



SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE
STATEMENT OF ESTIMATED FISCAL IMPACT
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This fiscal impact statement is produced in compliance with the South Carolina Code of Laws and House and Senate rules. The focus of the analysis is on governmental expenditure and revenue impacts and may not provide a comprehensive summary of the legislation.

Bill Number: H. 3126 Amended by Senate Finance on March 1, 2022
Author: Jones
Subject: Vaccine Mandates
Requestor: Senate Finance
RFA Analyst(s): Miller, Boggs, and Wren
Impact Date: March 31, 2022

Fiscal Impact Summary

This bill declares that neither the State nor any political subdivision, including school districts, may require a COVID-19 vaccine mandate for any employee or student, unless there is a federal requirement to do so. DHEC and MUSC will partner with the State and local government employers to provide COVID-19 testing in lieu of vaccination when allowed. The bill also extends unemployment benefits to employees who are fired for failure to comply with a vaccine mandate.

The Department of Disabilities and Special Needs (DDSN) indicates a need of up to an additional \$1,757,000 in General Funds to cover the potential increase in unemployment benefits as well as weekly testing for up to 120 employees. DDSN is required to have a vaccine mandate, pursuant to the Centers for Medicare and Medicaid Services (CMS) Omnibus COVID-19 Health Care Staff Vaccination Interim Final Rule (IFR).

The Department of Mental Health (DMH) has expressed concerns about the implementation of this bill. Additionally, based on DDSN's response, the Revenue and Fiscal Affairs Office (RFA) anticipates DMH, who is also subject to the CMS's Omnibus COVID-19 Health Care Staff Vaccination IFR, will have an undetermined expenditure impact to cover the potential increase in unemployment benefits as well as weekly testing. We will update this information if the agency provides additional information.

Additionally, the Department of Alcohol and Other Drug Abuse Services (DAODAS) indicates this bill will have no expenditure impact for the agency. However, DAODAS noted the local DAODAS facility in Orangeburg County may be required to implement a vaccine mandate as it is a licensed psychiatric hospital and expressed concerns about the potential fiscal impact of the bill on the facility.

The Department of Employment and Workforce (DEW) expects that the bill will impact the Unemployment Grant and Unemployment Trust Fund. The bill appropriates \$10,000,000 from the Contingency Reserve Fund to DEW to cover all expenses associated with providing retroactive unemployment benefits for eligible employees. The net impact on unemployment compensation is undetermined, as the number of unemployment claimants due to this bill is unknown.

Further, DEW indicates this bill will result in an Other Fund expenditure of \$164,250 in FY 2022-23 for computer programming changes necessary to handle the modified unemployment benefits claims allowed by this bill.

The Department of Health and Environmental Control (DHEC) indicates this bill will have an undetermined expenditure impact, depending on the number of COVID-19 tests administered and who is responsible for the cost of these tests. DHEC estimates the average cost per test is \$63.99 based on actual contract pricing for polymerase chain reaction (PCR) tests and antigen tests.

This bill will have no expenditure impact for the Medical University of South Carolina (MUSC), the Workers Compensation Commission (WCC), the Department of Health and Human Services (DHHS), the Department of Administration (Admin.), and the State Fiscal Accountability Authority (SFAA). All of these agencies anticipate being able to manage any additional responsibilities required by this bill within existing appropriations.

The potential local expenditure impact of this bill is undetermined, as it depends upon whether a local government implements a vaccine mandate in violation of the bill. According to the South Carolina Association of Counties (SCAC), currently, Charleston County has a vaccine mandate in place. Other counties may have a mandate but are unknown.

Explanation of Fiscal Impact

Amended by Senate Finance on March 1, 2022

State Expenditure

This bill declares that neither the State nor any political subdivision, including school districts, may require a COVID-19 vaccine mandate for any employee or student, unless there is a federal requirement to do so. This bill specifically includes first responders. If there is a federal requirement for a COVID-19 vaccine mandate for employees or COVID-19 testing, then an employer may allow testing in lieu of the vaccine. DHEC and MUSC will partner with the State and local government employers to provide this COVID-19 testing. Additionally, an employee who is fired for failure to get vaccinated may receive unemployment benefits if the employer has no alternative than to terminate the employee or forfeit Federal Funds.

Also, this bill specifies that employees of any private employer who terminates, suspends, or otherwise reduces compensation to an employee for failure to be vaccinated, are eligible for unemployment benefits. Employee eligibility for unemployment benefits is retroactive for nine months prior to the effective date of this bill. Additionally, the employer will be required to pay a surcharge equal to ten times the amount of the unemployment taxes of a class 20 rate. However, this does not include employers whose employees receive unemployment benefits due to the retroactive period, nor to employers who submit an affidavit to DEW stating the employer is subject to a federal vaccine mandate.

Further, this bill specifies all persons are entitled to the full and equal enjoyment of the goods, services, and accommodations of any place of public accommodation regardless of the person's

vaccine status. A place of public accommodation includes inns, hotels, restaurants, hospitals, retail shops, and other such entities.

Department of Disabilities and Special Needs. DDSN is required to have a vaccine mandate, pursuant to CMS's Omnibus COVID-19 Health Care Staff Vaccination IFR. This bill allows employees who are terminated for failure to vaccinate to claim unemployment. DDSN estimates an increase of 2 percent of the agency's budget to cover additional unemployment benefits and weekly testing for approximately 120 employees. Based on this estimate, DDSN indicates a need for up to an additional \$1,757,000 in General Funds. However, this estimate is subject to change depending upon the number of employees who are subject to weekly testing and the increased cost for unemployment benefits.

Department of Mental Health. DMH is required to have a vaccine mandate, pursuant to CMS's Omnibus COVID-19 Health Care Staff Vaccination IFR. This bill allows for weekly testing in lieu of vaccination and allows employees who have left a position rather than be vaccinated to collect unemployment. DMH has expressed concerns for the implementation of this bill. Additionally, based on the response from DDSN, RFA anticipates this bill may have an undetermined expenditure impact for DMH to cover additional personnel unemployment benefits and weekly testing for those employees who are not fully vaccinated.

Department of Alcohol and Other Drug Abuse Services. DAODAS anticipates this bill will have no fiscal impact on the agency. However, DAODAS noted that this bill could result in the closing of a local facility due to penalties incurred from firing an employee for failure to be vaccinated as required by a federal mandate. The local DAODAS facility in Orangeburg County may be required to implement a vaccine mandate as it is a licensed psychiatric hospital. The agency expressed concerns about the potential fiscal impact of the bill on the facility due to potential penalties for firing an employee for failure to be vaccinated.

Department of Employment and Workforce. This bill will impact the Unemployment Grant and Unemployment Trust Fund. The bill appropriates \$10,000,000 from the Contingency Reserve Fund to DEW to cover all expenses associated with providing retroactive unemployment benefits for eligible employees. The net impact is undetermined, as the number of unemployment claimants due to this bill is unknown.

Additionally, DEW anticipates a non-recurring Other Funds expenditure impact of \$164,250 for computer programming changes necessary to handle the modified unemployment benefits claims allowed by this bill.

Department of Health and Environmental Control. This bill requires DHEC and MUSC to partner with state and local government employers to provide COVID-19 testing when the employer is under a federal vaccine mandate with an alternative option for testing. DHEC estimates the average cost per test is \$63.99. This estimate is based on actual contract pricing for polymerase chain reaction (PCR) tests and antigen tests. The total expenditure impact will depend upon the number of employees that are tested and the frequency of the testing. DHEC is unsure how these costs will be covered among DHEC, MUSC, any potential FEMA

reimbursements, and health insurance policy coverage. Therefore, the expenditure impact for this bill is undetermined.

Medical University of South Carolina. This bill requires DHEC and MUSC to partner with state and local government employers to provide COVID-19 testing when the employer is under a federal vaccine mandate with an alternative option for testing. MUSC indicates this bill will have no expenditure impact for the agency.

State Fiscal Accountability Authority. Section 10 of this bill reenacts Act 99 of 2021, for all actions arising between March 13, 2020, and December 31, 2023. Act 99 of 2021 established a safe harbor from coronavirus claims for businesses, governmental entities, health care facilities, and their employees from March 13, 2020, through June 31, 2021. This safe harbor only applies if public health guidance is followed. This bill extends this safe harbor through December 31, 2023. As this is a reenactment, SFAA indicates this bill will have no fiscal impact for the agency.

Workers Compensation Commission. WCC indicates being able to manage the additional responsibilities within this bill with existing staff and within existing appropriations.

Department of Administration. The Division of State Human Resources, within the Department of Administration, does not anticipate this bill will have any impact on the agency.

Department of Health and Human Services. DHHS indicates this bill will have a minimal fiscal impact on the agency that can be managed within existing appropriations.

State Revenue

N/A

Local Expenditure

This bill declares that neither the State nor any political subdivision, including school districts, may require a COVID-19 vaccine mandate for any employee or student, unless there is a federal requirement to do so. This includes first responders.

According to the Department of Education, no school district has implemented a vaccine mandate. Therefore, this bill will have no impact on school districts.

Additionally, according to the South Carolina Association of Counties, Charleston County has implemented a vaccine mandate. SCAC also stated there may be other local governments that have vaccine mandates, but they are not aware of any other than Charleston. SCAC also expressed concern that this bill may conflict with the home rule for local governments. However, the potential local expenditure impact of this bill is undetermined, as it depends upon any legal actions taken by either the State or the local governments.

Local Revenue

N/A

**Amended by House Ways and Means Revenue Policy Legislative Subcommittee on
December 7, 2021
State Expenditure**

To determine the potential impact of this bill, RFA contacted those agencies and political subdivisions that may be impacted based upon an initial review of the bill as outlined below. However, depending upon responses, additional agencies may need to be contacted.

This bill specifies that neither the State nor any political subdivisions, including school districts, may enact a COVID-19 vaccine mandate as a condition of employment or attendance. Also, neither the State nor any political subdivision may terminate a first responder for failure to get a COVID-19 vaccine. Additionally, a private employer may not terminate or suspend an individual who does not receive a COVID-19 vaccination. If a private employer is subject to a federal vaccine mandate the employer may allow an employee, the alternative choice of weekly COVID-19 testing. Further, any employer who violates the provisions of this bill will be liable in a civil action. Also, the bill directs DHEC and MUSC to partner with private employers to provide COVID-19 testing. Each of these agencies is appropriated \$10,000,000 from the FY 2021-22 Contingency Reserve Fund to fund this COVID-19 testing.

The Division of State Human Resources, within the Department of Administration, has allowed each state agency to determine whether a COVID-19 vaccine mandate is appropriate and does not have specific knowledge of which agencies, if any, have enacted a COVID-19 vaccine mandate. The agency is not aware of any current mandates by an agency, but it is currently unclear whether any agencies will be impacted as this information has not been reported.

Additionally, this bill requires DHEC and MUSC to partner with private employers to offer weekly COVID-19 testing to employees as an alternative to getting a vaccine. DHEC has offered four scenarios to estimate the potential statewide cost of this testing.

Estimate Scenario	A - All Employers	B - Private Sector Only	C - Vaccination Surge	D - Vaccine Hesitancy
OSHA Rule Application	ALL employers with 100+ employees	Private Sector employers with 100+ employees	ALL employers with 100+ employees	ALL employers with 100+ employees
Calculation Method	Assuming 1.2M employees in impacted organizations; applying statewide vaccination rate of 50.3%	Bureau of Labor Statistics data estimates 683,643 workers in private sector businesses with 100+ employees; applying statewide vaccination rate of 50.3%	Same calculations as A, but assumes a vaccination surge of 25% of impacted population	Based on June 2021 CDC vaccine hesitancy data; assumes remaining workers who are not "strongly hesitant" will become vaccinated
Impact of Mandate on Vaccination Behavior	No impact	No impact	25% surge in vaccination	CDC-identified "Movable Middle" become vaccinated
# of employees needing testing per week	596,400	339,771	447,300	175,000
Average cost per test	\$63.99	\$63.99	\$63.99	\$63.99
Weekly Testing Cost	\$38,163,636	\$21,741,919	\$28,622,727	\$11,198,250
Monthly Testing Cost	\$165,248,544	\$94,142,509	\$123,936,408	\$48,488,423
6-month Testing Cost	\$992,254,536	\$565,289,890	\$744,190,902	\$291,154,500

DHEC used workforce numbers from SC Department of Commerce, SC Department of Employment and Workforce, and the Bureau of Labor statistics. These numbers may include federal contractors and the Centers for Medicare and Medicaid Services (CMS)-certified facilities. Additionally, the average cost per test of \$63.99 is based on actual contract pricing for polymerase chain reaction (PCR) tests and antigen tests.

The above estimates reflect total statewide testing costs. DHEC is unsure how these costs will be covered among DHEC, MUSC, any potential FEMA reimbursements, health insurance policy coverage, and the private employer. However, DHEC did note that most health insurance policies only cover the cost of testing if the insured is symptomatic, and most screening testing is denied coverage.

This bill allocates a total of \$20,000,000, or \$10,000,000 each to DHEC and MUSC, from the FY 2021-22 Contingency Reserve Fund. These funds are to be used to provide weekly COVID-19 testing for employees who work for a private employer that is subject to a federal vaccine

mandate as an alternative to the receiving the COVID-19 vaccine. DHEC estimates the average cost per test is \$63.99. Therefore, the \$20,000,000 will cover approximately 313,500 COVID-19 tests. In addition to this \$20,000,000, assuming a worst-case scenario, this bill will result in additional expenditures due to COVID-19 testing of up to \$972,000,000 in the first six months of implementation. However, it is unclear who will be responsible for these expenditures.

Also, MUSC is working to provide additional information on the potential expenditure impact due to this bill.

State Revenue

This bill specifies that neither the State nor any political subdivisions, including school districts, may enact a COVID-19 vaccine mandate. Also, neither the State nor any political subdivision may terminate a first responder for failure to get a COVID-19 vaccine.

DHHS and MUSC work with CMS-certified facilities. CMS is a federal program and is currently in the process of litigating a COVID-19 vaccine mandate. If CMS's mandate goes into effect, DHHS and MUSC will be unable to meet the mandate requirements under the provisions of this bill. This bill, therefore, may result in a loss of Federal Funds from Medicare and Medicaid payments depending upon the outcome of the federal lawsuits.

Further, MUSC currently requires employees to get a COVID-19 vaccine in order to meet a federal contractual workforce requirement. This bill specifies that MUSC may no longer require COVID-19 vaccines for employees. Additionally, the federal vaccine mandates are suspended at this time due to federal litigation. If federal mandates take effect, MUSC estimates that failure to comply will potentially result in the loss of millions due to the loss of federal contracts for the research universities, including the University of South Carolina and Clemson.

Local Expenditure

This bill specifies that neither the State nor any political subdivisions, including school districts, may enact a COVID-19 vaccine mandate. Also, neither the State nor any political subdivision may terminate a first responder for failure to get a COVID-19 vaccine.

The State Department of Education (SDE) stated that no school district currently requires its employees to have a COVID-19 vaccine. Therefore, this bill will have no expenditure impact for school districts.

Additionally, RFA contacted the Municipal Association of South Carolina (MASC) and the South Carolina Association of Counties (SCAC) to determine the potential fiscal impact for this bill for local governing entities. The potential impact for local government is pending, contingent upon a response from MASC and SCAC.

Local Revenue

N/A



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