COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 5726-08
Bill No.: SCS for HCS for HB 1854
Subject: Disabilities; Crimes and Punishment; Health Dept.; Health Care; Medicaid; Tax Credits
Type: Original
Date: May 16, 2012

Bill Summary: Modifies provisions relating to services provided to individuals with disabilities.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2013	FY 2014	FY 2015
General Revenue	($29,160) to $1,637,507	($30,545 to $2,030,454)	($30,878) to $1,696,122
Total Estimated Net Effect on General Revenue Fund	**($29,160) to $1,637,507**	**($30,545 to $2,030,454)**	**($30,878) to $1,696,122**

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2013	FY 2014	FY 2015
Brain Injury	$1,875,000 or $3,000,000	$0	$0
Total Estimated Net Effect on Other State Funds	**$1,875,000 or $3,000,000**	**$0**	**$0**

Numbers within parentheses: ( ) indicate costs or losses.
This fiscal note contains 15 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2013	FY 2014	FY 2015
Federal*	$0	$0	$0
UC Administration	$0 or ($51,000,000)	$0 or ($51,000,000)	$0 or ($51,000,000)
Wagner-Peyser Administration	$0 or ($18,000,000)	$0 or ($18,000,000)	$0 or ($18,000,000)
Total Estimated Net Effect on All Federal Funds	**$0 or ($69,000,000)**	**$0 or ($69,000,000)**	**$0 or ($69,000,000)**

*** Revenues and expenditures net to $0.**

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2013	FY 2014	FY 2015
General Revenue	0.5	0.5	0.5
Brain Injury	0	2.5	2.5
Federal	0.5	3	3
Total Estimated Net Effect on FTE	**1**	**6**	**6**

☒ 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**	**$0**	**$0**

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Agriculture, Office of Administration, Department of Economic Development, Department of Higher Education, Department of Mental Health, Department of Natural Resources, Missouri Department of Transportation, Department of Public Safety (DPS) - Missouri State Highway Patrol, DPS - Missouri Veterans Commission, Office of the Governor, Missouri Department of Conservation, Office of State Auditor, Missouri Senate** and **St. Louis County** assume the proposal will have no fiscal impact on their organizations.

Officials from the **Office of Attorney General** assume any potential costs arising from this proposal can be absorbed with existing resources.

Officials from the **Joint Committee on Administrative Rules (JCAR)** state the legislation is not anticipated to cause a fiscal impact to JCAR beyond its current appropriation.

Officials from the **City of Columbia** state the proposal will likely have a minimal impact on their organization.

Officials from the **Office of Prosecution Services (OPS)** assume the proposal will have no measurable fiscal impact on the OPS. The creation of a new crime creates additional responsibilities for county prosecutors which may, in turn, result in additional costs, which are difficult to determine.

Oversight assumes the potential responsibilities imposed on county prosecutors as a result of this proposal, will be absorbable within current funding and staffing levels.

Officials from the **Office of Secretary of State (SOS)** state many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. 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. **The fiscal impact for this fiscal note to the SOS for Administrative Rules is less than $2,500. The SOS recognizes this is a small amount and does not expect that additional funding would be required to meet these costs**. However, it is also recognized that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what the office can sustain within its core budget. **Therefore, the SOS reserves the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the governor.**

ASSUMPTION (continued)

Officials at the **Department of Corrections (DOC)** assumes the penalty provisions, the component of the bill to have potential fiscal impact for DOC, is for up to a class D felony. Currently, the DOC cannot predict the number of new commitments which may result from the creation of the offense(s) outlined in this proposal. An increase in commitments depends on the utilization by prosecutors and the actual sentences imposed by the court.

DOC states if additional persons are sentenced to the custody of the DOC due to the provisions of this legislation, the DOC will incur a corresponding increase of direct offender costs either through incarceration (FY11 average of $16.878 per offender, per day, or an annual cost of $6,160 per inmate) or through supervision provided by the Board of Probation and Parole (FY11 average of $5.12 per offender, per day or an annual cost of $1,869 per offender).

DOC assumes the narrow scope of the crime will not encompass a large number of offenders. The DOC further assumes the low felony status of the crime enhances the possibility of plea-bargaining or imposition of a probation sentence and the probability exists that offenders would be charged with a similar but more serious offense or that sentences may run concurrent to one another.

Therefore, the DOC assumes supervision by the DOC through probation or incarceration would result in some additional costs, but it is assumed the impact would be $0 or a minimal amount that could be absorbed within existing resources.

Officials from the **Department of Insurance, Financial Institutions and Professional Registration (DIFP)** state, with respect to Sections 135.1150 and 135.1180, it is unknown how many insurance companies will choose to participate in this program and take advantage of the tax credits. Premium tax revenue is split 50/50 between General Revenue and County Foreign Insurance Fund except for domestic Stock Property and Casualty Companies who pay premium tax to the County Stock Fund. The County Foreign Insurance Fund is later distributed to school districts through out the state. County Stock Funds are later distributed to the school district and county treasurer of the county in which the principal office of the insurer is located. It is unknown how each of these funds may be impacted by tax credits each year.

DIFP will require minimal contract computer programming to add this new tax credit to the premium tax database and can do so under existing appropriation. However, should multiple bills pass that would require additional updates to the premium tax database, the department may need to request more expense and equipment appropriation through the budget process.

Officials from the **Office of State Courts Administrator (CTS)** state the proposed legislation would allow a $10 surcharge for the Brain Injury Fund to be assessed on all criminal and traffic cases, including infractions. Currently a $2 surcharge is allowed.

ASSUMPTION (continued)

In FY 11, $596,566 was collected on this surcharge. The CTS anticipates the additional revenue from an increased $10 surcharge would be approximately $2,386,264, for a total in any given year of $2,982,830.

Officials from the **Department of Health and Senior Services (DHSS)** provide the following assumptions:

304.028

Of the total revenues collected, $1,875,000 (50% of $3,750,000) would be used for the state match for the brain injury waiver and the remaining revenues of $1,875,000 would be used by the Adult Brain Injury (ABI) Program. The waiver will not have any expenses in FY 13 because the waiver cannot be administered until the application is written and approved by the Centers for Medicare and Medicaid Services (CMS). The current DHSS ABI Program Manager would manage the waiver program. An additional 5 FTE would be required to implement and manage the brain injury waiver statewide, including 2 Public Health Nurses ($40,212 each, annually) to provide service coordination and authorization of waiver services, statewide implementation, and home visits; 1 Health Program Representative (HPR) III ($37,296 annually) and 1 HPR II ($33,420 annually). The HPR III and HPR II would perform functions related to referral management, provider relations, prior authorization processing, quality assurance, performance management, data analysis, fiscal analysis and reporting; 1 Senior Office Support Assistant ($24,576 annually) would support the program. All waiver services are calculated at a 40% state match/60% federal match. Administrative costs are calculated at 50% state match/50% federal match.

Oversight contacted CTS and DOH officials regarding the discrepancy between the income estimated for cases, including infractions, that would go to the Brain Injury Fund. CTS officials stated their information did not include municipal court cases and they were unable to obtain municipal court information. Based on CTS' response, **Oversight** assumes the difference between CTS' and DOH's revenue estimates to be the municipal court fees. **Oversight** will use the estimated income provided by DOH for this fiscal note.

Officials from the **Department of Social Services (DSS) - MO HealthNet Division (MHD)** state this proposal will create a new waiver. Each waiver generates the same amount of oversight requirements, which would require one full-time Program Development Specialist FTE for MHD. The activities this staff will have includes development of the waiver application, submission to the Centers for Medicare and Medicaid Services (CMS) of all applications, renewals and amendments to the waiver, tracking of data for all performance measures outlined in the waiver and ensuring the Department of Health and Senior Services (DHSS) is identifying problems and conducting proper remediation, quarterly quality assurance meetings, quarterly

ASSUMPTION (continued)

waiver record reviews, annual reporting of expenditures to CMS and compilation of evidence after the first 18 months of the waiver to show compliance with Home and Community Based Services assurances. Because the staff at DHSS who manage the Head Injury Fund are not familiar with the waiver process, much of the work will fall on MHD.

MHD assumes the proposal will have a fiscal impact for FY 13 of $58,319 ($29,160 GR/$29,159 Federal funds; for FY 14 of $61,092 ($30,545 GR/$30,547 Federal funds; and for FY 15 of $61,756 ($30,878 GR/$30,878 Federal funds).

Based on discussions with DHSS and DSS personnel, **Oversight** assumes it may be possible for the federal waiver to allow moneys in the Brain Injury Fund to be used under the MO HealthNet program to be obtained during FY 13. As a result, **Oversight** is ranging available funds in the Brain Injury Fund from $1,875,000 to $3,000,000, to allow for the possibility of the granting of the waiver in FY 13.

Officials from the **Department of Elementary and Secondary Education (DESE)** provide the following assumptions:

Section 161.870

In order to meet the requirements of the proposal, a number of group meetings must occur. Group members would include existing personnel and human resources available to DESE. In addition, group members would include representatives from state agencies, local advocacy groups and community members with valuable input regarding the needs of disabled students and individuals, or members of the general assembly. At this time, DESE cannot estimate the number and extent of such meetings and members; however, it appears likely that costs associated with such meetings could easily exceed $100,000.

It should be noted that most existing personnel and human resources available to DESE with valuable input regarding the needs of disabled students and individuals are federally funded people who are prohibited by federal law from implementing state objectives.

There would likely be one or more surveys for which questions must be developed and results must be analyzed. Additional costs would be incurred to write and edit the report. All of this must be completed by January 1, 2013 for a proposal that would presumably go into effect on August 28, 2012. These time constraints would leave approximately four months to carry out the requirements of the proposal.

ASSUMPTION (continued)

Sections 135.1150 & 135.1180

Tax subsidies reduce the state's revenues and decrease the amount of money available for public schools and all public school students.

Section 301.143

School districts may incur additional costs to restripe parking lots in accordance with the terms of this section. DESE defers to schools regarding the extent of any costs.

Oversight assumes the proposal states the work group shall include existing personnel and human resources available to DESE. The project appears to be short term and **Oversight** assumes the work group duties can be accomplished with existing resources.

Officials at the **Department of Revenue** (**DOR**) provide the following assumptions:

135.1180

This proposal creates the "Developmental Disability Care Provider Tax Credit Program." For tax years beginning January 1, 2012, taxpayers will be allowed a credit against the taxes due under Chapters 143, 147, or 148 excluding withholding tax in an amount equal to 50% of the amount of an eligible donation, subject to the restrictions in this section. The amount of the tax credit claimed shall not exceed the amount of the taxpayer's state income tax liability. The credit is not refundable and may be carried forward four years. Tax credits issued under this section may be assigned, transferred, sold, or otherwise conveyed, and the new owner of the tax credit shall have the same rights in the credit as the taxpayer.

DOR assumes DOR and ITSD-DOR will need to make processing changes to multiple processing systems. The Department will need to make forms changes. In addition, Personal Tax and Corporate tax will each need a Revenue Processing Technician (starting salary $25,380) for every 4,000 tax credit redemptions. Total costs, including salaries, fringe benefits, equipment and supplies, and computer programming are estimated to be $102,341 for FY 13; $81,133 for FY 14; and $81,984 for FY 15.

Oversight assumes OA-ITSD (DOR) is provided with core funding to handle a certain amount of activity each year. **Oversight** assumes OA-ITSD (DOR) could absorb the costs related to this proposal. If multiple bills pass which require additional staffing and duties at substantial costs, OA-ITSD (DOR) could request funding through the appropriation process.

ASSUMPTION (continued)

Oversight assumes that due to the limited number of individuals currently taking advantage of this program, that the DOR could absorb the duties of this proposal with existing staff.

Oversight assumes that section 135.1180.4(3) requires payment from the provider equal to the amount of the value of the tax credit. **Oversight** assumes that receipt of payment and the application of the tax credits could affect various state funds, so for the purpose of this note **Oversight** is showing all the payments and costs to general revenue. However, the overall result of this proposal is no impact to total state revenue.

Officials at the **Department of Labor and Industrial Relations (DOL)** state this proposal changes subsection 288.034.19. The DOL assumes the federal government and state governments are jointly responsible for administering the unemployment insurance (UI) system. State laws must meet certain federal requirements for the state agency to receive the administrative grants needed to operate its UI program and for employers to qualify for certain tax credits.

This proposal would not include in-home or community-based services performed by a provider contracted to provide such services for the clients of a county board for developmental disability services in the definition of employment. These services may be required to be covered if they are in an employment relationship under Federal law.

Section 3304(a)(6)(A) of the Federal Unemployment Tax Act (FUTA) requires, as a condition for employers in a state to receive credit against the Federal tax, that Unemployment Compensation be payable based on certain services. Specifically, Unemployment Compensation must be payable based on services excepted from the Federal definition of employment (1) solely by reason of being performed for state and local governmental entities or federally recognized Indian tribes described in Section 3306(c)(7), FUTA, or (2) solely by reason of being performed for the nonprofit organizations described in Section 3306(c)(8), FUTA.

In the event that the provider has the right of direction and control, and is a state or local governmental entity or nonprofit organization or Indian Tribe, the services must be covered under the state's unemployment compensation program.

Thus, this proposal raises a non-conformity issue with federal law. Non-conformity with federal law could jeopardize the certification of Missouri's UI program. If the program fails to be certified, Missouri would lose approximately $51 million in federal funds the state receives each year to administer the UI program and $18 million in funds the Division of Workforce Development uses for Wagner-Peyser re-employment services.

ASSUMPTION (continued)

The Federal Unemployment Tax Act (FUTA) imposes a 6.0% payroll tax on employers. Most employers do not actually pay the total 6.0% due to credits they receive for the payment of state unemployment taxes and for paying reduced rates under an approved experience rating plan. FUTA allows employers tax credits up to a maximum of 5.4% against the FUTA payroll tax if the state UI law is approved by the Secretary of Labor. However, if the proposed resolution causes Missouri's program to be out of compliance or out of conformity, Missouri employers would pay the full 6.0%, or approximately an additional $868 million per year.

In the event a provider is a regular for-profit employer, it would not be able to take credit against the FUTA tax for the excluded services and would be required to pay at the full 6.0% rate rather than the 0.6% rate applicable after the credit.

Oversight assumes it is unclear if the state will have a conformity issue and will show the loss of federal funds as $0 or the potential loss of funds.

Officials from the **Office of Administration - Division of Budget and Planning (BAP)** state the proposed legislation should not result in additional costs or savings to the BAP.

Section 135.630

This provision extends the sunset from 2012 to 2013 on the Pregnancy Resource Center Credit. Redemptions under this program totaled $1.1M in FY11. This provision will reduce general and total state revenues by similar amounts.

Section 135.1150

The residential treatment agency credit is extended from 2012 to 2013. This provision also expands the types of taxpayers that are eligible for the credit and includes "children's homes" as eligible recipients of the credit. Because agencies are required to remit payments for the credits, this provision has no direct impact on general and total state revenues.

Section 135.1180

This provision creates a tax credit program for contributions made to Developmental Disability Care Providers. Because these agencies are required to submit payment to the state in amount equal to 50% of the donation, the equivalent amount of the tax credit, this provision has no direct impact on general and total state revenues.

ASSUMPTION (continued)

Section 209.202

This provision changes the scope and increases the penalties relating to injury or death of a service dog. Penalties associated with this provision would increase total state revenues by an unknown amount.

Section 304.028

This provision increases the surcharge on all criminal cases including county ordinance violations and state criminal and traffic law violations and infractions from $2 to $10 to the credit of the Brain Injury Fund. This proposal would increase total state revenues by an unknown amount and impacts 18(e) cap. BAP defers to the Department of Health and Senior Services for a specific estimate of increased revenue.

In response to an earlier version of this proposal, officials from the **Office of State Treasurer** and **City of Kansas City** assumed the proposal would have no impact on their organizations.

Officials from the **Missouri House of Representatives, Office of State Public Defender,** and **Office of State Treasurer** did not respond to **Oversight's** request for a statement of fiscal impact.

This proposal will result in an increase in Total State Revenue.

FISCAL IMPACT - State Government	FY 2013	FY 2014	FY 2015
GENERAL REVENUE			
Income - Department of Social Services			
Payment for tax credit filed with the application (§135.1180)	Unknown	Unknown	Unknown
Revenue Increase - Elimination of tax credits			
Expiration of pregnancy resource center tax credit (§135.630)	$0	$0	$0 to $2,000,000
Cost - Department of Social Services			
Developmental disability tax credit (§135.1180)	(Unknown)	(Unknown)	(Unknown)
§304.028			
Costs - DSS- MHD			
Personal service costs	($15,540)	($18,834)	($19,023)
Fringe benefits	($8,227)	($9,971)	($10,071)
Equipment and supplies	($5,393)	($1,740)	($1,784)
Total Costs - DSS-MHD	($29,160)	($30,545)	($30,878)
FTE Change - DSS-MHD	0.5 FTE	0.5 FTE	0.5 FTE
Revenue Reduction - Extension of the tax credit			
Extension of the pregnancy resource center tax credit (§135.630)	$0	$0 to ($2,000,000)	$0
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	**($29,160)**	**($30,545 to $2,030,545)**	**($30,878) to $1,969,122**
Estimated Net FTE Change for General Revenue Fund	0.5 FTE	0.5 FTE	0.5 FTE

FISCAL IMPACT - State Government	FY 2013	FY 2014	FY 2015
BRAIN INJURY FUND			
§304.028			
Income - DHHS			
Increase in fine revenue	$3,000,000	$3,000,000	$3,000,000
Costs - DHHS			
Personal services	$0	($88,737)	($89,624)
Fringe benefits	$0	($46,977)	($47,447)
Equipment and expense	$0	($71,495)	($58,357)
ABI program services	$0 or ($1,125,000)	($1,125,000)	($1,125,000)
Brain Injury Waiver services	$0	($1,667,791)	($1,679,572)
Total Costs - DHSS	$0 or ($1,125,000)	($3,000,000)	($3,000,000)
FTE Change - DHSS	0 FTE	2.5 FTE	2.5 FTE
ESTIMATED NET EFFECT ON BRAIN INJURY FUND	**$1,875,000 or $3,000,000**	**$0**	**$0**
Estimated Net FTE Change for Brain Injury Fund	0 FTE	2.5 FTE	2.5 FTE
FEDERAL FUNDS			
§304.028			
Income - DHSS			
Program reimbursement	$0	$2,708,896	$2,714,786
Income - DSS-MHD			
Program reimbursement	$29,159	$30,547	$30,878
Costs - DHSS			
Personal service	$0	($88,737)	($89,624)
Fringe benefits	$0	($46,977)	($47,447)
Equipment and expense	$0	($71,495)	($58,357)
Brain Injury Waiver services	$0	($2,501,687)	($2,519,358)
Total Costs - DHHS	$0	($2,708,896)	($2,714,786)
FTE Change - DHHS	0 FTE	2.5 FTE	2.5 FTE

FISCAL IMPACT - State Government	FY 2013	FY 2014	FY 2015
FEDERAL FUND (cont.)			
Costs - DSS-MHD			
Personal service costs	($15,540)	($18,835)	($19,023)
Fringe benefits	($8,227)	($9,971)	($10,071)
Equipment and supplies	($5,392)	($1,741)	($1,784)
Total Costs - DSS-MHD	($29,159)	($30,547)	($30,878)
FTE Change - DSS-MHD	0.5 FTE	0.5 FTE	0.5 FTE
ESTIMATED NET EFFECT ON FEDERAL FUNDS	**$0**	**$0**	**$0**
Estimated Net FTE Change on Federal Funds	0.5 FTE	3 FTE	3 FTE
UC ADMINISTRATION FUND			
Loss - UC Administration Fund (§288.034)			
Loss of federal funds	$0 or ($51,000,000)	$0 or ($51,000,000)	$0 or ($51,000,000)
ESTIMATED NET EFFECT ON UC ADMINISTRATION FUND	**$0 or ($51,000,000)**	**$0 or ($51,000,000)**	**$0 or ($51,000,000)**
WAGNER-PEYSER ADMINISTRATION FUND			
Loss - Wagner-Peyser Admin Fund (§288.034)			
Loss of federal funds	$0 or ($18,000,000)	$0 or ($18,000,000)	$0 or ($18,000,000)
ESTIMATED NET EFFECT ON WAGNER-PEYSER ADMINISTRATION FUND	**$0 or ($18,000,000)**	**$0 or ($18,000,000)**	**$0 or ($18,000,000)**

Note: The fiscal note does not reflect the possibility that some of the tax credits could be utilized by insurance companies against insurance premium taxes. If this occurs, the loss in tax revenue would be split 50/50 between the General Revenue Fund and the County Foreign Insurance Fund, which ultimately goes to local school districts.

FISCAL IMPACT - Local Government	FY 2013 (10 Mo.)	FY 2014	FY 2015
	$0	**$0**	**$0**

FISCAL IMPACT - Small Business

The availability of more revenues to pay for services could positively impact small business health care providers.

FISCAL DESCRIPTION

This proposal extends then expires several state tax credits and creates the Developmental Disability Care Provider tax credit.

This proposal removes the authority to transfer pregnancy resource center tax credits and extends the tax credits to December 31, 2013.

This proposal requires the Department of Health and Senior Services, in cooperation with the Department of Social Services, to seek waivers from the federal Department of Health and Human Services to allow moneys in the brain injury fund to be used under the MO HealthNet program to provide services.

This proposal also provides that in all criminal cases including violations of any county ordinance or any violation of criminal or traffic laws, including an infraction, there shall be assessed a surcharge of ten dollars. The surcharge collected shall be paid to the brain injury fund.

Provisions of the proposal change the definition of the term "employment" to not include in-home or community-based services performed by a provider contracted to provide services.

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 Attorney General
Department of Agriculture
Office of Administration -
    Division of Budget and Planning
Office of State Courts Administrator
Department of Economic Development
Department of Elementary and Secondary Education
Department of Higher Education

SOURCES OF INFORMATION (continued)

Department of Insurance, Financial Institutions, and Professional Registration
Department of Mental Health
Department of Natural Resources
Department of Corrections
Department of Health and Senior Services
Department of Labor and Industrial Relations
Department of Revenue
Department of Social Services
Missouri Department of Transportation
Department of Public Safety -
    Missouri State Highway Patrol
    Missouri Veterans Commission
Office of the Governor
Joint Committee on Administrative Rules
Missouri Department of Conservation
Office of Prosecution Services
Office of State Auditor
Missouri Senate
Office of Secretary of State
St. Louis County
City of Columbia
City of Kansas City

NOT RESPONDING: Missouri House of Representatives, Office of State Public Defender, and **Office of State Treasurer**

Mickey Wilson

Mickey Wilson, CPA
Director
May 16, 2012

HWC:LR:OD