

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 5039-01  
Bill No.: HJR 53  
Subject: Constitutional Amendments; Abortion; Children and Minors  
Type: Original  
Date: March 27, 2018

---

Bill Summary: This proposal proposes a constitutional amendment regarding the right to life.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
General Revenue Fund	\$0 or (More than \$7,800,000)	\$0	\$0
<b>Total Estimated Net Effect on General Revenue</b>	<b>\$0 or (More than \$7,800,000)</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

Numbers within parentheses: ( ) indicate costs or losses.

This fiscal note contains 10 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b>			
<b>FUND AFFECTED</b>	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>
<b>Total Estimated Net Effect on FTE</b>	<b>0</b>	<b>0</b>	<b>0</b>

Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any of the three fiscal years after implementation of the act.

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>
<b>Local Government*</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

\*Distribution of Revenues (Expenditures) net to zero.

## FISCAL ANALYSIS

### ASSUMPTION

Officials from the **Office of the 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 SOS is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this fiscal note to the SOS for Administrative Rules is less than \$2,500. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, the SOS also recognizes 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 with the 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.

**Oversight** assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation process.

Officials at the **Office of the Secretary of State (SOS)** assume 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, Referendums are submitted to the people at the next general election. Article III section 52(b) of the Missouri Constitution authorizes the general assembly to order a special election for measures referred to the people. If a special election is called to submit a Referendum to a vote of the people, §115.063.2, RSMo, requires the state to pay the costs. The cost of the special election has been estimated to be \$7.8 million based on the cost of the 2016 Presidential Preference Primary.

The 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 Section 116.230-116.290, RSMo. The 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. Through FY 2013, the appropriation has historically been an estimated appropriation because the final cost is dependent upon the number of ballot measures approved

ASSUMPTION (continued)

by the General Assembly and the initiative petitions certified for the ballot. In FY 2015, the General Assembly changed the appropriation so that it was no longer an estimated appropriation. In FY 2017, the SOS was appropriated \$2.6 million to publish the full text of the measures. In FY 2017, at the August and November elections, there were 6 statewide Constitutional Amendments or ballot propositions that cost \$2.4 million to publish (an average of \$400,000 per issue). The SOS will continue to assume, for the purposes of this fiscal note, that it should have the full appropriation authority it needs to meet the publishing requirements. 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 again change the amount or continue to not designate it as an estimated 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 2019. 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 statewide primary election is in August 2018 and the next scheduled general election is in November 2018 (both in FY 2019). It is assumed the subject within this proposal could be on one of these ballots; 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 2019.

Officials at the **Department of Social Services (DSS)** assume upon voter approval, this proposed constitutional amendment adds a definition of person as every human being, including unborn human children at every stage of biological development from conception to birth. It further clarifies that the constitution does not secure or protect the right to an abortion or funding for abortion services.

Missouri HealthNet Division (MHD)

Federal law requires the Medicaid program to cover the cost of abortions to save the life of the mother, or in cases of rape or incest in order to receive federal matching funds for the MHD program. This legislation does not change this requirement; therefore, there is no impact to MHD.

Children's Division (CD)

Section 2, Article I, Constitution of Missouri is repealed and one new section is adopted in lieu thereof, to be known as section 2. Section 2. (1) This proposed Constitutional Amendment defines "person" to include every human being, including every unborn human child at every state of biological development from the moment of conception until birth.

ASSUMPTION (continued)

The current State Statutes defining a person or child (Section 1.205, RSMo,) states that life of each human being begins at conception. It further defines "unborn children" and "unborn child" to include all unborn children or child or the offspring of human beings from the moment of conception until birth. This statute does not define "child" or "person"; therefore, it does not impact the CD's responsibilities under Section 210, RSMo. Further, it should also be noted that subsection 1.205.4 prohibits CD from taking reports of abuse and neglect for these cases as it states "Nothing in this section shall be interpreted as creating a cause of action against a woman for indirectly harming her unborn child by failing to properly care for herself or by failing to follow any particular program of prenatal care."

Section 210.110, RSMo, the statute impacting the CD's requirement to accept and investigate reports of child abuse and neglect, defines child as "any person, regardless of physical or mental condition, under eighteen years of age." Because no state statute defines "person," the CD has relied upon the federal definition found at 1 U.S.C. Section 8 which defines the words "person" and "child" to include "every infant member of the species homo sapiens who is born alive at any stage of development."

Analysis

If the proposed constitutional amendment is interpreted to have no impact to the definition of child under Section 210.110, RSMo, the anticipated impact to the CD would be \$0.

However, if this constitutional amendment is interpreted to expand CD's requirements related to accepting and responding to reports of child abuse and neglect, the CD would need in excess of 400 additional staff for the purpose of accepting additional calls at the Child Abuse and Neglect Hotline, responding to these reports through investigations or assessments, and potentially opening family-centered services cases for the women and children impacted. Such calls would likely be made by medical professionals involved with pregnant women. The potential need for additional staff resources was determined based upon assuming that the CD would be required to take reports of abuse and neglect on behalf of unborn children. Presently, the CD does not accept reports of abuse or neglect against unborn children. Therefore, the CD is responding that the fiscal impact is \$0 based upon the language's ability to be open to interpretation.

Family Support Division (FSD)

If the proposed constitutional amendment is interpreted to have no impact on child support services or how eligibility for public assistance is determined under Chapter 208, RSMo, the anticipated impact to the FSD would be \$0. For the purposes of this fiscal note response, FSD is interpreting this constitutional amendment to have no impact on child support services or how eligibility for public assistance is determined, and therefore, no fiscal impact.

ASSUMPTION (continued)

If this constitutional amendment is interpreted to expand the definition of a person to include unborn children for child support services or in determining the household size for eligibility for public assistance, there would be significant fiscal, systematic, and programmatic costs to FSD.

HJR 53's definition of "person" is in conflict with 1 U.S.C. §8. 1 U.S.C. §8 states: "In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the words "person", "human being", "child", and "individual", shall include every infant member of the species homo sapiens who is born alive at any stage of development." For reference only, the following FSD programs have been identified as having significant impact if child support services or public assistance programs that FSD administers are affected by this legislation:

Child Support:

45 CFR 301.1 defines IV-D agency as: "the single and separate organizational unit in the State that has the responsibility for administering or supervising the administration of the State plan under title IV-D of the Act." The FSD, child support program is the IV-D agency in Missouri. In order to receive federal funding to operate the child support program, the child support program must follow federal and state laws, and policies pertaining to the child support program must align with federal law.

Temporary Assistance for Needy Families:

FSD would be in violation of federal laws regulating the program and could be subject to sanctions from the federal government if it were to include unborn children from the date of conception in the eligibility determinations.

Food Stamps:

FSD would be in violation of federal laws regulating the program and could be subject to sanctions from the federal government if it were to include unborn children from the date of conception in the eligibility determinations.

MO HealthNet for Disabled Children (MHDC):

In addition to conflicting with 1 U.S.C. §8, MHDC is regulated under Section 1611 of the Social Security Act and 20 CFR 416.1165. The federal law's definition of a child does not include every unborn child. Therefore, FSD would be in violation of federal laws regulating the program and could be subject to sanctions from the federal government if it were to include unborn children in the eligibility determinations.

ASSUMPTION (continued)

Division of Legal Services (DLS)

DLS assumes that a court of law will interpret the proposed constitutional amendment to require no programmatic or fiscal changes to the DSS. However, if a court of law interprets the proposed constitutional amendment to require programmatic changes to the DSS, DLS and the DSS will have a significant fiscal and programmatic impact, depending on how the Court interprets and applies the language through the course of litigation.

The DLS provides legal representation and counsel to the CD. If this legislation increases the number of investigations and child abuse and neglect review board hearings, it will likely increase the number of de novo reviews DLS will be required to litigate pursuant to Section 210.152, RSMo.

If the constitutional amendment is interpreted to expand Children's Division's requirements related to accepting and responding to reports of child abuse and neglect, the Children's Division has estimate that it will have approximately 384 additional investigations as a result of this legislation. If each of these cases reached de novo review, assuming it takes an attorney approximately 40 hours to try a de novo review, this leads to a potential 15,360 additional hours. ( $384 \times 40 \text{ hours per case} = 15,360$ ). This will require approximately 8 additional attorneys to handle the increased workload ( $15,360 \text{ hours} / 2000 \text{ hours per attorney} = 7.68 \text{ attorneys}$ ). It is unlikely that every investigation will result in a de novo review. Children's Division estimates that only 44 cases will result in a CANRB hearing. If only the 44 cases which result in a CANRB hearing become de novo reviews, it will require 1,760 additional hours ( $44 \times 40 \text{ hours per case} = 1,760 \text{ hours}$ ). This will mean only one additional attorney is necessary to handle the increased workload. ( $1,760 \text{ hours} / 2,000 \text{ hours per attorney} = .88 \text{ attorneys}$ ).

It should be noted that CD cannot predict how many additional children may come into care as a result of this legislation. Should additional children come into care, DLS will be called upon to provide legal counsel and representation in these cases as well. Therefore, consideration should be given to the potential need for increased representation should additional children come into care.

DLS could also see a potential increase in litigation to determine how to interpret the constitutional amendment. Should the DSS become involved in such litigation, it would likely be handled by the Attorney General's office.

ASSUMPTION (continued)

It is also possible that this legislation may have an effect on other Divisions within Social Services. For example, if a preborn child is now considered a person, this may impact the way household composition is calculated for purposes of benefits such as SNAP and TANF. DLS will defer to FSD for their assessment of how this legislation may affect them.

Officials at the **Office of the Attorney General (AGO)** assume that any potential costs arising from this proposal can be absorbed with existing resources. The AGO may seek additional appropriations if there is a significant increase in litigation.

Officials at the **Office of the State Courts Administrator** and the **Department of Health and Senior Services** each assume no fiscal impact to their respective agencies from this proposal.

<u>FISCAL IMPACT - State Government</u>	FY 2019 (10 Mo.)	FY 2020	FY 2021
<b>GENERAL REVENUE FUND</b>			
<u>Transfer Out</u> - SOS - reimbursement of local election authority election costs <b>if</b> a special election is called by the Governor	\$0 or (More than <u>\$7,800,000</u> )	<u>\$0</u>	<u>\$0</u>
<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>	<b>\$0 or (More than <u>\$7,800,000</u>)</b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>



<u>FISCAL IMPACT - Local Government</u>	FY 2019 (10 Mo.)	FY 2020	FY 2021
<b>LOCAL POLITICAL SUBDIVISIONS</b>			
<u>Transfer In</u> - Local Election Authorities - reimbursement of election costs by the State for a special election	\$0 or More than \$7,800,000	\$0	\$0
<u>Costs</u> - Local Election Authorities - cost of a special election - <b>if</b> called for by the Governor	\$0 or (More than \$7,800,000)	<u>\$0</u>	<u>\$0</u>
<b>ESTIMATED NET EFFECT ON LOCAL POLITICAL SUBDIVISIONS</b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>

FISCAL IMPACT - Small Business

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

FISCAL DESCRIPTION

Upon voter approval, this proposed Constitutional amendment declares that the term "person" under the Missouri Constitution includes every human being, including every preborn human child at every stage of biological development from the moment of conception until birth. The amendment declares that nothing in the Constitution of Missouri secures or protects a right to abortion or requires the funding of an abortion.

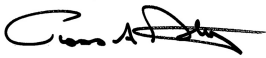
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

L.R. No. 5039-01  
Bill No. HJR 53  
Page 10 of 10  
March 27, 2018

SOURCES OF INFORMATION

Office of the Secretary of State  
Department of Social Services  
Office of the Attorney General  
Office of the State Courts Administrator  
Department of Health and Senior Services

Ross Strope

A handwritten signature in black ink, appearing to read "Ross Strope", with a stylized flourish at the end.

Acting Director  
March 27, 2018