

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4386-01
Bill No.: SJR 38
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 3, 2014

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 2015	FY 2016	FY 2017
General Revenue	\$0 or (More than \$7,100,000)	\$0 or (Unknown)	\$0 or (Unknown)
Total Estimated Net Effect on General Revenue Fund*	\$0 or (More than \$7,100,000)	\$0 or (Unknown)	\$0 or (Unknown)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
 This fiscal note contains 11 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
*Federal Funds	\$0	\$0	\$0
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

* Savings and Losses will Net to \$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
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 2015	FY 2016	FY 2017
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 each year, a number of joint resolutions that would refer to a vote of the people a constitutional amendment and bills that would refer to a vote of the people the statutory issue in the legislation may be considered by the General Assembly.

Unless a special election is called for the purpose, Joint Resolutions proposing a constitutional amendment are submitted to a vote of the people at the next general election. Article XII section 2(b) of the Missouri Constitution authorizes the governor to order a special election for constitutional amendments referred to the people. If a special election is called to submit a Joint Resolution to a vote of the people, subsection 115.063.2 RSMo requires the state to pay the costs. The cost of the special election has been estimated to be \$7.1 million based on the cost of the 2012 Presidential Preference Primary. This figure was determined through analyzing and totaling expense reports from the 2012 Presidential Preference Primary received from local election authorities.

SOS is required to pay for publishing in local newspapers the full text of each statewide ballot measure as directed by Article XII, Section 2(b) of the Missouri Constitution and sections 116.230-116.290, RSMo. SOS 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 2013, at the August and November elections, there were 5 statewide constitutional amendments or ballot propositions that cost \$2.17 million to publish (an average of \$434,000 per issue). Therefore, the SOS 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.

ASSUMPTION (continued)

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 2015. 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 2014 (FY 2015). 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 2015.

Officials from the **Department of Elementary and Secondary Education**, the **Department of Public Safety - Missouri Highway Patrol**, the **Office of the State Courts Administrator**, the **Missouri House of Representatives** and the **Missouri Senate** each assume the proposal will have no fiscal impact on their respective organizations.

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

In response to a similar proposal from 2012 (SJR 45), officials from the **Department of Corrections** assumed an unknown fiscal impact for each fiscal year due to passage of this proposal contingent on potential future actions of the federal government.

In response to a similar proposal from 2012 (SJR 45), officials from the **Department of Mental Health** assumed while their department is not directly involved with most of the issues contained in this proposal, it is affected to a great degree by 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.

In response to a similar proposal from 2012 (SJR 45), officials from the **Department of Conservation** assumed 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.

In response to a similar proposal from 2012 (SJR 45), officials from the **Missouri Consolidated Health Care Plan (MCHCP)** assumed this proposal prohibits Missouri state government from recognizing, enforcing, or acting in furtherance of certain actions of the federal government.

ASSUMPTION (continued)

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.

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 cause 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 replace 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:

ASSUMPTION (continued)

- 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 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.

ASSUMPTION (continued)

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.

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 SFY13 are expected to be about \$3.5 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 \$3.5 billion.

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.

ASSUMPTION (continued)

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.

Officials from the **Department of Social Services - Division of Legal Services** assumes enactment of this 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 can easily exceed \$100,000. Specifically, DLS anticipates the possibility of litigation involving funding for abortion services, public option health care, and MO-HITECH.

<u>FISCAL IMPACT - State Government</u>	FY 2015 (10 Mo.)	FY 2016	FY 2017
GENERAL REVENUE			
<u>Cost</u> - Replace lost federal dollars	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
<u>Transfer Out</u> - Office of the Secretary of State - reimbursement of local election authorities for election costs if a special election is called	\$0 or (More than <u>\$7,100,000</u>)	<u>\$0</u>	<u>\$0</u>
ESTIMATED NET EFFECT TO THE GENERAL REVENUE FUND	\$0 or (More than <u>\$7,000,000</u>)	<u>\$0 or (Unknown)</u>	<u>\$0 or (Unknown)</u>

<u>FISCAL IMPACT - Federal Government</u>	FY 2015 (10 Mo.)	FY 2016	FY 2017
*FEDERAL FUNDS			
<u>Savings</u> - Missouri not spending federal money on certain programs	\$0 to Unknown	\$0 to Unknown	\$0 to Unknown
<u>Loss</u> - Missouri not receiving federal money on certain state programs	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>
ESTIMATED NET EFFECT ON FEDERAL FUNDS	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
*Savings and Losses will Net to \$0			
<u>FISCAL IMPACT - Local Government</u>	FY 2015 (10 Mo.)	FY 2016	FY 2017
LOCAL ELECTION AUTHORITIES			
<u>Transfer In</u> - Cost reimbursement from the State for special election	\$0 or More than \$7,100,000	\$0	\$0
<u>Expense</u> - Cost for special election	\$0 or (More than \$7,100,000)	\$0	\$0
<u>Loss</u> - Federal Funding	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>
ESTIMATED NET EFFECT TO LOCAL POLITICAL SUBDIVISIONS	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>

FISCAL IMPACT - Small Business

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

FISCAL DESCRIPTION

Upon approval by the voters, this constitutional amendment prohibits the Missouri legislative, executive, and judicial branches of government from recognizing, enforcing, or acting in furtherance of any federal action that exceeds the powers delegated to the federal government.

The state also shall not recognize, enforce, or act in furtherance of any federal actions that: restrict the right to bear arms; legalize or fund abortions, or the destruction of any embryo from the zygote stage; require the sale or trade of carbon credits or impose a tax on the release of carbon emissions; involve certain health care issues; mandate the recognition of same sex marriage or civil unions; increase the punishment for a crime based on a perpetrator's thoughts or designate a crime as a hate crime; interpret the establishment clause as creating a wall of separation between church and state; or restrict the right of parents or guardians to home school or enroll their children in a private or parochial school or restrict school curriculum.

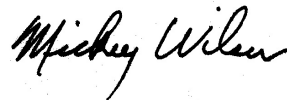
The state is also required to interpret the U.S. Constitution based on its language and the original intent of its signers. Amendments to the U.S. Constitution shall be interpreted based on their language and the intent of the congressional sponsor and co-sponsors of the amendment.

The amendment also declares that Missouri citizens have standing to enforce the provisions of the amendment.

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

SOURCES OF INFORMATION

Office of the State Courts Administrator
Department of Public Safety
Department of Health and Senior Services
Department of Social Services
Department of Natural Resources
Department of Elementary and Secondary Education
Office of the Secretary of State
Department of Revenue
Office of the Governor
Missouri House of Representatives
Missouri Senate
Department of Mental Health
Missouri Department of Conservation
Missouri Consolidated Health Care Plan
Department of Corrections



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