

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. NO.: 2924-01
BILL NO.: SB 640
SUBJECT: Waives Sovereign Immunity for the Divisions of Family Services and Aging
TYPE: Original
DATE: January 31, 2000

FISCAL SUMMARY

ESTIMATED NET EFFECT ON STATE FUNDS			
FUND AFFECTED	FY 2001	FY 2002	FY 2003
General Revenue*	(\$12,321,013) to (\$16,543,815)	(\$25,483,875) to (\$30,703,258)	(\$26,137,469) to (\$31,513,433)
Total Estimated Net Effect on <u>All</u> State Funds*	(\$12,321,013) to (\$16,543,815)	(\$25,483,875) to (\$30,703,258)	(\$26,137,469) to (\$31,513,433)

* Estimate, costs to the Legal Expense Fund could significantly exceed these amounts.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2001	FY 2002	FY 2003
Federal	(\$2,089,558)	(\$2,489,648)	(\$2,553,114)
Total Estimated Net Effect on <u>All</u> Federal Funds	(\$2,089,558)	(\$2,489,648)	(\$2,553,114)

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2001	FY 2002	FY 2003
Local Government	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 18 pages.

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Health** assume that this proposal will not fiscally affect their agency.

Officials from the **Office of Attorney General (AGO)** stated that based upon the large number of hotline calls received by the Division of Aging and the Division of Family Services, the Office of the Attorney General assumes that the waiver of sovereign immunity contained in this proposal will result in significant increase in cases handled by the Litigation Division. Therefore, the Office of the Attorney General projects a need for one additional Assistant Attorney General (AAG) III at \$45,000, five additional AAGs I (\$31,500 each), two Legal Secretaries (\$18,000 each) and two Paralegals (\$19,500 each). The new FTE would require the accompanying expense and equipment items including building rental costs (\$35,400 annually).

Oversight has removed ongoing expenses from data processing, furniture and "other" from their fiscal estimate.

Officials from the **Office of State Courts Administrator** stated they would expect one or more cases to test the parameters of the law. There may be a slight increase in the number of cases filed, but we would not expect an impact on the budget of the judiciary. **Oversight** assumes existing resources could be used for any impact on the judicial system resulting from enactment of this proposal.

Officials from the **Office of Administration - Risk Management Section (RMS)** stated they contacted officials in the insurance industry and risk management consultants and these officials suggested the cost impact could be determined by taking 1 to 2% of the divisions operating budget for services, less any pass-through funds. The RMS contacted the Department of Social Services - Division of Family Services (DFS) and Division of Aging (DA) and was told the budget costs less pass-through funds for DFS \$454,371,688 and for DA was \$52,364,499. The RMS is using a conservative approach and has used a 1% risk factor for a total fiscal impact to the Legal Expense Fund paid from the General Revenue Fund of \$4,222,802, \$5,219,383, and \$5,375,964 for Fiscal Years 2001, 2002, and 2003, respectively.

Oversight will range the costs to the Legal Expense Fund from \$0 to the amounts indicated above. However, Oversight also notes that the estimate for court costs and damages paid from the Legal Expense Fund are only estimates. Oversight cannot predict what a court of law may award in damages from abuse and neglect cases. Oversight's fiscal estimate should not be considered the maximum amount of costs related to this proposal.

ASSUMPTION (continued)

Officials from the **Department of Social Services (DOSS)** stated that the Division of Aging, Division of Family Services, and the Division of Legal Services will be impacted by this proposal.

Officials from the **DOSS- Division of Aging (DA)- Institutional Services (DAIS)** stated it is statutorily authorized to license and to conduct inspection activities in specific types of facilities. DAIS acts as the state survey agency for the Health Care Financing Administration (HCFA) conducting surveys and making recommendations for action related to certification of facilities accepted for participation in the federal Medicare and/or Medicaid programs. Institutional Services performs state licensure activities related to adult day care, residential care facilities I, residential care facilities II, intermediate care facilities and skilled nursing facilities. Additionally, Institutional Services staff conduct investigations of alleged elderly and disabled adult abuse/neglect or regulatory violations occurring in long-term facilities.

The proposed legislation will have a cost impact on Institutional Services operations. The DAIS anticipates that legal actions previously considered to fall within the scope of the sovereign immunity provision or to lack merit may now proceed through the judicial system for review and determination of status. With no statistics available related to the number of cases not pursued as a result of sovereign immunity, the DAIS base the cost estimate on the following assumptions:

Suits likely to occur would be:

- those brought by residents or families of residents residing in facilities receiving notices of noncompliance (211 in 1999);
- Medicare/Medicaid facilities cited for substandard quality of care (90),
- Medicare/Medicaid facilities cited for immediate jeopardy (73), and;
- Class I/II/III violations where the investigator determined the report to be valid and not captured in the preceding categories (Total I/II/III complaint reports 7,399 x 3.35% estimated to file suit = 248).

DAIS experience with preparing materials for litigation related to these types of actions indicated an average of 300 hours of staff time is devoted to these complex types of cases. Total staff hours required = 622 (211 + 90 + 73 + 248) suits x 300 hours = 186,600 hours.

ASSUMPTION (continued)

Invalid or where one of the actions noted above did not occur:

Class I violation :

- (Total Class I reports 1,529 x (33% (invalid) + 11% (unable to verify or other)) = 671).
Total staff hours required = 200 hours x 671 suits = 134,200 hours.

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Class II violation:

- Total Class II reports 4,580 x (16.5% (invalid) + 8.5% (unable to verify or other)) = 1,145). DAIS experience with preparing materials to be provided for litigation or to meet the needs of the public for information indicate an average of 100 hours of staff time is devoted to these types of cases. Total staff hours required = 100 x 1,145 suits = 114,500 hours.
- ⑩ Total staff hours anticipated for all types of actions = 435,300 staff hours. Each staff person routinely works 1,840 hours per year indicating the need for an additional 237 staff.

Historically, these hours are represented by both professional and clerical support staff activities. The DA estimates that 92% of the activities would require professional staff involvement (administrative level - Program Manager I, Facility Advisory Nurse III, Facility Surveyor III; field supervisory level - FAN III and FS III; and field survey level - FAN II and FS II) and the remaining 8% of the activities being completed by clerical support (Clerk Steno II and Clerk Typist II) running copies, typing letters, pulling files, etc. Professional staff routinely conduct state inspections, federal surveys, complaint investigations and complete required supporting documentation. The number of staff contained in this fiscal note represents the required increase related to preparation and participation in legal actions. Distribution of workload, in fact, would have all DAIS staff working on litigation based on participation in state inspections, federal surveys, and complaint investigations.

ASSUMPTION (continued)

Staff required:

Administrative Staff	PM I	2 FTE
	FAN III	6 FTE
	FS III	3 FTE
	Clerk Steno II	2 FTE
Field Supervisory Level Staff	FAN III	11 FTE
	FS III	6 FTE
Field Survey Staff	FAN II	126 FTE
	FS II	63 FTE
Regional Support Staff	Clerk Typist	<u>18 FTE</u>
Total Institutional Service Staff Required		<u>237 FTE</u>

Based on previous experience, the following amounts represent the average annual expense of an Institutional Services FTE:

- Rent (Statewide Average - \$2,360 per FTE (\$11.80 per sq. ft. x 200 sq. ft.)
- Utilities - \$320 per FTE (\$1.60 per sq. ft. x 200 sq. ft.)
- Janitorial/Trash - \$200 per FTE (\$1.00 per sq. ft. x 200 sq. ft.)
- Other Expenses - \$5,447 per FTE (includes travel, office supplies, professional development, telephone charges, postage and all other expenses not itemized above.)

Staff will be located as follows:

Central Office	13 FTE (2 PM I, 6 FAN III, 3 FS III and 2 CS II positions);
Springfield (Greene County):	39 FTE (2 FAN III, 1 FS III, 22 Fan II, 11 FS II & 3 CT II);
Poplar Bluff (Butler County):	25 FTE (1 FAN III, 1 FS III, 14 FAN II, 7 FS II & 2 CT II);
Kansas City (Jackson County):	39 FTE (2 FAN III, 1 FS III, 22 FAN II, 11FS II & 3 CT II)
Cameron (DeKalb County):	25 FTE (1 FAN III, 1 FS III, 14 FAN II, 7 FS II & 2 CT II);
Macon (Macon County):	25 FTE (1 FAN III, 1 FS III, 14 FAN II, 7 FS II & 2 CT II);
Jefferson City (Cole County):	32 FTE (1 FAN III, 1 FS III, 18 FAN II, 9 FS II & 3 CT II);
St. Louis City:	39 FTE (2 FAN III, 1 FS III, 22 FAN II, 11FS II & 3 CT II)

ASSUMPTION (continued)

ASSUMPTION (continued)

In addition to the above standard costs, systems furniture for the new staff in Jefferson city, Poplar Bluff, Kansas City and Macon will be needed at a cost of \$4,100 per FTE. Notebook PCs with docking stations will be needed for professional staff at a cost of \$5,620 each and desktop PCs will be needed for clerical staff at a cost of \$2,039 each.

Home and Community Services

Under current law (Chapter 105 RSMo) the state is not liable for actions by state employees that are beyond their scope of authority or official capacity nor do such actions expose the state to damages under the provisions of the state legal expense fund. In cases such as these, employees are held personally liable for their actions. The proposed bill expands the liability of the state and further exposes the budget to include "injuries directly inflicted by employees".

In FY99 there were approximately 14,099 total hotline reports made to the division relating mainly to cases of abuse, neglect, and exploitation. Of the total hotline calls approximately 1,864 were Class I calls (Imminent danger or an emergency situation), 10,471 were Class II hotline calls (Direct or immediate relationship to the health, safety, or welfare of the reported adult, but which does not create imminent danger), and 1,764 were Class III calls (Non-protective situation; not a Class I or Class II). Based on the large number of cases being investigated by division staff, it could be estimated that by the waiving of the division's sovereign immunity there would be a significant increase in the number of suits that are being brought against the division.

Although it is the division's contention that staff are performing these investigations and their duties to the best of their ability and within the confines of their scope of authority, by waiving sovereign immunity in cases where it was perceived the division was negligent more would be going to trial because the division would be liable for those negligent acts (real or perceived). Therefore, division staff would have to prepare these additional cases for trial regardless of whether the case made it to trial or not.

- It is estimated that the divisions highest source of potential litigation would come from the Class I hotlines, as these are clients with the highest degree of risk or injury. The DA estimates that 15% of these cases may need to be prepared for litigation (15% of 1,864) this would be 280 cases. The DA estimates that there is medium range of risk, or 10% of the 10,471 Class II hotlines, then 1,047 cases might result in litigation. It is estimated that there would be a negligible percentage or 5% of 1,764 Class III would result in 88 cases that might result in litigation. An estimated 1,415 cases every year could result in litigation against the

ASSUMPTION (continued)

division. It is estimated that approximately 110 hours are spent to prepare these cases to go to trial. It is estimated that the potential 1,415 cases x 110 hours are spent to prepare these cases to go to trial. It is estimated that the potential 1,415 cases x 110 hours of staff preparation time will result in 155,650 staff hours. Each staff person routinely works 1,840 hours per year indicating a need for 85 new staff.

- Currently the Home and Community Services Social Service Worker staff conduct approximately 22,074 screenings for Missouri Care Options which could provide a minimal risk to the division if it was felt there was negligence in any way. It is estimated that approximately 2% might lead to litigation under the waiver of sovereign immunity. 22,074 cases x 2% x 20 staff hours (minimal time is estimated)/1840 hours would result in a need for 5 new staff.
- The person receiving ongoing case management from the Division of Aging is another population that constitutes a potential for suits. The number of ongoing cases not included in the above two analyses can be calculated by subtracting the Missouri Care Options screenings and the hotline calls from the total number of DA customers. These ongoing cases are expected to have a relatively low potential for suit (approximately 1%). Preparation time for these type of suits is expected to be 110 hours. Subtracting the two above referenced populations (the Missouri Care Options screenings and the hotline calls = 36,173) from the total number of DA customers (65,491) leaves a total population of 29,318. It is estimated that the potential 293 suits (29,318 x 1%) times 110 staff hours to prepare these cases will result in 32,230 staff hours. Each staff person routinely works 1,840 hours per year indicating a need for 18 new staff.
- In determining the type of staff needed, DA estimates that approximately 60% of the case preparation time would be done by social Service Workers and approximately 40% of the case preparation time would be done by supervisory staff and clerical staff. This would result in the division hiring the following additional staff:

Clerk Typist II positions	21
Social Service Worker positions	66
Area Supervisor positions	21

Independent Contractors

Under current policy, independent contractors are responsible for selection and supervision of employees authorized to provide services reimbursed under public monies. Contract language

ASSUMPTION (continued)

_____ holds agencies solely responsible for acts of their employees. DA assumes the intent of this provision is to strengthen oversight and performance monitoring of contracts and assumes this provision does not conflict with federal statutes that differentiate independent contractors from employees. The waiver of immunity by the state exposes the budget to acts of negligent selection, supervision, inspection, or control over independent contractors.

- Currently, there are 400 in-home service provider agencies. There were approximately 40 agencies (10%) that were found out of substantial compliance in the last fiscal year. These agencies could possibly provide risk or harm to the clients causing the division to be exposed to potential suit. Preparing a case for court is a very timely process, usually requiring about 225 hours total staff time per case. These 40 cases x 225 hours to prepare each case is 9,000 hours/1840 hours would result in the need for five additional monitoring staff to prepare cases for litigation. The division will need two Aging Program Specialist II positions and three Aging Program Specialist I positions (Monitors). The division also need one Clerk Typist II positions to provide support to the additional Monitoring staff and support the activities of the unit. These six positions will be located in Central Office in Jefferson City.

Although the division estimates that there will be other situations that will place the division at risk for suit, such as acts committed by a negligent provider, it is felt that these would not involve a significant amount of additional staff time. While the division's staff time may be negligible, the impact of this on the legal expense fund could be enormous. Currently the division is not liable for the negligent acts of the provider agencies; however, under the waiver of sovereign immunity this liability is explicitly specified.

Sixty-six Social Service Worker II positions will be needed in county offices across the state. The Social Service Workers are responsible for the investigation of hotline reports of in-home service clients within 24 hours, pre-long-term care screenings, eligibility determination, and authorization of state funded in-home services. Also included in their responsibilities is the monitoring and revisions of care plans and to ensure the needs of clients are being met. The new FTE will be placed in the following counties/locations:

7 each in: Wainwright
6 each in: Jackson
4 each in: Prince Hall
3 each in: Greene, Boone
2 each in: Pike, Adair, Buchanan, Jefferson, Clay, St. Francois
1 each in: Butler, Scott, Saline, Livingston, Douglas, Cape Girardeau, Stoddard, Vernon, Nodaway, Pulaski, Howell, Dunklin, Wayne, Andrew, Randolph, Jasper, New

ASSUMPTION (continued)

Madrid, Cass, Taney, Pemiscott, Clinton, Crawford, St. Charles, Texas, Dekalb,
Marion, Wright, Ste. Genevieve, Pettis, Grundy, Phelps

Twenty-one Area Supervisors positions will be needed to enhance oversight of Social Service Workers to the level required by the bill. Area Supervisors provide oversight and supervision to the Social Service Workers and are accountable for the performance of the Social Service Workers including case review, evaluation and guidance. Area Supervisors often act as the first point of contact for complaint resolution when clients are dissatisfied with services or staff. The new FTE will be placed in the following counties/locations:

3 each in: Wainwright
2 each in: Jackson
1 each in: Greene, Wayne, Cooper, Jasper, Gasconade, Taney, Saline, Macon, Butler,
Buchanan, Warren, Cape Girardeau, Livingston, St. Charles, New Madrid,
Nodaway

Additionally, twenty-one Clerk Typist II positions will be needed to provide the necessary support to the Area Supervisors and the activities of the unit. The clerk typist positions will be located with the Area Supervisors.

Based on previous experience, the following amounts represent the average annual expense of a Home & Community Services FTE:

- Rent (Statewide Average) - \$2,360 per FTE (\$11.80 per sq. ft. x 200 sq. ft.)
- Utilities - \$320 per FTE (\$1.60 per sq. ft. x 200 sq. ft.)
- Janitorial/Trash - \$200 per FTE (\$1.00 per sq. ft. x 200 sq. ft.)
- Other Expenses - \$3,091 per FTE (includes travel, office supplies, professional development, telephone charges, postage and all other expenses not itemized above.)

In addition to the above standard costs, systems furniture for the new staff in Howell, Taney, Texas, Wright, Dunklin, Pemiscot, St. Francois, Stoddard, Cass, Clay, Jackson, Pettis, Andrew, Buchanan, Nodaway, Boone, Crawford, Gasconade, Macon, and Pulaski counties, at Prince hall in St. Louis City and at Central Office in Jefferson City will be needed at a cost of \$4,100 per FTE. Desktop PCs will be needed for new staff at a cost of \$2,039 each.

ASSUMPTION (continued)

Administrative Services

The addition of 237 Institutional Services FTE and 114 Home and Community Services FTE will result in the need for additional support staff. A 44% increase in total Division of Aging Staff will necessitate additional staff to perform support functions such as training, human resources, accounting, and automation.

- Currently, DA has two Institutional Services trainers. An increase of Institutional Services personnel from 277.5 to 514.5 will require that DA double the number of Institutional Services trainers. DA will need one (1) Facility Advisory Nurse III Trainer position and one Training Technician II position. Currently DA has two Home and Community Services trainers. An increase of Home and Community Services personnel from 483 to 597 will require one additional Training Technician II position. The addition of three trainers will require one Clerk Typist II position to provide clerical support to the training unit.
- Currently DA has four staff in the Human Resources Section. A 44% increase in total personnel will necessitate an increase of 2 staff in this unit. DA will need one Personnel Analyst II position and one Personnel Clerk position.
- Currently DA has six staff in the Accounting and Budgeting Section. A 44% increase in total personnel will necessitate an increase of 2 staff in this unit. DA will need one Account Clerk II position and one Accountant I position.
- Currently DA has ten staff in the Information Support Unit. A 44% increase in total personnel will necessitate an increase of 4 staff in this unit. DA will need four Computer Information Technologist III positions.

New staff in the Training, Human Resources and Accounting and Budgeting sections will be located in Central Office in Jefferson City. The Computer Information Technologist positions will be located one each in Springfield (Greene County), Kansas City (Jackson County), Macon (Macon County) and St. Louis City (Wainwright Building).

Based on previous experience, the following amounts represent the average annual expense of an Administrative Services FTE:

- Rent (Statewide Average) - \$2,360 per FTE (\$11.80 per sq. ft. x 200 sq. ft.)
- Utilities - \$320 per FTE (\$1.60 per sq. ft. x 200 sq. ft.)
- Janitorial/Trash - \$200 per FTE (\$1.00 per sq. ft. x 200 sq. ft.)

ASSUMPTION (continued)

- Other Expenses - \$6,041 per FTE (includes travel, office supplies, professional development, telephone charges, postage and all other expenses not itemized above.)

In addition to the above standard costs, systems furniture for the new staff in Jefferson City, Kansas City and Macon will be needed at a cost of \$4,100 per FTE. Desktop PCs will be needed for all new staff at a cost of \$2,039 each.

Costs were split between state and federal funds at a rate of 98% state and 2% federal.

Officials from the **DOSS - Division of Family Services (DFS) - Children's Services Section** provided the following assumptions in arriving at the fiscal impact based on expanding the sovereign immunity exceptions.

- Injuries arising out of the care, treatment, or statutorily required services provided by the division

All services provided by the division would be included in the proposed expansion of state liability for injuries arising out of the care, treatment, or statutorily required services provided by the division. This proposed bill would make the division liable, because we are investigating and providing services for child abuse and neglect, for injuries that resulted at the hands of the parent/caretaker. As a result of this legislation, the state would pay overtime to division staff responding to lawsuits.

Children's Services

This proposed bill would make the division liable, because the Division is investigating and providing services for child abuse and neglect, for injuries that resulted at the hands of the parent/caretaker. As a result of this legislation, the state would need to pay for overtime for employees who are responding to lawsuits against the State.

This proposed bill would make the State liable, because the Division is investigating and providing services for child abuse and neglect, for injuries that resulted at the hands of the parent/caretaker. During FY99, 71,675 children were named in 45,919 completed Child Abuse/Neglect (CA/N) reports.

Over 10,500 children were victims in the CA/N reports with probable cause conclusions. If in only 1% of the reports someone believed that DFS had been negligent (either in finding that abuse did or did not exist) there could be some 450 such lawsuits (cases) filed each year.

ASSUMPTION (continued)

DFS works in conjunction with DLS and the Attorney General's office in response to lawsuits that are filed against the division and state. It is estimated that the division staff spend 48 hours in preparing for court, in court, participating in depositions and interrogatories, working with Division of Legal Services and the Attorney General's office, and all aspects of responding to lawsuits against the State. Based on 459 cases and 48 hours/case, these cases would consume 22,032 hours (459 cases x 48 hours/case = 22,032 hours).

- Injuries directly inflicted by employees

Under current law, Chapter 105, RSMo, any actions by a state employee acting beyond their official capacity would not be covered under the State Legal Defense Fund. Therefore, if a division employee directly injured a child, the employee would be terminated and subject to child abuse and neglect investigation as well as face criminal charges. During FY99, no injuries were directly inflicted by division employees. However, this legislation would envelop liability that occurs at the hands of an individual acting outside the purview of his/her official capacity.

- Injuries directly resulting from the negligent selection, inspection, supervision or control over independent contractors

The division is responsible for ensuring contracts remain in compliance, as it is accountable for providers operating independently. Basic compliance standards have been set forth in each contract. Currently, the contracts require each contracted agency employee hold a minimum level of education (levels are determined by individual contract requirements) and submit to a criminal and child abuse/neglect background screening. Documentation of such compliance with the minimum contractual requirements is to be submitted to the division for approval.

Additionally, the contractor is currently responsible for any and all injuries or damages as a result of any services rendered under the terms and conditions of the contract. In addition to the liability imposed upon the contractor on the account of personal injury, bodily injury (including death) or property damage suffered as a result of the contractor's performance under the contract, the contractor assumes the obligation to save the DSS and the division from every expense, liability or payment arising out of such negligent act. However, the contractor shall not be responsible for any injury or damage occurring as a result of any negligent act or omission committed by the State of Missouri, including its agencies and employees.

Any violation of the contract, including injuries resulting in their services, may result in the termination of the contract. This legislation would shift the liability from the contracted agencies to the state.

ASSUMPTION (continued)

This proposed bill would expand state liability to include independent contractors, who currently have the responsibility over the hiring and supervision of their own staff, as well as taking on any liability. As a result of this bill, the division would need to assume further governing over contractors. This shift of responsibility would need to assume further governing over contractors.

This shift of responsibility from contractors to the state would involve the division in activities with the contractors, such as:

- Participating in the screening, interviewing and hiring of contract agency staff;
- Assisting in annual performance evaluations on each contract agency staff member;
- Doubling the frequency of contract agency site reviews;
- Providing second level supervision over contract agency staff;
- Reviewing/approving contract agency staff case activities; and

As previously mentioned, due to this legislation requiring the division to encapsulate the contracted agency's employee liability, the state would need to make liability insurance available to division staff.

Contract Agency Staff Monitoring:

As of 12/3/99, there were 1,846 active contracts that are responsible for the hiring or their staff. Each individual contract represents numerous staff. As a result of this bill, the division would need to assume further governing over contractors, which would include involvement in the hiring and direct supervision of each contract agency staff member. A Contract Agency Staff Monitoring Unit would be established with one Unit Manager, one Program Development Specialist for every 32 contract agency, and 1 Clerical Worker for every 3 professional staff. This would result in 57.69 new Program Development Specialist (PDS), FTEs that would be geographically based, contingent on contractor location; 7 new Unit Manager FTEs; and 21.56 Clerical Staff.

Additional On-site Review of Residential Facilities:

There are 160 residential sited that have approximately 4,364 staff that provide services to children. The division's Residential Program Unit monitors each residential contracted agency to ensure licensure compliance. However, this unit is not involved in monitoring which includes on-site review of the contracted agency. The Residential program Unit has five Residential Licensing Consultants that license and monitor the residential facilities. SB 640 expands state

ASSUMPTION (continued)

liability to include independent contractors, who currently have the responsibility over the hiring and supervision of their own staff, as well as taking on any liability.

The Residential program unit would double the frequency of on-site reviews of the facilities, resulting in 10 Residential Licensing Consultant FTEs. Currently, the Residential Program Unit is not involved in the hiring of individual staff of the residential facilities; these duties would be assumed by the new Contract Agency Staff Monitor position.

Oversight notes the DFS included costs for malpractice insurance in their cost estimate related to this proposal. The DFS included costs related to this insurance totaling \$3,566,906, \$4,410,460, and \$4,542,774 for FY 01, FY 02, and FY 03, respectively. Oversight notes this insurance cost was NOT included in the cost estimate provided by the Division of Aging for its employees. Oversight has removed the malpractice insurance cost estimate from the fiscal estimate provided by the DFS.

Officials from the **DOSS - Division of Legal Services (DLS)** anticipate this legislation will result in numerous suits being filed against the Division of Family Services, the Division of Aging and the employees of those agencies. This is especially so because there are no liability limits established for recoveries under SB 640 thus encouraging lawsuits to be filed. The second sentence of Section 207.024 and Section 660.673 arguably waives official immunity for DFS and DA employees thus exposing them to individual liability and excluding them from representation by the Attorney General.

The DLS responded to this particular proposal by stating recent data shows DFS annually receives some 45,000 child abuse and neglect hotline calls. If in even only 1% of the hotline calls someone believed that DFS had been negligent there could be some 450 such lawsuits filed each year. The attorney general, as the gatekeeper of the Legal Expense Fund, has the lead in cases involving money damages against the state or its agencies. DLS provides coordinating counsel with the assigned attorney general and is involved in case and witness preparation, and in developing strategy and tactics for the cases. It is estimated that the assigned coordinating counsel with DLS would spend 40 hours working with witnesses, assembling materials for discovery and/or trial, and coordinating with the assigned attorney general. Based on 450 cases and 40 hours/case, this would require nine new Attorneys (\$34,992) and four Clerk Typists III (\$17,000).

The Division of Aging projects 4,627 lawsuits that might be filed based on this legislation. Such suits could be initiated and would have to be litigated based on mere allegations that DA was negligent. Even if it is ultimately determined that DA was not negligent, the time and

ASSUMPTION (continued)

expense of the trial (and trial preparation) could not be avoided because the case could not be initially dismissed inasmuch as sovereign immunity has been waived. Based on 4,627 cases and 40 hours/case, these cases would consume 185,080 hours = (4,627 cases x 40 hours/case).

At 2,080 hours/attorney-year, this would require eighty-nine new Attorneys (\$34,992) and forty-five Clerk Typists III (\$17,000). The Attorney staff requirements were calculated by taking 185,080 hours divided by 2,080 hours per attorney per year which totaled 88.9 Attorneys.

The total estimated costs charged to the General Revenue Fund for FY 01, FY 02, and FY 03 were \$6,167,864, \$6,927,561, and \$7,106,113, respectively for 98 new Attorneys and 49 Clerk Typists III.

However, for a similar proposal from this legislative session, the DLS responded with a different cost estimate. For the similar proposal, the DLS assumed the following:

Division of Family Services

Recent data shows that DFS annually receives some 45,000 child abuse and neglect hotline calls. If in even only 1% of the hotline calls someone believed that DFS had been negligent there could be some 450 such lawsuits filed each year. The attorney general, as the gatekeeper of the Legal Expense Fund, has the lead in cases involving money damages against the state or its agencies. DLS provides coordinating counsel with the assigned attorney general and is involved in case and witness preparation, and in developing strategy and tactics for the cases. It is estimated that the assigned coordinating counsel with DLS would spend 40 hours working with witnesses, assembling materials for discovery and/or trial, and coordinating with the assigned attorney general. Based on 450 cases and 40 hours/case, this would require 9 new Attorneys and 4 Clerk Typists III.

Division of Aging

Recent data shows that DA receives on an annual basis approximately 21,400 hotline calls relating to abuse, neglect, or exploitation of the elderly. If in even only 1% of the hotline calls someone believed that DA had been negligent, there could be some 214 such lawsuits filed each year. Based on 214 cases and 40 hours/case, this would require 4 new Attorneys and two Clerk Typists III.

ASSUMPTION (continued)

ASSUMPTION (continued)

Oversight will use the earlier response received from DLS in order to maintain consistent fiscal estimates for similar proposals. The costs for DLS were split between state and federal funds at a rate of 60% state and 40% federal.

<u>FISCAL IMPACT - State Government</u>	FY 2001 (10 Mo.)	FY 2002	FY 2003
GENERAL REVENUE FUND			
<u>Costs - Legal Expense Fund</u>			
Court Costs and Damage Awards from Sovereign Immunity Court Cases*	\$0 to (\$4,222,802)	\$0 to (\$5,219,383)	\$0 to (\$5,375,964)
<u>Costs - Office of Attorney General</u>			
Personal Service (10 FTE)	(\$231,250)	(\$284,438)	(\$291,548)
Fringe Benefits	(\$71,109)	(\$87,465)	(\$89,651)
Expense and Equipment	<u>(\$200,751)</u>	<u>(\$141,522)</u>	<u>(\$145,768)</u>
Total <u>Costs</u> - Office of Attorney General	<u>(\$503,110)</u>	<u>(\$513,425)</u>	<u>(\$526,967)</u>
<u>Costs - Department of Social Services - Division of Aging</u>			
Personal Service (363 FTE at 98%)	(\$3,345,824)	(\$13,717,880)	(\$14,060,826)
Fringe Benefits	(\$1,028,841)	(\$4,218,248)	(\$4,323,704)
Expense and Equipment	<u>(\$3,407,625)</u>	<u>(\$2,790,059)</u>	<u>(\$2,873,760)</u>
Total <u>Costs</u> - Division of Aging	<u>(\$7,782,290)</u>	<u>(\$20,726,187)</u>	<u>(\$21,258,290)</u>
<u>Costs - Department of Social Services - Division of Family Services</u>			
Personal Service (91 FTE at 69%)	(\$2,131,387)	(\$2,622,655)	(\$2,688,222)
Fringe Benefits	(\$655,402)	(\$806,676)	(\$826,628)
Expense and Equipment	<u>(\$874,899)</u>	<u>(\$389,953)</u>	<u>(\$401,651)</u>
Total <u>Costs</u> - Division of Family Services	<u>(\$3,661,688)</u>	<u>(\$3,819,284)</u>	<u>(\$3,916,501)</u>
<u>Costs - Department of Social Services - Division of Legal Services</u>			
Personal Service (13 FTE at 60%)	(\$227,448)	(\$279,761)	(\$286,755)
Fringe Benefits	(\$69,940)	(\$86,027)	(\$88,177)
Expense and Equipment	<u>(\$76,537)</u>	<u>(\$59,009)</u>	<u>(\$60,779)</u>
Total <u>Costs</u> - Division of Legal Services	<u>(\$373,925)</u>	<u>(\$424,797)</u>	<u>(\$435,711)</u>
TOTAL ESTIMATED EFFECT ON	(\$12,321,013) to	(\$25,483,875) to	(\$26,137,469) to

<u>FISCAL IMPACT - State Government</u>	FY 2001 (10 Mo.)	FY 2002	FY 2003
GENERAL REVENUE FUND*	<u>(\$16,543,815)</u>	<u>(\$30,703,258)</u>	<u>(\$31,513,433)</u>

* Estimate, costs to the Legal Expense Fund could significantly exceed these amounts.

<u>FISCAL IMPACT - State Government</u>	FY 2001 (10 Mo.)	FY 2002	FY 2003
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FEDERAL FUND

Costs - Department of Social Services -
 Division of Aging

Personal Service (363 FTE at 2%)	(\$58,165)	(\$238,476)	(\$244,438)
Fringe Benefits	(\$17,886)	(\$73,331)	(\$75,165)
Expense and Equipment	<u>(\$51,387)</u>	<u>(\$54,025)</u>	<u>(\$55,646)</u>
Total <u>Costs</u> - Division of Aging	<u>(\$127,438)</u>	<u>(\$365,832)</u>	<u>(\$375,249)</u>

Costs - Department of Social Services -
 Division of Family Services

Personal Service (91 FTE at 33%)	(\$1,049,788)	(\$1,291,756)	(\$1,324,049)
Fringe Benefits	(\$322,810)	(\$397,215)	(\$407,145)
Expense and Equipment	<u>(\$340,239)</u>	<u>(\$151,647)</u>	<u>(\$156,196)</u>
Total <u>Costs</u> - Division of Family Services	<u>(\$1,712,837)</u>	<u>(\$1,840,618)</u>	<u>(\$1,887,390)</u>

Costs - Department of Social Services -
 Division of Legal Services

Personal Service (13 FTE at 40%)	(\$151,632)	(\$186,507)	(\$191,170)
Fringe Benefits	(\$46,627)	(\$57,351)	(\$58,785)
Expense and Equipment	<u>(\$51,024)</u>	<u>(\$39,340)</u>	<u>(\$40,520)</u>
Total <u>Costs</u> - Division of Legal Services	<u>(\$249,283)</u>	<u>(\$283,198)</u>	<u>(\$290,475)</u>

**ESTIMATED EFFECT
 ON FEDERAL FUNDS**

	<u>(\$2,089,558)</u>	<u>(\$2,489,648)</u>	<u>(\$2,553,114)</u>
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<u>FISCAL IMPACT - Local Government</u>	FY 2001 (10 Mo.)	FY 2002	FY 2003
	\$0	\$0	\$0

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FISCAL IMPACT - Small Business

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

DESCRIPTION

This proposal waives the sovereign immunity of the Division of Family Services and the Division of Aging for injuries directly inflicted by employees and those injuries directly resulting from the negligent selection, inspection, supervision or control over independent contractors.

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 Social Services
Office of State Courts Administrator
Office of Attorney General
Office of Administration
Department of Health



Jeanne Jarrett, CPA
Director
January 31, 2000