

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 2728-12
Bill No.: Truly Agreed To and Finally Passed CCS for HS for HCS for 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: May 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.

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
Road	(\$3,006)	(\$3,715)	(\$3,827)
Conservation	(Unknown) to Unknown	(Unknown) to Unknown	(Unknown) to Unknown
PSC	(\$3,159)	(\$3,791)	(\$3,791)
Total Estimated Net Effect on Other State Funds	(More than \$6,165) to Unknown	(More than \$7,506) to Unknown	(More than \$7,618) 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
Federal	(Unknown)	(Unknown)	(Unknown)
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 **Coordinating Board for Higher Education, Office of Administration – Division of Facilities Management, – Division of Budget and Planning, Office of the Governor, Highway and Transportation Employees’ and Highway Patrol Retirement System, Department of Mental Health, Department of Natural Resources, Department of Health and Senior Services, Department of Revenue, Department of Public Safety – State Emergency Management Agency, – Capitol Police, – Missouri State Highway Patrol, Missouri Consolidated Health Care Plan, Department of Insurance, Office of Secretary of State, State Tax Commission, Missouri Ethics Commission, Missouri House of Representatives, Office of the Lieutenant Governor, Missouri Senate, and the State Treasures’s Office** assume the proposal would have no fiscal impact on their agencies.

Officials from the **Office of the Attorney General (AGO)** assume it will be required to update its Sunshine Law Booklet due to the numerous changes made to the law. The AGO also anticipates an increase in calls from public bodies and the public at large as a result of the changes. Finally, the AGO assumes it will handle additional questions from state agencies as a result of this proposal. However, the AGO assumes any cost resulting from this proposal may be absorbed within existing resources.

ASSUMPTION (continued)

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.

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. 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 – Division of Purchasing and Materials Management (DPMM)** assume they would have to make available all records regarding expenditures, purchases, or contracts made by an agency in implementing security guidelines or policies. Also, DPMM would not be able to charge more than ten cents per page for copying open public records. If requested by the public and available, DPMM would have to provide the current electronic documents in another electronic format. DPMM is unable to determine the long-range implications of the proposed language. However, the potential to disclose any records related to security systems may hinder some of the security efforts that may be in place by Department of Public Safety.

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. COA estimates the decrease in receipts to be \$150 per year.

ASSUMPTION (continued)

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 “knowingly 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.

In response to a previous version of the proposal (2728-08), officials from the **Department of Economic Development – Public Service Commission (PSC)** assumed, 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 (2728-08), officials from the **Department of Conservation** assumed 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.

Officials from the **Department of Transportation (MoDOT)** assume the total fiscal impact for this legislation would be \$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.

ASSUMPTION (continued)

Officials from the **Department of Social Services – Division of Human Resources (DHR)** assume the legislation would change the fines to \$1,000 for knowing and \$5,000 for purposely violating the law. This would increase the agency’s liability. It is not possible at this time to estimate the actual cost.

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.

Oversight also assumes state agencies will not knowingly or purposely violate the sunshine law. Therefore, Oversight assumes no increased liability due knowingly or purposely violating the law.

<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
ROAD FUND			
<u>Losses – Department of Transportation</u>			
Record reproduction fees	<u>(\$3,006)</u>	<u>(\$3,715)</u>	<u>(\$3,827)</u>
ESTIMATED NET EFFECT ON ROAD FUND	<u>(\$3,006)</u>	<u>(\$3,715)</u>	<u>(\$3,827)</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. Any document or study prepared for a public governmental body by a consultant or other professional service would be retained by the public governmental body in the same manner as any other public record. A public vote would include any vote conducted in person, by telephone, or by any other electronic means. (Section 610.010)

Roll call votes in meetings of a public governmental body consisting of members who are all elected, except the General Assembly and any committee established by a public governmental body, would be cast by members who are physically present at the meeting. When an emergency exists, votes may be taken by members participating via telephone, facsimile, Internet, or any other voice or electronic means and would be regarded as if all members were physically present at the meeting. (Section 610.015)

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)

DESCRIPTION (continued)

Records concerning a transaction involving real estate would be made public upon execution of the transaction, rather than within 72 hours of execution. 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 would 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 purchased with public funds would be open. (Section 610.021)

A member of a public body could object to the closing of a meeting, record or vote if the member believes the motion to close would violate the Sunshine Law. Such member must object at or before the motion to closed is voted upon. The member would be allowed to fully participate in any subsequent meeting or vote. If the objecting members also votes in opposition to the motion to close, the member would be immune from any liability for improper closure of a meeting. (Section 610.022)

The proposal would require a public governmental body to supply a requested record in the format requested, if the document is available in such format. (Section 610.023)

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)

The proposal would modify the allowable copying charges for public records, except for motor vehicle records. Fees could not exceed 10 cents per page for paper no larger than 9 by 14 inches and the hourly fee for search time could not exceed the average hourly rate of pay for the clerical staff of the public body. Research time for record requests could be charged at the actual cost of research time. Based on the scope of the request, the body could use employees that result in the least amount of charges for search and duplication. The person could request the body to provide an estimate of the costs prior to the production of the records. The fee for access to public records on a computer, including maps, and paper copies larger than 9 by 14 inches shall include the cost of copies, staff time, which could not exceed the hourly rate of pay for staff of the body, and the cost of the disk used for duplication, if necessary. If specialized personnel are needed to copy documents, a different fee could be charged for personnel time. (Section 610.026)

DESCRIPTION (continued)

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 agency or officer is liable for any knowing violation of the Sunshine Law. If such public body, law enforcement agency, officer or member commits a knowing violation of the Law, the public entity, law enforcement agency, officer or member would be subject to a civil penalty of up to \$1000 and the court could award costs and attorney fees. If such public entity, law enforcement agency, officer or member purposely violates the Law, the civil penalty would be up to \$5,000 and the court would award costs and attorney fees. In all cases, the court would have discretion in the amount of the fine based on the size of the jurisdiction, the seriousness of the offense, and whether the entity or member has previously violated the Law. (Section 610.027)

A public body would be required to ensure that any contract for a public records database must not impair the ability of the public to inspect or copy public records. A useable electronic format would allow viewing and printing of records. If the body keeps records on a system capable of being copied, then the body would be required to provide data to the public in such electronic format, if requested. (Section 610.029)

The proposal would change the potential penalty for a knowing violation of this law from a maximum of \$500 to maximum of \$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 up to \$5,000 plus all costs and attorney fees. (Section 610.100)

The proposal would delete language which authorized a law enforcement agency to withhold accident or incident reports for 60 days. (Section 610.200)

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)

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

This proposal contains an emergency clause for Section 493.050.

SOURCES OF INFORMATION

Office of Attorney General
Coordinating Board for Higher Education
Office of Administration

BLG:LR:OD (12/02)

SOURCES OF INFORMATION (continued)

Office of the Governor
Office of State Courts Administrator
Department of Economic Development
 – Public Service Commission
Department of Elementary and Secondary Education
Department of Transportation
Highway and Transportation Employees' and Highway Patrol Retirement System
Department of Mental Health
Department of Natural Resources
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
 – State Emergency Management Agency
 – Capitol Police
 – Division of Fire Safety
 – Missouri State Highway Patrol
 – Director's Office
 – Missouri Veterans Commission
Missouri Consolidated Health Care Plan
Department of Insurance
Department of Conservation
Missouri State Employees' Retirement System
Office of Secretary of State
Office of State Treasurer
State Tax Commission
Missouri Ethics Commission
Missouri House of Representatives
Office of the Lieutenant Governor
Office of Prosecution Services
Missouri Senate



L.R. No. 2728-12

Bill No. Truly Agreed To and Finally Passed CCS for HS for HCS for SCS for SBs 1020, 889, and 869

Page 11 of 11

May 26, 2004

Mickey Wilson, CPA

Director

May 26, 2004