

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 5517-07
Bill No.: HCS for HB 1873
Subject: Education, Elementary and Secondary; Elementary and Secondary Education
Department
Type: Original
Date: March 26, 2014

Bill Summary: This proposal establishes the Missouri Student Data Protection Act.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
General Revenue	\$0 or (Unknown - Could exceed \$100,000)	\$0 or (Unknown - Could exceed \$100,000)	\$0 or (Unknown - Could exceed \$100,000)
Total Estimated Net Effect on General Revenue Fund	\$0 or (Unknown - Could exceed \$100,000)	\$0 or (Unknown - Could exceed \$100,000)	\$0 or (Unknown - Could exceed \$100,000)

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

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 16 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
Title I	\$0 or (Unknown - Could exceed \$100,000)	\$0 or (Unknown - Could exceed \$100,000)	\$0 or (Unknown - Could exceed \$100,000)
Special Education	\$0 or (Unknown - Could exceed \$100,000)	\$0 or (Unknown - Could exceed \$100,000)	\$0 or (Unknown - Could exceed \$100,000)
Carl Perkins Vocational Fund	\$0 or (Unknown - Could exceed \$100,000)	\$0 or (Unknown - Could exceed \$100,000)	\$0 or (Unknown - Could exceed \$100,000)
UC Admin Fund*	\$0 or (\$40,000,000)	\$0 or (\$40,000,000)	\$0 or (\$40,000,000)
Wagner-Peyser Admin Fund*	\$0 or (\$13,000,000)	\$0 or (\$13,000,000)	\$0 or (\$13,000,000)
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0 or (Unknown - Could exceed \$53,000,000)	\$0 or (Unknown - Could exceed \$53,000,000)	\$0 or (Unknown - Could exceed \$53,000,000)

*Depending on interpretation, this bill may raise a conformity issue with federal law. If Missouri's unemployment compensation (UC) program is found to be out of compliance or out of conformity, Missouri would lose approximately \$40 million in federal funds the Department of Labor and Industrial Relations receives to administer the UC program and approximately \$13 million the Department of Economic Development receives to administer Wagner-Peyser services each year. Additionally, Missouri employers would lose approximately \$880 million annually in FUTA credits if Missouri's UC program is out of compliance or out of conformity.

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
Total Estimated Net Effect on FTE	0	0	0

☐ Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).

☒ Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
Local Government	\$0 or (Unknown - Could exceed \$100,000)	\$0 or (Unknown - Could exceed \$100,000)	\$0 or (Unknown - Could exceed \$100,000)

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Economic Development - Division of Workplace Development** and **Division of Business and Community Services**, the **Missouri House of Representatives**, the **Department of Health and Senior Services**, the **Department of Social Services - Children's Division**, and the **Office of the Governor** each state the proposed legislation will have no fiscal impact on their respective agencies.

Officials from the **Missouri Senate** assume there is no fiscal impact beyond existing appropriations.

Officials from the **Office of State Courts Administrator** assume no fiscal impact on the Courts.

Officials from the **Department of Mental Health (DMH)** assume that its programs and facilities are not subjected to the requirements of this legislation as they are not considered to be public education agencies or education institutions. Based on that assumption, this legislation should create no fiscal impact for DMH.

Officials from the **Department of Higher Education (DHE)** assume the bill would define what types of student and teacher level data public education agencies may collect and establish parameters for the use and sharing of collected data. Because the bill defines a public education agency so as not to include the Department of Higher Education or public postsecondary education institutions, these provisions do not appear to apply to higher education. As a result, there would be no direct fiscal impact on the DHE or public higher education institutions.

According to officials from the **Office of Attorney General (AGO)**, the proposal creates numerous new requirements and prohibitions, and further provides that the AGO "shall have the authority to enforce compliance" with those new provisions without specifying how the AGO is to enforce compliance. As the number and nature of violations of the new provisions are unknown, and as the mechanisms of enforcement are undefined, costs are unknown but may be significant. The AGO would likely require additional appropriations to enforce the provisions of the proposal.

Officials from the **Department of Elementary and Secondary Education (DESE)** assume that certain language within the proposal will result in an unknown impact on the department. DESE cited the following sections and their potential fiscal impact:

ASSUMPTION (continued)

§160.2514

"Notwithstanding any other provision of law, no school classroom, school district, state or national student assessment shall be adopted or administered in this state that collects any type of psychological data, including assessment of non-cognitive skills or attribute, psychological resources, mind sets, learning strategies, effortful control, attitudes, dispositions, social skills, or other interpersonal or intra personal resources."

DESE is uncertain whether this would allow the use of work keys. If so, this could impact federal Perkins funding.

§160.2520.5

"No student data shall be used for predictive modeling for detecting behaviors, beliefs, or value systems, or predicting or forecasting student outcomes."

DESE is uncertain as to whether this would mean DESE could not calculate the student level growth measure.

§160.2520.6

"There shall be no video monitoring of classrooms for any purpose, including for teacher evaluation, without the approval of the district school board after public hearings and the written consent of the teacher, all emancipated students, and the parents or guardians of all other students in the classroom."

DESE is uncertain whether this would cause an impact for teacher evaluations.

§160.2520.7

"Personally identifiable information from education records or teacher records shall not be disclosed to any noneducation government agency, including but not limited to the Missouri Department of Labor, whether within or outside the state, or to any party that intends to use or disclose the information or data for the purpose of workforce development or economic planning. Data linkages or sharing of data with other states without express permission of the individuals affected is prohibited."

ASSUMPTION (continued)

DESE is uncertain as to whether this would prohibit DESE from providing information to the National Student Clearinghouse to obtain follow-up data for students.

§160.2510.2

Officials from the **Department of Social Services - Family Support Division (FSD)** state that FSD provides data, including Social Security Numbers (SSN), for Food Stamp and Temporary Assistance participants to the Department of Elementary and Secondary Education (DESE) for the purpose of determining eligibility for free and reduced meals for students as outlined in 7 CFR 245. In 7 CFR 245.2, the definition of documentation allows schools to obtain information from the FSD including information in sufficient detail to match the child attending school with the name of a child who receives benefits through the Food Stamp or Temporary Assistance programs.

The FSD assumes this proposed legislation would no longer allow the SSNs to be shared with DESE. Therefore, the FSD would remove them from the data provided to DESE for free and reduced meals for students. While this could impact schools ability to determine eligibility for free or reduced meals for students, there is no fiscal impact to the Family Support Division

§160.2520.7

Officials from the **Department of Labor and Industrial Relations (DOLIR)** state this proposal affects Chapter 160, RSMo. The bill amends Missouri's "schools-general provisions" laws. According to DOLIR, the bill attempts to protect the privacy of student data from government intrusion, with penalty provisions and an emergency clause.

The bill amends §160.2520.7 as follows:

" Personally identifiable information from education records or teacher records shall not be disclosed to any non-education government agency, including but not limited to the Missouri Department of Labor, whether within or outside the state, or to any party that intends to use or disclose the information or data for the purpose of workforce development or economic planning. Data linkages or sharing of data with other states without express permission of the individuals affected is prohibited."

DOLIR assumes this section may prohibit the disclosure of personal identifying teacher records to the Division of Employment Security (DES). This could prohibit schools from providing information about a teacher's employment in an unemployment case, which could have an impact

ASSUMPTION (continued)

on the DES when a teacher applies for unemployment benefits. It could also prohibit schools from certifying that unemployment claimants, who are students, are attending school.

All government agencies, including the DES, obtain or collect information of all kinds by electronic means today. This bill may prohibit the electronic obtaining or collecting of required information and disclosures.

DOLIR states that the intent of this bill is unclear to their agency. If this bill is interpreted to prohibit the DES from collecting data necessary to administer Missouri's unemployment insurance (UI) law, it would raise a conformity issue with federal law. The federal and state governments jointly are responsible for administering the UI program. 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.

Non-conformity with federal law would jeopardize the certification of Missouri's UI program. If the program fails to be certified, Missouri would lose approximately \$40 million in federal funds the state receives annually to administer the UI program. Additionally, Missouri would lose approximately \$13 million in federal funds each year that the Department of Economic Development - Division of Workforce Development receives to administer Wagner-Peyser reemployment services.

The Federal Unemployment Tax Act (FUTA) imposes a 6.0 percent payroll tax on employers. Most employers never actually pay the total 6.0 percent due to credits they receive for the payment of state unemployment taxes and for paying reduced rates under an approved experience rating plan. Employers are allowed tax credits up to a maximum of 5.4 percent against the FUTA payroll tax if the Secretary of Labor approves the state's UI program. However, if the proposed legislation causes Missouri's program to be out of compliance or out of conformity, Missouri employers would pay the full 6.0 percent, or approximately an additional \$880 million per year.

These changes would have no fiscal impact as long as Missouri interprets this bill in a manner that does not raise conformity issues with federal law. However, if the language is construed to prohibit agencies from obtaining/collecting electronic data from claimants, this bill could have a significant negative fiscal impact on DOLIR.

ASSUMPTION (continued)

Officials from the **Department of Social Services - Division of Youth Services (DYS)** assume this proposed legislation will impact DYS in many ways.

§160.2510.2

The Division of Youth Services is a school district within a custodial agency operating rehabilitative behavioral programs. DYS does not have a school specific information system, rather it has one information system utilized for all of data needs of the agency including, but much broader than, education. DYS, in order to fulfill its mandate, must collect and store a wide variety of information related to the treatment needs of youth. Some of that information regularly captured by the DYS is listed in §160.2510.2 as requiring "informed written consent" of a parent or guardian. DYS assumes that, as custodians, its representatives can make that decision for the qualifying youth in care.

§160.2512

This section establishes that certain information regarding the existence and use of data systems is disclosed on agency and/or institution web sites. Certain requirements listed likely produce the need for DYS to create a separate School Information System. This could create cost.

§160.2516

This prohibits the solicitation of certain information from students or their family. Many of the prohibited subjects are subjects routinely assessed by DYS, some even required by current statute. DYS gathers information on these topics from youth and their family in an effort to fulfill a broader mandate as a custodial agency providing a rehabilitative behavioral service. The information is not captured specific to the DYS function as an accredited education "institution". Mapping a strategy to comply with this section may require that significant distinctions be made between the DYS education function and treatment function. Presently, DYS operates a fully integrated model of education and treatment with nationally renowned successful outcomes. Enactment of this section could disrupt the model.

§160.2518

DYS assumes enactment of this section will likely have cost associated with it. The DYS contracts with Local Investment Commission (LINC) to operate a distance learning academy, STAR school. Requirements contained in this section would cause contract amendments resulting in new, on-going costs.

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ASSUMPTION (continued)

§160.2520.6

This section requires district school board approval and public hearings as well as consents from teachers and parents/guardians of students in order for video monitoring of classrooms to take place. DYS operates schools in secure settings that presently have video monitoring for the purpose of safety. This tool is essential in maintaining safe environments for youth and employees.

§§160.2520.8 - 160.2520.10

According to DYS, these subsections are measures that limit/prohibit the sharing of personal identifying information with other entities. DYS follows all guidelines and procedures for reporting student data and academic achievement to the Department of Elementary and Secondary Education (DESE) for evaluation purposes, including the following federal programs: Title I, Carl Perkins Vocational and Special Education programs. As an Accredited Missouri Public School District, DYS receives all federal monies thru DESE. Evaluation reports for federal programs are completed by DYS annually for DESE compliance.

PROGRAM	ALLOCATION	CARRYOVER	TOTAL
<i>Title I</i>	\$902,770	\$389,661	\$1,292,431
<i>Special Education</i>	\$223,373	\$151,798	\$375,171
<i>Carl Perkins Vocational</i>	\$103,730		\$103,730
TOTAL			\$1,771,332

Enactment of this bill may impact the ability of DESE to comply with existing conditions surrounding the grants listed above. This could jeopardize current educational funding structures for the DYS.

DYS recognizes the addition of §160.2520.9(3). This section allows for information to be exchanged for purposes of grant program evaluation provided the federal entity agrees in writing to the limited use of the provided information. There is no way to be certain the federal entity will comply.

ASSUMPTION (continued)

§160.2520.12

DYS assumes this section mandates destruction and removal schedules of all education records from the student database within five years of the students graduation from that institution and within one year for a student who has withdrawn from the institution prior to graduation. The DYS records for treatment as well as education, are retained in the agency's information system. Due to the integrated treatment approach (education/treatment) the records are not necessarily distinctive of one another. DYS would have cost in modifying the existing system to identify and destroy records contained in the database.

In summary, it is unknown how this legislation would affect Federal funding streams for education to the DYS and to what extent, therefore the fiscal impact is unknown but greater than \$100,000.

Officials from the **Special School District of St. Louis County (SSD)** assume this proposed legislation would have a negative fiscal impact on SSD. Obtaining parental consent will require time, effort, and costs which may impede education. Obtaining 100% parental consent for the use of tools such as predictive modeling will be difficult. SSD assumes the Family Educational Rights and Privacy Act (FERPA) already provides protection of identifiable student data. Also, this proposed bill could negatively impact Perkins and other federal funding (NCLB and Title programs) which requires certain data to be provided including post-graduate follow up. In addition, SSD would incur additional expense for mailings to obtain parent consents required by this bill.

In response to the introduced version of this bill, officials from the **Kansas City Public School District (KCPS)** assume the proposed legislation places restrictions on the usage of federal and state funds to support, purchase, or replace computer and digital information collections and analysis may have a negative fiscal impact on KCPS. While difficult to estimate the impact, KCPS assumes it may exceed \$20,000 annually.

Also, in response to the introduced version of this bill, officials from the **Fulton School District** assume a minimal fiscal impact to their district as a result of this proposal.

Officials from the following school districts: Blue Springs, Branson, Caruthersville, Charleston R-I, Cole R-I, Columbia, Fair Grove, Francis Howell, Harrison R-IX, Independence, Jefferson City, Johnson County R-7, Kirksville, Kirbyville R-V, Lee's Summit, Malden R-I, Malta Bend, Mexico, Monroe City R-I, Nixa, Parkway, Pattonville, Raymore-Peculiar R-III, Raytown, Riverview Gardens, Sedalia, Sikeston, Silex, Spickard R-II, Springfield, St Joseph, St Louis, St.

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ASSUMPTION (continued)

Charles, Sullivan, Warren County R-III, and Waynesville did not respond to **Oversight's** request for fiscal impact.

<u>FISCAL IMPACT - State Government</u>	FY 2015	FY 2016	FY 2017
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GENERAL REVENUE

<u>Costs</u> - Office of Attorney General - Enforcement of compliance requirements	\$0 or (Unknown - Could exceed \$100,000)	\$0 or (Unknown - Could exceed \$100,000)	\$0 or (Unknown - Could exceed \$100,000)
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<u>Costs</u> - Department of Elementary and Secondary Education (DESE) - Impact of lack of ability to collect certain data	\$0 or (Unknown - Could exceed \$100,000)	\$0 or (Unknown - Could exceed \$100,000)	\$0 or (Unknown - Could exceed \$100,000)
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<u>Costs</u> - Department of Social Services/ Division of Youth Services (DOS-DYS) - Impact of lack of ability to collect certain data	\$0 or (Unknown - Could exceed \$100,000)	\$0 or (Unknown - Could exceed \$100,000)	\$0 or (Unknown - Could exceed \$100,000)
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ESTIMATED NET EFFECT ON GENERAL REVENUE	<u><u>\$0 or (Unknown - Could exceed \$100,000)</u></u>	<u><u>\$0 or (Unknown - Could exceed \$100,000)</u></u>	<u><u>\$0 or (Unknown - Could exceed \$100,000)</u></u>
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FISCAL IMPACT - State Government
 (Continued)

FY 2015

FY 2016

FY 2017

FEDERAL FUNDS

<u>Loss</u> - DESE & DOS/DYS - Title I	\$0 or (Unknown - Could exceed \$100,000)	\$0 or (Unknown - Could exceed \$100,000)	\$0 or (Unknown - Could exceed \$100,000)
<u>Loss</u> - DESE & DOS/DYS- Special Education	\$0 or (Unknown - Could exceed \$100,000)	\$0 or (Unknown - Could exceed \$100,000)	\$0 or (Unknown - Could exceed \$100,000)
<u>Loss</u> - DESE & DOS/DYS - Carl Perkins Vocational	\$0 or (Unknown - Could exceed \$100,000)	\$0 or (Unknown - Could exceed \$100,000)	\$0 or (Unknown - Could exceed \$100,000)
<u>Loss</u> - Unemployment Compensation Administration Fund (§160.2520.7)	\$0 or (\$40,000,000)	\$0 or (\$40,000,000)	\$0 or (\$40,000,000)
<u>Loss</u> -Wagner-Peyser Administration Fund (§160.2520.7)	\$0 or (\$13,000,000)	\$0 or (\$13,000,000)	\$0 or (\$13,000,000)
	<u>\$0 or</u> <u>(Unknown -</u> <u>Could exceed</u> <u>\$53,000,000)</u>	<u>\$0 or</u> <u>(Unknown -</u> <u>Could exceed</u> <u>\$53,000,000)</u>	<u>\$0 or</u> <u>(Unknown -</u> <u>Could exceed</u> <u>\$53,000,000)</u>
ESTIMATED NET EFFECT ON FEDERAL FUNDS			

FISCAL IMPACT - Local Government

FY 2015

FY 2016

FY 2017

LOCAL POLITICAL SUBDIVISIONS

<u>Costs</u> - School Districts - Impact of lack of ability to collect certain data	\$0 or (Unknown - Could exceed \$100,000)	\$0 or (Unknown - Could exceed \$100,000)	\$0 or (Unknown - Could exceed \$100,000)
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	<u>\$0 or</u> <u>(Unknown -</u> <u>Could exceed</u> <u>\$100,000)</u>	<u>\$0 or</u> <u>(Unknown -</u> <u>Could exceed</u> <u>\$100,000)</u>	<u>\$0 or</u> <u>(Unknown -</u> <u>Could exceed</u> <u>\$100,000)</u>
ESTIMATED NET EFFECT ON LOCAL POLITICAL SUBDIVISIONS			

FISCAL IMPACT - Small Business

An unknown negative fiscal impact to small businesses could be expected as a result of this proposal.

FISCAL DESCRIPTION

This bill establishes the Missouri Student Data Protection Act to protect the privacy of educational data, including student performance data and teacher records. In its main provisions, the bill:

- (1) Makes it unlawful for a public education agency or educational institution to collect specified information without informed consent and specifies what information may be collected without consent;
- (2) Prohibits the use of federal or state funds to construct or expand a data system that fails to comply with the bill, is designed to track students beyond the twelfth grade, or compiles information beyond what is necessary for functions directly related to education or evaluation of academic progress;
- (3) Prohibits the collection or dissemination of data in violation of the Fair Labor Standards Act of 1938;
- (4) Prohibits the pursuit or acceptance of any grant that requires collecting or reporting data in violation of the provisions of the bill;

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FISCAL DESCRIPTION (continued)

- (5) Requires public education agencies and educational institutions to disclose on their web sites the existence of their data systems and lists the specific information about the data system that must be posted;
- (6) Requires that parents and eligible students be provided with a printed copy of educational records held in any database, upon request, and that the records may be corrected;
- (7) Requires public education agencies to notify the chairs of the Education Committee of the Senate and the Elementary and Secondary Education Committee of the House of Representatives of the existence of any data system each year, and requires the use of only aggregated data in published reports;
- (8) Prohibits an assessment from being adopted or administered that collects psychological data as specified in the bill, except as otherwise prohibited by law;
- (9) Prohibits the administration of a survey assessment analysis, evaluation, or similar instrument concerning a student or student's family politics, psychological problems, social skills, sexual behavior, illegal behavior, appraisals of family, privileged relationships, gun ownership, or income except when required for eligibility for a program;
- (10) Limits the access to information in data systems to specified individuals, requires the Department of Elementary and Secondary Education to develop and publish criteria for approval of research-related data requests, and limits the release of data to a contractor by specifying the requirements for its release;
- (11) Establishes procedures for reporting a security breach or unauthorized disclosure of personally identifiable student data by a public education agency, educational institution, or third party;
- (12) Prohibits the release of personally identifiable information for commercial use, including use by cloud computing service providers, except to ensure service integrity, and requires any storage to be within the United States;
- (13) Prohibits the use of student data in predictive modeling, prohibits video monitoring of classrooms without a public hearing and written consent from parents and teachers;
- (14) Prohibits disclosure of personally identifiable information from education or teacher records to noneducation government agencies, including the Missouri Department of Labor or to any

FISCAL DESCRIPTION (continued)

party that would use the data for workforce planning. Express permission of individuals is required to share data with other states;

(15) Specifies when personally identifiable information from education or teacher records may be disclosed to other government agencies or entities outside Missouri or to federal agencies;

(16) Requires written notification to parents and teachers when the federal Department of Education requires personally identifiable student or teacher data disclosure for a grant;

(17) Requires the transmission of data to an assessment consortium to be in nonindividual record format, directly related to the assessment, and not to contain psychological information; and

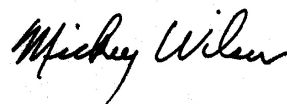
(18) Establishes a civil penalty of \$1,000 for each violation by an entity other than a public education agency or educational institution, \$5,000 for a second violation, and \$10,000 for a third violation involving the same student. The Attorney General may enforce compliance.

The bill has an emergency clause.

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

SOURCES OF INFORMATION

Department of Elementary and Secondary Education
Office of Attorney General
Office of State Courts Administrator
Department of Economic Development
 Division of Workplace Development
 Division of Business and Community Services
Department of Mental Health
Department of Health and Senior Services
Department of Labor and Industrial Relations
Department of Social Services
 Children's Division
 Division of Youth Services
 Family Support Division
Department of Higher Education
Office of the Governor
Missouri House of Representatives
Missouri Senate
School Districts
 Kansas City
 Fulton
 Special School District of St. Louis County



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March 26, 2014

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