 Department of Higher Education and Workforce Development; Education, Higher  
 Type: Original  
 Date: March 21, 2023

Bill Summary: This proposal establishes guidelines for student participation in athletic contests organized by sex.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
FUND AFFECTED	FY 2024	FY 2025	FY 2026
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>

\*The fiscal note reflects the potential withholding of funds from school districts and institutions of higher education if the financial penalty provisions of the bill are enacted. For simplicity, Oversight will reflect the potential withheld payments coming from (remaining in) General Revenue. Oversight assumes the funding withheld could reach the \$250,000 threshold.

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
FUND AFFECTED	FY 2024	FY 2025	FY 2026
University Funds*	\$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>

Oversight assumes the loss could exceed \$250,000.

Numbers within parentheses: () indicate costs or losses.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2024</b>	<b>FY 2025</b>	<b>FY 2026</b>
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b>			
<b>FUND AFFECTED</b>	<b>FY 2024</b>	<b>FY 2025</b>	<b>FY 2026</b>
<b>Total Estimated Net Effect on FTE</b>			

- 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.

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2024</b>	<b>FY 2025</b>	<b>FY 2026</b>
<b>Local Government</b>	<b>\$0 or (Unknown)</b>	<b>\$0 or (Unknown)</b>	<b>\$0 or (Unknown)</b>

## FISCAL ANALYSIS

### ASSUMPTION

Officials from the **Department of Elementary and Secondary Education, Attorney General's Office and Department of Higher Education and Workforce Development** each assume the proposal will have no fiscal impact on their respective organizations.

Officials from the **University of Missouri** state the fiscal impact on the University of Missouri System could be significant.

In response to a similar proposal, SB 2 (2023), officials from **Missouri Western State University** stated, if enacted, the impact is zero (not implemented) or up to Missouri Western State University's state appropriations (implemented), including the annual core appropriation (FY23 amount = \$24,315,659) and funds for capital improvements.

Officials from the **University of Central Missouri** state there is the potential for an indeterminate fiscal impact.

In response to a similar proposal, SB 2 (2023), officials from the **Northwest Missouri State University** stated the proposal would have no fiscal impact on their organization but it could have political/social implications because of the fallout of not allowing a transgender athlete, but financially this bill would prohibit it.

Officials from the **Missouri State University** assume the proposal will have no fiscal impact on their organization.

In response to a similar SB 781 (2022), officials from the **St. Charles Community College** assumed the proposal would have no fiscal impact on their organization.

**Oversight** notes transgender student participation in interscholastic sports is regulated by school districts and the Missouri State High School Activities Association (MSHSAA). Per the [MSHSAA Handbook](#) the Board Policy on Transgender Participation is as follows;

“A transgender student must meet the following in order to participate in sex-separated interscholastic sports so long as the athlete’s use of medical/hormone therapy is consistent with current medical standards:

**No Medical/Hormone Treatment:** Any transgender student-athlete who is not taking medical/hormone treatment related to gender transition may commence and continue interscholastic participation in sex-separated sports in accordance with his or her assigned birth gender.

- A trans male (female to male) student-athlete who is not taking medical/hormone treatment related to gender transition may participate in co-ed sports and may apply to participate in boys sports. Once the student participates in a boys' sport, he shall participate consistently with that gender for the remainder of his interscholastic eligibility.
- A trans female (male to female) student-athlete who is not taking medical/hormone treatments related to gender transition may not compete on a girls' team, but may participate in co-ed and boys sports. (See also By-Law 3.20.)

**Receiving Medical/Hormone Treatment:**

- A trans male (female to male) student-athlete who has commenced medical/hormone treatment with prescribed drugs for diagnosed gender dysphoria and/or transsexualism, may compete on a boys' team, but is no longer eligible to compete on a girls' team without changing that team status to a co-ed team. (See also By-Law 3.20.d.)
- A trans female (male to female) student-athlete being treated with hormone suppression medication for diagnosed gender dysphoria and/or transsexualism may continue to compete on a boys' team but may not compete on a girls' team, without changing it to a co-ed team, until one calendar year of documented medical/hormone treatment and/or suppression is completed. To maintain eligibility, a trans female student shall thereafter provide continuing medical documentation that the appropriate hormone levels are being maintained."

**Oversight** notes transgender student participation in intercollegiate sports is regulated by National Collegiate Athletic Association (NCAA). Per the by-laws of the [NCAA](#):

"The following policies clarify participation of transgender student-athletes undergoing hormonal treatment for gender transition:

- A trans male (FTM) student-athlete who has received a medical exception for treatment with testosterone for diagnosed Gender Identity Disorder or gender dysphoria and/or Transsexualism, for purposes of NCAA competition may compete on a men's team, but is no longer eligible to compete on a wom-en's team without changing that team status to a mixed team.
- A trans female (MTF) student-athlete being treated with testosterone suppression medication for Gender Identity Disorder or gender dysphoria and/or Transsexualism, for the purposes of NCAA competition may continue to compete on a men's team but may

not compete on a women’s team without changing it to a mixed team status until completing one calendar year of testosterone suppression treatment.

Any transgender student-athlete who is not taking hormone treatment related to gender transition may participate in sex-separated sports activities in accordance with his or her assigned birth gender.

- A trans male (FTM) student-athlete who is not taking testosterone related to gender transition may participate on a men’s or women’s team.
- A trans female (MTF) transgender student-athlete who is not taking hormone treatments related to gender transition may not compete on a women’s team.”

**Oversight** assumes this proposal prohibits public or private schools and public or private institutions of postsecondary education from allowing biological males as assigned at birth to play on sports teams designated for women. Entities that violate this proposal are not eligible for moneys appropriated by the general assembly.

**Oversight** notes the foundation formula payments for school districts is estimated at \$3,561,737,794 for FY 2024 per the DESE Budget Request for FY 2024.

**Oversight** notes the following appropriations for FY 2023 to postsecondary institutions:

<b>Institution</b>	<b>Appropriation</b>
Community Colleges	\$174,863,323
State Technical College of Missouri	\$8,494,011
UCM	\$60,711,063
Southeast Missouri State University	\$50,371,167
Missouri State University	\$103,242,970
Lincoln University	\$29,183,697
Truman State University	\$45,734,649
Northwest Missouri State University	\$34,336,363
Missouri Southern State University	\$30,874,099
Missouri Western State University	\$24,640,659
Harris-Stowe State University	\$12,634,137
University of Missouri System	\$463,876,797

\*Source: TAFP HB 3003 (2022). Actual appropriation amounts may differ based on withholds.

**Oversight** assumes there could be a loss to public schools, colleges and universities that fail to comply with the requirements in the proposal. The penalty would be any moneys appropriated by the general assembly. Based on amounts appropriated, Oversight assumes the loss could exceed \$250,000.

Additionally, **Oversight** notes that this provision may prompt a cause of action against colleges, universities, and public schools. Oversight notes, in rare circumstances, universities and community colleges can access the state Legal Expense Fund. However, for purposes of this

fiscal note, Oversight assumes colleges and universities will bear the cost of any litigation or judgment. Oversight will range the fiscal impact to colleges, universities and public schools from \$0 (does not increase litigation) to an unknown cost for damages and court costs.

**Oversight** notes the provisions of this section expire on August 28, 2027.

**Oversight** received a limited number of responses from school districts, colleges and universities related to the fiscal impact of this proposal. Oversight has presented this fiscal note on the best current information available. Upon the receipt of additional 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.

**Oversight** only reflects the responses received from state agencies and political subdivisions; however, other school districts, colleges and universities were requested to respond to this proposed legislation but did not. A listing of political subdivisions included in the MOLIS database is available upon request.

#### 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.

In response to a similar proposal, 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.

<u>FISCAL IMPACT – State Government</u>	FY 2024 (10 Mo.)	FY 2025	FY 2026
<b>GENERAL REVENUE</b>			
<u>Revenue Gain</u> - from funding withheld from school districts and charter schools for violating section §163.048	\$0 or Unknown	\$0 or Unknown	\$0 or Unknown
<u>Revenue Gain</u> - from funding withheld from colleges and universities for violating section §163.048	\$0 or Unknown	\$0 or Unknown	\$0 or Unknown
<u>Revenue Gain</u> - from funding withheld from community colleges for violating section §163.048	<u>\$0 or Unknown</u>	<u>\$0 or Unknown</u>	<u>\$0 or Unknown</u>
<b>ESTIMATED NET EFFECT ON GENERAL REVENUE</b>	<b><u>\$0 or Unknown</u></b>	<b><u>\$0 or Unknown</u></b>	<b><u>\$0 or Unknown</u></b>
<b>UNIVERSITY FUNDS</b>			
<u>Costs</u> - legal costs - §163.048	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
<u>Loss</u> - funding withheld for violating section §163.048	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
<b>ESTIMATED NET EFFECT ON UNIVERSITY FUNDS</b>	<b><u>\$0 or (Unknown)</u></b>	<b><u>\$0 or (Unknown)</u></b>	<b><u>\$0 or (Unknown)</u></b>

<u>FISCAL IMPACT – Local Government</u>	FY 2024 (10 Mo.)	FY 2025	FY 2026
<b>LOCAL POLITICAL SUBDIVISIONS</b>			
<u>Costs</u> - School Districts & Charter Schools - legal costs §163.048	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
<u>Loss</u> - School Districts & Charter Schools - funding withheld for violating section §163.048	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
<u>Costs</u> - Community Colleges - legal costs §163.048	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
<u>Loss</u> - Community Colleges - funding withheld for violating section §163.048	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
<b>ESTIMATED NET EFFECT ON LOCAL POLITICAL SUBDIVISIONS</b>	<b>\$0 or (Unknown)</b>	<b>\$0 or (Unknown)</b>	<b>\$0 or (Unknown)</b>

FISCAL IMPACT – Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

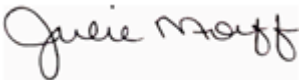
This act prohibits a private school, public school district, public charter school, or public or private institution of postsecondary education from allowing any student to compete in an athletic competition that is designated for the biological sex opposite to the student's biological sex as stated on the student's official birth certificate or other government record as described in the act. The act delineates what constitutes an acceptable official birth certificate. A private school, public school district, public charter school, or public or private institution of postsecondary education may allow a female student to compete in an athletic competition designated for male students if no corresponding competition for female students is offered or available. Any private school, public school district, public charter school, or public or private institution of postsecondary education that violates this act shall not receive any state aid or other revenues from the state. The parent or guardian of any student, or any student who is over eighteen years old, who is deprived of an athletic opportunity as a result of a violation of the act shall have a cause of action for injunctive or other equitable relief as described in the act.




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 Elementary and Secondary Education  
Department of Higher Education and Workforce Development  
Attorney General's Office  
University of Missouri System  
University of Central Missouri  
Missouri Western State University  
Northwest Missouri State University  
St. Charles Community College



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March 21, 2023



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