

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 5666-04
Bill No.: SCS for SB 819
Subject: Education, Elementary and Secondary; Department of Elementary and Secondary Education; Boards, Commissions, Committees, Councils; Department of Higher Education; General Assembly; Governor and Lt. Governor; Search and Seizure; Telecommunications; Office of Attorney General
Type: Original
Date: April 1, 2014

Bill Summary: This proposal enacts multiple provisions to protect the privacy of individuals from government intrusion.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
Total Estimated Net Effect on General Revenue Fund	\$0	\$0	\$0

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 10 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

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 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)

FISCAL ANALYSIS

ASSUMPTION

Oversight notes this proposal in §§160.1500 - 160.1545 prohibits the collection of certain data and the use of certain data by schools, colleges and universities.

Officials at the **Department of Higher Education (MHDE)** assume with regard to the operation of the MDHE, §160.1503 of this bill would restrict the types of personally identifiable information that the department could collect without the written consent of the individual. Based on a review of the data currently collected by the MDHE, we do not believe any restricted data is currently collected or stored by the MDHE.

There is an additional restriction relating to the sharing of such data with the federal government. Currently the only data that is shared with the federal government relates specifically to grants received from the USDE (United States Department of Education) and which would be used to verify compliance with grant requirements and to assess the performance of the grant. While there would not be an impact for implementation of this requirement, it could impact the ability of the MDHE to apply for and receive such grants in the future.

Officials at the **Department of Elementary and Secondary Education (DESE)** assume various language within the proposal will result in an unknown impact on the department:

§160.1503.1(11) seems to continue to allow the demographic data required for NAEP participation; however, it seems that 160.1503.2(5) would require written consent from parents before the NAEP student/teacher/school questionnaires could be completed or according to 160.1509, might not be allowed. We are uncertain whether this could end up impacting national/international assessments in which the state participates.

§160.1509 - No state or national student assessment shall be adopted or administered in this state by any school district or charter school that collects any type of psychological data, including assessment of non-cognitive skills or attributes, psychological resources, mindsets, learning strategies, effortful control, attitudes, dispositions, social skills, or other interpersonal or intrapersonal resources. We are uncertain whether this would allow the use of work keys. If so, this could impact federal Perkins funding.

§160.1524 - No student data shall be used for predictive modeling for detecting behaviors, beliefs, or value systems, or predicting or forecasting student outcomes. We are uncertain as to whether this would mean the department could not calculate the student level growth measure.

§160.1527 - There shall be no video monitoring of classrooms for any purpose, including for teacher evaluation, without the approval of the district's school board after public hearings and

ASSUMPTION (continued)

the written consent of the teacher, of all eligible students, and of the parents of all students in the classroom. We are uncertain whether this would cause an impact for teacher evaluations.

§160.1530 - 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 and industrial relations, 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 expressed permission of the individuals affected are prohibited. We are uncertain as to whether this would prohibit the department from providing information to the National Student Clearinghouse to obtain follow-up data for students.

Officials at the **Missouri State University** assume this proposal would have a significant negative fiscal impact which can not be determined at this time.

Officials at the **University of Central Missouri** assume impact in the form of man hours to ensure compliance, but it is not quantifiable at this time.

Officials at the **Northwest Missouri State University** assume a major negative impact from unintended costs, regulatory burdens and administrative burdens. The impact is not quantifiable at this time.

Officials at the **Linn State Technical College** assume there is no fiscal impact from this proposal.

Officials at the **Special School District of St. Louis** assume this proposed legislation would have a negative fiscal impact on the Special School District as it would require parent consent to compile certain data on students. Based on the 22,900 students currently served, we estimate the cost of postage to be over \$10,000 (first attempt) and significant administrative time to track parent consents. Currently, there are protections available for student data through FERPA and HIPAA. This proposed bill would also be in conflict with NCLB and IDEA requirements. Predictive modeling and data mining would be used to improve instruction for students and improve results for students.

Officials at the **Carondelet Leadership Academy** responded to Oversight but did not indicate an impact.

Oversight assumes this proposal may require additional administrative costs for schools, colleges and universities. Oversight will reflect the impact as \$0 to Unknown.

JH:LR:OD

ASSUMPTION (continued)

Officials at the following schools: Blue Springs Public Schools, Branson Public Schools, Charleston R-I Schools, Cole R-I Schools, Columbia Public Schools, Fair Grove Schools, Francis Howell Public Schools, Independence Public Schools, Jefferson City Public Schools, Johnson County R-7 Schools, Kirksville Public Schools, Kirbyville R-VI Schools, Lee Summit Public Schools, Malden R-I Schools, Malta Bend Schools, Mexico Public Schools, Monroe City R-I Schools, Nixa Public Schools, Parkway Public Schools, Pattonville Schools, Raymore-Peculiar R-III Schools, Raytown School District, Sedalia School District, Sikeston Public Schools, Silex Public Schools, Spickard School District, St Joseph School District, St Louis Public Schools, St. Charles Public Schools, Sullivan Public Schools and Warren County R-III School District did not respond to **Oversight's** request for fiscal impact.

Officials at the following colleges: Crowder, East Central Community College, Harris-Stowe, Jefferson College, Kansas City Metro Community College, Lincoln University, Moberly Area Community College, Missouri Western State University, Missouri State University, Southeast Missouri State University, State Fair Community College, St. Charles Community College, St. Louis Community College, Three Rivers Community College and the Truman State University did not respond to **Oversight's** request for fiscal impact.

<u>FISCAL IMPACT - State Government</u>	FY 2015	FY 2016	FY 2017
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

<u>FISCAL IMPACT - Local Government</u>	FY 2015	FY 2016	FY 2017
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LOCAL POLITICAL SUBDIVISIONS

<u>Cost - Schools & Universities - administration to ensure compliance</u>	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>
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ESTIMATED NET EFFECT ON LOCAL POLITICAL SUBDIVISIONS	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>
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FISCAL IMPACT - Small Business

Small businesses that collect electronic data could be impacted.

FISCAL DESCRIPTION

This act enacts multiple provisions to protect personal privacy from government intrusion.

Education Data: This act establishes limits and procedures for how certain entities may use student data and teacher data.

State agencies and education institutions are limited in the student data they may collect without written consent. The data they may collect includes the following, as described in the act: name, address, email, and family contact information; assessment results from the statewide assessment system; course taking and completion, credits earned, grades, date of birth; attendance; certain medical, health and mental-health records when used for certain purposes; discipline reports and juvenile delinquency or criminal or correctional records when used for certain purposes; remediation data; special education data; certain demographic data; student workforce information; social security numbers if required to comply with state or federal law; income data; and extracurricular activity data. State agencies or education institutions must obtain written consent before collecting other data points. Examples are listed in the act. (§160.503)

No funds, regardless of source, can be spent on the construction, enhancement, or expansion of any data system that does not comply with these limitations or that is designed to track students beyond their K-12 or post-secondary education careers, or that compiles personal non-academic information. (§160.1503)

This act prohibits state agencies and education institutions from pursuing or accepting any grant that would require the collecting or reporting of any type of data that violates these prohibitions. (§160.1503)

State agencies and education institutions must publicly disclose on their websites the existence and character of any personally identifiable information from education records or teacher records maintained by them. They must annually notify parents, eligible students, and teachers of this website posting. (§160.1506)

These entities must annually notify the chairs of the Senate Education Committee, House Elementary and Secondary Education Committee, and the Joint Committee on Education. (§160.1506)

FISCAL DESCRIPTION (continued)

The disclosure and notifications must include multiple explanations, including the legal authority authorizing the establishment of a data repository, the principal purpose for which the information is intended to be used, categories of records and individuals maintained in the repository, expected disclosure of records, and policies and practices that must be followed, as described in the act. (§160.1506)

State agencies must only use aggregate data in published reports. (§160.1506)

School districts and charter schools are prohibited from adopting or administering any state or national student assessment that collects psychological data, as described in the act. (§160.1509)

State agencies, school boards, and education institutions offering grades pre-kindergarten through twelve cannot administer any student survey, assessment, analysis, evaluation, or similar instrument that solicits certain personal information about the student or student's family, as described in the act. (§160.1512)

Access to student education records in the Department of Elementary and Secondary Education's Missouri Student Information System (MOSIS) must be restricted to the authorized representatives of the Department of Elementary and Secondary Education, state agency, or education institution who require access to it. An authorized representative must be an employee of the Department, state agency, or education institution and be under its direct control. Personally identifiable student or teacher data cannot be disclosed without the written consent of the parents, eligible students, or affected teachers. (§160.1515)

The Department of Elementary and Secondary Education must develop and publish criteria for the approval of research-related data requests from state agencies, political subdivisions, local government agencies, the General Assembly, academic researchers, and the public. Written consent is required for the release of personally identifiable student or teacher information to a party conducting studies. Outside parties conducting studies must meet the requirements for contractors, as described in the act. (§160.1515)

In addition, state agencies, school boards, and institutions must not disclose personally identifiable information from education records or teacher records without written consent to an outside party, unless the outside party meets the criteria established in the act. (§160.1515)

If a security breach or unauthorized disclosure of personally identifiable student or teacher data occurs, the state agency, school board, or education institution responsible for the data must immediately notify the subjects of the breach or disclosure, report it to the Family Policy Compliance Office of the U.S. Department of Education, and investigate the causes and

FISCAL DESCRIPTION (continued)

consequences of the breach or disclosure. (§160.1518)

Personally identifiable information from education records or teacher records cannot be disclosed to any party for commercial use. Cloud computing service providers that provide services for state agencies, school boards, or education institutions cannot use any information from education records or teacher records for any secondary purpose that would benefit the cloud computing service provider. (§160.1521)

Any cloud computing service provider that enters into a service agreement with a state agency, school board, or institution must certify in writing that it will comply with data use requirements and that the state agency, school board, or institution maintains ownership of all teacher and student data. All student or teacher data stored by a cloud computing service provider must be stored within the boundaries of the United States. (§160.1521)

Student data cannot be used for predictive modeling, as defined in the act, for detecting behaviors, beliefs, or value systems, or predicting or forecasting student outcomes. (§160.1524)

This act prohibits video monitoring in classrooms unless the local school board approves it after public hearings and the written consent of the teacher, eligible students, and the parents of all students in the classroom. (§160.1527)

This act prohibits the disclosure of personally identifiable information from education records and teacher records to any non-education government agency, including the Missouri Department of Labor and Industrial Relations, or to any party for the purpose of workforce development or economic planning. Data linkages or sharing of data with other states without expressed permission of the individuals affected are prohibited. (§160.1530)

Personally identifiable information from education records or teacher records cannot be disclosed to any government agency or other entity outside Missouri except to an institution attended by a student who has transferred out of state, to an out-of-state program in which a student voluntarily participates and a data transfer is required, or for migrant students for federal reporting purposes. (§160.1533)

Personally identifiable information from education records or teacher records cannot be disclosed to any federal agency unless certain conditions are satisfied. First, the disclosure must be required by the U.S. Department of Education as a condition of receiving a federal education grant. Second, the U.S. Department of Education must agree in writing to use the information only to evaluate the program funded by the grant. Third, the U.S. Department of Education must agree in writing that the information must not be used for any research beyond what is needed to

FISCAL DESCRIPTION (continued)

evaluate the program, unless the parent or eligible student, or teacher, whose information or data is used, affirmatively consents. Fourth, the U.S. Department of Education must agree in writing to destroy the information or data upon completion of the program evaluation. Fifth, the grant or program must be authorized by federal statute or rule. Additional requirements on the use of data, and procedures in which written consent is required, are described in the act. (§160.1536)

State agencies, school boards, and education institutions are prohibited from disclosing student or teacher information to any assessment consortium of which Missouri is a member or any company with which Missouri contracts for development or administration of any assessment. However, these entities may disclose such information if it is transmitted in non-individual record format, it is limited to information directly related to the assessment, and no psychological information is included as part of the test scores. (§160.1539)

Education institutions must destroy and remove from their student databases all education records of a student within five years of the student's graduation. An institution may retain records showing the student's data of attendance, diploma or degree earned, and contact information. For any student who withdraws before graduation, the institution must, within one year, destroy and remove all records of the student except those showing dates of attendance. (§160.1542)

Each violation of any provision of this act by an organization or entity other than a state agency, a school board, or an institution shall be punishable by a civil penalty of up to one thousand dollars. A second violation involving the education records and privacy of the same student is punishable by a civil penalty of up to five thousand dollars. A subsequent violation by the same organization or entity involving the education records and privacy of the same student is punishable by a civil penalty of up to ten thousand dollars. (§160.1545)

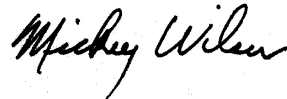
The Attorney General is granted authority to enforce compliance with this act by investigation and subsequent commencement of a civil action, to seek civil penalties for violations, and to seek injunctive relief. (§160.1545)

This act contains 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

Carondelet Leadership Academy
Department of Higher Education
Linn State Technical College
Missouri State University
Northwest Missouri State University
Special School District of St. Louis
University of Central Missouri



Mickey Wilson, CPA
Director
April 1, 2014

Ross Strobe
Assistant Director
April 1, 2014