

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4759-02
Bill No.: SJR 45
Subject: Abortion; Constitutional Amendments; Courts; Crimes and Punishment;
Education, Elementary and Secondary; Federal - State Relations; Environmental
Protection; Firearms and Fireworks; Health Care; Marriage and Divorce;
Religion; Science and Technology; State Departments
Type: Original
Date: March 26, 2012

Bill Summary: This proposal prohibits Missouri state government from recognizing,
enforcing, or acting in furtherance of certain actions of the federal
government.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2013	FY 2014	FY 2015
General Revenue	\$0 or (More than \$7,000,000)	(Unknown)	(Unknown)
Total Estimated Net Effect on General Revenue Fund	\$0 or (More than \$7,000,000)	(Unknown)	(Unknown)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2013	FY 2014	
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 17 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2013	FY 2014	FY 2015
Federal Funds	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2013	FY 2014	FY 2015
Total Estimated Net Effect on FTE	0	0	0

☒ 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 2013	FY 2014	FY 2015
Local Government	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)

FISCAL ANALYSIS

ASSUMPTION

Officials at the **Office of the Secretary of State (SOS)** assume unless a special election is called for the purpose, Joint Resolutions are submitted to a vote of the people at the next general election. If a special election is called to submit a Joint Resolution to a vote of the people, section 115.063.2 RSMo requires the state to pay the costs. Article III section 52(b) of the Missouri Constitution authorizes the general assembly to order a special election for measures referred to the people and Article XII section 2(b) authorizes the governor to call a special election to submit constitutional amendments to a vote of the people.

The SOS is required to pay for publishing in local newspapers the full text of each statewide ballot measure as directed by Article I, Section 26, 27, 28 of the Missouri Constitution and Section 116.230-116.290, RSMo. The Secretary of State's office is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. Funding for this item is adjusted each year depending upon the election cycle with \$1.3 million historically appropriated in odd numbered fiscal years and \$100,000 appropriated in even numbered fiscal years to meet these requirements. The appropriation has historically been an estimated appropriation because the final cost is dependent upon the number of ballot measures approved by the General Assembly and the initiative petitions certified for the ballot. In FY 2011, at the August and November elections, there were 6 statewide Constitutional Amendments or ballot propositions that cost \$1.02 million to publish (an average of \$170,000 per issue). Therefore, the Secretary of State's office assumes, for the purposes of this fiscal note, that it should have the full appropriation authority it needs to meet the publishing requirements. However, because these requirements are mandatory, we reserve the right to request funding to meet the cost of our publishing requirements if the Governor and the General Assembly change the amount or eliminate the estimated nature of our appropriation.

Oversight has reflected in this fiscal note, the state potentially reimbursing local political subdivisions the cost of having this joint resolution voted on during a special election in fiscal year 2013. This reflects the decision made by the Joint Committee on Legislative Research, that the cost of the elections should be shown in the fiscal note. The next scheduled general election is in November 2012 (FY 2013). It is assumed the subject within this proposal could be on that ballot; however, it could also be on a special election called for by the Governor. Therefore, Oversight will reflect a potential election cost reimbursement to local political subdivisions in FY 2013.

ASSUMPTION (continued)

To estimate the expense the state would incur for reimbursing local political subdivisions for a special election, Oversight requested expense estimates from all election authorities for an election. Eighty-six out of the one hundred fifteen election authorities responded to Oversight's request. From these respondents; the total election expense that would have to be reimbursed by the state government is over \$7 million. Therefore, Oversight will reflect a potential cost borne by the state in FY 2013 of over \$7 million for reimbursement to the local political subdivisions. Oversight assumes the Governor could call for a special election to be held prior to November 2012 regarding this joint resolution; however, if a special election is not called, the subject will be voted on at the general election in November, 2012. **Oversight** has reflected in this fiscal note, the state potentially reimbursing local political subdivisions the cost of having this joint resolution voted on during a special election in fiscal year 2012. This reflects the decision made by the Joint Committee on Legislative Research, that the cost of the elections should be shown in the fiscal note. The next scheduled general election is in November 2012 (FY 2013). It is assumed the subject within this proposal could be on that ballot; however, it could also be on a special election called for by the Governor. Therefore, Oversight will reflect a potential election cost reimbursement to local political subdivisions in FY 2013.

To estimate the expense the state would incur for reimbursing local political subdivisions for a special election, Oversight requested expense estimates from all election authorities for an election. Eighty-six out of the one hundred fifteen election authorities responded to Oversight's request. From these respondents; the total election expense that would have to be reimbursed by the state government is over \$7 million. Therefore, Oversight will reflect a potential cost borne by the state in FY 2013 of over \$7 million for reimbursement to the local political subdivisions. Oversight assumes the Governor could call for a special election to be held prior to November 2012 regarding this joint resolution; however, if a special election is not called, the subject will be voted on at the general election in November, 2012.

Officials from the **Department of Corrections** assume an unknown fiscal impact for each fiscal year due to passage of this proposal contingent on potential future actions of the federal government.

Officials from the **Missouri Highway Patrol** assume the Department of Transportation will respond on their behalf.

Officials from the **Governor's Office** assume there should be no added cost to their agency as a result of this measure.

Officials from the **Department of Mental Health** assume while their department is not directly involved with most of the issues contained in this proposal, it is affected to a great degree by

ASSUMPTION (continued)

federal health care programs and requirements. It is unknown how much refusal to follow federal guidelines would cost the Department, but it is assumed that a significant cost would be experienced.

Officials from the **Department of Conservation** assume there is an unknown fiscal impact to their agency. There is legal precedent that upholds the State of Missouri's regulation of fish and wildlife and also to require state participation in federal laws and regulation for migratory wildlife, water quality, and regulation of a wide range of resource contaminants.

Officials from the **Missouri Consolidated Health Care Plan (MCHCP)** assume this proposal prohibits Missouri state government from recognizing, enforcing, or acting in furtherance of certain actions of the federal government.

MCHCP was approved to receive funds from the Early Retiree Reinsurance Program (ERRP). ERRP provides reimbursement to participating employment-based plans for a portion of the costs of health benefits. To date, MCHCP has received \$11.6 million. MCHCP plans to submit requests for additional funds, but the reimbursement amounts are unknown based on the availability of funds. This proposal would require MCHCP to return funds received through this program. The fiscal impact is unknown but greater than \$11.6 million and contingent on future actions of the federal government.

Prior to the passage of the Patient Protection and Affordable Care Act, MCHCP only covered children up to age 25 unless they were disabled. IN CY 2011, MCHCP covered an average number of 615 children age 25. In 2011, MCHCP's portion of medical and pharmacy claims for this age group was \$2,640 per member per year. MCHCP would not be required to cover 25 year olds under this proposal. The fiscal savings would be less than \$1,623,600 annually because some disabled children would still be eligible for coverage.

In response to SS for SJR 15 (2011), officials from the **Department of Economic Development** assume this proposal could jeopardize the continued availability of funding through federal programs where such programs mandate compliance with federal actions covered by the proposal. Examples would include federal funding provided to the Division of Business and Community Services through the Community Block Grant. The amount of any negative fiscal impact is unknown, but would likely exceed \$100,000.

Officials from the **Department of Economic Development - General Counsel** anticipates no fiscal impact as a result of this proposal

ASSUMPTION (continued)

Officials from the **Office of Administration - Division of Budget & Planning** assume this proposal should not result in additional costs or savings to their division.

Officials from the **Joint Committee on Public Employee Retirement** assume this proposal would not affect retirement plan benefits as defined in Section 105.660.

Officials from the **Missouri Office of Prosecution Services, Missouri Veterans Commission, Missouri Department of Transportation, State Emergency Management Agency, Department of Higher Education, Missouri Senate, Missouri House of Representatives, State Tax Commission, Office of State Courts Administrator, Missouri Gaming Commission, State Auditor's Office, Missouri Lottery, Capitol Police, Missouri State Prosecutor, Division of Alcohol and Tobacco Control, Division of Fire Safety, Administrative Hearing Commission, Joint Committee on Administrative Rules, Missouri Ethics Commission, Department of Agriculture, Department of Labor and Industrial Relations, Department of Elementary & Secondary Education, MoDOT and Patrol Employees Retirement System, Department of Insurance, Financial Institutions & Professional Registration, Department of Agriculture and State Treasurer's Office** assume there will be not fiscal impact to their agencies.

Officials from the **Department of Health & Senior Services (DOH)** assume the legislation proposes an amendment to the Missouri Constitution. Section 35.2.(2)(d) would prevent the state of Missouri from recognizing, enforcing, or acting in furtherance of federal actions involving a public option for health care. This would have an unknown loss of federal funding for the Department of Health and Senior Services (DHSS) for activities that related to health care (Medicaid, Medicare, Ryan White HIV/AIDS program). Since the department would not be able to recognize or enforce new provisions or changes to these federal programs, the department may be prohibited from participating in the programs and therefore lose existing federal funds, as well as be ineligible for future federal fund opportunities. In order to maintain services at their current level, state funding would be required to fund switch lost federal funding.

Division of Community and Public Health (DCPH)

The proposed bill may prohibit Missouri from participating in the Medicaid program which would result in an unknown loss of federal funds and an unknown cost to General Revenue if the services currently provided are maintained at the current level. DCPH assumes the following programs in the division would be impacted:

- The Children and Youth with Special Health Care Needs Program (CYSHCN) would see an unknown, significant increase in the number of people served if individuals were no longer able to access necessary services through Medicaid. CYSHCN is the payer of last resort for

ASSUMPTION (continued)

- essential health care services for individuals eligible for the program. In addition, the department assumes federal funding for the Medically Fragile Adult Waiver Program and the Healthy Children and Youth Program may be lost. State General Revenue would be needed if services were to be continued at current levels.
- The Ryan White HIV/AIDS Treatment Extension Act of 2009 (Public Law 111-87), which was passed on October 30, 2009, could be in jeopardy of not being funded in Missouri under the proposed legislation. This program is the largest federal program focused exclusively on HIV/AIDS care. The program is for individuals living with HIV/AIDS who have no health insurance (public or private), have insufficient health care coverage, or lack financial resources to get the care they need for their HIV disease. Under the provisions of this legislation, DCPH assumes the department could no longer participate in the federal Ryan White program, and as such the costs for this program would become state responsibility if it were to be continued.

Division of Regulation and Licensure (DRL)

Section 35.2.(2)(d) would impact the survey and certification activities conducted by DRL if Missouri was no longer eligible to participate and qualify for Medicare and Medicaid funding from the Centers for Medicare and Medicaid Services (CMS). Survey and certification work the division conducts at various Medicare and/or Medicaid certified providers such as hospitals, ambulatory surgical centers, home health agencies, hospices, end stage renal dialysis facilities, intermediate care nursing facilities, skilled nursing facilities, etc. on behalf of CMS would be impacted. This would put at risk the award of approximately \$10,600,000 in FY 2012 Medicare funding and \$6,500,000 in FY 2012 Medicaid funding the division currently receives for survey and certification activities.

Division of Senior and Disability Services (DSDS)

DSDS assumes Section 35.2.(2)(d) could result in the loss of funding for Medicaid Home and Community Based Services, as well as other federal grants aimed at enhancing the lives and health of elderly Missourians and adults with disabilities. DSDS assumes that any services provided for Missouri's elderly and adults with disabilities to enable them to remain in their homes and communities rather than enter long-term care facilities would need to be funded by state resources for services to continue at the current levels. This would put at risk more than \$382 million of federal funds in FY 2012 for Medicaid services and administration.

Officials from the **Department of Natural Resources (DNR)** assume Section 35.2(2)(c) could place state air permitting in conflict with federal permitting requirements. Carbon emissions are synonymous with greenhouse gas emissions, and federal permitting requirements related to greenhouse gases are currently being incorporated into state air permitting regulations.

ASSUMPTION (continued)

The department has accepted the delegation from the federal government for the implementation of federal programs and we receive federal grant funds to administer them.

The department assumes there could be an unknown fiscal impact to from this proposal. It is assumed that this proposal could jeopardize the continued availability of funding through federal programs where such programs mandate compliance with federal actions covered by the proposal.

Officials from the **Department of Revenue (DOR)** assume the proposal could cause an unknown impact contingent on potential future actions of the federal government.

Officials from the **Department of Social Services - MO HealthNet** assume the MO HealthNet Division provides medical assistance to eligible individuals through the federal and state Medicaid program. Federal matching funds for the costs of these programs are available to states that elect to participate. As a condition of participation, states must cover certain populations and services that are considered mandatory. If states do not cover these mandatory populations and services they lose their federal matching funds.

Federal matching funds for SFY12 are expected to be about \$3.6 billion.

The MHD assumes that if this legislation passes all federal requirements necessary to continue the operation of its programs will be authorized. If this assumption is not correct the fiscal impact could be unknown but greater than \$3.6 billion.

Officials from the **Department of Social Services - Division of Legal Services** assume this legislation proposes an amendment to Article I, Section 35 of the Missouri Constitution, guaranteeing state sovereignty under the Tenth Amendment of the United States Constitution.

- Section 35.1 – This section states the purpose of the Constitutional Amendment. The Amendment would allow the state of Missouri to “enforce its constitutional sovereignty” under the 10th Amendment of the United States Constitution.
 - The Tenth Amendment of the United States Constitution provides that, “the powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.” *See*, U.S. Const. Art. X.
 - Under current law, Missouri has the authority to enforce its constitutional sovereignty. It is unclear whether this section of the proposed amendment makes any substantive changes in law.
- Section 35.2(1) – The Missouri Constitution would be amended to provide that the State of

ASSUMPTION (continued)

Missouri shall uphold and defend the Constitution of the United States. The Amendment prohibits the Missouri legislative, executive, and judicial branches from recognizing, enforcing, or acting in furtherance of any federal law or action by the Federal Branches of Government that exceed the powers enumerated and delegated to the Federal government.

- The question of what laws and actions of the federal government may exceed the limited powers enumerated and delegated to the federal government under the constitution is a complex question of law. Under the United States and Missouri Constitutions it will be up to the judicial branch of the state and federal governments to determine how the proposed amendment may apply in a particular situation. Enactment of this constitutional amendment can reasonably be expected to result in litigation challenging the actions of Missouri government officials when they are implementing programs which implicate federal law. It is not possible at this time to estimate the cost of this litigation to the State of Missouri, but past experience in this type of litigation makes it clear that the cost of the litigation in some cases can reasonably be anticipated to exceed \$100,000.
- In addition, an unsuccessful defense of a challenge to this constitutional amendment in federal court may result in the assessment of attorney fees and costs against the state or state officials. It is not possible to accurately estimate the fiscal impact on the state as a whole, but in some cases, an attorney fee/cost award could exceed \$250,000, depending on the complexity of the litigation and the costs involved. It is not possible at this time to determine whether the costs would have to be paid by DSS.
- Section 35.2(2)(a) – Provides that the State of Missouri shall not recognize, enforce, or act in furtherance of Federal actions restricting the right of private citizens to bear arms. This section will have no fiscal impact on DSS.
- Section 35.2(2)(b) – This section would prohibit federal actions legalizing or funding abortions, the destruction of any embryo containing human DNA from the zygote stage onward.
 - Currently, MO HealthNet makes payments for “[f]amily planning as defined by federal rules and regulations; provided, however, that such family planning services shall not include abortions unless such abortions are certified in writing by a physician to the MO HealthNet agency that, in his professional judgment, the life of the mother would be endangered if the fetus were carried to term.” § 208.152(11) RSMo.
 - The only abortion services eligible for federal financial participation are those that the department is required to cover under the federal Hyde amendment. To qualify under the Hyde amendment, the abortion must be the result of rape or incest, or the life of the mother must be endangered if the pregnancy were carried to term. *See*, Public Law 111-8 Sec. 507 et seq. (*enacting*, the Hyde Amendment). It is unclear how this

ASSUMPTION (continued)

- amendment would apply to the Missouri MO HealthNet program. However, under the language of the amendment the court would have to determine whether the Hyde amendment in particular and the federal law in general would exceed the powers enumerated by the federal constitution.
- This section can reasonably be expected to result in litigation.
 - The fiscal impact of this section on DSS is unknown.
 - Section 35.2(2)(c)- Under this section the State of Missouri would not recognize any federal action requiring the sale or trade of carbon credits or imposing a tax, fee, fine, or penalty on the release of carbon emissions. This section will have no impact on DSS.
 - Section 35.2.(2)(d) – This Amendment would prohibit Missouri from recognizing “federal actions” involving a public option for health care, mandatory end of life counseling, rationing healthcare, dictating or limiting treatment a doctor may provide, the creation of medical records database, covering illegal aliens, mandating health benefits to be covered, restricting the ability to purchase out of state health insurance, eliminating federal penalties on employers who do not provide health insurance to their employees or to Missouri citizens who do not purchase health insurance.
 - This language is vague and can reasonably be expected to generate extensive litigation on whether the amendment is consistent with the federal constitution and how it is to be applied.
 - It is not possible at this time to accurately anticipate what the impact of the amendment would be on DSS and its programs.
 - The state of Missouri currently participates in the Medicaid program (MO HealthNet) which provides medical care for eligible low income and disabled persons. MO HealthNet is administered by DSS. MO HealthNet is a publically funded, cooperative program between the state and the federal government. State participation in MO HealthNet is voluntary, but when a state elects to participate in the program and accept federal dollars, the State is required to comply with federal law. 42 U.S.C. §1396a(a)(17).” *Plumb v. Missouri Dept. of Social Services, Family Support Div.* 246 S.W.3d 475, 479 (Mo.App. E.D 2007). Unless a federal court rules that the Medicaid program exceeds the enumerated powers of the federal government, then Missouri’s choice to continue participating in the Medicaid program may not be impacted.
 - The provision of the proposed amendment which prohibits Missouri from implementing a “public option for health care” is unclear. The proposed amendment defines the “public option” as “any health insurance plan passed after January 1, 2009, operated by the federal government or its agent that competes directly or indirectly with private health insurance providers.” It does not appear on its face that this language will apply to the Missouri HealthNet program because it was enacted before January 1, 2009, and the State of Missouri is not an “agent” of the federal

ASSUMPTION (continued)

government for purposes of administering the MHN program. However, how this amendment would apply to federal requirements enacted subsequent to that date will be up to the courts.

- The proposed constitutional amendment may be used to challenge the collection and storage of patient medical records into a database. It is unclear whether, or how, this language may impact MO-HITECH and the MHN program
 - MHN program. The MHN program requires the division to compile medical information into data bases for the purpose of managing both the participant eligibility side of the program (FSD) and the provider payment side of the program (MHD). The power of the federal government to put conditions on the Medicaid program as a condition of receipt of federal funds is well established, and DLS does not expect that this language will have an impact on state operations, especially if MHN is applying law enacted prior to January 1, 2009. However, if the Courts disagree on the authority of the federal government to impose mandates in this area, this may have a significant impact in the ability of Missouri to receive federal financial participation in the medicaid program. The fiscal impact, if any, is unknown.
- Illegal aliens. The proposed amendment states that Missouri shall not recognize, enforce, or act in furtherance of federal actions covering illegal aliens under health insurance, or prohibiting enforcement of laws covering illegal aliens. This language is vague. Under current federal law there are only limited situations in which illegal aliens are authorized to receive health care coverage under the Medicaid program. The power of the federal government to put conditions on the Medicaid program as a condition of receipt of federal funds is well established, and DLS does not expect that this language will have an impact on state operations. However, the language of the proposed amendment is not entirely clear, and it can reasonably be expected that the language of this section will be subject to constitutional challenge.
- Section 35.2(2)(e) – This section of the proposed amendment would prohibit the State of Missouri from recognizing any federal action that requires the recognition of any relationship other than the marriage of one man and one woman. This language will not have a fiscal impact on DSS.
- Section 35.2(2)(f) – This proposed section would prohibit Missouri from recognizing a federal action increasing the punishment of hate crimes. This language will not have a fiscal impact on DSS.
- Section 35.2(2)(g) – This proposed amendment would prohibit Missouri from recognizing any federal action that interprets the establishment clause based upon a “wall of separation” between church and state. This language will not have an impact on DSS.
- Section 35.2(2)(h) – This proposed amendment would prohibit Missouri from recognizing any federal action restricting the right of a parent/guardian to home school their child, to

ASSUMPTION (continued)

enroll their child in a private or parochial school or placing restrictions on curriculum. It is not anticipated that this language will have a direct fiscal impact on DSS. However, it may have an impact on how the Children's Division administers some of its programs, such as the educational neglect provisions of the child abuse and neglect hotline system. The fiscal impact, if any, is unknown.

- Section 35.2(3) - This provision would require the Constitution of the United States be interpreted based on its language and the intent of the signers of the Constitution at the time of its passage. The interpretation of the amendments to the US Constitution shall be based on the language of the amendment and "the intent of the congressional sponsor and co-sponsors of the amendment." Any other interpretation of the US constitution shall be deemed to exceed the limited powers enumerated to the federal government.
 - Opponents of this amendment can reasonably be expected to challenge this provision of the proposed amendment as a violation of the Supremacy Clause of the US Constitution, among other provisions.
 - It is impossible at this juncture to determine what, if any, fiscal or policy impact the language of this section would have on DSS.
 - In general, the interpretation and application of the language of the U.S. Constitution, federal statutes and federal regulations is a matter of federal law, which will ultimately be resolved by the courts. A state law provision, which directs how the courts are to interpret the federal constitution is likely to result in litigation and may be found to violate the federal constitution.
 - It is not possible to accurately estimate the fiscal impact on the state as a whole. In cases where this language is challenged in federal court, it is possible that the federal court may order award attorney fees. The costs of defending this amendment against constitutional attack may be significant. It is not possible at this time to determine whether the costs would have to be paid by DSS.
- Section 35.3 – This section would give Missouri citizens standing to enforce the provisions of this section. The section would also give the Missouri General Assembly or Missouri Supreme Court the authority to determine whether a federal action exceeded "the powers enumerated and delegated to the federal government by the Constitution of the United States."
 - In general, the interpretation and application of the language of the U.S. Constitution is a matter of federal law, which is ultimately a matter for the federal courts. A state law provision, which directs how the courts are to interpret the federal constitution is likely to result in litigation and may be found to violate the federal constitution.
 - Pursuant to Art. V Sec. 3 of the Missouri Constitution, "the supreme court shall have exclusive appellate jurisdiction in all cases involving the validity of a treaty or statute of the United States, or of a statute or provision of the constitution of this state, the construction of the revenue laws of this state, the title to any state office and in all

ASSUMPTION (continued)

- cases where the punishment imposed is death. The court of appeals shall have general appellate jurisdiction in all cases except those within the exclusive jurisdiction of the supreme court.”
- It is not possible to accurately estimate the fiscal impact on the state as a whole. In cases where this language is successfully challenged in federal court, it is possible that the federal court may order award attorney fees. The costs of defending this amendment against constitutional attack may be significant. It is not possible at this time to determine whether the costs would have to be paid by DSS.
 - Section 35.4 – This is the definition section of the amendment and defines the following terms; federal action, public option, and constitution.
 - The proposed amendment defines a “federal action” as “any federal law, executive order, judicial ruling, administrative ruling, collection of revenue, dispersal of revenue, or other action by the legislative, executive or judicial branches of the federal government that exceeds the limited powers enumerated and delegated to the federal government by the constitution.” Under current law, the Missouri Supreme Court would be responsible for interpreting the amendment from a state law perspective. However, under federal law it is the federal courts and the United States Supreme Court which have ultimate and final jurisdiction to determine whether a particular “federal action” would exceed the powers that the United States Constitution vests in the federal government. Under the supremacy clause of the U.S. Constitution federal laws would supersede inconsistent state laws and constitutional provisions. The bill can reasonably be expected to generate extensive litigation in state and federal courts on what constitutes a “federal action.”
 - Section 35.5 – This section would make any ruling by a court of competent jurisdiction in violation of subparagraph (3) of this subsection invalid and not recognized or enforced in the state of Missouri.
 - This provision can reasonably be expected to generate litigation and subject to challenge on the grounds that it violates the Supremacy Clause of the United States Constitution. *See*, U.S. Const. Art. VI., Clause 2 (*stating*, the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.”)
 - The proposed amendment grants standing to Missouri citizens to enforce the provisions of the bill. It is expected that the proposed amendment will generate substantial litigation. It is reasonably foreseeable that the state of Missouri as a whole may incur legal fees and litigation costs over time in excess of a million dollars. Whether the proposed amendment has a direct impact on the Department of Social Services will depend on how the language of the amendment is interpreted by the federal and state courts. It is, therefore, not possible to fix a

ASSUMPTION (continued)

fiscal impact of this proposed constitutional amendment on the Department of Social Services.

Officials from the **Department of Social Services - Family Services Division** are unable to determine the fiscal impact of this legislation at this time. Implementation of this bill could result in federal mandates being delayed or not implemented, resulting in non-compliance in some instances, which may bring about penalty payments or denial of federal funds needed to administer the child support program. As a result, the FSD would either have to reduce the child support program to only the state portion or discontinue administering the program entirely.

Officials from the **Department of Social Services - Children's Division** assume it is impossible to predict what legislation may be passed at the federal level in the future that may be impacted by this legislation. The items enumerated in this bill would have no impact upon the Children's Division at this time. However, due to the uncertainty of future federal legislation the fiscal impact of this proposed legislation is unknown.

Officials from the **Department of Social Services - Division of Youth Services** assume enactment of this resolution could, in some cases, result in federal mandates being delayed or not implemented at all. Delayed implementation or a failure to implement federal mandates will ultimately result in compliance issues. A determination of non-compliance may cause the withholding of funding for the affected programs.

<u>FISCAL IMPACT - State Government</u>	FY 2013 (10 Mo.)	FY 2014	FY 2015
GENERAL REVENUE			
<u>Cost</u> - Pick-up of lost federal dollars	(Unknown)	(Unknown)	(Unknown)
<u>Expense</u> - reimbursement of local political subdivisions for special election costs	\$0 or (More than \$7,000,000)	\$0 or (More than \$7,000,000)	<u>\$0</u>
ESTIMATED NET EFFECT TO THE GENERAL REVENUE FUND	\$0 or (More than \$7,000,000)	\$0 or (More than \$7,000,000)	<u>(Unknown)</u>
 <u>FISCAL IMPACT - Federal Government</u>	 FY 2013 (10 Mo.)	 FY 2014	 FY 2015
ESTIMATED NET EFFECT ON FEDERAL FUNDS	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>
 <u>FISCAL IMPACT - Local Government</u>	 FY 2013 (10 Mo.)	 FY 2014	 FY 2015
LOCAL POLITICAL SUBDIVISIONS			
<u>Income</u> - cost reimbursement from the State for special election	\$0 or More than \$7,000,000	\$0	\$0
<u>Expense</u> - cost for special election	\$0 or (More than \$7,000,000)	\$0	\$0
<u>Loss</u> - Federal Funding	(Unknown)	(Unknown)	(Unknown)
ESTIMATED NET EFFECT TO LOCAL POLITICAL SUBDIVISIONS	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>

FISCAL IMPACT - Small Business

Unknown.

FISCAL DESCRIPTION

The proposed legislation prohibits Missouri state government from recognizing, enforcing, or acting in furtherance of certain actions of the federal government.

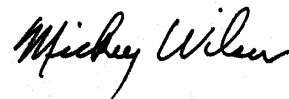
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Department of Corrections
Missouri Highway Patrol
Governor's Office
Missouri Office of Prosecution Services
Department of Mental Health
Department of Transportation
Department of Conservation
Missouri Consolidated Health Care Plan
Department of Economic Development
State Emergency Management Agency
Department of Higher Education
Missouri Senate
Secretary of State's Office
Missouri House of Representatives
State Tax Commission
Office of State Courts Administrator
Missouri Gaming Commission
State Auditor's Office
Office of Administration -
 Division of Budget & Planning
Missouri Lottery
Capitol Police
Missouri State Prosecutor
Division of Alcohol and Tobacco Control
Division of Fire Safety
Administration Hearing Commission
Joint Committee on Public Employee Retirement

SOURCES OF INFORMATION (continued)

Joint Committee on Administrative Rules
Missouri Ethics Commission
Department of Agriculture
Missouri Veterans Commission
State Treasurer's Office
Department of Economic Development -
 General Counsel
Department of Labor & Industrial Relations
Department of Elementary & Secondary Education
MoDOT & Patrol Employees' Retirement System
Department of Insurance, Financial Institutions &
 Professional Registration
Department of Agriculture
Department of Health & Senior Services
Department of Revenue
Department of Natural Resources
Department of Social Services -
 MO HealthNet
 Division of Legal Services
 Children's Division
 Division Youth Services
 Division of Family Support



Mickey Wilson, CPA
Director
March 26, 2012