

**MISSOURI STATE AUDITOR'S OFFICE
FISCAL NOTE (14-HJR 11 & 7)**

Subject

Truly Agreed To and Finally Passed House Joint Resolution Nos. 11 & 7. (Received May 22, 2013)

Date

June 10, 2013

Description

This proposal would amend Article I of the Constitution of Missouri.

The amendment is to be voted on in November, 2014.

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 Natural Resources**, the **Department of Revenue**, the **Department of Conservation**, the **Office of Administration**, and the **Secretary of State's office**.

Wes Shoemyer provided information as an opponent to the joint resolution to the State Auditor's office.

Assumptions

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

Officials from the **Department of Agriculture** indicated they do not anticipate any direct 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 Revenue** indicated this resolution will have no impact on their department.

Officials from the **Department of Conservation** indicated that the fiscal impact this proposal would have on their department is unknown, with it being likely less than \$100,000 negative fiscal impact. The officials said the department is unable to determine any fiscal impact related to federal funding.

Officials from the **Office of Administration** indicated this proposal will have no fiscal impact on their office.

Officials from the **Secretary of State's office** indicated:

Unless a special election is called for the purpose, Joint Resolutions proposing a constitutional amendment are submitted to a vote of the people at the next general election. Article XII section 2(b) of the Missouri Constitution authorizes the governor to order a special election for constitutional amendments referred to the people. If a special election is called to submit a Joint Resolution to a vote of the people, section 115.063.2 RSMo requires the state to pay the costs. The cost of the special election has been estimated to be \$7.1 million based on the cost of the 2012 Presidential Preference Primary. This figure was determined through analyzing and totaling expense reports from the 2012 Presidential Preference Primary received from local election authorities.

The Secretary of State's 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. The Secretary of State's 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. The appropriation has 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). Therefore, the Secretary of State's office assumes, for the purposes of this fiscal note, that it should have the full appropriation authority it needs to meet the publishing requirements. However, because these requirements are mandatory, we reserve the right to request funding to meet the cost of our publishing requirements if the Governor and the General Assembly change the amount or eliminate the estimated nature of our appropriation.

Wes Shoemyer provided the following information as an opponent to the joint resolution to the State Auditor's office.

Proposed Statement of Fiscal Impact
for HJR Nos. 11 & 7

On May 22, HJR Nos. 11 & 7 was received by both the Secretary of State and the State Auditor. The joint resolution would amend article I of the Constitution of Missouri by creating a new section that forever guarantees the right of farmers and ranchers in the state to engage in farming and ranching practices. Specifically, the joint resolution would add new section 35 to read as follows:

That agriculture which provides food, energy, health benefits, and security is the foundation and stabilizing force of Missouri's economy. To protect this vital sector of Missouri's economy, the right of farmers and ranchers to engage in farming and ranching practices shall be forever guaranteed in this state, subject to duly authorized powers, if any, conferred by article VI of the Constitution of Missouri.

Fiscal Impact Summary

While the fiscal impact of the proposed amendment cannot be determined precisely there is a strong likelihood of significant, negative long-term fiscal impacts including:

- Unknown, but potentially significant, costs for the courts, the Attorney General, and district attorneys due to litigation resulting from alleged violations of this constitutional amendment or declaratory actions intended to clarify the scope of the rights guaranteed by the amendment; and
- The potential loss of millions of dollars of federal funds currently given to state agencies in connection with implementation of federal laws.

Information Submitted Pursuant to Section 23.140.2

The cost of the proposed amendment to the state for the next two fiscal years could be substantial due to increased litigation and loss of federal funding to some state agencies. Indeed, such negative fiscal impacts have the potential to have long-range implications beyond a two-year period.

Potential Increase in Costs Associated with Litigation

The constitutional amendment proposed by HJR Nos. 11 & 7 will likely open the door to costly legal challenges claiming that government actions concerning any subject matter that even tangentially impacts "farming and ranching practices" violate the state constitution. Examples include:

- Whether a state law or regulation that imposes requirements on farms or ranches for the protection of the environment (e.g. requirements relating to animal waste

management, nutrient management, and air pollution) unlawfully infringes upon the right of farmers and ranchers to “engage in farming and ranching practices”;

- Whether a state law or regulation relating to odor emissions from farms and ranches unlawfully infringes upon the right of farmers and ranchers to “engage in farming and ranching practices”;
- Whether a state law or regulation that requires construction and operating permits for farms or ranches (including requirements relating to buffer distances and neighbor notification) unlawfully infringes upon the right of farmers and ranchers to “engage in farming and ranching practices”;
- Whether a state law or regulation relating to food safety requirements (e.g. requirements relating to the sale of eggs or prohibitions relating to adulteration of food products) unlawfully infringes upon the right of farmers and ranchers to “engage in farming and ranching practices”;
- Whether a state law prohibiting cruelty to animals unlawfully infringes upon the right of farmers and ranchers to “engage in farming and ranching practices”; and
- Whether a state labor law or labor regulation that applies to farming and ranching businesses unlawfully infringes upon the right of farmers and ranchers to “engage in farming and ranching practices.”
- Whether state statutory and regulatory framework regulating the treatment of dogs at puppy mills/large-scale dog breeding operations (e.g. Missouri’s Canine Cruelty Prevention Act) unlawfully infringes upon the right of farmers and ranchers to “engage in farming and ranching practices.”

Under these circumstances, the state would incur significant additional costs to process and hear these cases. The Attorney General and local district attorneys may also incur costs as those offices review and respond to allegations of violations of the amendment and actions for declaratory judgment. The magnitude of these various costs is unknown but would likely be significant given the sweeping and vague nature of the constitutional amendment, depending on the number of cases filed and how they are adjudicated by the courts.

Loss of Federal Funding to State Agencies

The proposed amendment could also result in the loss of millions of dollars of federal funding to state agencies charged with implementing federal law within the state. For example, the Missouri Department of Natural Resources (“DNR”), through agreement with the federal Environmental Protection Agency (“EPA”), is charged with carrying out the requirements of federal environmental laws such as the Clean Water Act and the Clean Air Act. According to the DNR's FY 2014 Budget Request Governor's Recommendations, \$25.6 million of federal funds are needed to perform Water Protection Operations and Water Quality Studies Private Sector Development in Missouri. The federal Clean Water Act and federal Safe Drinking Water Act are the primary authorities listed for these activities. An additional \$5.8 million was requested to fund the Missouri Department of Environmental Quality's Environmental Services Operations for FY 2014. The Environmental Services Program takes joint authorization from the Federal Clean Air Act, the Federal Clean Water Act, and the Federal Safe Drinking Water Act.

If state enforcement of environmental laws were found to infringe on the constitutionally-protected right of farmers and ranchers to “engage in farming and ranching practices,” the

DNR would no longer be able to implement these programs and the EPA would have to take over, resulting in a loss of millions in federal funding.

Other factors

The proposed amendment would neither establish a new program or agency nor duplicate an existing program or agency. However, as discussed above, the proposed amendment has the potential to substantially affect state agencies such as the Department of Natural Resources via removal of millions of dollars of federal funding given each year for the purpose of executing federal environmental law mandates.

The proposed amendment is not a federal mandate.

No new program or agency is being created; therefore, there is no new program or agency that will have a direct fiscal impact on any political subdivision of the state.

No new physical facilities will be required by the proposed amendment.

The proposed amendment has the potential to have a significant negative impact on small businesses in Missouri. For example, there are numerous consulting firms throughout Missouri that assist businesses, including farms and ranches, with statutory and regulatory compliance relating to state environmental, labor, and safety laws. If these laws are found to infringe on a constitutionally-protected right to engage in farming and ranching practices, these small firms could potentially lose a significant portion of their business.

Fiscal Note Summary

The potential costs or savings to governmental entities are unknown, but likely limited unless the resolution leads to increased litigation costs and/or the loss of federal funding.