

**COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION**

FISCAL NOTE

L.R. No.: 0450-09
Bill No.: Truly Agreed to and Finally Passed HCS for SCS for SB 69
Subject: Administrative Rules; Boards, Commissions, Committees, Councils; Business and Commerce; Corporations; Courts.
Type: Original
Date: June 11, 2003

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
General Revenue *	(\$22,413 to Unknown)	(\$22,413 to Unknown)	(Unknown)
Total Estimated Net Effect on General Revenue Fund *	(\$22,413 to UNKNOWN)	(\$22,413 to UNKNOWN)	(UNKNOWN)

* Could exceed \$100,000 per year.

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
Various *	(Unknown)	(\$63,968 to Unknown)	(\$57,132 to Unknown)
Total Estimated Net Effect on Other State Funds *	(UNKNOWN)	(\$63,968 to UNKNOWN)	(\$57,132 to UNKNOWN)

* Could exceed \$100,000 per year.

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 11 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
None			
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Missouri Senate** on behalf of the **Joint Committee on Administrative Rules** state this proposal establishes the Small Business Regulatory Fairness Board comprised of 10 members, which is to meet at least quarterly. The staff of the Joint Committee on Administrative Rules is to provide support for the board.

Assuming that the expenses for the meeting of the board are to be paid from the Joint Committee on Administrative Rules' appropriation, the expenses are expected to range from \$0 to \$10,000 per year for travel and miscellaneous. The assumption is being made that no additional staff will be required to support the activities of the board. Based on the aforementioned criteria, anticipated expenses can be absorbed by current appropriations.

Officials from the **Department of Economic Development - Division of Professional Registration (DPR)** did not respond to our request for fiscal impact. However, in response to a previous version of this proposal, DPR stated they currently process and prepare hundreds of rules annually (including rule fiscal notes) for all 37 boards and the division. It was assumed that the preparation of this additional information (small business impact statement) will require a significant additional amount of time for research and preparation. DPR assumed the need for an

additional Budget Analyst II (at \$37,488) to assist DPR's Director of Budget and Legislation

ASSUMPTION (continued)

with the research and preparation that will be required to prepare a small business impact statement. DPR stated the expenses resulting from this proposal (estimated to be roughly \$60,000 per year starting in FY 2005) will be billed back to the various board funds in accordance with the Division's Cost Allocation Plan.

Officials from the **Department of Social Services - Division of Medical Services (DMS)** state under this proposal, they may have to hold a public hearing on every proposed rule. DMS state they currently use Missouri Regulations as a notice for public hearings, which is held within 30 days. If Missouri Regulations are no longer used as the notice, DMS would have to use the newspaper for such notices. This would cost DMS several thousand dollars per hearing.

DMS also states the provision of the proposal regarding retroactive review of current existing rules would create additional expense for their agency. In all, DMS assumes this proposal would have a fiscal impact on their agency of an unknown amount, greater than \$100,000 for advertising costs, holding additional hearings and staff costs for retroactive review.

In response to a previous version of this proposal, officials from the **Office of Administration - Design and Construction (COA - DC)** stated the reporting and record keeping required by this proposal would require the addition of 2 FTE's. One Contract Specialist I (at \$29,592 annually) and one Clerk I (at \$16,452 annually). COA - DC estimated a cost of roughly \$68,000 per year.

Oversight assumes the COA - DC would not need additional FTE as a result of this proposal.

Officials from the **Office of Secretary of State (SOS)** assume there would be costs due to additional publishing duties related to the Small Business Regulatory Fairness Board's authority to promulgate rules, regulations, and forms. SOS estimates the division could require approximately 56 new pages of regulations in the Code of State Regulations at a cost of \$27.00 per page, and 84 new pages in the Missouri Register at a cost of \$23.00 per page. Costs due to this proposal are estimated to be \$3,444, however, the actual fiscal impact would be dependent upon the actual rule-making authority and may be more or less. Financial impact in subsequent fiscal years would depend entirely on the number, length, and frequency of the rules filed, amended, rescinded, or withdrawn. SOS does not anticipate the need for additional staff as a result of this proposal; however, the enactment of more than one similar proposal may, in the aggregate, necessitate additional staff.

Oversight assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation

ASSUMPTION (continued)

process. Any decisions to raise fees to defray costs would likely be made in subsequent fiscal years.

Based on SOS' response to a similar proposal (SB 873) from 2000, SOS stated the proposal also requires agencies to file proposed rules and a small business impact statement with the small business regulatory review board. The impact statement is not currently filed with proposals of rule-making submitted to the Secretary of State. If the impact statements must be published then the Secretary would publish 1,405 additional pages in the *Missouri Register* each year, assuming 1,125 proposed rules with 1.25 page impact statements, at a cost of \$31,635 per year. It is assumed that the impact statements would not have to be published.

The proposal requires agency rules be reviewed. Rules could be amended or rescinded. If seven percent (7%) of rules would be changed during initial reviews, 350 *Code* pages would be published. Approximately 175 *Register* pages would be published. Costs for publication in future years would depend upon the number of rules changed due to reviews. Costs for the first two fiscal years are estimated at \$22,413.

Officials from the **Department of Conservation (MDC)** state this proposal could have fiscal impact on MDC funds because of the potential effect of MDC regulations on small business such as commercial fishermen, wildlife breeders, licensed shooting areas and permit vendors. The amount of fiscal impact is unknown.

Officials from the **Office of the Attorney General (AGO)** state this proposal would require additional steps in the rule-making process, requiring additional staff time in counseling agencies and commissions.

AGO assumes these costs could be absorbed with existing resources. AGO also states that additional steps in the rule-making process will also provide specific additional bases for litigation on the validity of rules. Additional litigation would require additional staffing. Because the volume of additional litigation is unknown, AGO assumes the cost of this portion of the proposal is significant but unknown. In addition, the proposal creates an adversarial hearing process before the newly created board. Agencies may desire legal representation at these hearings, resulting in additional unknown costs.

Officials from the **Department of Labor and Industrial Relations (DOLIR)** state the cost of the legislation will depend on how many petitions are filed by small business owners and how many hearings DOLIR will have to attend. DOLIR assumes the cost to be unknown, but under \$100,000 in any given fiscal year.

ASSUMPTION (continued)

Officials from the **Missouri Public Service Commission (PSC)** state they currently provide a small business economic impact statement in accordance with Executive Order 96-18. However, the proposed bill not only would require this agency to state whether the rule will affect small business, but if small business is affected it must also give the availability and practicability of less restrictive alternatives. This would, in effect, require the drafting of several rule proposals. These multiple proposals would entail additional time and expense for the various departments as well as for senior supervisory personnel who must review the rules.

The proposal may also cost the PSC the additional time and expense of defending current rules before the Board. This defense would likely involve the efforts of higher-salaried personnel, such as engineers, accountants, financial analysts and legal staff in addition to senior supervisory personnel. The level of cost could vary widely dependant upon the content of each new rule and the number of current rules that are subject to complaint. Because of a number of unknown variables, the increased costs of proposing alternatives to new rules and reviewing and defending current rules cannot be determined at this time, but it is clear that there will be additional costs incurred due to this proposed legislation.

Officials from the **Department of Transportation (MoDOT)** state this legislation could require significant time to fulfill the legislation's requirements that would result in monetary costs to their agency. MoDOT assumes that this legislation could have a potentially significant fiscal impact due to several variables, such as the number of rules issued that may affect small businesses; the amount of staff time devoted to holding and recording public hearings, preparing fiscal impacts analyses, and presenting those to a "Small Business Regulatory Fairness Board." MoDOT states that it is difficult to estimate the fiscal impact of this legislation.

Officials from the **Office of the State Treasurer** defer to the Office of the Secretary of State for the fiscal impact estimate of this proposal.

Officials from the **Department of Natural Resources (DNR)** state that due to uncertainties with the number of instances in which a state rule may be appealed by a small business, DNR was unable to determine the fiscal impact of this legislation.

Officials from the **Department of Higher Education (DHE)** state the fiscal impact of this legislation is unknown. DHE assumes that it is possible that additional resources would be necessary for their agency to comply with the provisions of the bill.

Officials from the **Department of Revenue (DOR)** state that in order to conduct the additional hearings and filing of reports for potentially each rule or regulation filed, the Division of

ASSUMPTION (continued)

Taxation will need one Management Analyst Specialist (at \$37,488 annually). DOR assumes a total cost for this FTE to be roughly \$62,000 per year.

Oversight assumes DOR may or may not need an additional FTE, depending upon the number of hearings and filings of reports that are required regarding their rules. Therefore, Oversight will include DOR's potential for an additional FTE in the encompassing "(Unknown)" cost to the General Revenue Fund as well as other state funds for implementing this proposal.

Officials from the **Department of Public Safety - Director's Office** state this proposal will create a new panel that all rules and regulations have to be approved by. It will delay the implementation of rules and regulations.

Officials from the **Department of Insurance** assumes that existing staff and resources can handle the additional workload created by this single proposal.

Officials from the **State Tax Commission, Lt. Governor's Office, Missouri Gaming Commission, Office of the State Courts Administrator, House of Representatives, Department of Health and Senior Services, State Auditor's Office, University of Missouri, Department of Elementary and Secondary Education, Office of Administration - Deputy Commissioner's Office, Budget and Planning, Facilities Management and the Division of Purchasing and Materials Management, Department of Mental Health, Department of Public Safety - Divisions of Missouri Highway Patrol, Missouri Veterans' Commission, Fire Safety, Highway Safety and the State Emergency Management Agency** each assume this proposal would not fiscally impact their respective agencies.

In response to a previous version of this proposal, officials from the **Office of the Governor, Southwest Missouri State University, Truman State University, Department of Higher Education, Missouri Lottery Commission, Department of Agriculture, Department of Social Services - Divisions of Child Support Enforcement** each assumed this proposal would not fiscally impact their respective agencies.

Officials from the **Department of Economic Development, Department of Corrections and Southeast Missouri State University** did not respond to our request for fiscal impact.

Oversight has listed an unknown cost to “various state agencies” for costs associated with holding public hearings on proposed rules and rule changes, review of the agency’s rules to determine if they may impact small business, and other administrative issues that may arise as a result of this proposal.

<u>FISCAL IMPACT - State Government</u>	FY 2004 (10 Mo.)	FY 2005	FY 2006
GENERAL REVENUE FUND			
<u>Costs</u> - various state agencies that estimated an unknown fiscal impact for administrative costs including additional hearings, review of all rules, small business impact statements, appeals, reports and judicial reviews	(Unknown)	(Unknown)	(Unknown)
<u>Costs - Secretary of State</u> Publication of Rules	<u>(\$22,413)</u>	<u>(\$22,413)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT TO THE GENERAL REVENUE FUND	<u>(\$22,413 to Unknown)</u>	<u>(\$22,413 to Unknown)</u>	<u>(Unknown)</u>

VARIOUS OTHER STATE FUNDS

<u>Costs</u> - Professional Registration			
Personal Service (1 FTE)	\$0	(\$39,386)	(\$40,370)
Fringe Benefits	\$0	(\$15,940)	(\$16,338)
Expense and Equipment	<u>\$0</u>	<u>(\$8,642)</u>	<u>(\$424)</u>
<u>Total Costs</u> - Professional Registration	<u>\$0</u>	<u>(\$63,968)</u>	<u>(\$57,132)</u>

Costs - various state agencies
 that estimated an unknown fiscal impact
 for administrative costs including
 additional hearings, review of all rules,
 small business impact statements, appeals
 reports and judicial reviews

(Unknown)

(Unknown)

(Unknown)

**ESTIMATED NET EFFECT TO
 VARIOUS OTHER STATE FUNDS**

(UNKNOWN)

**(\$63,968 TO
 UNKNOWN)**

**(\$57,132 TO
 UNKNOWN)**

FISCAL IMPACT - Local Government

FY 2004
 (10 Mo.)

FY 2005

FY 2006

\$0

\$0

\$0

FISCAL IMPACT - Small Business

Small businesses would benefit from reductions in administrative rules governing their operations, less administrative sanctions, and more flexible enforcement of existing rules.

DESCRIPTION

This proposal requires state agencies which are proposing rules to consider alternative compliance methods for small businesses and to prepare a small business impact statement. The provisions of this proposal shall not apply to rules that do not require an agency to interpret or describe the requirements of a statute. An agency, upon request by the Board, shall conduct a hearing on a proposed rule. The Board shall not request more than 12 hearings per quarter. Any proposed rule that is required to have a small business impact statement but fails to include the statement shall be invalid.

For proposed rules that affect small business, the state agency must submit a small business participation statement to the Board within 30 days after a public hearing is held, or if no hearing is held, then at least 30 days prior to the issuance of a final order of rulemaking.

RAS:LR:OD (12/02)

The proposal creates the Small Business Regulatory Fairness Board. The joint committee on administrative rules will provide staff for the Board. The Board shall provide agencies with input regarding proposed rules, consider requests from small business owners for review of agency rules, review agency rules and make recommendations to the agency and general assembly regarding the need for a rule or legislation, conduct hearings and solicit input from regulated small businesses and prepare an annual evaluation report to the Governor. The Board shall not have the power to interfere with an agency or administrative enforcement action, intervene in legal actions between a small business and an agency, or subpoena witnesses or documents.

The Board shall consist of two members appointed by the Governor, one member appointed by the Lieutenant Governor, one member who is chair of the minority business advocacy commission, two members appointed by the House of Representatives, two members appointed

DESCRIPTION (continued)

by the senate, one member appointed by the speaker of the House and one member appointed by the President Pro Tempore of the Senate. Except for initial members, appointed members shall serve a term of three years.

Small business owners may petition an agency objecting to any rule, and the agency shall forward the petition to the Commissioner of Administration and the Joint Committee on Administrative Rules. The agency may determine the petition warrants adoption of amended or new rules, or may determine no additional action is necessary. A small business may seek the filing of petition by the Board for the adoption, amendment or repeal of any rule. The Board may make an evaluation report to the governor and General Assembly on rulemaking proceedings, comments from small business and the response of the state agency. The Governor or General Assembly may subsequently take such action in response to the evaluation report and state agency response as they find appropriate.

The Board shall provide to the head of each state agency a list of any rules adopted by the agency that affect small business and have generated complaints or concerns, including any rules that the board determines may duplicate, overlap or conflict with other rules or exceed statutory authority. Within 45 days after being notified by the board of the list, the agency shall submit a written report to the board in response to the complaints or concerns.

Any agency that can assess administrative penalties or fines shall consider waiving or reducing such fines upon a business if the business meets certain conditions relating to correction of the violation by the business or the unintentional nature of the violation. The proposal sets out conditions where the agency is not required to consider the waiver or reduction of the fine.

A small business may seek a declaratory judgment if there is a claim of a material violation by the state agency regarding the small business impact statement for the proposed rule.

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

Office of the State Courts Administrator
Department of Economic Development
Department of Elementary and Secondary Education
Department of Mental Health
Gamming Commission

SOURCES OF INFORMATION (continued)

Department of Labor and Industrial Relations
State Tax Commission
Department of Social Services
Department of Public Safety
Missouri House of Representatives
Department of Insurance
Department of Conservation
Office of Administration
Lieutenant Governor's Office
State Auditors Office
Secretary of State's Office
Attorney General's Office
Department of Agriculture
Department of Health and Senior Services
Department of Higher Education
Southwest Missouri State University
Department of Transportation
Office of the State Treasurer
University of Missouri
Department of Natural Resources
Missouri Lottery Commission
Office of the Governor
Missouri Senate
Truman State University

L.R. No. 0450-09

Bill No. Truly Agreed to and Finally Passed HCS for SCS for SB 69

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**NOT RESPONDING: Department of Corrections, Southeast Missouri State University,
Department of Economic Development**

A handwritten signature in black ink that reads "Mickey Wilson". The signature is written in a cursive, flowing style.

MICKEY WILSON, CPA
DIRECTOR

JUNE 11, 2003