

**MISSOURI STATE AUDITOR'S OFFICE
FISCAL NOTE (16-090)**

Subject

Initiative petition from Winston Apple regarding a proposed amendment to Chapters 286 and 143 of the Revised Statutes of Missouri. (Received September 4, 2015)

Date

September 24, 2015

Description

This proposal would amend Chapters 286 and 143 of the Revised Statutes of Missouri.

The amendment is to be voted on in November 2016.

Public comments and other input

The State Auditor's office requested input from the **Attorney General's office**, the **Department of Agriculture**, the **Department of Economic Development**, the **Department of Elementary and Secondary Education**, the **Department of Higher Education**, the **Department of Health and Senior Services**, the **Department of Insurance, Financial Institutions and Professional Registration**, the **Department of Mental Health**, the **Department of Natural Resources**, the **Department of Corrections**, the **Department of Labor and Industrial Relations**, the **Department of Revenue**, the **Department of Public Safety**, the **Department of Social Services**, the **Governor's office**, the **Missouri House of Representatives**, the **Department of Conservation**, the **Department of Transportation**, the **Office of Administration**, the **Office of State Courts Administrator**, the **Missouri Senate**, the **Secretary of State's office**, the **Office of the State Public Defender**, the **State Treasurer's office**, **Adair County**, **Boone County**, **Callaway County**, **Cass County**, **Clay County**, **Cole County**, **Greene County**, **Jackson County Legislators**, **Jasper County**, **St. Charles County**, **St. Louis County**, **Taney County**, the **City of Cape Girardeau**, the **City of Columbia**, the **City of Jefferson**, the **City of Joplin**, the **City of Kansas City**, the **City of Kirksville**, the **City of Mexico**, the **City of Raymore**, the **City of St. Joseph**, the **City of St. Louis**, the **City of Springfield**, the **City of Union**, the **City of Wentzville**, the **City of West Plains**, **Cape Girardeau 63 School District**, **Hannibal 60 School District**, **State Technical College of Missouri**, **Metropolitan Community College**, **University of Missouri**, and **St. Louis Community College**.

Assumptions

Officials from the **Attorney General's office** indicated they assume that any potential costs arising from the adoption of this proposal can be absorbed with existing resources.

Officials from the **Department of Economic Development** indicated no impact for their department.

Officials from the **Department of Higher Education** indicated this initiative petition would have no fiscal impact on their department.

Officials from the **Department of Health and Senior Services** indicated no fiscal impact on their department.

Officials from the **Department of Insurance, Financial Institutions and Professional Registration** indicated this petition, if passed, will have no cost or savings to their department.

Officials from the **Department of Mental Health** indicated this proposal creates no direct obligations or requirements to their department that would result in a fiscal impact.

Officials from the **Department of Natural Resources** indicated they would not anticipate a direct fiscal impact from this proposal.

Officials from the **Department of Corrections** indicated no impact.

Officials from the **Department of Labor and Industrial Relations (DOLIR)** indicated:

The proposal could affect any agency that administers any public assistance programs.

Space will be required for 1,271 full time employees (FTE) throughout the state.

There are over 138,000 small businesses covered under Missouri's unemployment insurance system. Because Missouri's Unemployment Insurance Compensation (UI) program is certified in conformity with Federal UI laws, most employers never actually pay the total 6.0% in Federal Unemployment Tax Act (FUTA) taxes due to the credits they receive for the payment of state unemployment taxes and for paying reduced rates under an approved experience rating plan. However, since this bill could cause Missouri's program to be out of compliance or out of conformity, Missouri employers would pay the full 6.0%, or approximately an additional \$889 million per year.

Information Technology Services Division (ITSD) estimates costs of \$299,538 in FY 2017 and \$61,405 in FY 2018 to set up and implement the computer system.

A surtax on capital gains of 10% would be imposed beginning with the 2017 tax year. DOLIR defers to the Office of Administration regarding the estimate of revenue collected from this surtax.

Summarize how this bill affects the department

This petition seeks to create a new Section 286.131, RSMo, requiring the Division of Employment Security (DES) to provide employment through a program called "Public Sector Employment" in lieu of unemployment benefits. It is unclear to the DES whether this public works program is designed to be voluntary or mandatory. If this language is interpreted to prohibit otherwise eligible individuals from filing claims for the payment of unemployment benefits, a conformity issue with federal law would be raised.

This petition also creates Section 143.012.2, RSMo, that, under certain conditions, would permit the state to seek funding for the program from various forms of public assistance. If this provision would allow the state to seek funding from the unemployment insurance trust fund for the public works program then a conformity issue with federal law would be raised.

The federal and state governments are jointly responsible for administering the UI program. State administrative grants are needed to operate the UI program and for employers to qualify for certain tax credits.

Depending upon interpretation, this bill could create several conformity issues with federal unemployment law. Non-conformity with federal law could jeopardize the certification of Missouri's UI program. If the program fails to be certified, Missouri would lose approximately \$38 million in federal funds the state receives each year to administer the UI program. Additionally, Missouri would lose the approximately \$12 million in federal funds each year the Department of Economic Development-Division of Workforce Development uses for Wagner-Peyser reemployment services.

The 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 the state UI law is approved by the Secretary of Labor. However, if this bill causes Missouri's program to be out of compliance or out of conformity, Missouri employers would pay the full 6.0% or approximately an additional \$889 million per year.

DOLIR assumes the state unemployment tax would still be collected and deposited into the UI Trust Fund because the proposal does not repeal those statutes. If the UI Trust Fund no longer pays out unemployment benefits, the lack of unemployment payouts would lead to a 0% contribution rate for employers with no revenue deposited to the UI Trust. This would effectively negate the purpose of the fund and the statutes that govern it.

Regardless of whether the program would be mandatory, DOLIR estimates it would need FTE and ongoing costs to set up and administer the program.

Using the assumptions described later in this response, the estimated cost per participant in the Public Sector Employment Program is \$18,904 ($\$3,038,908,429 \div 160,753$) in fiscal year (FY) 2019. This proposal indicates that as many eligible citizens of Missouri as possible should be served with the funds available. With an annual revenue estimate of \$617,500,000, DOLIR estimates 32,665 individuals could participate in the Public Sector Work Program each year. If revenues increase or decrease in a given year, the number of participants in the program would rise or fall proportionally.

ITSD Costs--A new system will be developed for this proposal.

Long-range implications

As the program becomes established, individuals would be deferred from public assistance to the "Public Sector Employment" program, which could result in a decrease in unemployment benefit payments by DOLIR and in public assistance payments from other agencies.

Ongoing costs associated with the program would be the same as those covered in the estimate period.

DOLIR assumes the state unemployment tax would still be collected and deposited into the UI Trust Fund because the proposal does not repeal those statutes. If the UI Trust Fund no longer pays out unemployment benefits, the lack of unemployment payouts would lead to a 0% contribution rate for employers with no revenue deposited to the UI Trust. This would effectively negate the purpose of the fund and the statutes that govern it.

Assumptions and methodology used in arriving at state fiscal impact

This petition creates a new Section 286.131, RSMo, to establish a public sector works program to be operated by the DES to provide employment in lieu of unemployment benefits to as many eligible citizens as possible. It is unclear whether this program would be voluntary or mandatory. If the program is interpreted to be a mandatory program and prohibits otherwise eligible individuals from filing claims for the payment of unemployment benefits, a conformity issue with federal law would be raised.

The federal and state governments are jointly responsible for administering the UI program. State administrative grants are needed to operate the UI program and for employers to qualify for certain tax credits. Non-conformity with federal law could jeopardize the certification of Missouri's UI program. If the program fails to be certified, Missouri would lose approximately \$38 million in federal funds the state receives each year to administer the UI program. Additionally, Missouri would lose the approximately \$12 million in federal funds each year the Department of Economic Development-Division of Workforce Development uses for Wagner-Peyser reemployment services.

If this program is designed to be voluntary, meaning individuals have a choice between accepting a public works position or claiming unemployment benefits, then no federal conformity issue is raised. However, the DES receives a federal UI administrative grant to operate Missouri's UI program. Section 303(a)(8) of the Social Security Act limits the expenditure of UI grant funds to amounts necessary for "the proper and efficient administration" of the State's UI law. The costs for developing, administering, and maintaining the "Public Sector Employment" program are not considered a necessary expense for the "proper and efficient administration" of the State's UI law; therefore, they are not allowable expenditures from the State's UI grant. As such, all funding necessary to develop, administer and maintain this program will need to come from the surtax established by the proposed statutes or from general revenue.

The DES estimates the total cost to develop, administer and maintain the Public Sector Employment program to be roughly \$3 billion per year if it were to serve the entire population of unemployed individuals which currently claim benefits. In estimating the total costs of the program, the DES made the following assumptions and estimates.

Placement and DES Administrative Costs

The DES estimates 120,000 individuals will qualify for unemployment benefits annually and could be placed in the Public Sector Employment program. Additionally, approximately 40,753 individuals may qualify if they are a part of a family that has two adult members and no child under the age of six (initiative petition indicates under the age of three, but only statistics available are under the age of six)*. The DES estimates up to 160,753 individuals may qualify for this program annually. The DES estimates the average costs, with fringe, per DES employee is about \$30.00 per hour. The DES assumes it will take a total of 15 hours staff time for each Public Sector Employment job placement/ enrollment at approximately \$30 per hour for a total cost of \$72,338,850 (160,753 x \$450). This equates to approximately 1,159 staff. Additional funds will be needed for ongoing equipment and operating supplies to support the operation of the program.

In addition, the DES assumes it will need 10% of the DES staffing costs for making placements to manage and administer the Public Sector Employment program. This equates to \$7,233,885 ($\$72,338,850 \times .10$) and approximately 70 FTE and ongoing expenses related to managing the program.

* The chart below illustrates how the approximately 40,753 additional individuals were calculated. Statistics for children under 3 were not available, so available statistics for children under the age of six were used. This is based on the total households in Missouri (2,375,611) and the unemployment rate of 5.80%. 2013 American Community Survey (S2302)

Households with 1 worker in the past 12 months	781,576
Households with children under 6 with 1 worker	78,939
Households in MO with 1 worker and no children under 6	$781,576 - 78,939 = 702,637$
Households in MO with 1 worker and no children under 6 (based on 5.80% unemployment)	$702,637 * 5.8\% = 40,753$

Wages Paid to Participants

The DES assumes the applicants placed in the job programs will be considered state employees. The DES assumes it will provide 20 weeks of work (40 hours each week) for each applicant. The DES based the average wage at a level that provides a living wage, which is defined as putting a worker and her or his family at least ten percent above the poverty level. The DES estimates that the average hourly wage, with fringe, for each participant placed in the program will be \$15.00.* If the DES were to employ all 160,753 estimated applicants, at \$15.00 per hour, for 20 weeks, the total cost of the annual wages paid to the participants would be \$1,929,036,000 (160,753 X 20 X 40 X \$15).

* The chart below provides the minimum hourly wage required for an individual to be at least ten percent above the federal government poverty level, based on family size.

Family Size	100% FPL	110% FPL	110% FPL Hourly Wage	Pay Rate (10% over FPL)	Number of Households in Missouri	Total Income Needed to Meet 110% of FPL
1	\$11,770	\$12,947	\$6.22	\$7.65	672,276	\$8,703,957,372
2	\$15,930	\$17,523	\$8.42	\$8.42	822,516	\$14,412,947,868
3	\$20,090	\$22,099	\$10.62	\$10.62	370,462	\$8,186,839,738
4	\$24,250	\$26,675	\$12.82	\$12.82	296,548	\$7,910,417,900
5	\$28,410	\$31,251	\$15.02	\$15.02	134,977	\$4,218,166,227
6	\$32,570	\$35,827	\$17.22	\$17.22	49,861	\$1,786,370,047
7	\$36,730	\$40,403	\$19.42	\$19.42	28,971	\$1,170,515,313
8	\$40,890	\$44,979	\$21.62	\$21.62		
					= 2,375,611	= \$46,389,214,465

Average wage required to meet 110% of FPL = \$19,527.28

Average hourly rate = \$9.39

Material Costs for Construction Projects

In calculating the material costs, the DES assumes labor to material costs at 3 to 1 ratio. Using this ratio, the annual material cost is estimated at \$636,581,880 (\$1,929,036,000 X .33).

Management of Construction Projects

The DES will contract the management of the construction projects to the Office of Administration, Division of Design and Construction. The DES assumes management fees will be 10% of the cost of wages and material, which equates to \$256,561,788 (\$2,565,617,880 X .10).

Skill Assessment and Training Costs

The DES will contract with the Department of Economic Development, Division of Workforce Development for the cost of administering skills test and job training to each applicant in the Public Sector Employment program. The DES estimates the skills test of each participant will require 0.5 hours of time at \$30.00 per hour for a total cost of \$2,411,295 (160,753 X \$15). In addition, the DES estimates the average training for each participant will require 20 hours of time at \$30.00 per hour for a total cost of \$96,451,800 (160,753 X \$600).

Monitoring of Participants

The DES will contract with the Department of Social Services for the cost of monitoring each participant in the Public Sector Employment program. The DES estimates the monitoring of each participant will require 8 hours of time at \$30.00 per hour for a total cost of \$38,580,720 (160,753 X \$240).

Section 143.012.2, RSMo, stipulates that under certain conditions the state shall seek funding for the public sector works program from various forms of public assistance, if approved by the federal government. If there are no public assistance funds available, the program would be supported by the capital gains surtax and general revenue.

DOLIR assumes the state unemployment tax would still be collected and deposited into the UI Trust Fund because the proposal does not repeal those statutes. If the UI Trust Fund no longer pays out unemployment benefits, the lack of unemployment payouts would lead to a 0% contribution rate for employers with no revenue deposited to the UI Trust. This would effectively negate the purpose of the UI Trust fund and the statutes that govern it.

ITSD Costs

The assumptions made are to import information from a new client public service job application form into a database. Build new web pages to display and update the client information. Create a new exchange of data with Department of Mental Health to retrieve information on substance abuse, other additions and mental health issues for clients that have a public service job. Create a new exchange of data with Department of Social Services (DSS) to gather information on clients that have a public service job that are failing to provide adequately for their dependents. Create a new exchange with DSS to send client information to have vouchers produced from the DSS programs currently in place like food stamps. Create a new exchange with Department of Revenue to receive client information for the W-4 dependent. Create a new exchange with Department of Economic Development to receive client information on aptitude test and training. Create a new exchange with a vendor to send payment information for them to produce the payment. Create a new exchange with Statewide Advantage for Missouri (SAMII). If DOLIR cannot use DSS voucher system then the cost will increase significantly for DOLIR to produce vouchers. Create a financial min system to track the financial piece along with financial reports. Scanning and imaging of the form. The system will require a new database and services from the State Data Center.

Officials from the **Department of Revenue** indicated the total increased costs would be \$164,089 for FY 2017, \$168,172 for FY 2018, and \$169,922 for FY 2019. Increased revenue is expected to be \$351,400,000 per year.

If excess funds remain after all applicants have been employed, the legislation transfers this excess to General Revenue, less the reserve sufficient to meet the next 12 month period.

This legislation may create a positive impact on state revenues.

Section 143.012, RSMo

Beginning January 1, 2017, the legislation imposes a ten percent (10%) surtax on capital gains reported on a Missouri resident taxpayer's federal tax return. Once implemented, if excess funds exist after all applicants are employed, less the reserve necessary to fund the next twelve months, the excess funds shall be transferred to General Revenue.

For tax year 2013, taxpayers reported positive capital gains of \$3.514 billion on federal tax returns filed by Missouri residents. The department anticipates collecting an estimated \$351.4 million from the 10 percent surtax to provide funding for public sector employment through the Division of Employment Security.

Administrative Impact:

Personal Tax

Personal Tax requires form and programming changes. Additionally, Personal Tax requires two (2) Revenue Processing Technicians I (Range 10, Step L) for error correction and correspondence.

Collections & Tax Assistance

This section will see additional contacts on the surtax, notice of adjustment, and billings. Collections & Tax Assistance requires two (2) Tax Collection Technicians I (Range 10, Step L) for additional contacts on the delinquent and non-delinquent tax lines. Each technician requires CARES equipment and license.

Officials from the **Department of Public Safety** indicated they see no fiscal impact due to this initiative petition.

Officials from the **Department of Social Services** indicated no fiscal impact on their department.

Officials from the **Governor's office** indicated there should be no fiscal impact to their office.

Officials from the **Missouri House of Representatives** indicated no fiscal impact to their office.

Officials from the **Department of Conservation** indicated that no adverse fiscal impact to their department would be expected as a result of this proposal.

Officials from the **Department of Transportation** indicated no impact to their department.

Officials from the **Office of Administration** indicated the proposal adds Sections 286.131 and 143.012, RSMo, to create a Public Sector Employment program, administered by the Division of Employment Security. The program is to provide employment to eligible citizens in lieu of unemployment benefits. This initiative also enacts a 10 percent capital gains surtax to provide funding for the public sector employment through the Division of Employment Security. Using Tax Year 2012 data, capital gains for Missouri taxpayers totaled \$617.5 billion; therefore, the office estimates that 10 percent surtax would increase total state revenue by up to \$617.5 million with the revenue directed to the program. If it is determined there are excess funds from the surtax, those excess funds shall be transferred to the general fund.

Officials from the **Office of State Courts Administrator** indicated there is no fiscal impact on the courts.

Officials from the **Missouri Senate** indicated no fiscal impact on their office.

Officials from the **Secretary of State's office** indicated their office is required to pay for publishing in local newspapers the full text of each statewide ballot measure as directed by Article XII, Section 2(b) of the Missouri Constitution and Section 116.230-116.290, RSMo. Their office is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. Funding for this item is adjusted each year depending upon the election cycle with \$1.3 million historically appropriated in odd numbered fiscal years and \$100,000 appropriated in even numbered fiscal years to meet these requirements. Through FY (fiscal year) 2013, the appropriation had historically been an estimated appropriation because the final cost is dependent upon the number of ballot measures approved by the General Assembly and the initiative petitions certified for the ballot. In FY 2013, at the August and November elections, there were 5 statewide Constitutional Amendments or ballot propositions that cost \$2.17 million to publish (an average of \$434,000 per issue). In FY 2015, the General Assembly changed the appropriation so that it was no longer an estimated appropriation and their office was appropriated \$1.19 million to publish the full text of the measures. Due to this reduced funding, their office reduced the scope of the publication of these measures. In FY 2015, at the August and November elections, there were 9 statewide Constitutional Amendments or ballot propositions that cost \$1.1 million to publish (an average of \$122,000 per issue). Despite the FY 2015 reduction, their office will continue to assume, for the purposes of this fiscal note, that it should have the full appropriation authority it needs to meet the publishing requirements. Because these requirements are mandatory, they reserve the right to request funding to meet the cost of their publishing requirements if the Governor and the General Assembly again change the amount or continue to not designate it as an estimated appropriation.

Officials from the **Office of the State Public Defender** indicated this initiative petition will not have any substantial direct impact on their office.

Officials from the **State Treasurer's office** indicated this proposal would have no fiscal impact on their office.

Officials from **Greene County** indicated there are no estimated costs or savings to report from their county for this initiative petition.

Officials from the **City of Kansas City** indicated no fiscal impact is anticipated if this proposal is adopted.

Officials from **University of Missouri** indicated this petition will have an undetermined fiscal impact on their university to the extent the general fund is impacted.

The State Auditor's office did not receive a response from the **Department of Agriculture, the Department of Elementary and Secondary Education, Adair County, Boone County, Callaway County, Cass County, Clay County, Cole County, Jackson County Legislators, Jasper County, St. Charles County, St. Louis County, Taney County, the City of Cape Girardeau, the City of Columbia, the City of Jefferson, the City of Joplin, the City of Kirksville, the City of Mexico, the City of Raymore, the City of St. Joseph, the City of St. Louis, the City of Springfield, the City of Union, the City of Wentzville, the City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, State Technical College of Missouri, Metropolitan Community College, and St. Louis Community College.**

Fiscal Note Summary

State governmental entities estimate annual revenue increases of \$351 million to \$617 million to fund the proposed program. State government may lose \$50 million in federal funding annually and businesses in the state may have increased federal unemployment tax costs of \$889 million annually. Local governments report no expected fiscal impact.