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MISSOURI
ATTORNEY GENERAL

OFFICE OF MISSOURI STATE AUDITOR

October 3, 2019

The Honorable Eric Schmitt
Attorney General
Supreme Court Building
Jefferson City, MO 65101

Dear Attorney General Schmitt:

Our office received initiative petition 20-122 on September 13, 2019. Pursuant to §116.175, RSMo, we are forwarding the following fiscal note summary for your review and approval as to legal content and form:

Costs to the state are unknown but may be up to \$2.45 billion annually. School districts may have a positive fiscal impact.

A copy of the fiscal note for the initiative petition is also attached. Thank you for your immediate attention to this matter. Your office should return the approved fiscal note summary to our office within 10 days, pursuant to §116.175.4, RSMo. If you have any questions or comments, please contact me at (573) 751-4213.

Sincerely,

A handwritten signature in black ink that reads "Susan Beeler".

Susan J. Beeler, CPA, CIA, CGAP
Assistant Director of Audits

Enclosures

**MISSOURI STATE AUDITOR'S OFFICE
FISCAL NOTE (20-122)**

Subject

Initiative petition from DeeAnn Aull regarding a proposed constitutional amendment to Article IX. (Received September 13, 2019)

Date

October 3, 2019

Description

This proposal would amend Article IX of the Missouri Constitution.

The amendment is to be voted on in November 2020.

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 and Workforce Development, the Department of Health and Senior Services, the Department of Commerce and Insurance, 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, 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, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri, Metropolitan Community College, University of Missouri, and St. Louis Community College.

Michael Podgursky, PhD provided information as an opponent of the proposal to the State Auditor's office.

Assumptions

Officials from the **Attorney General's office** indicated this provision seeks to create a private cause of action against the Missouri General Assembly with respect to enforcement of the provision's terms. To the extent a successful plaintiff may be entitled to costs, including attorneys' fees, incurred in maintaining their suit, there is the possibility of additional liability upon the State Legal Expense Fund ("LEF"). Similarly, if the Attorney General's Office is required to defend the General Assembly in such lawsuits, such representation could likely be accomplished with existing resources, though some amount of additional personnel services funding may be required to provide representation in these lawsuits. Neither the potential LEF exposure nor the additional amounts potentially required for personnel services can be estimated at this time.

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

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

Officials from the **Department of Elementary and Secondary Education** indicated:

Section A. Article IX. Section 1(c)

Using FY 2019 K-12 enrollment of 880,025, adding two more grade level cohorts could result in an additional 135,388 students to be included in the Foundation Formula. Using an average attendance percentage of 94% this would result in an Average Daily Attendance (ADA) of 127,265 if all children ages 3 to 5 were enrolled in a full-time pre-kindergarten program. This 127,265 less the 6,872 pre-kindergarten ADA used in the FY 2021 budget projections results in 120,393 additional ADA to be included in the Foundation Formula payment. This could result in up to \$767,505,375 additional dollars to be required to be paid out through the Foundation Formula.

(120,393 multiplied by the State Adequacy Target (SAT) of \$6,375)

This is an estimate for an increase in the formula cost that would continue annually and have the potential to further increase in future years depending on various components of the foundation formula.

Officials the **Department of Higher Education and Workforce Development** indicated they report no cost for this initiative petition.

Officials from the **Department of Health and Senior Services** indicated this initiative petition has no impact on their department.

Officials from the **Department of Commerce and Insurance** 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** indicated they assume no fiscal impact for this initiative petition.

Officials from the **Department of Revenue** indicated this initiative petition, as it is currently set forth, would have no impact on their department.

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

Officials from the **Department of Social Services** indicated they do not anticipate a fiscal impact due to this initiative petition.

Officials from the **Governor's office** indicated there should be no added costs or savings to their office.

Officials from the **Missouri House of Representatives** indicated an unknown fiscal impact could be realized if the general assembly were sued and ultimately found liable for any damages and/or fees.

Officials from the **Department of Conservation** indicated there is no anticipated fiscal impact (cost or savings) to their department associated with this initiative petition.

Officials from the **Department of Transportation** indicated this initiative petition would have no fiscal impact to their department/Missouri Highways and Transportation Commission.

Officials from the **Office of Administration** indicated this proposal amends Article IX of the Constitution of Missouri by amending Sections 1(a) and 3(b) and adopting two new sections.

Proposed language in Section 1(a) requires the General Assembly to ensure the equality of educational opportunity for all persons in the State of Missouri through a uniformly regulated, thorough, appropriate, and adequate system of free public schools and to adequately and equitably fund free public schools.

Proposed language in Section 1(c) requires that voluntary early childhood education programs established by a public school board for children ages three to five years old be funded as part of free public schools. Currently, Section 163.018, RSMo, allows districts

to include three to five year olds in their Average Daily Attendance (ADA) up to a specified cap-- four percent of the total number of pupils who are eligible for Free and Reduced Price Lunch between the ages of five and eighteen. Budget and Planning (B&P) defers to the Department of Elementary and Secondary Education for the impact of this provision.

Proposed language in Section 3(b) states that new or increased taxes or fees enacted by the General Assembly for the purpose of funding free public schools are not subject to the provisions of Article X of the Missouri Constitution. B&P notes that Article X, Section 18(a-d) of the Missouri Constitution establishes a revenue and spending limit on state government. The limit is 5.6 percent of Missouri personal income, based on the relationship between personal income and total state revenues when the limit was established and approved by voters in November 1980. Calculations made pursuant to Article X of the Missouri Constitution show that total state revenues for Fiscal Year 2017 were below the total state revenue limit by over \$4.1 billion. In addition, Article X, Section 18(e) of the Missouri Constitution states the General Assembly shall not increase taxes or fees in any fiscal year, without voter approval, that in total produce net new annual revenues greater than \$50 million, adjusted annually by the percentage change in the personal income of Missouri for the second previous year, or one percent of total state revenues for the second fiscal year prior to the General Assembly's action, whichever is less. For Fiscal Year 2019, these calculations are \$128.1 million for the personal income amount and \$105.0 million for the one percent of total state revenues amount.

Proposed language in Section 11 prohibits any appropriation be made, funds expended, or tax credits or other tax expenditures enacted after January 1, 2020 for the benefit of private schools.

This proposal should not impact their office.

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

Officials from the **Missouri Senate** indicated they anticipate no fiscal impact.

Officials from the **Secretary of State's office** indicated unless a special election is called for the purpose, Referendums are submitted to the people at the next general election. Article III section 52(b) of the Missouri Constitution authorizes the general assembly to order a special election for measures referred to the people. If a special election is called to submit a Referendum 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 \$7.8 million based on the cost of the 2016 Presidential Preference Primary.

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. Funding for this item is adjusted each year depending upon the election cycle. A new decision item is requested in odd numbered fiscal years and the amount requested is dependent upon the estimated number of ballot

measures that will be approved by the General Assembly and the initiative petitions certified for the ballot. In (fiscal year) FY 2014, the General Assembly changed the appropriation so that it was no longer an estimated appropriation.

In FY19, over \$5.8 million was spent to publish the full text of the measures for the August and November elections. They estimate \$65,000 per page for the costs of publications based on the actual cost incurred for the one referendum that was on the August 2018 ballot.

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 significant impact on their office.

Officials from the **State Treasurer's office** indicated no fiscal impact to 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 **St. Louis County** indicated they do not see a fiscal impact upon their county in the event this is ultimately adopted.

Officials from the **City of Kansas City** indicated this proposed amendment will have no fiscal impact on their city.

Officials from **Wellsville-Middletown R-1 School District** indicated if this petition were to be voted on and passed, it would appear to have a positive fiscal impact on their school's finances. However, it appears to be setting the stage for some sort of general tax increase to raise the needed revenues. They are also concerned that this may lead to a strong push to consolidate small schools that would be very detrimental to the wellbeing of many of the small rural communities, as well as putting kids on buses for a longer period of time than they already are.

Of course, with any state law the devil is always in the details. If any of these initiatives (Initiative Petitions 20-117 through 20-122) pass the potential positive fiscal impact they would hope for is a stabilization of education funding that would guarantee that all schools receive equitable levels of resources. Some of these petitions call for fully funding pre-school programs. This would be a big boost to their bottom line. Some of these petitions call for a ban on the use of any public monies for any private schools. This will help protect the level of funding for public schools.

Their biggest concern with these petitions is that in order to reduce costs, an effort will be made to consolidate/eliminate small school districts, which will be (in their opinion) very detrimental to their small rural communities.

Officials from **Metropolitan Community College** indicated no fiscal impact.

Michael Podgursky, PhD provided the following information as an opponent of this initiative petition.

Missouri State Auditor Nicole Galloway, CPA
PO Box 869
Jefferson City, MO 65102
And via email to: moaudit.mo.gov; barb.wood@auditor.mo.gov;
paul.harper@auditor.mo.gov

RE: Fiscal Analysis for Initiative Petitions 117,118,119, 120, 121 and 122

Dear Auditor Galloway,

I am an opponent of the above initiative petitions and submit the following fiscal analysis pursuant to section 116.175 RSMo.

Fiscal Note

MNEA Petitions 117-122

Prepared by Michael Podgursky, PhD¹

Petitions 117-122 amend the Missouri State Constitution in a variety of ways. In this fiscal note I focus on the two changes that have the most direct, and largest, potential fiscal consequences.

1. Adequacy

In all versions of the petitions, Section 1(a) of the Constitution is amended to change the duty of the state to provide “free” public schools, to provide “equality of educational opportunity for all persons in this state through the establishment and maintenance of uniformly regulated, thorough, appropriate, and adequate system of free public schools... The general assembly shall have an affirmative duty to adequately and equitably fund the free public schools established by this article.”

On the face of it, addition of “thorough, appropriate, and adequate” do not have direct fiscal consequences. However, addition of these terms to the Constitution would very likely overturn the recent school finance court case (CEE vs MO, 2009), wherein the Missouri Supreme Court found that the current school funding formula had a rational basis in law, and, in particular, that there was no duty on the part of the legislature to provide an “adequate” level of spending beyond the 25 percent of revenue requirement:

Notably, the introductory clause in section 1(a) concerning the "diffusion of knowledge" outlines the purpose and subject of Missouri's public education system. But, it provides no specific

¹ Chancellor’s Professor of Economics, University of Missouri – Columbia and Director, Squirefield Center for Applied Economic Research, Saint Louis University.

directive or standard for how the State must accomplish a "diffusion of knowledge." Plaintiffs are attempting to read a separate funding requirement into section 1(a) that would require the legislature to provide "adequate" education funding in excess of the 25-percent requirement contained in section 3(b). Such language does not exist.

<https://www.courtlistener.com/opinion/1789805/committee-for-educational-equality-v-state/>

In CEE vs MO, the plaintiffs commissioned reports and provided testimony from a variety of experts who opined regarding the shortcomings of Missouri school spending and what an "adequate" education would cost in Missouri. Two witnesses in particular provided evidence of overall costs using two different methods (professional judgement panels and cost functions) to provide quantitative dollar value gaps between current expenditures and "adequate" expenditures.

Since it is the clear intent of the petitioners to open the door to future "adequacy" lawsuits and overturn CEE vs MO, a reasonable estimate of the fiscal cost of such a Constitutional change would be to update these adequacy estimates (i.e., expenditure shortfalls) from the 2008 trial. This is based on the assumption, implied in the quote above, that had this language been in the Constitution in 2008, the plaintiffs would have won, and the adequacy estimates provided by their experts would have formed the basis for a remedy. Indeed, this is what has occurred in numerous other school finance lawsuits in states where plaintiffs have won.

Based on "professional judgement" panels in Missouri, and evidence from other states, Dr. Kern Alexander stated in his trial testimony (p. 7525, and elsewhere) that Missouri was roughly one billion dollars short of adequate spending in academic year 2005-06.² Thus, in one set of estimates I update Alexander's estimate to 2019.

A second adequacy estimate was provided by Dr. Bruce Baker. Baker estimated "education cost functions" and used them to compute a measure of adequate expenditures district by district.³ I took the excel file he submitted with his report and totaled the expenditure shortfall for all districts he determined to have had inadequate spending in 2004-05. This totaled \$466,370,600.

I then updated both of these estimates to Fall 2019 values in the following ways.

- Enrollment adjustment. Total Missouri public school enrollment has fallen slightly since 2004-05 when these estimates were made. I assume that this would lower both cost estimates by a factor of .993

² Testimony of Dr. Kern Alexander. CEE vs MO. Testimony. Feb 21, 2007. Vol. 30, p 7525.

³ Bruce D. Baker. 2006. Missouri's School Finance Formula Fails to Guarantee Equal or Minimally Adequate Educational Opportunity to Missouri Schoolchildren. Report Prepared on Behalf of Committee for Educational Equality.

- CPI Inflation adjustment. In one set of estimates I simply updated these figures (after enrollment adjustment) to Fall, 2019 values using inflation estimates based on the BLS Consumer Price Index. This resulted in an adjustment factor of 1.35 for Baker and 1.29 for Alexander.
- Relative spending adjustment. It may be that the relevant inflation adjustment is not household consumer prices, but Missouri school operating expenditures (e.g. reflecting educator salaries and benefits and other school input costs). In this case, I computed the Alexander and Baker estimates of the shortfall of current expenditures in 2005 and 2006 (13.2 and 6.6 percent respectively) and applied them to estimated Fall, 2019 current operating expenditures along with the enrollment adjustment noted above.

The results of these exercises produced a minimum estimate (Baker) of \$625,779,201 and a maximum estimate (Alexander) of \$1,289,645,735.

2. Free Early Childhood Education

Three versions of the petitions (118, 120, 122) include the following amendment to the state Constitution:

Section 1 (c) Any voluntary early childhood education program established by a publically funded elected school board for persons between the ages of three and five years shall be funded as part of the free public schools established by this article.

If this sentence, combined with the amended language regarding adequacy in 1(a), is interpreted as creating a right to free public preschool education in Missouri, this would produce a substantial increase in public K-12 expenditures. I have estimated these costs in the following manner. Using data from the 2017 American Community Survey I estimate that there are 204,182 children aged 3-5 eligible for this program.⁴ I make two assumptions regarding the take-up rate: 60 percent and 90 percent.⁵

Regarding cost per student, I use the current state adequacy rate (\$6,316). This gives a range of cost estimates from a low (60 percent take-up) of \$773,766,970 to a high (90 percent take up) of \$1,160,650,455.

3. Cost Summary

⁴ 2017 is the most recent available ACS data. This estimate only includes five year olds who would not be eligible for public kindergarten.

⁵ The currently 54 percent of 3 and 4 year olds participate in either public or private preschool. Since most of this is currently paid for by parents it is reasonable to assume that many of these parents would choose a free public option and many more, not currently participating, would do so as well.

https://nces.ed.gov/programs/digest/d18/tables/dt18_202.10.asp?current=yes

Table 1 provides fiscal estimates of the lower and upper bound of costs for each version of the petition based on whether it included just adequacy (A) or adequacy and preschool (A+P).

Sincerely,

/s/ Michael Podgursky

Michael Podgursky, PhD

Table 1: Summary Cost Calculations

Petition		Low	High
117	A	\$625,779,201	\$1,289,645,735
118	A+P	\$1,399,546,172	\$2,450,296,190
119	A	\$625,779,201	\$1,289,645,735
120	A+P	\$1,399,546,172	\$2,450,296,190
121	A	\$625,779,201	\$1,289,645,735
122	A+P	\$1,399,546,172	\$2,450,296,190

A = Adequacy only, A+P = Adequacy + Pre-school

The State Auditor's office did not receive a response from **Adair County, Boone County, Callaway County, Cass County, Clay County, Cole County, Jackson County, Jasper County, St. Charles 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, Malta Bend R-V School District, Mehlville School District, State Technical College of Missouri, University of Missouri, and St. Louis Community College.**

Fiscal Note Summary

Costs to the state are unknown but may be up to \$2.45 billion annually. School districts may have a positive fiscal impact.