

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 2728-05
Bill No.: Perfected SCS for SBs 1020, 889, and 869
Subject: Sunshine Law; Political Subdivisions; Higher Education; Crimes and Punishment;
Public Records; Public Meetings; Law Enforcement Officers and Agencies
Type: Original
Date: March 10, 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 14 pages.

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
Road	(\$3,015)	(\$3,727)	(\$3,838)
Highway*	(Unknown)	(Unknown)	(Unknown)
Department of Revenue Information Fund	(Up to \$391,820)	(Up to \$395,738)	(Up to \$399,695)
Conservation	(Unknown) to Unknown	(Unknown) to Unknown	(Unknown) to Unknown
Total Estimated Net Effect on <u>Other</u> State Funds	(More than \$394,835)	(More than \$399,465)	(More than \$403,533)

*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	(Unknown)	(Unknown)	(Unknown)

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Agriculture, Office of the Governor, Department of Labor and Industrial Relations, Department of Public Safety – State Emergency Management Agency, – Missouri State Water Patrol, – Division of Alcohol and Tobacco Control, – Missouri State Highway Patrol, – Missouri Gaming Commission, – Capitol Police, Department of Insurance, Missouri House of Representatives, Office of Secretary of State,** assume the proposal would have no fiscal impact on their agencies.

In response to a previous version of the proposal, officials from the **Office of the Lieutenant Governor, Office of State Auditor, Department of Revenue – State Tax Commission, Missouri Senate, Central Missouri State University, and Southwest Missouri State University** assumed 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.

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

In response to a previous version of the proposal, officials from the **Lincoln University** assumed 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 \$.10 and the hourly fee for search time, not to exceed the average hourly pay for clerical staff. The fiscal impact from the proposed changes in charging staff time to research for copies is unknown. However, the DNR would expect the fiscal impact to be minimal.

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.

ASSUMPTION (continued)

Officials from the **Department of Public Safety – Director’s Office** assume the proposal would result in a negative impact because they currently charge \$.20 per page plus personnel costs. The legislation would reduce the personnel costs and the amount per page to \$.10. The amount of impact is unknown.

In response to a previous version of the proposal, officials from the **Office of Prosecution Services** assumed prosecutors could absorb the costs of the proposed legislation within existing resources.

In response to a previous version of the proposal, officials from the **Office of Administration (COA) – Division of Personnel** assumed 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 assumed the costs associated with the proposed legislation are difficult to estimate, as the frequency and extent of information requests cannot be predicted.

In response to a previous version of the proposal, officials from the **Office of Administration – Division of Information Technology** assumed any potential costs arising from the proposed legislation would have minimal fiscal impact and could be absorbed within existing resources.

In response to a previous version of the proposal, officials from the **Office of Administration – Administrative Hearing Commission (AHC)** stated 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 \$0.10 would result in \$796 less General Revenue each year.

ASSUMPTION (continued)

In response to a previous version of the proposal, officials from the **Office of Administration – Commissioner’s Office (COA)** assumed 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 ten cents per page for copying public records, with an hourly fee for search time. The first half hour is free; further time cost is limited to the average hourly rate of pay for clerical staff in the department. COS estimates the decrease in receipts to be \$150 per year.

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 “knowingly” 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 10 cents a page and limits the administrative costs associated with the collection and preparation of such documents to the rate of pay. 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 \$17,537 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 10 cents per page, limits the hourly fee for search time, and provides the first half 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)

In response to a previous version of the proposal, officials from the **Office of State Courts Administrator (CTS)** assumed 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 \$3,618 (\$3,618 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.

In response to a previous version of the proposal, officials from the **Office of State Treasurer (STO)** stated they currently receive about \$1,000 each year from heirfinders 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 10 cents can be charged for these services. Therefore, STO assumes the fiscal impact will range from (\$1,000) to (Unknown).

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.

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).

ASSUMPTION (continued)

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 \$.10 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. Electronic records charges would remain the same.

	Transactions	# of Pages	Total # of Pages	Charge per page	Total Revenue	Current Revenue	Revenue Gain/Loss
Non Electronic	428,320	2	856,639	\$0.10	\$85,664	\$555,848	(\$470,184)
Total Revenue Impact							(\$470,184)

*The current charge is \$1.25 per record. The new legislation would only allow \$0.10.

The DOR estimates the total revenue loss due to the proposal to be \$395,738 (\$470,184/12 x 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 \$395,738 in FY 06 and \$399,695 in FY 07.

ASSUMPTION (continued)

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 Human Resources (DHR)** assume there would be some lost revenue from the decrease in the amounts that can be charged to the requestor. Often professional staff members are responsible for reviewing and preparing information requests. Because the cost is calculated based on the average clerical salary, this would result in lost revenue. Additionally, the legislation would lower the standard of proof for imposition of fines from “purposely” to “grossly negligently,” which would increase the agency’s liability. The fine amount would change from “up to \$500” to \$25 to \$1,000 and attorney fees. It is not possible at this time to estimate the actual cost.

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 fees for copies for birth and death certificates are provided for under other statutes. The impact on the DOH is expected to be minimal. There may be a minimal loss of revenue because of the reduced fee for sunshine request copies. However, if DOH determined additional funding was required, they would pursue funding through the appropriations process.

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.

<u>FISCAL IMPACT - State Government</u>	FY 2005 (10 Mo.)	FY 2006	FY 2007
GENERAL REVENUE FUND			
<u>Losses</u> – Various Agencies			
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
ROAD FUND			
<u>Losses</u> – Department of Transportation			
Record reproduction fees	<u>(\$3,015)</u>	<u>(\$3,727)</u>	<u>(\$3,838)</u>
ESTIMATED NET EFFECT ON ROAD FUND	<u>(\$3,015)</u>	<u>(\$3,727)</u>	<u>(\$3,838)</u>

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>(\$391,820)</u>	<u>(\$395,738)</u>	<u>(\$399,695)</u>

**ESTIMATED NET EFFECT ON
 DEPARTMENT OF REVENUE
 INFORMATION FUND**

<u><u>(Up to</u></u>	<u><u>(Up to</u></u>	<u><u>(Up to</u></u>
<u><u>\$391,820)</u></u>	<u><u>\$395,738)</u></u>	<u><u>\$399,695)</u></u>

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

CONSERVATION FUND	FY 2004 (10 Mo.)	FY 2005	FY 2006
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<u>Income</u> – Department of Conservation			
Charges for making information available to public	Unknown	Unknown	Unknown

<u>Costs</u> – Department of Conservation			
To make information available to public	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>

**ESTIMATED NET EFFECT ON
 CONSERVATION FUND**

<u><u>(Unknown) to</u></u>	<u><u>(Unknown) to</u></u>	<u><u>(Unknown) to</u></u>
<u><u>Unknown</u></u>	<u><u>Unknown</u></u>	<u><u>Unknown</u></u>

<u>FISCAL IMPACT - Local Government</u>	FY 2005 (10 Mo.)	FY 2006	FY 2007
LOCAL GOVERNMENTAL ENTITIES			
<u>Losses – Local Political Subdivisions</u>			
Record reproduction fees	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT ON LOCAL GOVERNMENTAL ENTITIES	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>

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 and any bi-state development agency established pursuant to Section 70.370 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. (Section 610.010)

Public bodies would be required to maintain minutes of closed meetings. (Section 610.020)

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 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. 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 allowed to remain in the meeting. The objection would be entered into the minutes of the meeting. (Section 610.021)

DESCRIPTION (continued)

The proposal would modify the allowable copying charges for public records. Fees could not exceed ten cents per page and the hourly fee for search time could not exceed the average hourly rate of pay for clerical staff of the public body. The first half-hour of time would be provided without charge. Search time that would require more than clerical duplication of documents could be charged at the actual cost of research time. The public governmental body would be required to produce the copies using employees of the body that would result in the lowest amount of charges. The fee for access to public records stored on computers, tapes, disks, videotapes, picturers, slides, etc. would only include the cost of copies, staff time (not to exceed the average hourly rate of pay for clerical staff), and the disk used for duplication. (Section 610.026)

When designing an electronic record-keeping system, an agency would ensure that the system is capable of providing data in a common format. 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.

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 knowing violation of the Sunshine Law. Currently, the body or member must purposely violate the Law. (Section 610.027)

The proposal would increase the potential penalty for knowing violation of this law from a maximum of \$500 to a range of \$25 to \$1,000. Upon a finding by a preponderance of evidence that a public governmental body or a member of the public body has purposely violated this law, civil penalties could range from \$1,000 to \$5,000 plus all costs and attorney fees. (Section 610.100)

The proposal would require all votes taken by roll call be cast by members of the public governmental body who are physically present at the meeting. (Section 610.015 – SA 9)

Information gathered by the Department of Health and Senior Services concerning the rate of staphylococcus aureus infections would be a public record. The DOH would not release patient identifying data. (Section 1 – SA 11)

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
Coordinating Board of Higher Education
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
Department of Public Safety
 – Division of Fire Safety
 – State Emergency Management Agency
 – Missouri State Highway Patrol
 – Missouri Gaming Commission
 – Missouri State Water Patrol
 – Division of Alcohol and Tobacco Control
 – Director's Office
 – Capitol Police
Department of Insurance
Department of Conservation
Missouri House of Representatives

SOURCES OF INFORMATION (continued)

Office of Lieutenant Governor
Office of Prosecution Services
Missouri Senate
Office of State Auditor
Office of Secretary of State
Office of State Treasurer
Central Missouri State University
Lincoln University
Southwest Missouri State University

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

Mickey Wilson, CPA
Director
March 10, 2004