

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1373-10
Bill No.: Truly Agreed To and Finally Passed CCS for HCS for SCS for SBs 420 & 344
Subject: Civil Procedure; Courts
Type: Original
Date: June 2, 2005

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
General Revenue	(Less than \$316,667)	(\$564,387 to Unknown)	(\$1,009,993 to Unknown)
Total Estimated Net Effect on General Revenue Fund	(Less than \$316,667)	(\$564,387 to Unknown)	(\$1,009,993 to Unknown)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
Legal Expense	\$2,083,333 to 3,750,000	\$2,500,000 to \$4,500,000	\$2,500,000 to \$4,500,000
Total Estimated Net Effect on <u>Other</u> State Funds	\$2,083,333 to 3,750,000	\$2,500,000 to \$4,500,000	\$2,500,000 to \$4,500,000

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 16 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
Local Government	(\$25,000 to Unknown)	(\$30,000 to Unknown)	(\$30,000 to Unknown)

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of the Governor, Office of Administration – Administrative Hearing Commission, Coordinating Board for Higher Education, Department of Economic Development, Department of Elementary and Secondary Education, Department of Mental Health, Department of Natural Resources, Department of Revenue, Department of Public Safety – Missouri State Highway Patrol, Department of Insurance, Joint Committee on Public Employee Retirement, Department of Conservation, Missouri House of Representatives, Office of the Lieutenant Governor, State Treasurer’s Office, State Tax Commission, Boone County Collector’s Office, Boone County Sheriff’s Department, and Jasper County** assume the proposal would have no fiscal impact on their agencies.

ASSUMPTION (continued)

Health Professionals – §§44.045 and 105.711

Officials from the **Department of Health and Senior Services (DHSS)** state they employ numerous health care professionals that could be deployed pursuant to this legislation. Depending on the number of staff deployed and the duration of the deployment, there may be a fiscal impact that could exceed \$100,000, related to any temporary hiring, or overtime payment necessary to fill in for critical needs for clients of services. However, for purposes of this fiscal note, DHSS assumes the fiscal impact would be minimal.

The DHSS assumes that the fiscal impact of this legislation would be minimal. If a sizable fiscal impact were to result, funds to support the program would be sought through the appropriations process.

State Legal Expense Fund – §§105.711 and 105.726

Officials from the **Office of the Attorney General (AGO)** assume they will need an additional 7 FTE Assistant Attorneys General II (AAG II) (each at \$36,750 per year) to handle additional cases presented pursuant to Section 105.726. This provision allows the Board of Police Commissioners to present cases to the Attorney General for representation of claims against any employees of the Board, specifically: “. . . employees, agents, representatives, or any other individual or entity acting or purporting to act on its or their behalf.” This extends the Smith decision beyond representation of police officers which will likely result in additional cases presented to the AGO. Moreover, many of these cases proceed to trial because there are disputes of fact. The AGO also assumes the need for 2 FTE Paralegals (each at \$25,000 per year) to assist in the preparation of these cases for trial.

AGO assumes that expenses will be reimbursed by the Police Boards pursuant to Section 105.726.4, which allows the AGO to be reimbursed for the expenses or charges associated with representation of these cases.

AGO further assumes that it will need an additional 2 FTE AAG II (each at \$36,750 per year) to handle claims made against health professionals that provide medical care on a part-time contract basis to county jails. The AGO expects that, because these professionals are now covered under the Legal Expense Fund, there will be a greater incentive for them to work with counties in providing these services. As a result, it is likely that additional claims will be filed against the Legal Expense Fund.

ASSUMPTION (continued)

AGO estimates the total cost to be \$655,309 in FY 06; \$703,238 in FY 07, and \$721,481 in FY 08.

Oversight assumes the AGO cannot determine the number of cases for which a board of police commissioners would request the attorney to represent claims for the board. Oversight also assumes the AGO would be reimbursed for all costs of representation by the city which the police board represents. Therefore, Oversight has shown no cost to the AGO for Section 105.726 and an unknown costs to cities.

Oversight assumes the AGO could experience an increase in case load due to the proposed changes in Section 105.711. Oversight assumes the AGO could absorb the cost of the increased case load within existing resources. If the AGO experiences an increase that would justify additional FTE, the AGO could request funding through the appropriation process.

Officials from the **Office of Administration (COA)** assume the provisions regarding the St. Louis and Kansas City Police Commissioners liability, as written, still cover officers named in any suit to be covered under the Legal Expense Fund (LEF). This would effectively eliminate all of the estimated \$2 to \$4 million cost avoidance savings realized from excluding coverage of St. Louis and Kansas City Police officers.

COA assumes the provisions regarding LEF Liability for state employees places caps on payments from the fund, but do not prevent judgments from being rendered by a state or federal court. Judgments against the state exceeding the cap could not be paid from the LEF, but would remain an obligation of the state and would presumably have to be paid through a supplemental appropriation decision item. Interest penalties could be applied.

COA assumes the exclusive remedy provisions would protect the employee from suit for money damages if the state were also pursued as a party defendant. The employee is subject to federal causes of action regardless; however, they are limited to the \$500,000 cap provided under the LEF. Federal awards over this limit would be the personal responsibility of the employee. The Attorney General's Office has advised that a plaintiff's attorney could circumvent the intent of the exclusive remedy provisions by first seeking judgment against the employee personally and then file a claim against the LEF.

COA assumes the language in the proposal would allow payment up to \$500,000 per person for claims against the state and individual. Based on the \$9.5 million paid on cases over the past two years that have exceeded the sovereign immunity cap, the savings under the proposal would be approximately \$7,350,000.

ASSUMPTION (continued)

COA assumes the proposal would save \$2,500,000 to \$4,500,000 per year to the Legal Expense Fund. **Oversight** has prorated the FY 06 impact to reflect 10 months.

Officials from the **Office of the Secretary of State (SOS)** assume the proposal would give the Department of Insurance the authority to have the value of the limitation on awards for noneconomic damages published in the Missouri Register. Based on past experience, the notice issued by the director of the Department of Insurance could require as many as 2 pages in the Missouri Register. The estimated cost of a page in the Missouri Register is \$23. Based on these costs, the estimated cost of the proposal is \$46 in FY 06 and unknown in subsequent years. The actual cost could be more or less than the numbers given. The impact of this legislation in future years is unknown and depends upon the frequency and length of rules filed, amended, rescinded, or withdrawn.

Oversight assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which would require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation process. Any decisions to raise fees to defray costs would likely be made in subsequent fiscal years.

Officials from the **Department of Public Safety – Veterans Commission** assume there is an unknown impact because the Missouri Veterans Homes contract with medical providers for services for the veterans in the homes.

Child Protection – §§210.117 and 211.038

Officials from the **Department of Social Services – Division of Youth Services (DYS)** assume alternative placement options will be arranged if the victim of child abuse is a non-sibling and living, going to school, or assigned to a child care facility within 1,000 feet of the offender's home.

DYS assumes the monthly reimbursement rate for a youth receiving foster care services is \$377.50 per month, or \$4,530 per year. DYS assumes the number of youth requiring an alternative placement under the provisions of this bill is unknown. DYS estimates the cost to be less than \$100,000 per year.

ASSUMPTION (continued)

Alternative Sentencing – \$217.860

Officials from the **Department of Corrections (DOC)** assume the fiscal impact for the DOC would result from the formation of a “Task Force on Alternative Sentencing” and paying the expenses reimbursed to members for personal expenses incurred (mileage, etc.) related to the performance of task force duties. Although the exact fiscal impact is unknown, it is estimated these costs would be less than \$100,000 per year.

Judicial Circuits (23rd) – \$478.550

Officials from the **Office of State Courts Administrator (CTS)** assume, beginning 1/1/2007, there will be two new circuit court judgeships in the 23rd judicial circuit by converting two associate circuit court judgeships to circuit court judgeships, and convert one family court commissioner and one drug court commissioner to associate circuit judgeships in that same circuit.

The cost for the two new circuit judgeships would be \$24,000 plus fringes. (Annual salary for a circuit judge is \$108,000, versus the annual salary of \$96,000 for an associate circuit judge or \$12,000 x 2)

Circuit court judges, by statute (§485.040), must appoint a court reporter; therefore, the legislation would also include costs for two court reporters.

Cases heard by associate circuit judges are heard on the record via electronic recording devices. There would be some, unquantifiable, costs related to transcribing these records for the three new associate circuit judges.

Since family court commissioners and drug court commissioners are paid at the associate circuit judge rate, there would be no additional salary for this provision.

The total cost for these provisions of the legislation is as follows:

- 1) Two circuit court judges: \$24,000 plus fringes,
- 2) Two court reporters: \$49,860 x 2 plus fringes.

Total cost for 12 months is \$123,720 plus fringes.

ASSUMPTION (continued)

Cases heard by associate circuit judges are heard on the record via electronic recording devices. There would be some additional transcribing costs which are unquantifiable at this time.

Since family court commissioners and drug court commissioners are paid at the associate circuit judge rate, there would be no additional salary for converting these commissioners to associate circuit judgeships.

The total cost for 12 months for these provisions is \$123,720 plus fringe benefits (\$24,000 x 2 for the circuit court judges and \$49,860 x 2 for the court reporters).

Judicial Circuits (11th and 17th) – §§478.570 and 478.600

Officials from the **Office of State Courts Administrator (CTS)** assume the proposed legislation would create two new circuit court judgeships in the 11th judicial circuit by converting two associate circuit judgeships to circuit court judgeships, and convert two family court commissioners and one drug court commissioner to associate circuit judgeships in that same circuit.

The cost for the two new circuit judgeships would be \$24,000 plus fringe benefits. (Annual salary for a circuit judge is \$108,000, versus the annual salary of \$96,000 for an associate circuit judge or \$12,000 x 2).

Circuit court judges, by statute (§485.040), must appoint a court reporter; therefore, the legislation would also include costs for two court reporters.

Cases heard by associate circuit judges are heard on the record via electronic recording devices. There would be some, unquantifiable, costs relating to transcribing these records for the three new associate circuit judges.

Since family court commissioners and drug court commissioners are paid at the associate circuit judge rate, there would be no additional salary for this provision.

ASSUMPTION (continued)

CTS estimates the total cost for the legislation as follows:

1. Two circuit court judges: \$24,000 plus fringe benefits;
2. Two court reporters: \$49,860 x 2 plus fringe benefits.

Total cost for 12 months is \$123,720 plus fringe benefits.

3. Additional transcribing costs which are unquantifiable at this time.

CTS assumes the legislation would also add an additional associate circuit judge in Cass County beginning on January 1, 2007. The cost for this judge in FY 07 would be \$48,000 plus fringe benefits (six months). The cost in subsequent years would be \$96,000 plus fringe benefits per year at the present associate judge salary.

Passport Fees – \$483.537

Officials from the **Office of State Courts Administrator (CTS)** assume the proposed legislation would allow circuit clerks to retain all fees relating to passport applications, as they had done until the passage of SB 1211 in 2004. SB 1211 provided for these fees to be distributed 80% to the state, and 20% to the county. While they do not have data available to provide an exact estimate of the amount realized from passport fees, CTS can estimate an approximate amount of \$150,000 – \$175,000 statewide in a given year. Thus, the passage of this legislation will result in a loss of 80% of this amount to the state, and 20% to the counties.

Judicial Circuits (29th and 42th) – Sections 3 and 4

Officials from the **Office of State Courts Administrator (CTS)** assume the bill would create a state-funded family court commissioner in the 29th judicial circuit, at an annual cost of \$96,000 plus fringes (the same salary as that of an associate circuit court judge); and an additional state-funded drug court commissioner in the 42nd judicial circuit at an annual cost of \$96,000 plus fringes.

<u>FISCAL IMPACT - State Government</u>	FY 2006 (10 Mo.)	FY 2007	FY 2008
GENERAL REVENUE FUND			
<u>Savings</u> – Office of State Courts Administrator (CTS)			
Personal Service (4 FTE Associate Circuit Judge positions) (§§478.550 & 478.600)	\$0	\$201,720	\$413,526
Fringe Benefits (§§478.550 & 478.600)	<u>\$0</u>	<u>\$112,480</u>	<u>\$230,582</u>
<u>Total Savings</u> – CTS	\$0	\$314,200	\$644,108
<u>Costs</u> – CTS			
Personal Service (4 FTE Circuit Judge positions) (§§478.550 & 478.600)	\$0	(\$226,935)	(\$465,217)
Personal Service (1 FTE Associate Circuit Judge position) (§478.570)	\$0	(\$50,430)	(\$103,382)
Personal Service (2 FTE court commissioners) (Sections 3 & 4)	\$0	(\$100,860)	(\$206,763)
Personal Service (4 FTE Court Reporter positions) (§§478.550 & 478.600)	\$0	(\$104,769)	(\$214,775)
Fringe Benefits	\$0	(\$255,593)	(\$523,964)
Equipment and Expense	<u>\$0</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
<u>Total Costs</u> – CTS	\$0	(\$738,587 to Unknown)	(\$1,514,101 to Unknown)
<u>Costs</u> – Department of Social Services			
Foster care (§§210.117 & 211.038)	(Less than \$100,000)	(Less than \$100,000)	(Less than \$100,000)
<u>Costs</u> – Department of Corrections			
Expenses of Task Force (§217.860)	(Less than \$100,000)	(Less than \$100,000)	\$0

<u>FISCAL IMPACT - State Government</u> (continued)	FY 2006 (10 Mo.)	FY 2007	FY 2008
GENERAL REVENUE FUND			
(continued)			
<u>Losses</u> – Office of State Courts			
Administrator			
Passport fees (§483.537)	(\$100,000 to <u>\$116,667</u>)	(\$120,000 to <u>\$140,000</u>)	(\$120,000 to <u>\$140,000</u>)
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>(Less than \$316,667)</u>	<u>(\$564,387 to Unknown)</u>	<u>(\$1,009,993 to Unknown)</u>
 LEGAL EXPENSE FUND			
<u>Savings</u> – Office of Administration			
Reduced liability and claims	\$2,083,333 to <u>3,750,000</u>	\$2,500,000 to <u>\$4,500,000</u>	\$2,500,000 to <u>\$4,500,000</u>
ESTIMATED NET EFFECT ON LEGAL EXPENSE FUND	<u>\$2,083,333 to 3,750,000</u>	<u>\$2,500,000 to \$4,500,000</u>	<u>\$2,500,000 to \$4,500,000</u>

<u>FISCAL IMPACT - Local Government</u>	FY 2006 (10 Mo.)	FY 2007	FY 2008
POLITICAL SUBDIVISIONS			
<u>Costs – Cities</u>			
Representation by Attorney General (\$105.726)	(Unknown)	(Unknown)	(Unknown)
<u>Losses – Counties</u>			
Passport fees (\$483.537)	(\$25,000 to <u>\$29,167</u>)	(\$30,000 to <u>\$35,000</u>)	(\$30,000 to <u>\$35,000</u>)
ESTIMATED NET EFFECT ON POLITICAL SUBDIVISIONS	<u>(\$25,000 to Unknown)</u>	<u>(\$30,000 to Unknown)</u>	<u>(\$30,000 to Unknown)</u>

FISCAL IMPACT - Small Business

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

DESCRIPTION

The proposed legislation modifies numerous provisions regarding judicial procedures and personnel:

Health Professionals – \$44.045 – Health care professionals who volunteer to be deployed in a state emergency may be deployed and otherwise confidential contact information may be released to facilitate such deployment.

State Legal Expense Fund – \$105.711 – The proposal adds certain health care providers under formal contract to provide services to patients or inmates at a county jail on a part-time basis to coverage from the State Legal Expense Fund. For claims against officers and employees of the state, the fund shall be liable for economic damages to any one claimant and up to \$350,000 for noneconomic damages. The noneconomic damage cap is shall be adjusted annually based on certain indexes. If payment is made from the fund, such payment shall be the exclusive remedy for the claimant.

DESCRIPTION (continued)

State Legal Expense Fund – §105.726 – The proposal exempts the police boards of Kansas City and St. Louis City from coverage under the fund, except that the fund shall reimburse such police boards for liability claims otherwise eligible for payment from the fund up to \$1 million. The attorney general is responsible for establishing procedures for the representation of such police boards and the compensation to be paid by the board for such representation.

Private Children Services Liability – §210.116 – A private contractor with the children’s division that provides services to children and their families will receive the same immunity from civil liability as the division. The immunity will not apply to a private contractor if the contractor knowingly violates policies or rules of the division or any state law relating to child abuse.

Child Protection – §§210.117, 211.038, and 211.181 – This act prohibits a child who has been taken into the custody of the state or the jurisdiction of a juvenile court from being reunited with a parent or being placed back in the home in which the parent or any person living in the home has been found guilty or plead guilty to certain sexual offenses or offenses against the family when a child was the victim. The Child Support Division may exercise discretion in the placement of a child in a home with a parent when the parent or person living in the home has been found guilty or plead guilty for similar offenses in another state. A juvenile court cannot place a juvenile sex offender in a home within 1,000 feet of the victim until the victim reaches 18 years of age. The act prohibits a minor from residing within a certain distance of a child abused by the minor.

Safe Place for Newborns – §210.950 – Extends the affirmative defense to prosecution for voluntary relinquishment of a child no more than one year old. Currently, the child must be between six and thirty days old.

Alternative Sentencing – §217.860 – Establishes the Task Force on Alternative Sentencing within the Department of Corrections and provides that the primary duty of the task force is to develop a statewide plan for alternative sentencing programs.

Transportation District – § 238.216 – Requires a verified petition to be submitted in order to form a transportation district.

DESCRIPTION (continued)

Child Support – §452.340 – Authorizes a court to enter a judgment abating child support for a period of up to five months for any semester in which a child completes at least six but less than 12 credit hours when a child has pursued a path of continuous attendance at an institution of higher learning and has demonstrated evidence of a plan to continue the attendance. Such five-month period of abatement shall only be granted one time for each child. Further, the act changes the review of the child support guidelines from every three years to every four years.

Orders of Protection – §455.516 and 455.524 – The act provides that child orders of protection may be issued for at least 180 days and up to one year. Further, the court shall retain jurisdiction over a full order of protection for a child for the duration of the order and allows the court to schedule compliance review hearings to monitor compliance with the order.

Nonprobate Transfers – §461.005 – This act states that the term “owner” when used to define a person having a right to create a beneficiary deed shall include any such person, regardless of the terminology used to refer to the owner in the deed. This act will apply to all beneficiary deeds, including those executed prior to August 28, 2005.

Probate Judges – §§472.060 and 478.255 – Applies current replacement procedures to disqualified probate judges.

Judicial Circuits – §§478.550, 478.570, and 478.600 – The act increases the number of circuit judges in the 11th and 23rd judicial circuits from 4 to 6 beginning January 1, 2007. The family court and drug court commissioner positions in those circuits shall become associate circuit judge positions beginning on January 1, 2007. Further, there will be one additional associate circuit judge in Cass County beginning January 1, 2007.

Passport Fees – §483.537 – The act requires clerks who process passport applications and collect a fee for the processing to account for the expenditure of the fee in an annual report to the presiding judge and the Office of State Courts Administrator. The fees may only be used for the maintenance of the courthouse or to fund operations of the circuit court.

Notary Public – §486.200 – Adds attorneys licensed to practice law in this state to the definition of “notary public.”

DESCRIPTION (continued)

Court Costs – Various sections in chapter 488 – No court in this state that is authorized to collect court costs is required to refund any overpayment of less than \$5 or collect any due court costs of less than \$5. The circuit court may retain any overpayment for operation of the circuit court. The act removes an effective date for a municipality or county to enact an ordinance to impose a domestic violence shelter surcharge on marriage licenses and civil cases filed in circuit court. Currently, such ordinance had to be in effect prior to January 1, 2001. For any county or city with a domestic violence shelter or whose residents are in a shelter located in another county, the domestic violence shelter surcharge may be assessed in any criminal case, including violations of any county or municipal ordinance. The act authorizes a circuit court to contract with a private entity operated under a contract with a state agency or the office of state courts administrator.

Jury Duty – §§494.430 and 494.432 – Health care providers and employees of religious institutions may be excused from jury duty upon timely application to the court. Courts must specify the date a prospective juror will appear for jury service before granting a postponement.

Statute of Limitations – §516.030 – An action for prevailing wages by a workman must be brought within three years.

Unlawful Detainer Actions – §534.090 – The service of summons in an unlawful detainer action will be delivered by ordinary, rather than certified, mail. If the officer assigned to execute the summons returns to the court with information that the defendant cannot be found and with proof by affidavit that the summons was mailed, the judge will proceed to hear the matter as if personal service had been made.

Housing of Defendants – §545.550 – Sheriffs are authorized agree as to which county will house a defendant after a change of venue.

Civil Action for Passing Bad Checks – §570.123 – Currently, any person bringing a civil action against a person who passes a bad check may be entitled to attorney fees. This act provides that such person may be entitled to “reasonable” attorney fees.

Personal Information on the Internet – Section 1 – The act prohibits a court or a state or local agency from releasing personal information of certain elected and appointed officials on the Internet. It shall be a class C misdemeanor if any person knowingly posts personal information on such officials on the internet.

DESCRIPTION (continued)

Practice of Law – Section 2 – Banks or lending institutions that make residential loans and impose a fee of less than \$200 for completing residential loan documentation shall not be deemed as engaged in the practice of law.

29th Judicial Circuit – Section 3 – The act creates a state-funded family court commissioner position in the 29th judicial circuit.

42nd Judicial Circuit – Section 4 – The act creates a state-funded drug court commissioner position in the 42nd judicial circuit.

23rd Judicial Circuit – Section 5 – Any drug court commissioner appointed in the 23rd judicial circuit will be a state-funded position.

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 the Attorney General
Office of the Governor
Office of Administration
 – Administrative Hearing Commission
Coordinating Board for Higher Education
Office of State Courts Administrator
Department of Economic Development
Department of Elementary and Secondary Education
Department of Mental Health
Department of Natural Resources
Department of Corrections
Department of Health and Senior Services
Department of Labor and Industrial Relations
Department of Revenue
Department of Social Services
Department of Public Safety
 – Missouri State Highway Patrol
 – Missouri Veterans Commission

L.R. No. 1373-10

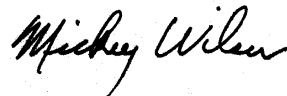
Bill No. Truly Agreed To and Finally Passed CCS for HCS for SCS for SBs 420 & 344

Page 16 of 16

June 2, 2005

SOURCES OF INFORMATION (continued)

Department of Insurance
Joint Committee on Public Employee Retirement
Department of Conservation
Missouri House of Representatives
Office of the Lieutenant Governor
Missouri Public Service Commission
Office of the Secretary of State
Office of the State Public Defender
State Treasurer's Office
State Tax Commission
Boone County Sheriff's Department
Boone County Collector's Office
Jasper County



Mickey Wilson, CPA
Director
June 2, 2005