

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4222-01
Bill No.: SB 1149
Subject: Children and Minors; Administrative Law
Type: Original
Date: February 6, 2004

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
General	(\$102,709)	(\$120,377)	(\$123,521)
Total Estimated Net Effect on General Revenue Fund	(\$102,709)	(\$120,377)	(\$123,521)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
Total Estimated Net Effect on <u>All</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 6 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
Federal*	\$0	\$0	\$0
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

*Income and costs of approximately \$140,000 per year would net to \$0.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of State Courts Administrator** assume this proposal would not fiscally impact their agency.

Officials from the **Department of Social Services - Children's Division (CD)** assume this proposal would not fiscally impact the CD.

Officials from the **Department of Social Services - Division of Legal Services (DLS)** state the proposal transfers the primary responsibility for processing appeals of Child Abuse and Neglect determinations from the Child Abuse and Neglect Review Board (CANRB) in the Department of Social Services to the Administrative Hearing Commission.

DLS states state agencies must be represented by legal counsel before the Administrative Hearing Commission. At the present time the Department of Social Services (DOS) is not represented by counsel before the CANRB unless the case is complex or there are other unusual circumstances. This proposal would require the DOS to have a licensed attorney at law to appear and defend the division in every administrative appeal of a hotline case.

The DLS states the procedures followed by the CANRB are informal. The rules of evidence do

ASSUMPTION (continued)

not apply. The proposed legislation will set up a formal administrative review procedure with formal pre-hearing motions and discovery procedures such as interrogatories, and depositions. This will increase the costs of litigation to the DLS, the Children's Division and the Department of Social Services. These costs will include, but are not limited to: 1) additional lawyer and clerical staff time; 2) additional costs for taking depositions and ordering transcripts of depositions; 3) additional costs for preparing the record for appeals to the Circuit Court under Chapter 536; and 4) attorney fees and costs awards under Section 536.087, RSMo.

DLS states the proposal requires a full evidentiary hearing before the AHC and then a judicial review by a full trial de novo before the circuit court. This would require, in effect, two full evidentiary hearings for the same case.

DLS states it received 397 requests for review in FY01, 480 requests for reviews in FY02 and 425 requests for reviews in FY 03, for an average of approximately 435 cases per year. The DLS closed 48 de novo judicial reviews of CANRB hearings in FY01, 32 in FY02 and 27 in FY03, for an average of 36 cases per year. If the cases are transferred to the AHC, this will require the DLS to handle an additional 399 (435 - 36 cases) cases per year. The DLS states the maximum case load that one attorney could handle would be 150 cases. The DLS would therefore require an additional 3 (actual number 2.6) attorneys to handle the additional case load (399 divided by 150) with one additional clerical staff to support the attorneys for a total of 4 FTE.

Transcription costs: According to the administrative hearings commission, transcription costs average approximately per case \$61 per case for cases that go to circuit court. Assuming that 25% of the 399 cases are appealed to circuit court, that would result in additional costs of approximately \$6,100 in transcription costs and fees.

Litigation costs: Some cases will require formal discovery such as depositions and the costs for serving subpoenas. Assuming that 50 per year cases will require taking or defending formal depositions at an estimated cost of \$400 per deposition this will cost approximately \$20,000 per year in additional costs. Assuming that approximately 250 cases per year would require service of subpoenas for testimony at depositions and at hearings \$20 per subpoena, this will result in an additional litigation cost of approximately \$5,000 per year.

Officials from the **Office of Administration - Administrative Hearing Commission (AHC)** state that this proposal gives the AHC jurisdiction over child abuse and neglect appeals, adding to the AHC caseload. Upon a finding of abuse or neglect by the Division of Family Services, the person named as a perpetrator could appeal to the AHC.

ASSUMPTION (continued)

The AHC states the fiscal impact to the AHC is unknown. The Child Abuse and Neglect Review Board currently processes these cases and holds hearings. AHC states according to this Board, the number of hearings held during the prior fiscal years is as follows: FY03 - 322; FY02 - 237; FY01 - 209; FY00 - 234; FY99 - 297. Using these figures, the average number of hearings held per year is 260. AHC states based on information from the Board, the hearings normally do not last longer than one hour.

If the AHC were required to hold hearings and issue written decisions in 260 additional cases, AHC would need to add a 0.25 attorney FTE to process these cases. AHC assumes the majority of the hearings are no longer than an hour and assuming this is the only jurisdiction added to the AHC this year, the existing three AHC commissioners could absorb the workload.

AHC states the cost of .25 attorney would be approximately \$19,500 per year. **Oversight** assumes the AHC could absorb the cost of this additional workload.

Officials from the **Secretary of State Office (SOS)** assume this legislation would require the Administrative hearing Commission to hear appeals of substantiated reports of child abuse and neglect by the Children's Division. The Administrative Hearing Commission may promulgate rules and regulations as to enact this proposal. Based on experience with other divisions, rules and forms could require as many as 12 pages in the *Code of State Regulations*. Because rules in their proposed version are also published in the *Missouri Register*, one-half again as many pages will be required to be published in this publication because of cost statements, fiscal notes, etc., which are not republished in Code. These costs are estimated. The cost per page in the Missouri Register is \$23; the cost per page in the Code of State Regulations is \$27.00. Actual costs may vary depending on the department and the number of rulemakings promulgated. The SOS estimates total costs to be \$738 in FY 2005.

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. Any decisions to raise fees to defray costs would likely be made in subsequent fiscal years.

<u>FISCAL IMPACT - State Government</u>	FY 2005 (10 Mo.)	FY 2006	FY 2007
GENERAL REVENUE			
<u>Cost</u> - Department of Social Services - Division of Legal Services			
Personal Services (4 FTE)	(\$53,666)	(\$66,035)	(\$67,686)
Fringe Benefits	(\$22,411)	(\$27,576)	(\$28,266)
Expense and Equipment	<u>(\$26,632)</u>	<u>(\$26,766)</u>	<u>(\$27,569)</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE	<u>(\$102,709)</u>	<u>(\$120,377)</u>	<u>(\$123,521)</u>
FEDERAL			
<u>Income</u> - Department of Social Services - Division of Legal Services			
Program reimbursement	\$120,053	\$138,719	\$142,388
<u>Cost</u> - Department of Social Services - Division of Legal Services			
Personal Services (4 FTE)	(\$56,508)	(\$69,533)	(\$71,271)
Fringe Benefits	(\$23,598)	(\$29,037)	(\$29,763)
Expense and Equipment	<u>(\$39,947)</u>	<u>(\$40,149)</u>	<u>(\$41,354)</u>
	<u>(\$120,053)</u>	<u>(\$138,719)</u>	<u>(\$142,388)</u>
ESTIMATED NET EFFECT ON FEDERAL	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
<u>FISCAL IMPACT - Local Government</u>	FY 2005 (10 Mo.)	FY 2006	FY 2007
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

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

DESCRIPTION

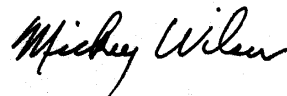
This proposal ensures that persons placed on the Child Abuse and Neglect Registry receive sufficient due process before any information concerning the abuse and neglect is disclosed.

Current law allows persons aggrieved by the Division's decision to seek administrative review to the Child Abuse and Neglect Review Board. This proposal moves the authority to review the Division's determinations to the Administrative Hearing Commission.

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

SOURCES OF INFORMATION

Department of Social Services
Office of Administration-
Administrative Hearing Commission
Secretary of State
Office of State Courts Administrator



Mickey Wilson, CPA
Director
February 6, 2004