

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 2728-08
Bill No.: HS for HCS for SCS for SBs 1020, 889, and 869, with HAs 1, 3, 5, 6, 9, and 10
Subject: Sunshine Law; Political Subdivisions; Higher Education; Crimes and Punishment;
Public Records; Public Meetings; Law Enforcement Officers and Agencies
Type: Original
Date: May 12, 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.

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
Road	(\$7,069)	(\$8,749)	(\$9,011)
Conservation	(Unknown) to Unknown	(Unknown) to Unknown	(Unknown) to Unknown
PSC	(\$3,159)	(\$3,791)	(\$3,791)
Total Estimated Net Effect on <u>Other</u> State Funds	(More than \$10,228) to Unknown	(More than \$12,540) to Unknown	(More than \$12,802) to Unknown

*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 Administration – Administrative Hearing Commission, – Division of Budget and Planning, – Division of Information Technology, Department of Mental Health, Department of Natural Resources, Department of Revenue, Department of Public Safety – Missouri State Water Patrol, – Missouri State Highway Patrol, Missouri Consolidated Health Care Plan, Department of Insurance, Office of Secretary of State, and the Missouri Ethics Commission** assume the proposal would have no fiscal impact on their agencies.

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.

Officials from the **Department of Labor and Industrial Relations** assume the proposal would result in a small fiscal impact in general revenue due to only charging the average hourly rate of pay for clerical staff for making copies or programming.

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 **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 plus staff costs. The amount of impact is unknown.

Officials from the **Department of Public Safety – Missouri Veterans Commission** assume the proposal would have an unknown fiscal impact on their agency.

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

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.

Officials from the **Office of Administration – Division of Purchasing and Materials Management (DPMM)** assume the proposal would allow any internal memorandum or letter received or prepared by on behalf DPMM consisting of advice, opinions, and recommendations in connection with the deliberative decision-making process of DPMM to now be a public record whether retained by DPMM or not. Also, there is the potential that any records related to purchases or contracts made in implementing certain public safety operational guidelines and policies may become an open record. Currently, documentation related to the procurement of services and goods by DPMM are an open record and available on DPMM’s website. Also, DPMM would not be able to charge more than ten cents per page for copying open public records. DPMM is unable to determine the long-range implications of the proposed language. However, the potential to disclose any records related to purchases or contracts made on behalf of an agency in implementing certain public safety operational guidelines and policies may hinder some of the security efforts in place by Department of Public Safety.

ASSUMPTION (continued)

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 staff in the department. COA 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 having “negligently violated” 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 Economic Development – Public Service Commission (PSC)** assume, using FY 2003 information, the proposal would result in decreased revenue of \$1,856 per fiscal year. In FY year 2003, the PSC copied 38,752 pages and collected \$5,729 for copies, which averages out to be approximately \$.15 per page. At \$.05 per page, the PSC would collect \$1,938, or \$3,791 less than collected in FY 2003.

In response to a previous version of this proposal, officials from the **Department of Conservation** assume the proposed legislation would have fiscal impact on Conservation funds. The amount of impact is unknown.

Officials from the **Missouri State Employees’ Retirement System** assume the cost of the proposed legislation could be absorbed within existing resources.

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 proposed legislation would also limit the charge for a paper copy provided by a government body to \$0.10 per page. This amount would likely not cover the actual cost, but CTS has no way of estimating what any actual cost would be, but assume the cost would be under \$100,000. The proposal would also require agencies to provide certain information to other state agencies at no cost. As long as the format requested is a format CTS uses, there would be little or no cost resulting from this provision.

ASSUMPTION (continued)

Officials from the **Department of Transportation (MoDOT)** assume the total fiscal impact for this legislation would be \$8,483 (\$4,876 search fees + \$3,607 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)** 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 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.

ASSUMPTION (continued)

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.

HA 3 – False/Fraudulent Claims

Officials from the **Office of the Attorney General (AGO)** assume this amendment has an unknown impact because it is unclear how many claims will be brought by private individuals under a false claims theory. The more claims that are brought, the more likely it is that the AGO will require additional resources to investigate and review these claims. However, the AGO assumes the provisions relating to the Sunshine Law can be absorbed within existing resources.

<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>(\$7,069)</u>	<u>(\$8,749)</u>	<u>(\$9,011)</u>
ESTIMATED NET EFFECT ON ROAD FUND	<u>(\$7,069)</u>	<u>(\$8,749)</u>	<u>(\$9,011)</u>

CONSERVATION FUND	FY 2004 (10 Mo.)	FY 2005	FY 2006
<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>(Unknown) to Unknown</u>	<u>(Unknown) to Unknown</u>	<u>(Unknown) to Unknown</u>
PSC FUNDS			
<u>Losses</u> – Public Service Commission			
Record reproduction fees	<u>(\$3,159)</u>	<u>(\$3,791)</u>	<u>(\$3,791)</u>
ESTIMATED NET EFFECT ON PSC FUNDS	<u>(\$3,159)</u>	<u>(\$3,791)</u>	<u>(\$3,791)</u>
<u>FISCAL IMPACT - Local Government</u>	FY 2005 (10 Mo.)	FY 2006	FY 2007
LOCAL GOVERNMENTAL ENTITIES			
<u>Losses</u> – Local Political Subdivisions			
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.

If a county is served by only one newspaper, that newspaper would be qualified to publish all public advertisements and orders of publication required by law, and all legal publications affecting the title to real estate. This subsection would expire on June 30, 2006. This section contains an emergency clause. (Section 493.050)

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. A public meeting could be conducted in person or by conference call, video conference, internet chat, or internet message board. Public records would include records created or maintained by private contractors under an agreement with a public governmental body or on behalf of a public governmental body. A public vote would include any vote conducted in person, by telephone, or by any other electronic means. (Section 610.010)

Public governmental bodies would be required to give notice of the mode by which the meeting will be conducted and the designated location where the public may observe and attend the meeting. 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. Hours worked, vacation leave used, donations or contributions from private sources to the salary of a chancellor or president at all public colleges and universities in the State of Missouri 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)

If a member of a public governmental body transmits a message relating to public business to one or more members of the body, the member transmitting the message would also be required to transmit the message to the custodian of records. Such message would be a public record subject to the exceptions in section 610.021. (Section 610.025)

DESCRIPTION (continued)

The proposal would modify the allowable copying charges for public records. Fees for records, except those records restricted under Section 32.091 (motor vehicle records) could not exceed ten cents per page for pages not larger than nine by fourteen inches and the hourly fee for duplicating time could not exceed the average hourly rate of pay for staff of the public body. 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, pictures, maps, slides, etc. and for copies larger than nine by fourteen inches would only include the cost of copies, staff time (not to exceed the average hourly rate of pay for clerical staff), and the disk or other medium used for duplication. Fees for maps, blueprints, or plats may include the actual rate of compensation for the trained personnel required to duplicate. (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 negligent violation of the Sunshine Law. Currently, the body or member must purposely violate the Law. (Section 610.027)

The proposal would change the potential penalty for negligent violation of this law from a maximum of \$500 to a range of \$25 to \$250. 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)

School districts with a district-sponsored Internet web site would be required to post the district's policy manual and the district's handbook on the web site.(Section 1)

Persons knowingly presenting a false or fraudulent claim for payment, using a false record to get a false claim paid or approved by the state would be liable to the state for a penalty for each false claim of not less than \$5,000 and not more than \$10,000, plus three times the amount of actual damages which the state sustains. The attorney general would investigate such violations. (HA 3 – Sections 537.805, 537.810)

DESCRIPTION (continued)

Meetings and records of a public hospital would not be a public record or meeting if the public hospital does not receive money from a tax levy imposed by the city, county, or hospital district that established the hospital and the public hospital waives its right to claim sovereign or governmental tort immunity protection. (HA 6 – Section 197.150)

Political subdivisions would not publicly disclose any social security number of a person unless such disclosure is permitted by law or authorized by the holder of the social security number. (HA 10 – Section 610.035)

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 Administration
Office of State Courts Administrator
Department of Economic Development
 – Public Service Commission
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
 – Missouri State Highway Patrol
 – Missouri State Water Patrol
 – Director's Office
 – Missouri Veterans Commission
Missouri Consolidated Health Care Plan
Department of Insurance

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SOURCES OF INFORMATION (continued)

Department of Conservation
Missouri State Employees' Retirement System
Office of Secretary of State
Office of State Treasurer
Missouri Ethics Commission

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

Mickey Wilson, CPA
Director
May 12, 2004