

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4837-01
Bill No.: SB 593
Subject: Federal - State Relations; Administrative Rules; General Assembly
Type: Original
Date: January 12, 2016

Bill Summary: This proposal prohibits the effectiveness of federal regulation not authorized by federal law in the state of Missouri unless authorized by the General Assembly.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
General Revenue	\$0 to (Potentially Large Unknown)	\$0 to (Potentially Large Unknown)	\$0 to (Potentially Large Unknown)
Total Estimated Net Effect on General Revenue	\$0 to (Potentially Large Unknown)	\$0 to (Potentially Large Unknown)	\$0 to (Potentially Large Unknown)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
Various Other State Funds	\$0 to (Potentially Large Unknown)	\$0 to (Potentially Large Unknown)	\$0 to (Potentially Large Unknown)
Total Estimated Net Effect on Other State Funds	\$0 to (Potentially Large Unknown)	\$0 to (Potentially Large Unknown)	\$0 to (Potentially Large Unknown)

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 11 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
Various Other Federal Funds	\$0 to (Potentially Large Unknown)	\$0 to (Potentially Large Unknown)	\$0 to (Potentially Large Unknown)
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0 to (Potentially Large Unknown)	\$0 to (Potentially Large Unknown)	\$0 to (Potentially Large Unknown)

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
Total Estimated Net Effect on FTE	0	0	0

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

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
Local Government	\$0 to (Potentially Large Unknown)	\$0 to (Potentially Large Unknown)	\$0 to (Potentially Large Unknown)

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Social Services (DSS)** assume states must comply with federal regulations in order to receive funding for many federal programs. Noncompliance with regulations promulgated by federal agencies will significantly reduce funding, or potentially eliminate federal funding for many of the programs and services provided to Missouri's citizens. As written, this could result in the loss of a portion of or all federal funding depending on the actions taken by the federal agencies; therefore, we are providing a range from zero impact up to the amount of federal funding received by the Department of Social Services for these programs.

DSS is expected to receive \$5.732 billion dollars in FY 2016 using a 1% inflationary increase the impact as written would be:

FY 2017 (10 months): \$5,737,957,711

FY 2018: \$5,743,695,669

FY 2019: \$5,749,439,364

To continue vital programs such as Medicaid, TANF, etc., General Revenue funding would have to be requested in lieu of the lost federal dollars.

If the SNAP program is discontinued, Missourians would potentially lose \$1.25 billion in food stamp benefit issuances not included in DSS's fiscal impact as this funding does not come through DSS appropriations.

The Department of Social Services is composed of several separate divisions, including the Family Support Division, the Children's Division, the Division of Youth Services, and the MO HealthNet Division. Each of these divisions administers social services programs in conjunction with the federal government in order to obtain federal funding for the programs. The divisions are required to comply with federal law and regulations, but are not specifically tasked with enforcement of the federal regulations. Much of these programs are codified in state law and state regulation already.

DSS' Division of Legal Services (DLS) provides legal advice and representation to the Department. DLS also conducts administrative hearings for the Department as required in 208.080 RSMo. It is assumed that because the Department is tasked with compliance with, and not enforcement of, federal regulations, this bill will not fiscally impact DLS or the Department.

ASSUMPTION (continued)

However, if it is determined that federal regulations are invalid without express General Assembly approval, and the resulting social services programs cannot operate, this bill will fiscally impact DLS and the Department as a whole.

DLS would need to review all of the federal regulations pertaining to social services programs administered by the Department to determine which regulations require approval by the General Assembly in order to continue receiving federal funds. Department programs rely regularly on titles 7, 20, 42, and 45 of the Code of Federal Regulations. The MO HealthNet program relies on over 600 pages of federal regulations in Title 42 alone. The Department can also anticipate litigation if it is unable to comply with federal regulations, and to determine the applicability of the bill to existing federal regulations. It is estimated that at least eight attorney FTEs are required for review of the thousands of pages of federal regulations pertaining to social services programs, and for assisting the Attorney General's office in litigation matters. An additional two attorney FTEs would be needed to assist the divisions with the development and presentation of new state regulations so that the Department can continue to operate its social services programs to the best of its abilities.

In summary, DLS anticipates a potential need for ten additional attorneys and three additional support staff if it is determined that federal regulations are invalid without express general assembly approval and the resulting social services programs cannot operate in compliance with federal law. This would result in a fiscal impact of up to \$732,952 in FY 2017 (10 months), \$829,208 in FY 2018, and \$837,350 in FY 2019.

Officials from the **Department of Economic Development - Division of Business and Community Services (DED - BCS)** state the proposed Section 1.375 would require DED to seek approval from the General Assembly before enforcing any federal regulation that is not authorized by federal law. DED may be at risk of losing federal funding if DED is not able to respond to federal guidelines or requests in a timely manner. This could have an indirect impact on the total federal appropriation for DED - BCS division which would amount to \$76,515,664.

Officials from the **Department of Economic Development - Division of Workforce Development (DWD)** assume Section 1.375 would require DWD to seek approval from the General Assembly before enforcing a federal regulation not authorized by federal law. DWD would be at risk of losing \$117,000,000 of federal funding if DWD is not able to respond to federal guidelines or requests in a timely manner.

ASSUMPTION (continued)

Officials from the **Department of Elementary and Secondary Education** assume the state educational agencies and local school districts are required to sign assurance statements to abide by federal laws, regulations, etc. Under the terms of this proposal, we will not be able to accept any federal funds. This will require us to lay off considerable numbers of staff and will place a severe fiscal burden upon the local school districts as they will no longer be able to provide those services to children (i.e. school food, IDEA, Title programs, etc.).

Officials from the **Office of the Secretary of State** assume if the legislature chooses to not grant approval to federal regulations pertaining to granted federal funds, all previously received federal funds will have to be returned to the granting federal agency and the state will be ineligible to receive further funds from the granting federal agency. At the start of FY 2016, the SOS had a total federal fund appropriation of \$10,404,140.

Officials from the **Office of the State Treasurer** estimate a range of no fiscal impact to an unknown impact because of the wide level of regulatory code that applies to the Office of the State Treasurer.

Officials from the **Office of Administration - Office of the Commissioner (OA)** assume the proposal provides that promulgated federal regulations that are not based in federal law are not effective in Missouri unless a regulation is "approved" by the General Assembly through a concurrent resolution. Solely for purposes of responding to this fiscal note request, OA makes the following assumptions:

OA specifically assumes that, in the absence of conflicting state statute or state regulation, there is nothing that prevents the department from compliance with a federal regulation. OA further assumes that none of OA's current practices or procedures would be foreclosed by the proposal.

If any of these assumptions were to prove incorrect, OA may incur substantial unknown costs.

Officials from the **Department of Insurance, Financial Institutions and Professional Registration** assume this bill prohibits the effectiveness of any federal regulation not authorized by federal law in the state of Missouri unless authorized by the General Assembly.

Officials from the **Department of Transportation (MoDOT)** assume the impact to their agency is unknown, contingent on potential future actions of the federal government and the General Assembly.

ASSUMPTION (continued)

MoDOT assumes this proposal will only have a fiscal impact if there are federal regulations that are not authorized by federal law.

This proposal prohibits state departments and agencies from enforcing federal regulation unless the enforcement of such regulation is approved by the General Assembly. In the event the general assembly fails to approve federal regulations this bill could have severe negative fiscal impact on MoDOT/MHTC.

MoDOT Motor Carrier Services (MC) division enforces the Federal Motor Carrier Safety Regulations (FMCSRs), compatible state statutes and state regulations

If the General Assembly fails to approve enforcement of motor carrier regulations, the state will lose federal-aid highway funds. Specifically with regard to MC, if MoDOT is not in compliance, federal - aid highway funds will be withheld from MoDOT/MHTC.

Per 49 CFR § 384.401

(a) Following the first year of noncompliance, an amount up to 5% of the Federal-aid highway funds required to be apportioned to any State under each of sections 104(b)(1), (b)(3) and (b)(4) of title 23 U.S.C. shall be withheld from a State.

(b) Following second and subsequent year(s) of noncompliance an amount up to 10% of the Federal-aid highway funds required to be apportioned to any State under each of section 104(b)(1), (b)(3), and (b)(4) of title 23 U.S.C. shall be withheld from a State.

Federal-aid highway funds withheld from a State under § 384.401(a) or (b) shall not thereafter be available for apportionment to the State.

This bill has the potential to impact not just the MC division but many other divisions of MoDOT as there are many federal regulations regarding which MoDOT has an enforcement role.

5% of federal funds = \$48 million
10% of federal funds = \$96 million
All federal funds = \$960.3 million

Officials from the **Department of Public Safety - Office of the Director** state that in the event the General Assembly fails to approve federal regulations this proposal could have a severe negative impact on state agencies.

ASSUMPTION (continued)

Officials from the **Department of Mental Health** assume their department operates (FY 2016 budget) with Federal funds received from Medicaid, various Federal grants, etc. totaling more than \$1 billion. All of these funds carry with them a requirement to enforce certain regulations. Failure or delay in getting General Assembly approval for the many regulations involved would jeopardize considerable funding. Depending upon what is considered to be General Assembly approval, the potential impact for this legislation could be between \$0 and over \$1 billion.

Officials from the **Department of Health and Senior Services (DHSS)** assume the potential loss of funds could include all of its current federal funds; the most recent budget year (FY 2016) includes approximately \$897 million and 976 FTE in federal funds.

The state may also have to replace lost federal funding with general revenue to continue some vital services for its citizens that are supported, in part or in total, by federal funds at a cost of up to \$897 million and 976 FTE in state General Revenue.

Officials from the **Missouri Department of Conservation** state this proposal would have an unknown fiscal impact to their agency.

Officials from the **Department of Natural Resources** assume that a federal agency would not make a regulation a part of the code of state regulations if it was not authorized by federal law. Therefore, the department would not anticipate a direct fiscal impact from this proposal.

Officials from the **Joint Committee on Administrative Rules** state this legislation is not anticipated to cause a fiscal impact beyond its current appropriation.

Officials from the **Attorney General's Office** assume any potential cost arising from this proposal can be absorbed with existing resources.

Officials from the **Office of Administration - Administrative Hearing Commission**, the **Department of Public Safety (Missouri Highway Patrol, Missouri Veterans Commission, Alcohol and Tobacco Control, Division of Fire Safety, Missouri Gaming Commission, Capitol Police and Missouri National Guard)** the **Department of Agriculture**, the **Office of the State Public Defender**, the **Department of Corrections**, the **Office of Prosecution Services**, the **Missouri House of Representatives**, the **Missouri Senate**, the **Department of Labor and Industrial Relations** and the **Office of the State Auditor** each assume the proposal will have no fiscal impact on their respective organizations.

ASSUMPTION (continued)

For fiscal note purposes, **Oversight** will range the fiscal impact of this proposal from \$0 (if all federal regulations are approved by the General Assembly) to a potentially large negative unknown impact to all funds (if all federal regulations are not approved by the General Assembly).

According to the Office of Administration - Division of Accounting's Appropriation Activity Report, Federal Funds had the following activity in FY 2015:

Appropriated:	\$9,610,052,531
Expended or Transferred Out:	\$8,117,203,786
Re-appropriated (to FY 2016):	\$ 30,551,765
Lapsed:	\$1,462,296.980

Oversight does not know which of the above federal funds were received pursuant to federal regulations not authorized by federal law. If only 1% of appropriations would have been affected by this proposal, the General Assembly would have had to authorize \$96,100,525 in federal funds before they could have been appropriated.

Oversight will reflect a potentially large unknown loss of federal funding from this proposal, as well as a potentially large amount of General Revenue and Other Funds being impacted. Numerous programs are funded with a combination of General Revenue, Federal Funding, and Other State Funds.

<u>FISCAL IMPACT - State Government</u>	FY 2017 (10 Mo.)	FY 2018	FY 2019
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GENERAL REVENUE

<u>Loss - Enforcement of federal regulation not approved by the General Assembly</u>	\$0 or (potentially <u>large unknown</u>)	\$0 or (potentially <u>large unknown</u>)	\$0 or (potentially <u>large unknown</u>)
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ESTIMATED NET EFFECT TO THE GENERAL REVENUE FUND	\$0 or (potentially <u>large unknown</u>)	\$0 or (potentially <u>large unknown</u>)	\$0 or (potentially <u>large unknown</u>)
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<u>FISCAL IMPACT - State Government</u> (continued)	FY 2017 (10 Mo.)	FY 2018	FY 2019
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FEDERAL FUNDS

<u>Loss</u> - Enforcement of federal regulation not approved by the General Assembly	\$0 or (potentially <u>large unknown</u>)	\$0 or (potentially <u>large unknown</u>)	\$0 or (potentially <u>large unknown</u>)
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ESTIMATED NET EFFECT TO FEDERAL FUNDS	\$0 or (potentially <u>large unknown</u>)	\$0 or (potentially <u>large unknown</u>)	\$0 or (potentially <u>large unknown</u>)
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OTHER STATE FUNDS

<u>Loss</u> - Enforcement of federal regulation not approved by the General Assembly	\$0 or (potentially <u>large unknown</u>)	\$0 or (potentially <u>large unknown</u>)	\$0 or (potentially <u>large unknown</u>)
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ESTIMATED NET EFFECT TO OTHER STATE FUNDS	\$0 or (potentially <u>large unknown</u>)	\$0 or (potentially <u>large unknown</u>)	\$0 or (potentially <u>large unknown</u>)
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<u>FISCAL IMPACT - Local Government</u>	FY 2017 (10 Mo.)	FY 2018	FY 2019
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LOCAL GOVERNMENTS

<u>Loss</u> - Enforcement of federal regulation not approved by the General Assembly	\$0 or (potentially <u>large unknown</u>)	\$0 or (potentially <u>large unknown</u>)	\$0 or (potentially <u>large unknown</u>)
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ESTIMATED NET EFFECT TO LOCAL GOVERNMENTS	\$0 or (potentially <u>large unknown</u>)	\$0 or (potentially <u>large unknown</u>)	\$0 or (potentially <u>large unknown</u>)
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FISCAL IMPACT - Small Business

Potentially removing the federal level of compliance could impact small business income and/or operations.

FISCAL DESCRIPTION

This proposal provides that any federal regulation not authorized by federal law shall not be effective within the state of Missouri unless the General Assembly adopts a concurrent resolution that authorizes the regulation's effectiveness within the state.

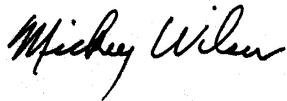
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Attorney General's Office
Department of Agriculture
Office of Administration
Department of Economic Development
Department of Elementary and Secondary Education
Department of Transportation
Department of Insurance, Financial Institutions and Professional Registration
Department of Mental Health
Department of Natural Resources
Department of Corrections
Department of Health and Senior Services
Department of Labor and Industrial Relations

SOURCES OF INFORMATION (continued)

Department of Social Services
Department of Public Safety
Missouri Department of Conservation
Office of Prosecution Services
Office of the State Auditor
Office of the Secretary of State
Office of the State Public Defender
Office of the State Treasurer
Joint Committee on Administrative Rules
Missouri Senate
Missouri House of Representatives



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January 12, 2016

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