

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 1482-02  
Bill No.: HB 727  
Subject: Disabilities; Administration, Office of; Education, Elementary and Secondary  
Type: Original  
Date: March 12, 2013

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Bill Summary: This proposal changes the laws regarding services for individuals with disabilities.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
<b>FUND AFFECTED</b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>FY 2016</b>
General Revenue	(Could exceed \$1,389,128)	(Unknown, greater than \$1,767,672)	(Unknown, greater than \$1,796,812)
<b>Total Estimated Net Effect on General Revenue Fund</b>	<b>(Could exceed \$1,389,128)</b>	<b>(Unknown, greater than \$1,767,672)</b>	<b>(Unknown, greater than \$1,796,812)</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>FY 2016</b>
Highway	(Unknown)	(Unknown)	(Unknown)
Conservation	(Unknown)	(Unknown)	(Unknown)
Brain Injury	(\$750,000)	(\$750,000)	(\$750,000)
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>(Unknown, greater than \$750,000)</b>	<b>(Unknown, greater than \$750,000)</b>	<b>(Unknown, greater than \$750,000)</b>

Numbers within parentheses: ( ) indicate costs or losses.  
This fiscal note contains 24 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>FY 2016</b>
Federal*	\$0	\$0	\$0
UC Administration	\$0 or (\$46,000,000)	\$0 or (\$46,000,000)	\$0 or (\$46,000,000)
Wagner-Peyser Administration	\$0 or (\$13,000,000)	\$0 or (\$13,000,000)	\$0 or (\$13,000,000)
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0 or (\$59,000,000)</b>	<b>\$0 or (\$59,000,000)</b>	<b>\$0 or (\$59,000,000)</b>

\* Income and expenditures net to \$0.

<b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b>			
<b>FUND AFFECTED</b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>FY 2016</b>
General Revenue	0.5	2.5	2.5
Federal	0.5	0.5	0.5
<b>Total Estimated Net Effect on FTE</b>	<b>1</b>	<b>3</b>	<b>3</b>

☒ 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).

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>FY 2016</b>
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

## FISCAL ANALYSIS

### ASSUMPTION

#### § 34.450 - Purchasing from persons with disabilities:

Officials from the **Office of Administration (OA) - Division of Purchasing and Materials Management (DPMM)** assume that a minimum of three (3) Buyer IV positions are needed to oversee the fulfillment of the tasks stated in this proposal. The Buyer IV positions (\$52,176) will:

- 1) Review proposals submitted by qualifying vendors and award/renew contracts for the purchase of goods, services, and supplies;
- 2) Review fair market price for the same goods, services, and supplies submitted by qualifying vendors;
- 3) Ensure the contractor is paying their employees at least minimum wage for direct labor hours performed in fulfillment of the contract;
- 4) Monitor the amount of goods, services, and supplies that are purchased to make sure the amount does not exceed twenty-five million dollars;
- 5) Assist with the promulgation of rules and regulations necessary to carry out the purposes of this proposal; and,
- 6) Research before awarding contracts to a qualifying vendor instead of the current contracting business if a severe adverse impact on such business could take place. This will include reviewing financial and employment information and contractor performance reports.

OA-DPMM assumes the proposal will have no fiscal impact on their organization in FY 14, but will have additional costs to the General Revenue Fund of \$250,065 in FY 15 and costs of \$245,251 in FY 16.

In response to a similar proposal from 2012 (HB 1902), the DPMM assumed the need for one (1) additional FTE. This proposal appears to be more involved than HB 1902; therefore, **Oversight** will assume DPMM can accomplish the additional duties set forth in the proposal with 2 additional FTE rather than the 3 additional FTE requested; however, should the amount of work justify another FTE, the FTE could be sought through the appropriation process.

Officials from the **Department of Elementary and Secondary Education (DESE)** state the fiscal impact of this proposal cannot be determined. DESE's assumption is that OA-DPMM would award the contracts to these vendors. Then, it would be mandatory on DESE and school districts to utilize those contracts. DESE is already restricted to the use of various contracts, so this additional restriction would be no different than current practice.

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ASSUMPTION (continued)

It cannot be determined at what price the bids will come in. If the prices are higher than with a vendor that is not disabled, DESE and school districts will likely be spending more; however, this will not be known until OA does the bidding and awarding of contracts.

Officials from the **Missouri Department of Transportation (MoDOT)** state section 34.450 gives preferences to vendors with qualifying disabilities (significant mental or physical impairment that impeded a person who is seeking, entering, or maintaining gainful employment). The section creates a Purchasing from Persons with Disabilities Advisory Board within OA which is to provide oversight over the state purchasing impacted by this proposal. It also provides that OA shall maintain a list of goods and services that are suitable for procurement from disabled vendors by state departments and will approve prices for such goods and services, review bids and award and renew contracts without competitive bidding.

HB 727 conflicts with the Missouri Highway and Transportation Commission's (MHTC) authority and its control over purchases as it requires that OA set a goal of 3% of all its goods and services to be purchased from vendors with a "qualifying disability", defined as a significant mental or physical impairment that impedes a person seeking or maintaining employment. HB 727 provides that OA shall maintain a list of goods and services that are suitable for procurement from disabled vendors by state departments and will approve prices for such goods and services, review bids and award and renew contracts without competitive bidding. HB 727 obligates every state agency to add "significant value" to bids of blind or significantly disabled persons (as determined by OA). HB 727 states that the use of products and services as determined by OA "is mandatory for all state agencies". This conflicts with MHTC's authority and control over purchases of materials, supplies, labor, etc., relating to the construction and maintenance of state highways and, therefore, violates sections 227.030 and 227.210, as well as MHTC's constitutional authority.

HB 727 obligates all state agencies to purchase goods and services from a qualifying disabled vendor under OA's procurement list if: (1) the goods and services "reasonably conform" to the agency's needs and specs; (2) can be supplied within a reasonable time; and (3) the qualifying vendor's price of the goods and services is competitive with procuring from another source. Again, mandated purchasing from/through OA violates sections 227.030 and 227.120 and MHTC's constitutional authority.

HB 727's preference for those with disabilities should not have a "severe adverse impact" on DBEs or small businesses; this is defined as impacting more than 15% of the Disadvantaged Business Enterprise Programs's (DBE) or small business' total revenue.

Finally, HB 727 contains a diversion as it allows OA to collect a fee of 1% of the gross value of any contract awarded to a qualifying vendor to cover OA's cost of administration. This violates article IV, section 30(b) of the Missouri Constitution.

ASSUMPTION (continued)

The fiscal impact of this proposal is unknown, but it is anticipated that the costs of goods and services will rise when low bids are not the criteria for awards while disability is.

Officials from the **Department of Conservation (MDC)** assume based on the Department's experience with other mandatory no-bid purchasing requirements already in state law for which pricing is set at "market value", the MDC would experience a negative fiscal impact on MDC funds greater than \$100,000 annually.

**Oversight** will, for fiscal note purposes, present MDC's costs as "unknown" for each year of this fiscal note.

Officials from the **Office of the State Auditor (SAU)** assume the auditor's office is not comprised of investigators and, therefore, investigations by the auditor's office would be outside their general expertise. Additionally, it is unclear how many of these violations would occur in each year. Therefore, it is difficult to estimate the costs of this proposal.

Officials from the **Office of State Treasurer (STO)** assume an unknown impact as they do not know whether, or by how much the price, of an item will rise. The STO defer to the Office of Administration for impact.

Officials from the **Department of Agriculture** defer to the Office of Administration for fiscal impact.

Officials from the **City of Kansas City (City)** state the proposal will require the City to make purchases from vendors that employ the disabled at prices determined by the Office of Administration (OA) to be the fair market price. The City is unable to estimate the potential cost because it will depend on the vendors that participate in the program, the types of goods and services and the quantities of goods and services needed by the City, as well as the price negotiated by OA. The City assumes the proposal will result in an increase in costs of an unknown and indeterminate amount.

Officials from the **Metropolitan Community College** assume an unknown, negative fiscal impact as a result of this proposal.

Officials from the **Missouri State University (MSU)** assume additional labor costs will be incurred because of the time involved in searching for and evaluating the disabled vendor and their specifications to ensure the purchase of quality products.

ASSUMPTION (continued)

Officials from the **Department of Social Services (DSS) - Division of Finance and Administrative Services (DFAS)** state there could be a slight fiscal impact to DFAS; however, the impact is not significant and can be absorbed within the current budget.

§ 161.870 - Work group to assess available resources:

Officials from the **Department of Elementary and Secondary Education (DESE)** assume 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.

There is a currently established stakeholder group called the MO Interagency Transition Team (MITT). If MITT could be utilized as the workgroup for this proposal, the fiscal impact would be minimal.

DESE notes 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, 2014 for a proposal that would presumably go into effect on August 28, 2013. These time constraints would leave approximately four months to carry out the requirements of the proposal.

**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. Oversight assumes the work group duties can be accomplished with existing resources.

§ 208.152.1(20) - Comprehensive Day Rehabilitation Program:

Officials from the **Department of Social Services (DSS) - MO HealthNet Division (MHD)** state this section of the legislation expands the Comprehensive Day Rehabilitation program to all adult participants. The services must be based on an individualized, goal-oriented, comprehensive and coordinated treatment plan. The MHD shall establish the definition and criteria for designation of a comprehensive day rehabilitation service facility, the benefit limitations and the payment mechanism utilizing the expertise of brain injury rehabilitation

ASSUMPTION (continued)

service providers and the Missouri Head Injury Advisory Council. The services must be provided in a community based facility and be authorized on tier levels based on the services the patient requires and the frequency of the services as guided by a qualified rehabilitation professional associated with a health care home.

In FY 10 there was one individual under the age of 21 with claims filed under this program and that individual had no Comprehensive Day Rehabilitation claims in FY 11. Therefore, to project costs if this program was expanded, the number of participants using the program in FY 05 (when the program was available to all adults) and their costs were obtained. There were 89 adults in a category of assistance other than a category that is currently eligible for the program (under age 21, blind individuals, pregnant women or nursing home residents) who received services through the Comprehensive Day Rehabilitation program. The fee-for-service cost for their services in FY 05 was \$526,728. It is assumed that about the same number of individuals would use the program if it were expanded. Therefore, the SFY 05 cost was used as the base for estimating future costs. The rates for this program have not changed since 2005 so no inflation was applied to the costs from FY 05 to FY 13. A 3.9% inflation factor was applied to FY 14 through FY16.

The annual cost to the fee-for-service program will be \$547,270.

In addition, the MHD contracts with managed care health plans to provide medical assistance to individuals eligible under Section 208.151. The MHD assumes this legislation will apply to the managed care health plans. The total annual amount deducted from payments to the managed care health plans in FY 06 (first year reductions were implemented) due to the reduction of eligibility for this service was \$10,125. Therefore, this figure was used as a base to estimate the cost to add this service back into the services offered to all adults. No inflation was added from FY 05 to FY 13. A 3.9% inflation factor was added to FY14 through FY16.

The annual cost to the managed care program will be a program cost of \$10,520 and an estimated actuarial cost to further evaluate this program change, which would be no more than \$25,000 (50% GR/50% Federal).

The annual cost to MHD in the first full year will be \$582,790 (\$547,270 + \$10,520 + \$25,000). To calculate the FY 14 cost, it is assumed that there would only be 10 months of the total program cost of \$557,790 (\$547,270 + \$10,520) and the full \$25,000 actuarial cost. Therefore, the cost for FY14 will be \$489,825  $[(\$557,790/12 \times 10 = \$464,825) + \$25,000]$ .

ASSUMPTION (continued)

Since this section of the proposal is subject to appropriations, the range would be zero to:

FY14 (10 months): Total \$489,825 (GR \$189,761; \$300,064 Federal);  
FY15 (12 months): Total \$579,544 (GR \$221,009; \$358,535 Federal); and,  
FY16 (12 months): Total \$602,146 (GR \$229,628; \$372,518 Federal).

**Oversight** assumes, for fiscal note purposes only, this proposal will be appropriated the necessary funding and has reflected the costs without the "\$0 to" range.

§ 208.152.1(24) - Hearing Aids:

Officials from the **DSS - MHD** state currently hearing aids and related covered services are offered to MO HealthNet participants who receive a full benefit package under a category of assistance for children, pregnant women, the blind or nursing facility residents. Covered services include audiological testing, hearing aids, ear molds, hearing aid fitting, hearing aid dispensing/evaluation, post-fitting evaluation, post-fitting adjustments, and hearing aid repairs. All hearing aids and related services must have prior approval except audiometric testing, post-fitting evaluation, post-fitting adjustment, and repairs to hearing aids no longer under warranty. The current prior approval process is paper-based and not electronic.

There would be a cost to the MHD to provide these services to participants who do not receive a full benefit package. Costs were obtained for fee-for-service participants who received hearing aids and related services in FY 05 and who would be in a limited benefit category now. Since there have been no rate increases for these services since FY 05, no inflation was applied for years FY 05 through FY 13. Costs were inflated by 3.9% from FY 14 through FY 16.

Costs for fee-for-service participants:

FY14 (10mths): Total \$1,222,977 (\$466,382 GR; \$756,595 Federal);  
FY15: Total \$1,524,807 (\$581,485 GR; \$943,322); and,  
FY16: Total \$1,584,274 (\$604,163 GR; \$980,111).

The MHD assumes this legislation will apply to MO HealthNet Managed Care health plans. The estimated annual fiscal impact for adults enrolled in managed care would be \$47,856. In addition, there would be a first year cost for an actuarial study to determine the impact of this requirement on rate ranges to ensure actuarial soundness as required by the Centers for Medicare and Medicaid Services. The cost of the analysis will depend on the complexity of the analysis needed to address this program change. The cost of the study could be up to \$25,000 (\$12,500 GR; \$12,500 Federal). Total FY 14 managed care cost would be unknown < \$64,880 (\$47,856 / 12 months \* 10 months + \$25,000). Managed care costs were inflated by 3.9%.



ASSUMPTION (continued)

Cost for MO HealthNet Managed Care:

FY14 (10mths): Unknown < \$64,880 (unknown < \$27,708 GR; \$37,172 Federal);  
FY15: \$49,723 (\$18,962 GR; \$30,761 Federal); and,  
FY16: \$51,662 (\$19,701 GR; \$31,961 Federal).

In addition, this section of the proposal requires that a web-based prior authorization system is used to verify medical need. The hearing aid program currently uses a paper-based prior authorization system. MHD uses a web-based prior authorization system for other services but does not have the system prepared to accommodate the hearing aid program. Algorithms will need to be developed for the hearing aid program and that cost will occur only one time in the first year of the fiscal note. The cost is unknown but is anticipated to be under \$100,000.

**Cost for Web-based PA System:**

FY14: Unknown < \$100,000 (Unknown < \$50,000 GR; Unknown < \$50,000 Federal);  
FY15: \$0; and,  
FY16: \$0.

**Total Cost of the proposal for section 208.152.1(24):**

Since this section of the proposal is subject to appropriations, the range would be zero to:

FY14: (10 months): Total \$1,387,857 (GR < \$544,090; < \$843,767 Federal);  
FY15: Total \$1,574,530 (GR \$600,447; \$974,083 Federal);  
FY16: Total \$1,635,936 (GR \$623,864; \$1,012,072 Federal).

**Oversight** assumes, for fiscal note purposes only, this proposal will be appropriated the necessary funding and has reflected the costs without the “\$0 to” range.

§ 209.202 - Interfering with a service animal:

For the purpose of this proposed legislation, officials at the **Office of State Public Defender (SPD)** cannot assume that existing staff will provide effective representation for any new cases arising where indigent persons are charged with the proposed new crime of interfering with a service animal, a new class A misdemeanor, or intentionally injures or kills or permits an animal to kill or injure a service animal, a new class D felony.

ASSUMPTION (continued)

While the number of new cases (or cases with increased penalties) may be too few or uncertain to request additional funding for this specific bill, the SPD will continue to request sufficient appropriations to provide effective representation in all cases.

**Oversight** assumes the SPD can absorb the additional caseload that may result from this proposal.

Officials from the **Department of Corrections (DOC)** state the penalty provisions for violations, the component of the bill to have a potential fiscal impact for DOC, is for a class A misdemeanor. 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 utilization by prosecutors and the actual sentences imposed by the court.

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 in operational cost through supervision provided by the Board of Probation and Prole (FY 12 average of \$4.96 per offender, per day, or an annual cost of \$1,810 per offender).

The DOC assumes supervision by the DOC through probation 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.

§ 288.034 - Unemployment:

Officials from the **Department of Labor and Industrial Relations (DOLIR)** assume 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. Therefore, this proposal raises an issue with 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

ASSUMPTION (continued)

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.

Whether services are performed in an employer-employee relationship for purposes of this required coverage is governed by Federal law. Specifically, Section 3306(i), FUTA defines “employee” by referring to the common law test found in Section 3121(d) of the Internal Revenue Code. Internal Revenue Service regulations at 26 C.F.R. 31.3306(i)-1 provide that every individual is an employee if the relationship between the individual and the person for whom service is performed has the legal relationship of employer and employee:

“Generally such relationship exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished.”

The regulations go on to state that “it is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if he has the right to do so.” If an employer-employee relationship exists, then “it is of no consequence that the employee is designated as a partner, coadventurer, agent, independent contractor, or the like.”

Whether an individual is an employee must be determined under a state law test at least as stringent as the above Federal common law test of direction and control. As a result, the facts must be examined to determine if direction and control exist under a test at least as stringent as the common law test, or whether they could exist. Since nothing in this proposal precludes the possibility that the persons providing these in-home or community-based services could, in fact, be employees under the common law test, an issue is raised.

Non-conformity with federal law could jeopardize the certification of Missouri’s UI program. If the program fails to be certified, Missouri could lose approximately \$46 million in federal funds the state receives each year to administer the UI program. Additionally, Missouri could lose the approximately \$13 million in federal funds each year the Department of Economic Development-Division of Workforce Development uses for Wagner-Peyser reemployment services.

The Federal Unemployment Tax Act (FUTA) imposes a 6.0% payroll tax on employers. Most employers never 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

ASSUMPTION (continued)

the state UI law is approved by the Secretary of Labor. However, if this proposal causes Missouri's program to be out of compliance or out of conformity, Missouri employers could pay the full 6.0%, or approximately an additional \$859 million per year.

In addition to the conformity issue with federal law, this proposal could have negative federal tax consequences for the providers covered under this subsection. Conformity issue aside, if the employing unit meets the statutory threshold for coverage under FUTA, the services would be subject to the full FUTA tax of 6.0%. Most employers do not actually pay the total 6.0% due to credits they receive for paying state unemployment taxes timely and in full. If an employer does not pay state unemployment tax on these services as a result of this proposal and the IRS determines an employee/employer relationship exists, the employer would be required to pay the full 6.0% FUTA tax.

Officials from the **DSS - MHD** state this section of the proposal modifies the definition of employment as it relates to employment security law. Specifically, employees of 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 organized and existing under Sections 205.968 to 205.973 are exempt from the definition of employment in Section 288.034. These sections 205.968 to 205.973 allow cities and counties to establish Boards of Directors to operate sheltered workshops, residential facilities, or related services for persons with disabilities.

There is no fiscal impact to MO HealthNet. The Home and Community Based Services Program is operated by the Department of Health and Senior Services.

§ 304.028 - Brain Injury Fund:

Officials from the **Department of Health and Senior Services (DHSS)** state Section 304.028.2 proposes DHSS work in cooperation with Department of Social Services to seek a federal waiver under the MO HealthNet Program to provide brain injury services. This section also proposes that upon granting of such a waiver, fifty percent of all moneys in the Brain Injury Fund (BIF) will be used as match for the waiver. This proposal has also deleted the language in section 304.028.2 and 304.028.3 which established a surcharge fee of two dollars on all violations of an ordinance or state law be collected and deposited to the credit of the BIF.

ASSUMPTION (continued)

Assumptions and Methodology in calculating fiscal impact:

Based on the average of past year collections into the BIF, it is assumed that \$750,000 per year is collected into the BIF. Since the only source of revenue to the BIF will be eliminated through this proposal, general revenue sources would be needed to replace this funding to maintain the program. The BIF money is currently appropriated to DHSS and used for services provided through the Adult Brain Injury (ABI) program.

The services provided through a waiver will not replace the need for services provided through the ABI Program. The waiver can only provide services to those meeting MO HealthNet eligibility and institutional level of care (per federal regulations). The services provided through the ABI Program are provided to those who may or may not meet MO HealthNet eligibility but whose income is at or below 185% of the federal poverty level. The services provided through the ABI Program are community-based rehabilitation services that focus on independent living, community integration and vocational supports. The ABI Program does not provide medical rehabilitation or in-home personal care support services. Therefore, the majority of participants receiving services and through the ABI Program would not meet institutional level of care requirements. Therefore, it is assumed that funding no longer available through the BIF would need to be requested from general revenue to continue to provide ABI Program services at the current level.

Writing and seeking approval for a federal waiver would be accomplished in FY 14; and, as a result, services through the waiver would not begin until FY 15. The waiver is estimated to draw approximately 60% match of federal funds. Because revenues to the BIF will be eliminated, the amount of state matching funds for the waiver is unknown. Waivers by design have capped slots based on total funding available. In addition, depending on the size of the waiver, DHSS may need additional staff to administer it. Therefore, the cost to general revenue and the federal match are unknown.

The DHSS estimates, for fiscal note purposes, the proposal will have an unknown, greater than \$750,000 cost to the General Revenue Fund each year and a \$750,000 cost to the Brain Injury Fund each year.

**Oversight** assumes funding lost through the cancellation of criminal case surcharge will be replaced with General Revenue funds. In addition, Oversight assumes since the DSS-MHD indicates that much of the waiver-related work will be performed by their organization, the DHSS will not need to hire additional staff to administer the waiver and can absorb the additional duties with existing staff.

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ASSUMPTION (continued)

Officials from the **DSS - MHD** state this section of the proposal will create a new waiver. Each waiver generates the same amount of oversight requirements, which would require one full-time FTE for MHD, at the Program Development Specialist level. 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 DHSS is identifying problems and conducting proper remediation, quarterly quality assurance meetings, quarterly 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 HCBS 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 the MHD.

MHD assumes the cost for this FTE as follows:

FY 14 (10 months): \$60,554 (\$30,277 GR; \$30,277 Federal);  
FY 15: \$63,649 (\$31,824 GR; \$31,825 Federal); and,  
FY 16: \$64,321 (\$32,160 GR; \$32,161 Federal).

Bill as a Whole:

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.

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

Officials from the **Department of Higher Education (DHE)** state the proposal would have no direct, foreseeable fiscal impact on the DHE.

ASSUMPTION (continued)

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 **Office of State Courts Administrator, the Department of Economic Development - Division of Workforce Development, the Department of Insurance, Financial Institutions, and Professional Registration, the Department of Mental Health, the Department of Natural Resources, the Department of Revenue, the Department of Public Safety - Missouri State Highway Patrol, the State Tax Commission, St. Louis County, the City of Columbia, Linn State Technical College, Northwest Missouri State University, and the University of Missouri** each assume the proposal would not fiscally impact their respective agencies.

Officials from the **Department of Public Safety - Missouri Veterans' Commission** and the **Office of Prosecution Services** did not respond to **Oversight's** request for a statement of fiscal impact.

No other counties, cities, schools or colleges and universities responded to **Oversight's** request for a statement of fiscal impact.

**This proposal will result in a reduction in Total State Revenues.**

<u>FISCAL IMPACT - State Government</u>	FY 2014 (10 Mo.)	FY 2015	FY 2016
<b>GENERAL REVENUE</b>			
<u>Cost - OA-DPMM (§ 34.450)</u>			
Personnel Service	\$0	(\$105,395)	(\$106,449)
Fringe Benefits	\$0	(\$53,477)	(\$54,012)
Equipment and Expenses	\$0	(\$5,519)	(\$698)
<u>Total Cost - OA-DPMM</u>	\$0	(\$164,391)	(\$161,159)
FTE Change - OA	0 FTE	2 FTE	2 FTE
<u>Cost - SAU</u>			
Investigations (§ 34.450)	(Unknown)	(Unknown)	(Unknown)
<u>Costs - DSS-MHD</u>			
Comprehensive day rehabilitation services (§ 208.152.1(20))	(\$189,761)	(\$221,009)	(\$229,628)
Hearing aids (§ 208.152.1(24))	<u>(Less than \$544,090)</u>	<u>(\$600,447)</u>	<u>(\$623,864)</u>
<u>Total Costs - DSS-MHD</u>	<u>(Less than \$733,851)</u>	<u>(\$821,456)</u>	<u>(\$853,492)</u>
<u>Costs - DHSS (§ 304.028)</u>			
Adult brain injury program services	(\$625,000)	(\$750,000)	(\$750,000)
Waiver services	\$0	(Unknown)	(Unknown)
<u>Total Costs - DHSS</u>	<u>(\$625,000)</u>	<u>(Unknown, greater than \$750,000)</u>	<u>(Unknown, greater than \$750,000)</u>
<u>Costs - DSS-MHD (§ 304.028)</u>			
Personal service	(\$16,450)	(\$19,938)	(\$20,138)
Fringe benefits	(\$8,346)	(\$10,116)	(\$10,217)
Equipment and expense	(\$5,481)	(\$1,771)	(\$1,806)
<u>Total Costs - DSS-MHD</u>	<u>(\$30,277)</u>	<u>(\$31,825)</u>	<u>(\$32,161)</u>
FTE Change - DSS	0.5 FTE	0.5 FTE	0.5 FTE
<b>ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND</b>	<u>(Could exceed \$1,389,128)</u>	<u>(Unknown, greater than \$1,767,672)</u>	<u>(Unknown, greater than \$1,796,812)</u>
Estimated Net FTE Change on the General Revenue Fund	0.5 FTE	2.5 FTE	2.5 FTE



<u>FISCAL IMPACT - State Government</u>	FY 2014 (10 Mo.)	FY 2015	FY 2016
<b>HIGHWAY FUNDS</b>			
<u>Costs - MoDOT</u>			
Increase in cost of goods and services (§ 34.450)	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
<b>ESTIMATED NET EFFECT ON HIGHWAY FUNDS</b>	<b><u>(Unknown)</u></b>	<b><u>(Unknown)</u></b>	<b><u>(Unknown)</u></b>
<b>CONSERVATION FUNDS</b>			
<u>Costs - MDC</u>			
Increase in cost of goods and services (§ 34.450)	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
<b>ESTIMATED NET EFFECT ON CONSERVATION FUNDS</b>	<b><u>(Unknown)</u></b>	<b><u>(Unknown)</u></b>	<b><u>(Unknown)</u></b>
<b>BRAIN INJURY FUND</b>			
<u>Loss - DHSS</u>			
Cancellation of criminal surcharge fees (§ 304.028)	<u>(\$750,000)</u>	<u>(\$750,000)</u>	<u>(\$750,000)</u>
<b>ESTIMATED NET EFFECT ON BRAIN INJURY FUND</b>	<b><u>(\$750,000)</u></b>	<b><u>(\$750,000)</u></b>	<b><u>(\$750,000)</u></b>

<u>FISCAL IMPACT - State Government</u>	FY 2014 (10 Mo.)	FY 2015	FY 2016
<b>FEDERAL FUNDS</b>			
<u>Income - DSS-MHD</u>			
Comprehensive day rehabilitation services reimbursement (\$ 208.152.1(20))	\$300,064	\$358,535	\$372,518
Hearing aid services reimbursement (\$ 208.152.1(24))	<u>Less than</u> <u>\$843,767</u>	<u>\$974,083</u>	<u>\$1,012,072</u>
<u>Total Income - DSS-MHD</u>	Less than \$1,143,831	\$1,332,618	\$1,384,590
<u>Income - DHSS</u>			
Brain Injury Waiver reimbursements	\$0	Unknown	Unknown
<u>Income - DSS-MHD</u>			
Program reimbursements (\$ 304.028)	\$30,277	\$31,825	\$32,161
<u>Costs - DSS-MHD</u>			
Comprehensive day rehabilitation services expenditures (\$ 208.152.1(20))	(\$300,064)	(\$358,535)	(\$372,518)
Hearing aid services expenditures (\$ 208.152.1(24))	<u>(Less than</u> <u>\$843,767)</u>	<u>(\$974,083)</u>	<u>(\$1,012,072)</u>
<u>Total Costs - DSS-MHD</u>	(Less than \$1,143,831)	(\$1,332,618)	(\$1,384,590)
<u>Costs - DHSS</u>			
Brain Injury Waiver expenditures	\$0	(Unknown)	(Unknown)
<u>Costs - DSS-MHD (\$ 304.028)</u>			
Personal service	(\$16,450)	(\$19,938)	(\$20,138)
Fringe benefits	(\$8,346)	(\$10,116)	(\$10,217)
Equipment and expense	<u>(\$5,481)</u>	<u>(\$1,771)</u>	<u>(\$1,806)</u>
<u>Total Costs - DSS-MHD</u>	<u>(\$30,277)</u>	<u>(\$31,825)</u>	<u>(\$32,161)</u>
FTE Change - DSS	0.5 FTE	0.5 FTE	0.5 FTE
<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>
Estimated Net FTE Change on Federal Funds	0.5 FTE	0.5 FTE	0.5 FTE

<u>FISCAL IMPACT - State Government</u>	FY 2014 (10 Mo.)	FY 2015	FY 2016
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**UC ADMINISTRATION FUND**

Loss - UC Administration Fund

Potential loss of federal funds (\$288.034)	\$0 or <u>(\$46,000,000)</u>	\$0 or <u>(\$46,000,000)</u>	\$0 or <u>(\$46,000,000)</u>
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**ESTIMATED NET EFFECT ON UC  
ADMINISTRATION FUND**

\$0 or <u>(\$46,000,000)</u>	\$0 or <u>(\$46,000,000)</u>	\$0 or <u>(\$46,000,000)</u>
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**WAGNER-PEYSER  
ADMINISTRATION FUND**

Loss- Wagner-Peyser Admin Fund

Potential loss of federal funds	\$0 or <u>(\$13,000,000)</u>	\$0 or <u>(\$13,000,000)</u>	\$0 or <u>(\$13,000,000)</u>
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**ESTIMATED NET EFFECT ON  
WAGNER-PEYSER  
ADMINISTRATION FUND**

\$0 or <u>(\$13,000,000)</u>	\$0 or <u>(\$13,000,000)</u>	\$0 or <u>(\$13,000,000)</u>
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<u>FISCAL IMPACT - Local Government</u>	FY 2014 (10 Mo.)	FY 2015	FY 2016
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<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
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FISCAL IMPACT - Small Business

Small businesses that employ persons with qualifying disabilities could be positively impacted by this proposal. Small businesses that make products that will no longer be competitively bid could be negatively impacted.

FISCAL DESCRIPTION

This proposal changes the laws regarding services for individuals with disabilities. The proposal establishes the Purchasing from Persons with Disabilities Advisory Board within the Division of Purchasing in the Office of Administration to provide oversight to the division regarding procurement policies from qualifying vendors that include a person with a qualifying disability or a business or entity that employs qualifying disabled individuals who perform at least 75% of the direct labor to fulfill a state contract for goods or services.

FISCAL DESCRIPTION (continued)

The division must: (1) Facilitate the procurement of up to \$25 million of goods and services from qualifying vendors unless increased by the board; (2) Develop and maintain a list of goods and services that are available from qualifying vendors and are suitable for procurement by state agencies. The list must be provided to all state agency purchasing officers and all products offered by a qualifying vendor must have significant value added by blind or significantly disabled persons as determined by the Office of Administration; (3) Approve pricing for goods and services; (4) Review bids received by qualifying vendors; and (5) Award and renew contracts for the purchase of goods and services without a competitive bidding process.

The Office of Administration must: (1) Determine the fair market price for all products and services offered by a qualifying vendor that at least covers the costs of raw materials, labor, overhead and, delivery; (2) Determine the mandatory use of products and services for all state agencies; and (3) Assess the suitability of an addition to the procurement list by considering the interest of small and disadvantaged-owned businesses by determining if the addition would have a severe adverse impact on the current commodity or service contractor. The Office of Administration is authorized to collect up to 1% of the gross value of a qualifying vendor contract to cover administration costs.

The proposal requires, by September 1, 2013, the Department of Elementary and Secondary Education to establish a work group to assess the available resources that youth with disabilities need for effective work experiences. The work group must review all interagency coordination of services for employer matching services to ensure that the services adequately meet the needs of youth and young adults with disabilities who seek employment and need job placement assistance. The goal of the work group must be to evaluate the current efforts and available resources and to promote the involvement of stakeholders when planning and implementing services to provide successful transitions to employment, lifelong learning, and quality of life. The work group must focus on secondary students with disabilities, adults with disabilities, and others who experience barriers to successfully completing school. The work group must assess the strengths and where improvements need to be made regarding transition services, instruction, and experiences that reinforce core curriculum concepts and skills that lead to gainful employment. It must determine if any additional state partnerships through nonfinancial interagency agreements are necessary to enhance the employment potential of individuals with disabilities. The work group must focus on developing careers for these youth to prevent economic and social dependence on the resources of state and community agencies. The department must submit recommendations based on the findings of the work group to the General Assembly prior to January 1, 2014. The work group members will be chosen and administered by the Commissioner of Education within the department and must utilize existing state agency and community personnel and human resources.

FISCAL DESCRIPTION (continued)

Subject to appropriations, the proposal adds comprehensive day rehabilitation services beginning soon after trauma as part of a coordinated system of care for individuals with disabling impairments to the list of services covered under MO HealthNet benefits. Services must be provided in a community-based facility and be authorized on tier levels based on the services and frequency of services the patient requires as guided by a qualified rehabilitation professional associated with a health care home.

Prescribed, medically necessary hearing aids are added to the list of covered services under the MO HealthNet Program. An electronic web-based prior authorization system using best medical evidence and care and treatment guidelines consistent with national standards must be used to verify medical need.

Currently, any person who knowingly, intentionally, or recklessly causes substantial physical injury to or the death of a service dog is guilty of a class A misdemeanor. The proposal removes these provisions and specifies that any person who, with reckless disregard, injures, kills, or permits a dog that he or she owns or is in the immediate control of to injure or kill a service animal will be guilty of a class A misdemeanor. Currently, any person who knowingly or intentionally fails to exercise sufficient control over an animal he or she owns, keeps, harbors, or exercises control over to prevent substantial physical injury to or death of a service dog, or the inability to function as a service dog as a result, is guilty of a class A misdemeanor. The proposal removes these provisions and specifies that any person who, with reckless disregard, interferes with or permits a dog that he or she owns or is in the immediate control of to interfere with the use of a service animal by obstructing, intimidating, or otherwise jeopardizing the safety of the service animal or its user is guilty of class B misdemeanor for a first violation and class A misdemeanor for a second or subsequent violation. The proposal repeals the provisions relating to harassing or chasing a service dog and specifies that any person who intentionally injures or kills or permits a dog that he or she owns or is in the immediate control of to injure or kill a service animal is guilty of a class D felony. Current provisions allowing for a cause of action by an owner of a service dog to recover civil damages are repealed and the proposal specifies that any person who is convicted for violating these provisions must make full restitution for all damages that arise out of or are related to the offense. Restitution includes, but is not limited to, the value of the animal, replacement and training expenses, veterinary and other medical and boarding expenses for the animal, medical expenses for the owner, and lost wages or income incurred during the period the owner is without the services of the animal. These provisions do not apply to the destruction of a service dog for humane purposes.

For the purposes of the employment security laws, the proposal specifies that the term “employment” will not mean in-home or community-based services performed by a provider contracted to provide the services for the clients of a county board for developmental disability services organized and existing under Sections 205.968 to 205.973, RSMo, commonly known as “SB 40 boards”; however, the provider must perform the payroll and fringe benefits accounting functions for the client.

### FISCAL DESCRIPTION (continued)

The proposal adds consumer-based consumer services in comprehensive brain injury day rehabilitation therapy, vocational, home, and community support to the list of services that the Department of Health and Senior Services must expend funds from the Brain Injury Fund to individuals with brain injury. The Department of Health and Human Services, in cooperation with the Department of Social Services, must seek a federal waiver from the federal Department of Health and Human Services to allow moneys in the fund to be used for brain injury services under the MO HealthNet Program. Upon the granting of a waiver, 50% of all moneys in the fund must be designated as MO HealthNet federal match moneys. Any approved federal waiver must be designed so that parity is established in funding for each eligible program service area to create a balance for access to all brain injury services. A 10-member volunteer committee must be established to develop service descriptions, regulations, and parity of funding for the eligible service areas, as needed. The committee must meet at least annually to review services using the most current Department of Health and Senior Services brain injury needs assessments and to address any modifications needed in the program services to ensure services are meeting the needs of brain injury consumers. The proposal repeals the provisions regarding the \$2 surcharge that must be assessed in all criminal cases, including violations of any county ordinance or any violation of state criminal or traffic laws, which is deposited into the Brain Injury Fund.

The provisions of the proposal regarding the work group to assess the available resources that youth with disabilities will expire on January 1, 2014.

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 Purchasing and Materials Management  
Office of State Courts Administrator  
Department of Economic Development -  
    Division of Workforce Development  
Department of Elementary and Secondary Education  
Department of Higher Education  
Department of Insurance, Financial Institutions, and Professional Registration  
Department of Mental Health  
Department of Natural Resources

SOURCES OF INFORMATION (continued)

Department of Corrections  
Department of Health and Senior Services  
Department of Labor and Industrial Relations  
Department of Revenue  
Department of Social Services -  
    Division of Finance and Administrative Services  
    MO HealthNet Division  
Missouri Department of Transportation  
Department of Public Safety -  
    Missouri State Highway Patrol  
Joint Committee on Administrative Rules  
Missouri Department of Conservation  
Office of State Auditor  
Office of Secretary of State  
Office of State Public Defender  
Office of State Treasurer  
State Tax Commission  
St. Louis County  
City of Columbia  
City of Kansas City  
Linn State Technical College  
Metropolitan Community College  
Missouri State University  
Northwest Missouri State University  
University of Missouri

**Not Responding:**

Department of Public Safety - Missouri Veterans' Commission  
Office of Prosecution Services



Ross Strope

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HWC:LR:OD