

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 2728-03
Bill No.: SB 1020
Subject: Sunshine Law; Political Subdivisions; Higher Education; Crimes and Punishment;
Public Records; Public Meetings; Law Enforcement Officers and Agencies
Type: Original
Date: January 26, 2004

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
General Revenue*	(Unknown)	(Unknown)	(Unknown)
Total Estimated Net Effect on General Revenue Fund*	(Unknown)	(Unknown)	(Unknown)

***Unknown losses could exceed (\$100,000) in any given fiscal year.**

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 16 pages.

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
Highway*	(Unknown)	(Unknown)	(Unknown)
Department of Revenue Information Fund	(Up to \$1,529,078)	(Up to \$1,853,242)	(Up to \$1,871,774)
Document Services	(\$30,000)	(\$28,000)	(\$24,000)
Childrens Trust	(\$347,060)	(\$416,472)	(\$416,472)
Cemetery Endowment	(\$69,412)	(\$83,294)	(\$83,294)
Conservation	(Unknown) to Unknown	(Unknown) to Unknown	(Unknown) to Unknown
Total Estimated Net Effect on <u>Other</u> State Funds	(More than \$1,975,550)	(More than \$2,381,008)	(More than \$2,395,540)

*Unknown losses could exceed (\$100,000) in any given fiscal year.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
Local Government	(\$2,467,144 to Unknown)	(\$2,960,573 to Unknown)	(\$2,960,573 to Unknown)

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Agriculture, Office of the Governor, Office of Administration – Division of Accounting, – Division of Facilities Management, Department of Public Safety –Veterans Commission, – State Emergency Management Agency, – Missouri State Highway Patrol, – Capitol Police, – Missouri Gaming Commission, Department of Insurance, Missouri House of Representatives, Office of the Lieutenant Governor, Office of State Auditor, Department of Revenue – State Tax Commission, Central Missouri State University, and Truman State University** assume the proposed legislation would have no fiscal impact on their agencies.

Officials from the **Office of Attorney General** assume any potential costs arising from this proposal could be absorbed within existing resources.

Officials from the **Department of Corrections (DOC)** assume they would comply with the spirit of this legislation and the cost to do so should be minimal. In summary, the DOC assumes the impact would be \$0 or a minimal amount that could be absorbed within existing resources.

Officials from the **Lincoln University** assume the proposal would result in some additional costs or reduced fees to the university.

Officials from the **Department of Natural Resources (DNR)** assume, for purposes of this fiscal note, they make approximately 300,000 copies per year for the public. Currently, it is DNR's policy to charge \$.10 per copy and in certain instances research time for standard copy machine copies. This proposal would limit the reimbursement per copy to \$.05 and the hourly fee for search time, not to exceed the rate of pay for the least senior employee of the public governmental body. Therefore, the DNR could experience a loss of up to \$15,000 per year in just the copy charges. The fiscal impact from the proposed changes in charging staff time to research for copies is unknown.

Officials from the **Department of Labor and Industrial Relations (DOL)** assume they would experience a small fiscal impact due to the loss in general revenue due to not charging for the first hour of retrieval time. In addition, the DOL assumes they could experience a loss in revenue due to the provision that limits the hourly fee for search time to the rate of pay for the least senior employee of the department. The DOL estimates the impact to be Unknown, but less than \$5,000 per year.

ASSUMPTION (continued)

Officials from the **Department of Public Safety – Division of Fire Safety (DFS)** assume the legislation would change the amount charged for the copying of public records. Although unknown, DFS estimates the cost to be less than \$1,000.

Officials from the **Office of Prosecution Services** assume prosecutors could absorb the costs of the proposed legislation within existing resources.

Officials from the **Southwest Missouri State University (SMS)** assume not being able to charge for the first hour of retrieval time will lower their fees. In addition, charging the hourly rate of the least senior employee of the department instead of the actual employee performing the retrieval will also lower their fees. SMS estimates the loss in revenues to be \$250 per fiscal year.

Officials from the **Office of Administration (COA) – Division of Personnel** assume reports of hours worked and sick and annual leave usage and accruals of employees could be requests for which the Division of Personnel would not be able to recover the costs of producing the reports. These charges would be limited to the media in which the data is transmitted under this proposed legislation. The language in this proposed legislation could result in staff timing and programming charges amounting to thousands of dollars each year, which they would not be able to recover. The Division of Personnel assumes the costs associated with the proposed legislation are difficult to estimate, as the frequency and extent of information requests cannot be predicted.

Officials from the **Office of Administration – Division of Information Technology** assumes any potential costs arising from the proposed legislation would have minimal fiscal impact and could be absorbed within existing resources.

Officials from the **Office of Administration – Administrative Hearing Commission (AHC)** state they charge \$0.25 per page for copies, and the majority of their searches take less than one hour. For the last three years, revenue from AHC copying charges was as \$4,351 in FY01; \$4,885 in FY02; and \$1,990 in FY03. Using e-mail has reduced the AHC's demand for copies, but this proposal would further reduce the amount of General Revenue. Using the revenue from FY03 (the lowest in the last three years), reducing the AHC copying fee from \$0.25 to \$0.05 would result in \$1,592 less General Revenue each year.

ASSUMPTION (continued)

Officials from the **Office of Administration – Commissioner’s Office (COA)** assume the current fee structure for public record duplication in COA covers costs of duplication of public records. This proposal would decrease revenue to General Revenue by setting the cost at five cents per page for copying public records, with an hourly salary after the first hour set at the hourly rate of the least senior employee of the department. COA’s present policy allows a recovery cost of fifty cents per page for the original, and ten cents per page for subsequent copies. Present policy also allows \$15 per hour for professional research time, and \$8 per hour for clerical research time. COS estimates the decrease in receipts to be \$186 per year. Since data on research time is unknown, the decrease in receipts may be greater than \$186 per year.

Officials from the **Office of Administration – Missouri Ethics Commission** assume the proposed legislation would reduce revenue. The Ethics Commission would have to change their current copy charge from \$.25 per page to \$.05 per page.

Officials from the **Department of Elementary and Secondary Education (DESE)** assume the proposed legislation would have no fiscal impact on their agency. However, DESE assumes school boards and all other governing bodies of political subdivisions would be subject to a civil penalty for “negligently” violating the open meeting laws. Current language refers to a civil fine for “purposely” violating the open meeting laws. Additionally, some additional administrative consideration would likely be given to the passage of this proposal and its ramifications to the public meeting laws which boards must comply with. The administrative impact is not expected to be significant.

Officials from the **Department of Mental Health (DMH)** assume Section 610.026 limits the copy charges to 6 cents a page. The DMH currently charges 25 cents per copy for records and costs for staff involved with search and duplication. DMH estimates the State would lose an estimated \$35,074 per year, based on FY 00 through FY 02 revenues from duplication costs.

Officials from the **Coordinating Board of Higher Education (CBH)** assume Section 610.026.1(1) limits the copying fees from actual costs to 5 cents per page, limits the hourly fee for search time, and provides the first hour of search time without charge. These limitations may result in costs to CBH that exceed the allowable charges for copies and search time, and therefore, could result in a negative fiscal impact.

Officials from the **Department of Conservation** assume the proposed legislation would have fiscal impact on Conservation funds. The amount of impact is unknown.

ASSUMPTION (continued)

Officials from the **Office of State Courts Administrator (CTS)** assume the proposed legislation would revise various provisions relating to public records, with monetary penalties for violations. The legislation would also provide that any governmental body developing an electronic record keeping system must do so in a common format that is not an impediment to public access. While CTS cannot provide a specific dollar amount to cover the cost of converting all judicial records into a common format, the amount would easily surpass \$100,000.

Officials from the **Department of Transportation (MoDOT)** assume the total fiscal impact for this legislation would be \$9,700 (\$4,876 search fees + \$4,824 copy reduction amount). MoDOT would also likely incur some increased costs due to the limit on the amount that can be charged for information, but those additional costs would be paid out of MoDOT's current appropriations. However, any loss of reimbursement costs will result in less money being available to spend on highway maintenance or construction.

Officials from the **Office of State Treasurer (STO)** state they currently receive about \$1,000 each year from heifinders purchasing the electronic format of the unclaimed property database. This proposal would take those moneys away. The proposal would also have a minimal impact on the outlawed checks and outstanding charges STO receives, since only 5 cents can be charged for these services. Therefore, STO assumes the fiscal impact will range from (\$1,000) to (Unknown).

Officials from the **Office of Secretary of State (SOS)** assume, for FY 03, they collected \$57,317 in copying fees, at a usual charge of 10 cents per page. Assuming the same number of copies for FY 05, the lost revenue would be half that amount, or \$28,658. In election years, the number of copies typically increases. The anticipated collections for copying for FY 04 are \$103,886. Assuming that the number of copies made in FY 06 are the same as in FY 04, the lost revenue would be half that amount, or \$51,944.

Officials from the **Department of Revenue (DOR)** assume all systems within the Division of Motor Vehicle and Drivers Licensing, Driver and Vehicle Services Bureau calculate fees for copies of records based on a per record fee. This proposal requires the department to change these systems to actually count the number of pages per record. This will require significant programming changes to the following systems:

Missouri Driver License System (MODL) – driver records, Field Automated System for Titling and Registrations (FASTR) – motor vehicle records, the department's billing system (PEACHTREE Accounting System), and the DARS accounting system.

ASSUMPTION (continued)

This will also require additional time for employees to *manually* count pages of the search for billing purposes. This will slow customer service turnaround time and require additional hours to be spent counting pages that could be used in more productive ways.

This proposed legislation will have a significant unknown negative fiscal impact on the Driver and Vehicle Services Bureau (DVSB).

To implement this legislation, the DOR will require additional funds. In the past, the programs included in this legislation have been paid for with highway funds. See Mo. Const. Article IV, Section 30(b) and Section 226.200.2, RSMo 2000. This year, however, highway funds may not be available for this purpose as a result of legislation enacted by the General Assembly in 2000 that limits the use of highway funds. This limitation is found in Section 226.200.3, RSMo. It places a cap on the highway funding available to state departments other than the Department of Transportation. The total amount of highway funds appropriated to these other state departments (including the Department of Revenue) cannot exceed the total amount of their fiscal year 2001 highway appropriations. This cap limits the highway funds that will be available for the implementation of this legislation. If highway funds are not available, then another source of funding must be identified to pay for the cost of implementing this legislation.

The DOR also assumes a loss in revenue. In fiscal year 2003, there were approximately 428,320 non-electronic transactions and 734,781 electronic transactions. This proposal requires that copies for non-electronic transactions would be \$.05 per page. The DOR charges documents based on a record which may include more than one page. For purposes of this fiscal note the department has projected non-electronic transactions would have an average of two pages per document.

	Transactions	# of Pages	Total # of Pages	Charge per page	Total Revenue	Current Revenue	Revenue Gain/Loss
Non Electronic	428,320	2	856,639	\$0.05	\$42,832	\$555,848	(\$513,016)
Electronic*	734,781	1	759,876	\$0.00	\$0	\$949,877	(\$949,877)
Vendor Charge Back							(\$372,000)
Total Revenue Impact							(\$1,834,893)

*The current charge is \$1.25 per record. The new legislation would only allow \$0.05.

ASSUMPTION (continued)

The DOR estimates the total revenue loss due to the proposal to be \$1,529,078 ($\$1,834,893/12 \times 10$ months) in FY 05.

DVSB estimated a 1% increase in record sales for FY 06 and FY 07. Therefore, the estimated loss would be \$1,853,242 in FY 06 and \$1,871,774 in FY 07.

The fees collected for electronic and non-electronic record sales are deposited into the Department of Revenue Information Fund. This fund is utilized strictly for the sale of records. Any excess fund balance on an annual basis is transferred from the Information Fund to the State Highways and Transportation Department Fund. Any decrease in fees would ultimately affect the amount of money that is transferred to the State Highways and Transportation Department Fund.

Officials from the **Department of Social Services – Division of Legal Services** assume the proposal would result in an unknown loss of revenue due to the limit on the copying cost that would be collected for Sunshine Law requests, as the number and size of requests cannot be determined.

Officials from the **Department of Social Services – Division of Medical Services (DMS)** assume the fiscal impact of the proposal would be less than \$500 per year, and is considered not material. Therefore, the DMS assumes no impact.

Officials from the **Department of Social Services – Division of Human Resources (DHR)** assume a cost will be incurred, although an actual fiscal amount cannot be calculated. Revisions regarding the release of information on the top three candidates in a hiring process will lead to unknown increased costs. Officials assume the release of this information would generate additional employee grievances and complaints, resulting in additional staff time. The DHR also assumes there would be some lost revenue from the decrease in the amounts that can be charged to the requestor. Additionally, the legislation would lower the standard of proof for imposition of fines from “purposely” to “negligently,” which would increase the agency’s liability.

Officials from the **Department of Social Services – Division of Research and Evaluation** assume existing staff would be used to comply with this legislation. Any staff programming costs associated with the request will be absorbed by existing general revenue. Since they have received minimal “Sunshine” requests in the past, they do not foresee a significant or measurable fiscal impact.

ASSUMPTION (continued)

Officials from the **Department of Social Services – Division of Budget and Finance** state the DOS collected \$7,328 in copying fees in FY 03. Assuming the cost of each page was \$.25 in FY 03 and this legislation would reduce that cost to \$.05, there would be an 80% reduction in revenue, or \$5,862 per year. However, some of that loss would be recovered in charging for personnel time spent retrieving the information.

Officials from the **Department of Social Services – Division of Family Support** assume they would comply with the policy changes in this legislation regarding the Sunshine Law at no cost to the State.

Officials from the **Department of Health and Senior Services (DOH)** assume the proposal would result in losses in revenues to the General Revenue, Document Services, Childrens Trust, and Cemetery Endowment Funds. The DOH also assumes the proposal would result in losses of local funds.

The DOH bases its loss of income from the sale of data requests on FY 03's income of \$36,470. The DOH receives 500 data requests per year that require writing a computer program. Analyst time spent writing the programs is charged out to the system users. The money collected is deposited in the Document Services Fund to pay the analyst salary incurred in writing the computer programs. If such charges will no longer be allowed, the service will have to be discontinued. Requests for data have been declining; therefore, the projected decrease in revenues reflect corresponding decreases.

In FY03, local public health agencies issued 297,545 certificates, totaling income of \$2,975,450. If they were only allowed to charge 5 cents per copy, the annual net loss would total \$2,960,573 for those agencies.

In FY03, there were 83,713 certificates issued from the DOH. This generates income to the state of \$837,130. Of this amount, \$334,852 goes to General Revenue, \$418,565 goes to the Childrens Trust Fund, and \$83,713 goes to the Cemetery Endowment Fund. If the state were only allowed to charge 5 cents per copy, there would be an annual net loss of \$333,178 to the General Revenue Fund, \$416,472 annual net loss to the Childrens Trust Fund, and \$83,294 annual net loss to the Cemetery Endowment Fund.

ASSUMPTION (continued)

Officials from the **Board of Police Commissioners for the Kansas City Police Department (KCBOPC)** state they receive 69,000 requests for public records per year. KCBOPC estimates it costs approximately \$430,000 annually to fulfill the 69,000 requests for public records. The average cost is over \$6 per request, whether the reproduced items consist of one page or up to twenty pages. If Section 610.026 of this proposal were enacted, KCBOPC would have to start charging five cents per page instead of a flat rate per request. The amount of five cents per page would not cover costs to provide this service to the public, and the KCBOPC estimates that it will lose approximately \$388,000 in revenue annually.

Oversight assumes state agencies and political subdivisions could experience losses due to the limitations on the amount that could be charged for reproducing records. Oversight has reflected this amount as an Unknown amount that could exceed \$100,000 in any given fiscal year.

Officials from the **Missouri Senate, Harris Stowe College, Missouri Western State College, Missouri Southern State College, Northwest Missouri State University, Southeast Missouri state University, University of Missouri, Bi-State Development, Greene County Sheriff, Columbia Police Department, and the St. Louis County Police Department** did not respond to Oversight's request for fiscal impact.

<u>FISCAL IMPACT - State Government</u>	FY 2005 (10 Mo.)	FY 2006	FY 2007
GENERAL REVENUE FUND			
<u>Losses – Various Agencies</u>			
Record Reproduction Fees*	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND*	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>

*Unknown losses could exceed (\$100,000) in any given fiscal year.

<u>FISCAL IMPACT - State Government</u>	FY 2005 (10 Mo.)	FY 2006	FY 2007
HIGHWAY FUND			
<u>Losses</u> – Department of Revenue Decreased transfers from Department of Revenue Information Fund*	(Unknown)	(Unknown)	(Unknown)
ESTIMATED NET EFFECT ON HIGHWAY FUND*	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>

*Losses could exceed (\$100,000) in any given fiscal year.

**DEPARTMENT OF REVENUE
INFORMATION FUND**

<u>Savings</u> – Department of Revenue Reduced Transfers to Highway Fund*	Unknown	Unknown	Unknown
<u>Losses</u> – Department of Revenue Record Reproduction Fees	<u>(\$1,529,078)</u>	<u>(\$1,853,242)</u>	<u>(\$1,871,774)</u>
ESTIMATED NET EFFECT ON DEPARTMENT OF REVENUE INFORMATION FUND	<u>(Up to \$1,529,078)</u>	<u>(Up to \$1,853,242)</u>	<u>(Up to \$1,871,774)</u>

*Savings could exceed \$100,000 in any given fiscal year.

DOCUMENT SERVICES FUND

<u>Losses</u> – Department of Health and Senior Services Limits on research fees	<u>(\$30,000)</u>	<u>(\$28,000)</u>	<u>(\$24,000)</u>
ESTIMATED NET EFFECT ON DOCUMENT SERVICES FUND	<u>(\$30,000)</u>	<u>(\$28,000)</u>	<u>(\$24,000)</u>

CHILDRENS TRUST FUND

Losses – Department of Health and Senior Services

Record reproduction fees	<u>(\$347,060)</u>	<u>(\$416,472)</u>	<u>(\$416,472)</u>
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ESTIMATED NET EFFECT ON CHILDRENS TRUST FUND

	<u>(\$347,060)</u>	<u>(\$416,472)</u>	<u>(\$416,472)</u>
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CEMETERY ENDOWMENT FUND

Losses – Department of Health and Senior Services

Record reproduction fees	<u>(\$69,412)</u>	<u>(\$83,294)</u>	<u>(\$83,294)</u>
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ESTIMATED NET EFFECT ON CEMETERY ENDOWMENT FUND

	<u>(\$69,412)</u>	<u>(\$83,294)</u>	<u>(\$83,294)</u>
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CONSERVATION FUND

	FY 2004 (10 Mo.)	FY 2005	FY 2006
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Income – Department of Conservation

Charges for making information available to public	Unknown	Unknown	Unknown
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Costs – Department of Conservation

To make information available to public	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
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ESTIMATED NET EFFECT ON CONSERVATION FUND

	<u>(Unknown) to Unknown</u>	<u>(Unknown) to Unknown</u>	<u>(Unknown) to Unknown</u>
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FISCAL IMPACT - Local Government

FY 2005
(10 Mo.)

FY 2006

FY 2007

LOCAL GOVERNMENTAL ENTITIES

Losses – Local Public Health Agencies

Record reproduction fees

(\$2,467,144)

(\$2,960,573)

(\$2,960,573)

Losses – Local Political Subdivisions

Record reproduction fees

(Unknown)

(Unknown)

(Unknown)

ESTIMATED NET EFFECT ON LOCAL GOVERNMENTAL ENTITIES

(\$2,467,144 to Unknown)

(\$2,960,573 to Unknown)

(\$2,960,573 to Unknown)

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

DESCRIPTION

The proposed legislation would revise various provisions relating to public records. The Curators of the University of Missouri would be considered a public governmental body. Certain internal memoranda and letters concerning advice, opinions and recommendations made in connection with the deliberative decision-making process of a public body would be considered a public record. Public bodies would be required to maintain minutes of closed meetings. The proposal would provide that a public body is authorized to close a meeting or record related to an “imminent” cause of action.

Records concerning a transaction involving real estate would be made public upon execution of the transaction, rather than within 72 hours of execution. Records of public employees concerning hours worked and employee benefit information such as the amount of sick leave and vacation leave would be open. Donations or contributions from private sources to the salary of a chancellor or president in the University of Missouri system could not be closed. The names of the final slate of candidates for any position of final authority in a public governmental office would be open. Final audit reports issued by auditors of a public body would be open. Records relating to the procurement of or expenditures relating to security systems would be open. A member of a public body that objects to the closing of a meeting would be immune from any liability for improper closure of a meeting. The objecting member would not vote on the issue or participate in the discussion.

DESCRIPTION (continued)

The proposal would modify the allowable copying charges for public records. Fees could not exceed five cents per page and the hourly fee for search time could not exceed the rate of pay for the least senior employment of the public body. The first hour of time would be provided without charge. The fee for access to public records on a computer would only include the cost of the disk used for duplication.

In any suit against a public body for violation of the Sunshine Law, the custodian of records could not alter or dispose of the records at issue. The proposal would provide that a public body or member or any law enforcement officer or agency is liable for any negligent violation of the Sunshine Law. Currently, the body or member must purposely violate the Law. The proposal would increase the potential penalty from a maximum of \$500 to a range of \$50 to \$1,000. A public body would ensure that any contract for a public records database not impair the ability of the public to inspect or copy public records. The proposal would delete language which authorized a law enforcement agency to withhold accident or incident reports for 60 days.

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 Attorney General
Department of Agriculture
Office of the Governor
Office of Administration
Office of State Courts Administrator
Department of Elementary and Secondary Education
Department of Transportation
Department of Mental Health
Department of Natural Resources
Department of Corrections
Department of Health and Senior Services
Department of Labor and Industrial Relations
Department of Social Services
Department of Revenue
— State Tax Commission

SOURCES OF INFORMATION (continued)

Department of Public Safety

- Division of Fire Safety
- State Emergency Management Agency
- Capitol Police
- Missouri Veterans Commission
- Missouri State Highway Patrol
- Missouri Gaming Commission

Department of Insurance

Department of Conservation

Missouri House of Representatives

Office of Lieutenant Governor

Office of Prosecution Services

Office of State Auditor

Office of Secretary of State

Office of State Treasurer

Central Missouri State University

Lincoln University

Truman State University

Southwest Missouri State University

Board of Police Commissioners for the Police Department of Kansas City

NOT RESPONDING

Missouri Senate

Harris Stowe College

Missouri Western State College

Missouri Southern State College

Northwest Missouri State University

Southeast Missouri State University

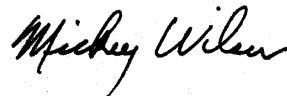
University of Missouri

Bi-State Development

Greene County Sheriff

Columbia Police Department

St. Louis County Police Department



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Mickey Wilson, CPA
Director
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