

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1516-05
Bill No.: HCS for SB 262
Subject: Civil Procedure; Courts
Type: Original
Date: April 21, 2009

Bill Summary: The proposal revises various sections relating to judicial procedures.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
General Revenue	(\$998,508 to Unknown)	(\$1,448,879 to Unknown)	(\$2,156,294 to Unknown)
Total Estimated Net Effect on General Revenue Fund	(\$998,508 to Unknown)	(\$1,448,879 to Unknown)	(\$2,156,294 to Unknown)

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 30 pages.

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
Criminal Records	(\$40,800)	\$0	\$0
Statewide Court Automation	\$83,333	\$100,000	\$100,000
Local Records Preservation	\$0	\$0	\$0
Various State Funds	(Unknown)	(Unknown)	(Unknown)
Total Estimated Net Effect on <u>Other</u> State Funds	\$42, 533 to (Unknown)	\$100,000 to (Unknown)	\$100,000 to (Unknown)

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
Federal*	\$0	\$0	\$0
Total Estimated Net Effect on <u>All</u> Federal Funds*	\$0	\$0	\$0

* Offsetting Income and Costs of \$535,583, net to \$0.

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
General Revenue	5.98	6.98	6.98
Federal	3.52	3.52	3.52
Total Estimated Net Effect on FTE	9.5	10.5	10.5

☒ Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).

☒ Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the Office of **Administration – Administrative Hearing Commission, Department of Economic Development, Department of Mental Health, City of Kansas City, City of Centralia, Little Blue Valley Sewer District, Missouri Western State University, Metropolitan Community College of Kansas City, Linn State Technical College, and the University of Central Missouri** assume the proposal would have no fiscal impact on their agencies.

In response to a similar proposal from the current session (Perfected HCS for HBs 187 & 235, LR # 0705-04), officials from the **Office of the Governor, Department of Transportation, Department of Insurance, Financial Institutions, and Professional Registration, and the State Treasurer’s Office** assumed the proposal would have no fiscal impact on their agencies.

In response to a previous version of the proposal (HCS for HBs 187 & 235, LR # 0705-04), officials from the **Department of Public Safety – Director’s Office** assumed the proposal would have no fiscal impact on their agency.

Officials from the **Office of Prosecution Services** assume the proposal would have no measurable fiscal impact the Office of Prosecution Services or county prosecutors.

Officials from the **Office of the Secretary of State – Administrative Rules Division (SOS)** assume 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 proposal for Administrative Rules is less than \$2,500. The SOS recognizes this is a small amount and does not expect additional funding would be required to meet these costs. However, SOS also recognizes that many such bills may be passed in a given year and that collectively the costs may be in excess of what the SOS can sustain with their core budget. Any additional required funding would be handled through the budget process.

Officials from the **Missouri Southern State University** assumes the proposal would result in minimal fiscal impact.

Oversight assumes Missouri Southern State University could absorb any minimal fiscal impact within existing resources.

ASSUMPTION (continued)

Section 173.270 – Foster Care Tuition and Fee Waiver

Officials from the **Coordinating Board for Higher Education (CBH)** assume they are unable to estimate the fiscal impact of the tuition and fee waiver that this bill would create because of several unknown factors:

- The number of students who would seek to take advantage of the program initially;
- The number of such students who would ultimately enter a college or university;
- The number of such students who would ultimately meet the criteria set forth in the bill;
- Participants' persistence rates;
- Institutions' future tuition rates; and
- The distribution of students among institutions (i.e., how many students would attend a relatively low-cost institution, how many would attend a relatively high-cost institution, etc.).

The MDHE does estimate, however, that it would require 1 FTE Program Specialist (at \$28,596 per year) to administer the program. The CBH's grants and scholarships staff is very small and already working at or above capacity. Requiring that staff to perform additional duties without adding additional staff would likely have a negative impact on other state financial aid programs, such as Access Missouri and Bright Flight.

CBH estimates the total cost of the proposal to be approximately \$45,000 to Unknown per fiscal year.

Oversight has adjusted Coordinating Board for Higher Education's equipment expenditure to remove the desk, as an FTE would require a desk or systems furniture.

Sections 193.087 and 193.215 – Voluntary Acknowledgment of Paternity

Officials from the **Department of Health and Senior Services (DHSS)** assume Sections 193.087.1(2) and 193.215.6(3) provide for the voluntary acknowledgment of paternity available upon request to additional parties. It is unknown and difficult to anticipate how many requests may be received if this bill passes. Therefore, the amount of additional resources required to respond to this increase in requests is unknown. DHSS estimates the costs for the proposed legislation to be unknown, but less than \$100,000.

ASSUMPTION (continued)

Sections 211.445 through 211.478 – Termination of Parental Rights

Officials from the **Office of State Courts Administrator (CTS)** assume Section 211.445, RSMo, would have a fiscal impact. Beginning January 1, 2010, a parent may request in writing a trial of the issues of fact by a jury for all issues in termination of parental rights actions under this chapter and chapter 210, RSMo.

While it is unknown how many jury trials will result from this legislative change, section 494.455, RSMo, requires a county to pay jurors six dollars per day, for every day he or she may actually serve as such, and seven cents for every mile he or she may necessarily travel going from his or her place of residence to the courthouse and returning, to be paid from funds of the county or a city not within a county. In addition, if a county or city pays a juror at least \$12 a day, a “person shall receive an additional six dollars per day to be reimbursed by the state of Missouri so that the total compensation payable shall be at least eighteen dollars, plus mileage for each day that the person actually serves as a petit juror in a particular case; or for each day that a person actually serves as a grand juror during a term of a grand jury. The state shall reimburse the county for six dollars of the additional juror compensation provided by this subsection.” There may be an increase in the amount of state reimbursement for jurors; however, we would not anticipate a fiscal impact in excess of \$100,000.

In response to a similar proposal from the current session (SB 218, 0781-02), officials from the **Department of Social Services – Children’s Division** stated the following assumptions are based on the Division of Legal Services estimation that jury trials would result in the Children's Division spending approximately twice the legal fees currently spent on termination of parental rights cases.

There was an average of 413 Termination of Parental Rights cases completed per year for children in alternative care during FY 2005, 2006 and 2007. In FY 08 the Children’s Division spent \$2,506,080.37 in legal fees for Termination for Parental Rights cases. Assuming that half of those cases would involve demands for jury trials that would mean that approximately 206 (approximately \$1,250,000) of their annual termination of parental rights cases would involve demands for jury trial and the costs of those trials would double. This would result in an increase of \$1,250,000 in legal fees for termination of parental rights cases. The Division would also anticipate an increase in staff time spent in court and initially would require a revision in policy and training. Ultimately this would also result in an increase in the time taken for some children to achieve permanency.

ASSUMPTION (continued)

In response to a similar proposal from the current session (SB 218, 0781-02), officials from the **Department of Social Services – Division of Legal Services (DLS)** stated the proposal would make it much more expensive for the Department to achieve permanency for children in care and would serve to delay achieving that permanency. Specifically, it is anticipated that additional funding, lawyers, and staff would be necessary if all TPRs were done by jury. Jury trials would require more trial preparation to ensure witnesses and evidence are ready for jury, and not just a judge. Additionally, considering several DLS attorneys have never tried a case before a jury, DLS would need to train those attorneys on handling themselves in front of a jury, voir dire, opening and closing statements, evidentiary issues, and various other issues unique to jury trial practice.

Further, cases will take longer to try if they were to be tried in front of juries. A safe estimate would be approximately two times longer thereby causing delays due to the already crowded calendars of courts and attorneys alike. It is also anticipated that attorney fees for GALs and court-appointed attorneys would skyrocket due to the increased amount of preparation time jury trials require as well as the anticipated increase in depositions and the use of expert witnesses by both sides to the respective cases. Finally, additional time and expense would be extended on those cases that ended with a hung jury and thus had to be retried. As more thoroughly discussed below, termination of parental rights cases tend to be time-intensive cases and therefore the increase in attorney's fees awards against the Children's Division would be significant. Based on experience, the typical attorney's fees award against the Children's Division in a termination of parental rights case is approximately \$10,000.00. However, if those cases were jury trials, a conservative estimate would be that attorney's fees charged to the State would at least double to approximately \$20,000.00 per case, not including any appellate issues that may need to be resolved.

Over the past three fiscal years, there has been an average of 413 termination of parental rights cases completed involving children in the Department's care. Assuming that half of those cases would involve demands for jury trials that would mean that approximately 206 of our annual termination of parental rights cases would involve demands for jury trial. A good estimate is that our current termination of parental rights cases require DLS attorneys to invest approximately 60 hours of preparation time and time spent actually in court arguing the case. Thus, given the average of 413 cases per year, DLS attorneys currently spend approximately 24,780 hours per year on termination of parental rights cases. However, as previously mentioned, jury trial would require about twice as much time, or approximately 120 hours, of preparation and trial time. Thus, if about 206 of DLS's termination of parental rights cases were jury trials, that would mean an additional 12,360 hours spent on termination of parental rights cases. Given current DLS case loads, the current staff for DLS would be insufficient to handle this additional burden.

ASSUMPTION (continued)

Therefore, the addition of additional FTE would be necessary to address this need. DLS assumes the need for 6 FTE Attorneys (each at \$37,560 per year) and 2 FTE Administrative Office Support Assistant (each at \$26,004 per year). DOS estimates the total cost to be approximately \$438,000 in FY 2010 and approximately \$500,000 in subsequent years. The cost would be split among the General Revenue and Federal Funds.

Section 452.305, 452.310, 452.312 – Use of Social Security Number

Officials from the **Department of Health and Senior Services (DHSS)** assume Sections 452.310.2(6) and 452.310.5(1) would change current documents to only include the last four digits of the social security number on any judgment of dissolution of marriage or legal separation. Such action would require modification to SSN field in the vital records database. DHSS estimates the associated cost would be minimal.

Section 452.310.2(4) would require the age, rather than the date of birth, of the child to be included on the petition in a proceeding for dissolution of marriage or legal separation. Such action would require modification to the date of birth/age fields in the vital records database. DHSS estimates the associated cost would be minimal.

Oversight assumes Department of Health and Senior Services could absorb any minimal costs resulting from the proposal within existing resources.

Officials from the **Department of Social Services (DOS)** assume the amendments to sections 452.305, 452.310, and 452.312 remove the requirements for the Social Security numbers and other identifying information of the parties to be recorded in the related petitions and orders. The amendments provide that Social Security numbers and other identifying information of the parties will instead be recorded in a family court information sheet. The amended law provides that the court may release information contained in the family court information sheets for good cause shown. DOS – FSD and other state IV-D agencies have statutory authority to receive Social Security numbers under 454.440 and 454.412, RSMo. DOS – FSD and other state IV-D agencies also have current authority to receive the other identifying information referenced in these sections of the law. However, it is unclear to the DOS – FSD whether it is the intent of the proposed legislation to prohibit the division's access to data recorded on the family court information sheets. If the legislation serves to limit the division's access to information recorded on the information sheets, it would adversely affect the division's ability to determine such information and, therefore, impact the division's ability to effectively provide support enforcement services. The fiscal impact for this change is unknown.

ASSUMPTION (continued)

42 USC, Section 666(f) requires states to have in effect the Uniform Interstate Family Support Act as approved by the American Bar Association on February 9, 1993, and as in effect on August 22, 1996, including any amendments officially adopted as of such date by the National Conference of Commissioners on Uniform State Laws. 42 USC, Section 666(f) states:

(f) Uniform Interstate Family Support Act

In order to satisfy section 654(20)(A) of this title, on and after January 1, 1998, each State must have in effect the Uniform Interstate Family Support Act, as approved by the American Bar Association on February 9, 1993, and as in effect on August 22, 1996, including any amendments officially adopted as of such date by the National Conference of Commissioners on Uniform State Laws.

In summary, DOS – DFS assumes the proposal would result in a loss of federal funds in the amount of \$63,000,000. This loss would be replaced by General Revenue funds in the amount of \$63,000,000.

Oversight assumes the intent of the legislation is not to make the Department of Social Services – Division of Family Services (DOS – DFS) out of compliance with federal Title IV-D State Plan requirements. DOS – DFS assumption that the proposal would jeopardize federal funding is speculative. Therefore, Oversight is reflecting no fiscal impact to the DOS – DFS for this fiscal note. If DOS – DFS is found to be out of compliance with Title IV-D State Plan requirements, then the proposal could result in a loss of federal funding.

Section 454.516 – Lien for Unpaid Child Support

Officials from the **Department of Revenue (DOR)** assume the provisions in section 454.516 could fiscally impact their department. This section changes the amount of unpaid child support from \$1,000 or more to \$2,500 or more before the Director or IV-D agency can notify the Director of Revenue to impose a lien to block the issuance of a certificate of ownership for motor vehicles, motor boats, outboard motors, manufactured homes, and trailers. This will potentially result in an unknown minimal increase in the number of certificates of ownership the DOR issues and an unknown decrease in rejected transactions for an unpaid child support lien.

Oversight assumes Department of Revenue could absorb the minimal increase within existing resources.

ASSUMPTION (continued)

Section 475.375 – Removal of Disqualification to Purchase Firearm

In response to a similar proposal from the current session (HCS for HBs 187 & 235, LR # 0705-04) officials from the **Office of the Attorney General (AGO)** assumed the proposed changes to Section 475.375 allow a person previously adjudged mentally incompetent or involuntarily committed to petition for removal of firearms restrictions, and assigns the AGO the duty to defend in various counties of the State. The number of such cases is unknown, but AGO assumes it would require 0.5 FTE Assistant Attorney General II (at \$37,500 per FTE) in light of the additional travel requirements. AGO assumes the cost to be approximately \$33,000 in FY10 and approximately \$36,000 in subsequent years.

Officials from the **Department of Public Safety – Missouri State Highway Patrol (MSHP)** state their Information Systems Division does not currently enter information into the National Instant Criminal Background Check System (NICS). To do so will require 480 hours of consultant work at \$85 per hour for a total of \$40,800 (480 x 85).

Section 476.055 – Statewide Court Automation Fund

Oversight assumes the proposed legislation would extend the September 1, 2009, expiration date of the Statewide Court Automation Fund and the statewide court automation fund fees until September 1, 2013. The balances in the fund for fiscal years 2006, 2007, and 2008 are as follows:

**Statewide Court Automation Fund (0270)
from
Fund Activity Report**

Fiscal Year	Beginning Balance	Receipts	Disbursements/JV's	Transfers/IAB	Ending Balance
2008	\$523,044.68	\$5,684,275.66	(\$4,176,715.19)	(\$1,286,070.86)	\$744,534.29
2007	\$573,953.71	\$5,334,765.18	(\$4,608,026.49)	(\$777,647.72)	\$523,044.68
2006	\$407,097.67	\$4,753,205.91	(\$3,449,035.10)	(\$1,137,311.77)	\$573,953.71
Avg	\$501,365.35	\$5,257,415.58	(\$4,077,925.59)	(\$1,067,010.12)	\$613,844.23

ASSUMPTION (continued)

Oversight assumes the proposal would result in continued revenues and costs to the Statewide Court Automation Fund in fiscal years 2010, 2011, and 2012. Based on the data from the past three fiscal years, Oversight assumes the proposal would result in average revenues of approximately \$5,300,000, costs of approximately \$4,100,000, and transfers of approximately (\$1,100,000), resulting in a net increase to the Statewide Court Automation Fund of approximately \$100,000 per fiscal year. FY 2010 amounts have been adjusted to reflect 10 months.

Section 478.264 – Probate Commissioners converted to Associate Circuit Judges

Officials from the **Office of State Courts Administrator (CTS)** assume beginning January 1, 2010, no new probate or deputy probate commissioners shall be appointed under Sections 478.265 to 478.267 to serve in the 31st judicial circuit. This section does not reference 478.268, RSMo, the probate commissioner in Greene County. It is assumed this legislation is intended to only convert the probate commissioner in the 31st circuit to an associate circuit judge. The conversion will produce no cost savings as the probate commissioner in Greene County is paid the same as an associate circuit judge.

Section 478.325 – Convert Probate and Drug Court Commissioners to Associate Circuit Judges

Officials from the **Office of State Courts Administrator (CTS)** assume no new state-funded probate or drug commissioners shall be appointed to the 31st judicial circuit and no drug court commissioners shall be appointed to any circuit. The probate commissioner in the 31st judicial circuit and all drug commissioners serving on January 1, 2010, shall complete their current term as commissioner. Upon completion of their current term, the drug court commissioner positions in the 16th, 24th, 31st, and 42nd judicial circuits shall convert to associate circuit judge positions and shall be subject to election at the general election immediately preceding the end of the current commissioner term.

Upon completion of their current term, the drug court commissioner positions in the 12th, 33rd, and 35th judicial circuits will each lose a commissioner position. The 22nd judicial circuit will lose two drug court commissioner positions. One of these commissioner positions shall be converted to a circuit court judge in the 38th judicial circuit. One of each of the remaining converted associate circuit judges will go to the 16th, 20th, 31st, and 40th judicial circuits. It is unclear in which order the counties will receive the converted associate circuit judge positions.

ASSUMPTION (continued)

Section 478.575 – 38th Judicial Circuit

Officials from the **Office of State Courts Administrator (CTS)** assume, beginning January 1, 2011, the legislation would add one circuit judge to the 38th judicial circuit. It is assumed a commissioner position will be vacated by this date. The 38th judicial circuit judge will cost an additional \$11,118, plus fringes and will require a court reporter, at \$55,012 per year, plus fringes. The fiscal impact of this conversion will be approximately \$66,130 per year, plus fringes.

Section 483.015 – 22nd Circuit Court

Officials from the **Office of State Courts Administrator (CTS)** assume Section 483.015, RSMo, provides that the Court Administrator for the 22nd Circuit Court as provided by local rule shall have and exercise all of the powers and duties of the Circuit Clerk of the City of St. Louis, effective January 2011. The Circuit Clerk of the City of St. Louis in office at the time of enactment of this legislation shall continue to hold such position until the expiration of his current term. The current salary for the St. Louis Circuit Clerk is \$111,953 and the salary for the proposed Court Administrator is unknown; therefore, CTS is unable to provide any estimate of cost savings at this time

Sections 488.012 and 488.075 – Circuit Clerk's Record Preservation Fund

Officials from the **Office of State Courts Administrator (CTS)** assume the proposed legislation would impose a \$3.00 court cost in all civil and criminal cases, including municipal and ordinance violations. Of this \$3.00 fee, \$2.00 shall be retained by the circuit clerk in the circuit clerk fund to be used for record storage, microfilming, preservation, and public access of circuit court records. The remaining \$1.00 of this fee collected by the circuit clerk shall be forwarded to the office of the secretary of state to be utilized for additional preservation of local records.

CTS calculation takes into account the fact that felony collection rates are only between 50% and 60%, and misdemeanor collection rates average 80%. This court cost is assessed on misdemeanor and felony cases. Since these defendants often do not have steady employment or cash reserves, the court often gives the defendants the period of probation to pay the costs and fines. Therefore, the revenue generated the first year is less than that generated in subsequent years. CTS assumes the felony collection rate increases over a period of four years, which CTS believes to be the average probation served for felonies. The collection rate for misdemeanors increases over two years, the average probation time for misdemeanants.

ASSUMPTION (continued)

Based on a 50% felony collection rate, CTS calculations indicate that the legislation will produce \$1,851,342 in the 1st 12 months, \$1,977,784 in the 2nd 12 months, \$1,990,764 in the 3rd 12 months, and \$2,003,744 annually thereafter. Based on a 60% felony collection rate, CTS calculations indicate that the legislation will produce \$1,853,938 in the 1st 12 months, \$1,982,976 in the 2nd 12 months, \$1,998,552 in the 3rd 12 months, and \$2,014,128 annually thereafter.

For simplicity and since the two estimates are relatively close, **Oversight** will utilize the lower of the estimates provided by CTS. The FY 10 estimates reflect 10 months of collections due to the August 28, 2009, effective date for this part of the proposal. Oversight assumes \$2.00 will be retained by the circuit clerk in the record preservation fund for the preservation of records. \$1.00 will be forwarded to the Office of the Secretary of State for preservation of local records.

Oversight assumes the circuit clerks will utilize any revenues generated by the provisions in the proposed legislation for the costs of record storage, microfilming, preservation, public access of circuit court records, and any other allowable costs.

Officials from the **Office of the Secretary of State (SOS)** state this part of the bill provides one dollar for each fee collected by the clerks of the court under Section 488.075 to be forwarded to the SOS to be used for the additional preservation of local records. SOS states that according to Office of State Courts Administrator's 2008 Annual Report, there were 1,147,389 filings in FY 2008. Using this number as a base figure, SOS can estimate revenues for this fund in FY 2009 to be \$1,147,389 (\$1 court fee). With these revenues taking effect on August 28, 2009, there will be an increase in revenues of \$956,158 for FY 2010 and \$1,147,389 for subsequent years. The SOS assumes these proceeds will be deposited into the Local Records Preservation Fund (0577).

ASSUMPTION (continued)

Sections 537.800, 537.802, 537.804, 537.806, and 537.808 – MO False Claims Act

In response to a similar proposal from the current session (HB 940, LR # 2054-01), officials from the **Department of Elementary and Secondary Education (DESE)** assumed there is no state cost to the foundation formula associated with this proposal. Should the new crimes and amendments to current law result in additional fines or penalties, DESE cannot know how much additional money might be collected by local governments or the DOR to distribute to schools. To the extent fine revenues exceed 2004-2005 collections, any increase in this money distributed to schools increases the deduction in the foundation formula the following year. Therefore, the affected districts will see an equal decrease in the amount of funding received through the formula the following year; unless the affected districts are hold-harmless, in which case the districts will not see a decrease in the amount of funding received through the formula (any increase in fine money distributed to the hold-harmless districts will simply be additional money). An increase in the deduction (all other factors remaining constant) reduces the cost to the state of funding the formula.

Oversight assumes any increase or decrease in fine or penalty revenues generated cannot be determined. Therefore, the fiscal note does not reflect any fine or penalty revenues for the local school districts.

In response to a similar proposal from the current session (HB 940, LR # 2054-01), officials from the **Department of Transportation (MoDOT)** assumed this bill creates the “Missouri False Claims Act.” It authorizes the Attorney General (AGO) to pursue civil penalties against persons or entities who submit false claims for payment to the state or a political subdivision of the state (including school districts). The bill authorizes the AGO to file a lawsuit on behalf of the state when a false claim has been made. This will effectively prevent Missouri Highways and Transportation Commission (MHTC) from pursuing any false claims made against MHTC on its own.

The bill does not specifically state that any penalties or damages recovered due to a false claim will be used to reimburse the damaged state agency, school district, etc., but if that is the case, this bill could have an unknown fiscal impact upon MoDOT.

ASSUMPTION (continued)

Officials from the **Department of Corrections (DOC)** assume in addition to establishing the Missouri False Claims Act, this bill establishes a cause of action for an employee who is discharged, demoted, suspended, threatened or harassed, “or in any other manner discriminated against in the terms and conditions of employment” by his or her employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under this section, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under. The relief includes reinstatement with two times the amount of back pay, interest on back pay, special damages, including costs and attorney’s fees.

DOC also assumes the relief is greater than provided for in other similar employment discrimination/retaliation/whistle blower statutes (two times back pay/interest/attorney’s fees). The scope is broad and undefined, to include employees “in any other manner discriminated against in the terms and conditions of employment” (necessarily must be something other than discharge, demotion, suspension, threats or harassment, because those are specifically mentioned), and plaintiffs would include not only employees who assisted in an action filed pursuant to the Missouri False Claims Act, but also in an action “to be filed.” Individuals may file actions under the Missouri False Claims Act in the name of the government. Because of the relief, broad scope, and vague terms in this section, this section will likely generate a lot of litigation.

In summary, fiscal impact for the DOC is unknown.

In response to a similar proposal from the current session (HB 940, LR # 2054-01), officials from the **Department of Social Services – Human Resources Center (DOS)** assumed this would duplicate the “Whistleblower” protections that the DOS employees already have under RSMo 105.055; however, it would increase the restitution to effected employees. Employees with regular status may appeal to the Personnel Advisory Board (PAB) whenever they allege that they have been retaliated against (disciplined) for disclosure of prohibited activities.

Under this proposed legislation, any employee who is retaliated against is entitled to all relief necessary to make the employee whole including: reinstatement with the same seniority status the employee would have had but for the discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the retaliation, including litigation costs and reasonable attorneys’ fees, and the employee may bring action in the appropriate circuit court for relief.

ASSUMPTION (continued)

This increases the liability to the agency because of the additional restitution to the effected party (for example, currently employees receive back pay not two times the amount of back pay; do not receive interest on the back pay; and they are not entitled to special damages). Additionally, it is noted that no limit is established on the special damages that can be awarded. DOS assumes the cost would be (Unknown).

In response to a similar proposal from the current session (HB 940, LR # 2054-01), officials from the **Department of Public Safety – Missouri Veterans Commission** assumed the fiscal impact to be unknown. The fiscal impact, if any, may be positive, although it is not clear that the funds would be returned to their agency or whether they would go to General Revenue.

In response to a similar proposal from the current session (HB 940, LR # 2054-01), officials from **Clinton County** assumed they may incur some financial losses as well as legal costs as a result of the proposal.

Oversight assumes the various state agencies and local governmental entities could incur increased liability costs as a result of the proposal. Oversight has reflected the costs to the general revenue fund, various state funds, and local government as (Unknown).

Various Sections – Corporations and LLC Filings

Officials from the **Office of the Secretary of State (SOS)** assume the proposal will allow the SOS to charge an additional fee for expedited filings; it will allow corporations to change the due date of their corporate registration report; it will allow corporations to elect to file their corporate registration report biennially; it will reduce the fee for LLCs organizing online; and it will extend the amount of time a corporation has from thirty days to ninety days before the SOS is required to administratively dissolve a corporation for failure to file their registration report.

The proposal would require the SOS to notify limited liability companies and limited partnerships 30 days in advance of the expiration of the LLC or the partnership's duration and allow the LLC or partnership to extend the duration. If the duration is not extended by the LLC or partnership, the SOS will notify the LLC or partnership it has 60 days to extend before being administratively dissolved by the SOS. Upon dissolution, the SOS must notify the LLC or partnership it has been administratively dissolved.

ASSUMPTION (continued)

The proposal also makes the provision for name reservations in Chapter 355 consistent with that of Chapter 351. The proposal allows alternative methods for board meeting attendance if approved by the Board of Directors, and allows certain information to be eliminated from restated articles of incorporation.

SOS estimates the fiscal impact of the proposal as follows:

Expedited fees: SOS Estimates 2 expedited requests per week at \$200 per filing.

Reduction of online filing fees for LLCs: SOS assumes that 50% of the 30,000 LLCs formed each year will file online (15,000 x \$55).

Option to change the due date of the corporate registration report: SOS assumes that 30% of the 115,200 general business corporations will opt to change their due date; of those, 50% will change in FY 10 and 50% will change in FY 11.

Option for a biennial corporate registration report: SOS assumes that 50% of the 115,200 general business and 50% of the 36,000 non-profit corporations will elect to file biennially. Corporations formed in odd numbered years can opt biennial filing in an odd numbered filing year; corporations formed in an even numbered year can opt biennial filing in an even numbered filing year. SOS assumes that 50% will opt to file biennially, with 75% of the general business and 55% of the non-profit filing online; the remainder will file paper reports. The change will occur over two fiscal years, with 76% of the general business corporations that change changing in FY 10 and 24% changing in FY 11. For non-profits, the first year change will occur in FY 11.

Expenses for FY 10 are for one time contract programming with the KB system vendor. FY 11 and FY 12 cost avoidance is in reduced postage and printing because of biennial filing.

There are just over 225,000 active limited liability companies and 16,000 limited partnerships registered with the SOS. Since most LLCs and limited partnerships have a duration of perpetual or an average of 50 years, the number of companies and partnerships affected by this legislation, while unknown, is assumed to be minimal. Therefore, the number of notices sent by the SOS will also be minimal; the SOS will absorb the fiscal impact of this part of the legislation.

In summary, SOS estimates the fiscal impact to the General Revenue fund to be increased revenues of approximately \$240,000 in FY10, and losses of approximately \$130,000 in FY11 and \$770,000 in FY12. In addition, SOS assumes a net increase in revenues to the Technology Fund of approximately \$59,000 in FY10 and \$170,000 in FY11.

BLG:LR:OD (12/02)

ASSUMPTION (continued)

Sections 1 and 2 – Modification of Child Support

In response to a similar proposal from the current session (HCS for HBs 187 & 235, LR # 0705-04), officials from the **Department of Social Services (DOS)** stated compliance problems exist and the fiscal note should reflect the potential loss of federal funds of approximately \$63 million.

Oversight assumes Department of Social Services assumption that the proposal would jeopardize federal funding is speculative. Therefore, Oversight is reflecting no fiscal impact to the DOS for this fiscal note. If DOS is found to be out of compliance with Title IV-D State Plan requirements, then the proposal could result in a loss of federal funding.

The proposed legislation could directly affect Total State Revenue (TSR). TSR will increase in FY 10 because of corporations electing to pay an additional fee to change the due date of their corporate registration report and electing to file their report biennially rather than annually; this increase will offset the decrease in revenue associated with a reduction in the online filing fee for Limited Liability Companies (LLC). In FY 11 and FY 12 there will be a decrease in TSR because the reduction in filing fees for LLCs will exceed the increase in fees associated with biennial filing and the change of the corporate registration report due date.

<u>FISCAL IMPACT - State Government</u>	FY 2010 (10 Mo.)	FY 2011	FY 2012
GENERAL REVENUE FUND			
<u>Revenues</u> – Office of the Secretary of State			
Corporation/LLC/LP filing fees	\$240,606	\$0	\$0
<u>Savings</u> – Office of the Secretary of State			
Reduced mailers and postage	\$0	\$15,287	\$15,800
<u>Losses</u> – Office of the Secretary of State			
Corporation/LLC/LP filing fees	\$0	(\$142,056)	(\$783,400)
<u>Costs</u> – Coordinating Board for Higher Education (173.270)			
Personal Service	(\$24,545)	(\$30,337)	(\$31,248)
Fringe Benefits	(\$11,936)	(\$14,753)	(\$15,196)
Equipment and Expense	(\$6,583)	(\$328)	(\$337)
Scholarship Costs	(Unknown)	(Unknown)	(Unknown)
<u>Total Costs</u> – CBH	(\$43,064 to Unknown)	(\$45,418 to Unknown)	(\$46,781 to Unknown)
FTE Change – CBH	1 FTE	1 FTE	1 FTE
<u>Costs</u> – Department of Health and Senior Services (193.087)			
Increased requests	(Less than \$100,000)	(Less than \$100,000)	(Less than \$100,000)
<u>Costs</u> – Office of State Courts Administrator (211.445)			
Increased juror reimbursements	(Less than \$100,000)	(Less than \$100,000)	(Less than \$100,000)

FISCAL IMPACT - State Government
 (continued)

FY 2010
 (10 Mo.)

FY 2011

FY 2012

GENERAL REVENUE FUND
 (continued)

Costs – Office of the Attorney General
 (\$475.375)

Personal Service	(\$16,094)	(\$19,892)	(\$20,489)
Fringe Benefits	(\$7,827)	(\$9,673)	(\$9,964)
Equipment and Expense	<u>(\$8,888)</u>	<u>(\$6,026)</u>	<u>(\$6,207)</u>
<u>Total Costs – AGO</u>	<u>(\$32,809)</u>	<u>(\$35,591)</u>	<u>(\$36,660)</u>
FTE Change – AGO	0.5 FTE	0.5 FTE	0.5 FTE

Costs – Office of State Courts
 Administrator (\$478.575)

Personal Service	\$0	(\$34,907)	(\$72,590)
Fringe Benefits	\$0	(\$18,507)	(\$38,124)
Equipment and Expense	<u>\$0</u>	<u>(\$1,509)</u>	<u>\$0</u>
<u>Total Costs – CTS (\$478.575)</u>	<u>\$0</u>	<u>(\$54,923)</u>	<u>(\$110,714)</u>
FTE Change – CTS	0 FTE	1 FTE	1 FTE

Costs – Department Social Services –
 Children's Division (211.445 – 211.478)

Program Costs	(\$907,500)	(\$907,500)	(\$907,500)
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Costs – Department of Social Services –
 Division of Legal Services (211.445 –
 211.478)

Personal Service	(\$133,268)	(\$164,785)	(\$169,729)
Fringe Benefits	(\$64,808)	(\$80,135)	(\$82,539)
Equipment and Expense	<u>(\$47,665)</u>	<u>(\$33,758)</u>	<u>(\$34,771)</u>
<u>Total Costs – DSS DLS</u>	<u>(\$245,741)</u>	<u>(\$278,678)</u>	<u>(\$287,039)</u>
FTE Change – DSS DLS	4.48 FTE	4.48 FTE	4.48 FTE

Costs – Various State Agencies (Chapter
 537)

Increased liability payments	(Unknown)	(Unknown)	(Unknown)
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<u>FISCAL IMPACT - State Government</u> (continued)	FY 2010 (10 Mo.)	FY 2011	FY 2012
GENERAL REVENUE FUND (continued)			
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>\$191,703</u>	<u>(\$237,175)</u>	<u>(\$935,463)</u>
Estimated Net FTE Change for General Revenue Fund	0.5 FTE	1.5 FTE	1.5 FTE
CRIMINAL RECORDS FUND			
<u>Costs</u> – Missouri State Highway Patrol (475.375)			
Consultant programming fees	<u>(\$40,800)</u>	<u>\$0</u>	<u>\$0</u>
ESTIMATED NET EFFECT ON CRIMINAL RECORDS FUND	<u>(\$40,800)</u>	<u>\$0</u>	<u>\$0</u>

<u>FISCAL IMPACT - State Government</u> (continued)	FY 2010 (10 Mo.)	FY 2011	FY 2012
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**STATEWIDE COURT
AUTOMATION FUND**

Revenues – Office of State Courts
 Administrator (§476.055)

Continued collection of state court automation fund fees	\$4,416,667	\$5,300,000	\$5,300,000
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Costs – Office of State Courts
 Administrator (§476.055)

Statewide court automation system	(\$3,416,667)	(\$4,100,000)	(\$4,100,000)
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Transfers – Office of State Courts
 Administrator (§476.055)

Net of transfers in, transfers out, and IAB transactions	<u>(\$916,667)</u>	<u>(\$1,100,000)</u>	<u>(\$1,100,000)</u>
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**ESTIMATED NET EFFECT ON
STATEWIDE COURT
AUTOMATION FUND**

<u>\$83,333</u>	<u>\$100,000</u>	<u>\$100,000</u>
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**LOCAL RECORDS PRESERVATION
FUND**

Transfer In – Secretary of State

From circuit clerk record preservation fund (488.075) \$1 of new \$3 fee	\$514,262	\$663,588	\$667,915
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Costs – Office of the Secretary of State

For local record preservation (488.075)	(\$514,262)	(\$663,588)	(\$667,915)
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**ESTIMATED NET EFFECT ON
LOCAL RECORDS PRESERVATION
FUND**

<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
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<u>FISCAL IMPACT - State Government</u> (continued)	FY 2010 (10 Mo.)	FY 2011	FY 2012
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VARIOUS STATE FUNDS

Costs – Various State Agencies (Chapter 537)

Increased liability payments	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
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**ESTIMATED NET EFFECT ON
VARIOUS STATE FUNDS**

<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
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FEDERAL FUNDS

Income – Department of Social Services
(211.445 – 211.478)

Federal Assistance	\$535,583	\$561,461	\$568,031
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Costs – Department of Social Services –
Children’s Division (211.445 – 211.478)

Program Costs	(\$342,500)	(\$342,500)	(\$342,500)
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Costs – Department of Social Services –
Division of Legal Services (211.445 –
211.478)

Personal Service	(\$104,711)	(\$129,474)	(\$133,359)
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Fringe Benefits	(\$50,921)	(\$62,963)	(\$64,852)
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Equipment and Expense	(\$37,451)	(\$26,524)	(\$27,320)
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<u>Total Costs</u> – DSS DLS	<u>(\$193,083)</u>	<u>(\$218,961)</u>	<u>(\$225,531)</u>
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FTE Change – DSS DLS	3.52 FTE	3.52 FTE	3.52 FTE
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**ESTIMATED NET EFFECT ON
FEDERAL FUNDS**

<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
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Estimated Net FTE Change for Federal
Funds

3.52 FTE	3.52 FTE	3.52 FTE
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<u>FISCAL IMPACT - Local Government</u>	FY 2010 (10 Mo.)	FY 2011	FY 2012
LOCAL GOVERNMENT			
<u>Revenue</u> – Circuit Clerks			
Court costs to circuit clerk’s record preservation fund (488.075) - new \$3 fee	\$1,542,785	\$1,990,764	\$2,003,744
<u>Costs</u> – Circuit Clerks			
Record storage, microfilming, preservation, etc. (488.075) – \$2 of new \$3 fee to be used by clerks	(\$1,028,523)	(\$1,327,176)	(\$1,335,829)
<u>Transfer Out</u> – to the Secretary of State (Section 488.075) – \$1 of new \$3 fee transferred to Secretary of State	(\$514,262)	(\$663,588)	(\$667,915)
ESTIMATED NET EFFECT ON LOCAL GOVERNMENT	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

This legislation could have a positive impact on small business because it will make it easier for a limited liability company (LLC) and a limited partnership to continue the existing LLC or limited partnership rather than create a new LLC or partnership if the existing company or partnership fails to extend its duration.

FISCAL DESCRIPTION

Section 173.270 – Foster Care Tuition and Fee Waiver

The proposal establishes a tuition and fee waiver program beginning with the 2010 fall term for incoming Missouri resident college freshmen who have been in foster or residential care at certain times. To be eligible, applicants must have graduated from high school or passed the general educational development (GED) test within the last three years. The student must apply for admission to and be accepted at a state institution of higher education within the time frame specified by the bill, apply for financial aid, request a determination of eligibility from the Coordinating Board for Higher Education, and complete at least 100 hours of community service or public internship within the 12-month period beginning September 1 during the year of the tuition and fee waiver. Waivers will be awarded annually, subject to appropriations, for up to four years of undergraduate study and may only be used after other sources of financial aid intended for tuition and fees are exhausted.

Sections 193.087 and 193.215 – Voluntary Acknowledgment of Paternity

The proposal provides for the voluntary acknowledgment of paternity to be available upon request to the child's mother, the father listed on the child's birth record, the attorney representing such mother or father, the child, the guardian ad litem, and the child's attorney and the state and federal government for child support purposes.

Sections 211.445 through 211.478 – Termination of Parental Rights

The proposed legislation provides that as of January 1, 2010, a parent may request by written demand to the juvenile court a jury trial for proceedings regarding involuntary termination of parental rights. By November 1, 2009, the Missouri Supreme Court shall develop appropriate jury instructions for termination of parental rights cases heard by a jury. At least one of the instructions shall direct the jury to find whether the termination of parental rights will or will not be in the best interests of the child.

Section 475.375 – Removal of Disqualification to Purchase Firearm

The proposed legislation authorizes a petition process for an individual over the age of eighteen who has been judged incompetent to purchase, possess, or transfer a firearm when the individual no longer suffers from the condition that resulted in the individual's incapacity.

FISCAL DESCRIPTION (continued)

Section 476.055 – Statewide Court Automation Fund

The proposed legislation extends the expiration date for the Statewide Court Automation Fund from September 1, 2009 to September 1, 2019.

Section 478.264 – Probate Commissioners

Beginning January 1, 2010, no new probate or deputy probate commissioners shall be appointed under sections 478.265 to 478.267 to serve in the 31st judicial circuit. Upon reappointment (after commissioners currently serving reach compulsory retirement age, die, resign, or are removed), such positions shall be converted to associate circuit judge positions.

Section 478.325 – Convert State-Funded Commissioners to Associate Circuit Judges

The proposal would convert all state-funded probate or drug commissioners to associate circuit judges after the current office holder reaches compulsory retirement age, dies, resigns, or is removed. One shall be transferred and converted to a circuit judge position in each of the 38th, 16th, 20th, 31st, and 40th judicial circuits. In circuits with more than one county, the county with the largest population will receive the new converted associate circuit judge.

Section 478.575 – 38th Judicial Circuit

Beginning January 1, 2011, there shall be two circuit judge in the 38th judicial circuit. The additional circuit judge shall be elected in 2010.

Section 483.015 – Court Administrator for the 22nd Circuit Court

The Court Administrator for the 22nd Circuit Court as provided by local rule shall have and exercise all of the powers and duties of the Circuit Clerk of the City of St. Louis, effective January, 2011. The Circuit Clerk of the City of St. Louis in office at the time of enactment of this legislation shall continue to hold such position until the expiration of his current term.

FISCAL DESCRIPTION (continued)

Section 488.012 and 488.075 – Local Records Preservation

The proposed legislation authorizes circuit courts to collect a \$3 fee on all cases filed on or after September 1, 2009. \$2 shall be deposited into the circuit clerk's record preservation fund to be used for record storage, microfilming, preservation, and public access of circuit court records. \$1 shall be forwarded to the Office of the Secretary of State to be utilized for additional preservation of local records. The proposal also specifies that no fee authorized by Sections 488.010 – 488.020, RSMo, can be collected in any proceeding involving a violation of an ordinance or state law when a criminal case has been dismissed by the court or when the costs are waived or paid by the state, county, or municipality.

Sections 537.800, 537.802, 537.804, 537.806, and 537.808 – MO False Claims Act

The proposed legislation establishes the Missouri False Claims Act. In its main provision, the bill specifies that a person will be liable to the state or relevant political subdivision for a civil penalty if he or she:

1. Knowingly presents, or causes to be presented, false or fraudulent claims for payment or approval to any officer or employee of the state, any political subdivision, public school district, or public charter school;
2. Knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved or to conceal, avoid, or decrease an obligation to pay or transmit money or property to the government;
3. Conspires to defraud the government by getting a false or fraudulent claim allowed or paid;
4. Has possession, custody, or control of property or money used, or to be used, by the government and, intending to defraud the government or willfully to conceal the property, delivers or causes to be delivered less property than the amount for which the person receives a certificate or receipt;
5. Makes or delivers a certified receipt of property used without completely knowing that the information on the receipt is true if authorized to make or deliver the document and with the intent to defraud the government;

FISCAL DESCRIPTION (continued)

6. Knowingly buys or receives as a pledge of an obligation or debt public property from an officer, agent, or employee of the government who may not sell or pledge the property; or
7. Violates Section 105.452, 105.454, 576.010, 576.020, 576.030, 576.040, 576.050, or 576.080, RSMo.

The penalty for anyone committing any of these acts must be at least \$10,000 and less than \$100,000, plus three times the amount of damages sustained by the government or political subdivision unless the court finds that the person furnished the relevant entity charged with investigating the claim with all relevant information; fully cooperated with the investigation; and at the time of production of information and cooperation, had no knowledge of an investigation and no criminal prosecution, civil action, or administrative action had commenced.

The bill also requires the Attorney General to diligently investigate any violation of these provisions and allows any person to bring a civil action for himself or herself and for the government.

Various Sections – Corporations and LLC Filings

Beginning January 1, 2010, the proposal allows a corporation to file a corporate registration report on a biennial basis and to change the month of its corporate registration report by designating the desired month and paying an additional \$20 fee. Corporations incorporated in an even-numbered year may only file a report in an even-numbered year, and corporations incorporated in an odd-numbered year may only file a report in odd-numbered years. The fee for filing the biennial report will be \$80 if filed in a written format and \$30 if in an electronic format. Any corporation filing a biennial report must maintain the registration for two years, but may choose to file an annual registration in subsequent years. The bill also allows the Secretary of State to collect an additional \$10 fee for each biennial corporate report to be credited to the Secretary of State's Technology Trust Fund Account.

The Secretary of State is authorized to charge a \$45 fee for a corporate filing of the original articles of organization in an electronic format.

Currently, the Secretary of State may commence a proceeding to dissolve a corporation if it fails to deliver its corporate registration report to the Secretary of State within 30 days after it is due. The bill changes the deadline to within 90 days.

FISCAL DESCRIPTION (continued)

The proposal allows the Secretary of State to administratively cancel the articles of organization of limited liability companies and limited liability partnerships if the period of duration on the articles expires and the company or partnership does not amend the articles in a timely manner. The Secretary of State may rescind a cancellation under certain circumstances.

Sections 1 and 2 – Modification of Child Support

In any proceeding for modification of child support, the state or any political subdivision shall not be required to represent any party to such proceeding if such party's income equals or exceeds three hundred percent of the federal poverty level. The court may award court costs and reasonable attorney fees to the state.

Section 475.375 of the legislation is in response to HR 2640 signed by President Bush in January 2008.

This legislation would not require additional capital improvements or rental space. The proposal may duplicate "whistleblower" provisions in Section 105.055, RSMo.

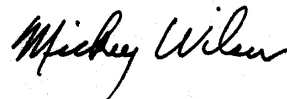
SOURCES OF INFORMATION

Office of Administration
Coordinating Board for Higher Education
Office of Administration
 – Administrative Hearing Commission
Office of State Courts Administrator
Department of Economic Development
Department of Transportation
Department of Insurance, Financial Institutions, and Professional Registration
Department of Mental Health
Department of Health and Senior Services
Department of Corrections
Department of Revenue
Department of Public Safety
 – Director's Office
 – Missouri State Highway Patrol
Office of Prosecution Services
Office of the Secretary of State

BLG:LR:OD (12/02)

SOURCES OF INFORMATION (continued)

Office of the State Public Defender
Office of the State Treasurer
City of Kansas City
City of Centralia
Little Blue Valley Sewer District
Missouri Western State University
Missouri Southern State University
Metropolitan Community College of Kansas City
Linn State Technical College
University of Central Missouri



Mickey Wilson, CPA
Director
April 21, 2009