

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 0475S.01I  
Bill No.: SB 180  
Subject: Administrative Law; Administrative Rules; State Departments  
Type: Original  
Date: March 1, 2021

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Bill Summary: This proposal modifies provisions relating to the adoption and review of administrative rules by state agencies.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
<b>FUND AFFECTED</b>	<b>FY 2022</b>	<b>FY 2023</b>	<b>FY 2024</b>
General Revenue	Could exceed (\$275,665)	Could exceed (\$199,230)	Could exceed (\$200,907)
<b>Total Estimated Net Effect on General Revenue</b>	<b>Could exceed (\$275,665)</b>	<b>Could exceed (\$199,230)</b>	<b>Could exceed (\$200,907)</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2022</b>	<b>FY 2023</b>	<b>FY 2024</b>
Various State Funds	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
State Road Fund	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>\$0 to (Unknown)</b>	<b>\$0 to (Unknown)</b>	<b>\$0 to (Unknown)</b>

Numbers within parentheses: () indicate costs or losses.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
Federal Funds – DNR	\$0	\$0	\$0 to (\$56,188,038)
Various Federal Funds	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0 to (Unknown)</b>	<b>\$0 to (Unknown)</b>	<b>\$0 to Could exceed (\$56,188,038)</b>

<b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b>			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
General Fund – DSS	2 FTE	2 FTE	2 FTE
Federal Fund – DNR	0 FTE	0 FTE	(254.83) FTE
<b>Total Estimated Net Effect on FTE</b>	<b>2 FTE</b>	<b>2 FTE</b>	<b>(252.83) FTE</b>

☒ Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.

☐ Estimated Net Effect (savings or increased revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

## **FISCAL ANALYSIS**

### **ASSUMPTION**

Officials from **Joint Committee on Administrative Rules (JCAR)** assume the good cause determinations would be in addition to the committees own review requirement. Additionally, any such review may lead to judicial challenge to such review. The assumptions for cost are for at least one meeting per month of the committee during interim. Travel expenses are calculated based on that assumption. It does not include cost of meals.

JCAR estimates an annual cost of \$24,846. (\$8,078.84 mileage for 5 Representatives, \$10,047.38 mileage for 5 Senators, and \$6,720 lodging cost for 10 members). The Joint Committee would need to have one meeting per month to review any decisions of historical preservation committee.

**Oversight** does not have any information to the contrary. Therefore, Oversight will reflect the impact estimated by JCAR in the fiscal note.

Officials from the **Department of Health and Senior Services (DHSS)** assume Section 536.021 requires any state agency adopting or amending a rule to rescind a rule that is unnecessary, obsolete, or burdensome. The rule to be rescinded shall be listed in the notice of proposed rulemaking of the proposed new or amended rule. The Joint Committee on Administrative Rules may grant an exception to this requirement upon the agency's application for good cause.

Section 536.175 would require all rules to expire five years after the year in which the rule takes effect, unless the rule contains an earlier expiration date. All rules in effect on January 1, 2022, shall expire on January 1, 2027. The expiration date will be extended each time that an unexpired rule is amended and the requirement of rescinded unnecessary, obsolete, or burdensome rules shall not apply to orders of rulemaking reauthorizing expiring rules.

DHSS states SB 180 would create an indeterminable amount of time and effort to employees of the Department of Health and Senior Services. In any instance that a rule would be created or amended, additional time would be spent determining if a corresponding rule must be rescinded, identifying which corresponding rule to rescinded, and working to guide the rule rescission through the process.

DHSS cannot estimate how many rules they will be required to promulgate, amend, or rescind as a result of legislation; therefore, cost is unknown.

Re-reviewing and resubmitted all rules on a five year cycle, could require additional FTE; however, DHSS cannot predict the number of FTE nor the cost.

**Oversight** cannot estimate how many rules DHHS will be required to promulgate, amend, or rescind as a result of legislation; therefore, Oversight will reflect a \$0 (no rules) to unknown (indeterminate amount of rules) cost on the fiscal note for this agency.

Officials from **Department of Natural Resources (DNR)** assume Section 536.021.11 requires the Department to rescind a rule that is obsolete, unnecessary or burdensome, at the same time as amending or adopting rules unless an exemption is granted. State rules are largely based on federal regulations and cannot be less stringent than federal requirements to maintain primacy or authorization, the Department would have to pursue an exemption for most rulemakings to incorporate federal requirements.

The Department recently reviewed all rules for compliance under Executive Order 17-03 and the Periodic Rule Review (536.175 RSMo). As a result, the Department identified and rescinded several rules that were unnecessary, obsolete, or burdensome. All remaining rules have been determined to be necessary to remain in compliance with federal laws. The Department will continue to comply with Executive Order 17-03 for all future rulemakings. In addition, the Department will conduct the next scheduled Periodic Rule Review as required under 536.175, RSMo, beginning in calendar year 2021.

The language in this section would also make it more difficult to plan and promulgate effective rules that take the concerns of the public and other stakeholders into consideration, as the Department may not be able to proceed with rules these groups want if there are no rules that could be rescinded to meet the requirement established by this section.

Section 536.021.12 states that “all rules adopted by any state agency pursuant to this section shall expire on January 1 of the fifth year after the year in which the rule takes effect...”

The Department’s current rulemaking process takes approximately 18-24 months to complete. The proposed language could cause the Department to be in a continuous cycle of rulemaking to maintain existing rules, which could decrease certainty for the regulated community. The new language also creates a duplication of effort, as Section 536.175 currently requires the Department to conduct a review of all Department rules and to provide a report based on this and other criteria every five years. Requiring the Department to review all rules on a set five year schedule under 536.175 and also having to review individual rules on an asynchronous five year schedule to extend the expiration date of the rule seems to create overlapping processes. This language would have an effect on the implementation of the Department’s environmental functions such as permitting and enforcement, given more staff time would need to be devoted to rulemaking efforts necessary to keep rules up-to-date to maintain drinking water primacy and the Department’s delegated authorities under the Clean Air Act, Resource Conservation and Recovery Act, and the Clean Water Act. Failure to address the state’s obligations under federal regulation may result in the loss of drinking water primacy or delegation authorities and a loss of federal funding tied to the programs. The Department’s Division of Environmental Quality receives annual federal fiscal year funding from EPA of approximately \$81 million.

It is unclear if the U.S. Environmental Protection Agency would delegate drinking water primacy if federally mandated rules include sunset dates, as these rules could be considered less stringent than the corresponding federal rules that do not contain an expiration date.

All state air pollution rules approved into Missouri's State Implementation Plan must be permanent and enforceable, as required by the Clean Air Act. State rules that expire may not be deemed permanent by EPA.

Section 536.175.6 requires the Department to amend or rescind rules that meet one or more of the conditions of this same section within one year after the report is submitted to the Joint Committee on Administrative Rules. This timeframe would be difficult for the Department to meet as the Department's current rulemaking process can take 18-24 months to complete. The proposed language seems to conflict with sunset provisions established in the bill in Section 536.021.12.

DNR assumes State Revenue could potentially be impacted if the state would lose drinking water primacy or its current delegated authority to implement federal environmental laws. The U.S. Environmental Protection Agency would implement the federal regulations tied to the various federal environmental laws. The state would then lose the associated federal funding tied to the programs and related state fee revenues.

State fees are collected due to the federal delegation. For example, air pollution control emissions fees are collected by the state to assist with running the federally delegated Air Pollution Control Program. For the purpose of this fiscal note, the Department anticipates the continuation of collecting state fees. However, regulatory actions would be conducted and fees assessed by EPA. Fee payers may challenge the collection of state fees by the Department if EPA is collecting a fee for the same service.

With the loss of funding, it would be necessary for the Department to return the enforcement of federal regulated programs back to EPA and reduce staff resources. The Department estimates up to 93% of DEQ's federal personal service budget (or 254.83 FTE) would likely be reduced.

**Oversight** does not have any information to the contrary. Therefore, Oversight will reflect impact estimated by DNR in the fiscal note.

**Oversight** notes that State Revenue could potentially be impacted if the state would lose its current delegated authority to implement certain federal laws. The state would then lose the associated federal funding tied to the programs and related state fee revenues. Therefore, Oversight will reflect impact \$0 to unknown negative impact to General Revenue, Various State Funds, and Federal Funds in the fiscal note, all dependent upon future rules action/enforcement. Oversight will reflect this possibility in FY 2024.

Officials from the **Department of Commerce and Insurance (DCI)** assume the costs of this bill can be absorbed within their current appropriations; however until the FY22 budget is final, the

department cannot identify specific funding sources. Should the cost be more than anticipated, the department would request an increase to our FTE and/or appropriations as appropriate through the budget process.

Officials from **Department of Social Services (DSS)** state they have approximately 300 active regulations. It has promulgated, amended, or rescinded approximately 120 regulations in the last two years; an average of 60 regulations each year. Approximately 70% of these regulations are amendments, 17% are newly adopted, and 13% are rescissions.<sup>[1]</sup> Therefore, DSS promulgates approximately 42 amendments, 10.2 new rules, and 7.7 rescissions per year.

The Division of Legal Services (DLS) administers the promulgation of all regulations for DSS.

536.021.11: Under this provision, every new or amended regulation that affects “substantive matters” or imposes new burdens on “individuals, businesses, or political subdivisions” must be accompanied by a rescission of another regulation that is unnecessary, obsolete, or burdensome. DSS currently amends or creates 52.2 regulations per year. Assuming only 50% of these rules affect substantive matters or impose burdens under this subsection, then an additional 26.1 rescissions would be required, for a total of 86.1 regulations for the year.

536.021.12: The five-year expiration requirement would subject all 300 of DSS’s regulations to expiration if they are not amended within five years of their creation or most recent amendment (or January 1, 2027 for regulations that are currently existing on January 1, 2022, if they are not amended after that date). This creates a baseline of 60 regulations per year during any five-year period that must be amended, lest they expire. DSS currently amends approximately 44.1 regulations per year, resulting in an increase of at least 15.9 amendments per year. Adding this amount to the 86.1 regulations that result from the previous subsection increases the total to 102 regulations for the year.

536.175.6: The one-year deadline to amend or rescind any regulations identified as “unnecessary, obsolete, overlapping, duplicating, or conflicting with” other state regulations in the five-year rule review report would create an additional group of an unknown number of regulations that must be amended or rescinded by June 30, 2024, and every fifth year after that. Therefore, this subsection would not incur a fiscal impact until fiscal year 2025.

DLS projects an overall increase of at least 70% in the number of regulations that DSS will promulgate each year as a result of this legislation. DLS would require one (1) additional attorney and one (1) additional administrative staff person – totaling 2 FTE – in order to meet the requirements of the statute in 2021 and beyond. This results in a negative fiscal impact to DLS.

**Oversight** does not have any information to the contrary. Therefore, Oversight will reflect impact estimated by DSS in the fiscal note.

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<sup>[1]</sup> This is based on the total number of Orders of Rulemaking for DSS in the 2019 and 2020 Missouri Register.

Officials from **Missouri Department of Transportation (MODOT)** assume the proposal would require all existing administrative rules to be reauthorized every five years, which would require substantial staff time to shepherd the existing rules through the approval process. The cost of this additional staff time is an unknown negative fiscal impact.

**Oversight** cannot estimate how many rules MoDOT will be required to promulgate, amend, or rescind as a result of legislation; therefore, Oversight will reflect a \$0 (no rules) to unknown (indeterminate amount of rules) cost on the fiscal note for this agency.

Officials from **Office of Administration** assume the proposal requires that, in order to adopt a new rule or to amend a rule, a state agency must rescind a rule that is unnecessary, obsolete, or burdensome. JCAR may grant an exception to the requirement for good cause, and certain exceptions are listed including typographical errors, changes that are not substantive or changes necessitated by new legislation. The bill states that all rules adopted by any state agency pursuant to this section shall expire on January 1 of the fifth year after the year in which the rule takes effect, unless the rule contains an earlier expiration date. That section then states that “all rules in effect on January 1, 2022 shall expire on January 1, 2027.” This means that if the bill passes, OA will need to re-promulgate all existing rules to take effect in 2027, unless they expire sooner. An initial review of all rules will be necessary to ensure that the rules are accurate prior to this bill taking effect.

The Division of Purchasing has 4 regulations, Personnel has 21 regulations, FMDC has 11 regulations, Office of Equal Opportunity has 3 regulations, and Accounting has 5 regulations. Each regulations is estimated to take 2 days (16 hours) of initial review and recommendations by division staff as well as that division’s director, followed by approval by the Director & the Commissioner of Administration. It is estimated to take an additional 16 hours of legal staff time per regulation to draft the rule, get it signed, filed, await comments, and then file the final rulemaking.

Estimated Fiscal Impact to occur every fifth year:

Purchasing Division Director: (\$472/day X 2 days) X 4 regulations = \$3,776

Purchasing Staff: (\$325.70/day X 2 days) X 4 regulations= \$2,606

Personnel Division Director: (\$472/day X 2 days) X 21 regulations=\$19,824

Personnel Staff: (\$378/day X 2 days) X 21 = \$15,876

FMDC Division Director: (\$472/day X 2 days) X 11 regulations= \$10,384

FMDC Staff: (\$386/day X 2 days) X 11 regulations= \$8,492

OEO Division Director: (\$312.50/day X 2 days) X 3 regulations= \$1,875

OEO Staff: (\$208.33/day X 2 days) X 3 regulations= \$1,250

Accounting Division Director:  $\$472/\text{day} \times 2 \text{ days} \times 5 \text{ regulations} = \$4,720$

Accounting Staff:  $(\$385.4/\text{day} \times 2 \text{ days}) \times 5 \text{ regulations} = \$3,854$

Legal Staff Time:  $(\$270/\text{day} \times 2 \text{ days}) \times 44 \text{ regulations} = \$23,760$

For a total estimated impact to OA each year in which rules must be re-promulgated of \$96,417.

**Oversight** does not have any information to the contrary. Therefore, Oversight will reflect impact estimated by OA in the fiscal note. Oversight notes that the estimated cost to OA will occur every fifth year. Oversight will show the annual cost of \$96,417 in FY22.

Officials from the **Office of the Secretary of State** notes many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The Secretary of State's office is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this fiscal note to Secretary of State's office for Administrative Rules is less than \$5,000. The Secretary of State's office recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, they also recognize that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what our office can sustain with our core budget. Therefore, they reserve the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the governor.

**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 process.

Officials from the **Attorney General's Office, Office of Administration - Administrative Hearing Commission, Office of Administration - Budget and Planning, Department of Economic Development, Department of Elementary and Secondary Education, Department of Higher Education and Workforce Development, Department of Mental Health, Department of Corrections, Department of Labor and Industrial Relations, Department of Revenue, Division of Alcohol and Tobacco Control, Capitol Police, Fire Safety, Office of the Director, Missouri Gaming Commission, Missouri National Guard, Missouri Highway Patrol, Missouri Veterans Commission, State Emergency Management Agency, Missouri Department of Agriculture, Missouri Department of Conservation, Missouri Ethics Commission, MoDOT & Patrol Employees' Retirement System, Office of the State Public Defender, Office of the Governor, Office of the State Auditor, Office of the State Treasurer, Missouri House of Representatives, Joint Committee on Education, Joint Committee on Public Employee Retirement, Legislative Research, Oversight Division, Missouri Senate, Missouri Lottery Commission, Missouri Consolidated Health Care Plan, Missouri Office of Prosecution Services, Missouri State Employee's Retirement System, Office of the State Courts Administrator, and State Tax Commission** each assume the proposal will have no



fiscal impact on their organization. **Oversight** does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note.

<u>FISCAL IMPACT – State Government</u>	FY 2022 (10 Mo.)	FY 2023	FY 2024
<b>GENERAL REVENUE FUND</b>			
<u>Cost – DSS</u>			
Salaries	(\$81,865)	(\$99,220)	(\$100,213)
Fringe Benefits	(\$50,527)	(\$60,958)	(\$61,287)
Equipment and Expense	(\$22,010)	(\$14,206)	(\$14,561)
<u>Total Costs – DSS</u>	<u>(\$154,402)</u>	<u>(\$174,384)</u>	<u>(\$176,061)</u>
FTE Change – DSS	2 FTE	2 FTE	2 FTE
<u>Cost - DHSS</u>			
Promulgate, amend, or rescind rules	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
<u>Cost - OA</u>			
Promulgate, amend, or rescind rules	(\$96,417)	\$0	\$0
<u>Cost - JCAR</u>			
Joint Committee travel expenses to meet monthly during interim	(\$24,846)	(\$24,846)	(\$24,846)
<u>Loss – DNR</u>			
Loss of Federal Funds pg. 5	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>	<b>Could exceed <u>(\$275,665)</u></b>	<b>Could exceed <u>(\$199,230)</u></b>	<b>Could exceed <u>(\$200,907)</u></b>
Estimated Net FTE Change on General Revenue Fund	2 FTE	2 FTE	2 FTE

<b>OTHER STATE FUNDS</b>			
<u>Cost – MODOT - State Road Fund</u>			
Additional staff time	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
Various State Funds	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>	<b><u>\$0 to (Unknown)</u></b>	<b><u>\$0 to (Unknown)</u></b>	<b><u>\$0 to (Unknown)</u></b>
<b>FEDERAL FUNDS</b>			
<u>Cost Savings - DNR</u>			
Salaries	\$0	\$0	\$0 to \$12,374,615
Fringe Benefits	\$0	\$0	\$0 to \$7,209,193
Equipment and Expense	\$0	\$0	\$0 to \$703,973
Other Sources	\$0	\$0	\$0 to \$4,524,175
<u>Total Cost Savings - DNR</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0 to \$24,811,962</u>
FTE Change - DNR			(254.83) FTE
<u>Loss – DNR Federal Funding</u>			
EPA Grants Lost	<u>\$0)</u>	<u>\$0</u>	<u>\$0 to (\$81,000,000)</u>
<u>Total Cost -DNR</u>	<u>\$0)</u>	<u>\$0</u>	<u>\$0 to (\$56,188,038)</u>
<u>Loss – Various Federal Funds to Various State Agencies</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>
<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>	<b><u>\$0 to (Unknown)</u></b>	<b><u>\$0 (Unknown)</u></b>	<b><u>\$0 to Could substantially exceed (\$56,188,038)</u></b>
Estimated Net FTE Change on Federal Funds	0 FTE	0 FTE	(254.83) FTE

<u>FISCAL IMPACT – Local Government</u>	FY 2022 (10 Mo.)	FY 2023	FY 2024
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT – Small Business

Small businesses could potentially be impacted if the state would lose drinking water primacy or its current delegated authority to implement federal environmental laws. The U.S. Environmental Protection Agency would implement the federal regulations tied to these various environmental laws.

FISCAL DESCRIPTION

This act requires that any state agency adopting or amending a rule shall rescind a rule that is unnecessary, obsolete, or burdensome. The rule to be rescinded shall be listed in the notice of proposed rulemaking of the proposed new or amended rule. The Joint Committee on Administrative Rules may grant an exception to this requirement upon the agency's application for good cause. Additionally, the requirement shall not apply to proposed amendments to existing rules for corrections of typographical or printing errors, proposed rules or amendments that do not affect substantive matters and do not impose new burdens or requirements on individuals, businesses, or political subdivisions, and proposed rules or amendments that were necessitated by newly delegated authority by an act of the General Assembly.

All rules shall expire five years after the year in which the rule takes effect, unless the rule contains an earlier expiration date. All rules in effect on January 1, 2022, shall expire on January 1, 2027. The expiration date shall be extended each time that an unexpired rule is amended and the requirement of rescinded unnecessary, obsolete, or burdensome rules shall not apply to orders of rulemaking reauthorizing expiring rules.

No later than a year after the review report on an agency's rules is filed, this act requires that each agency amend or rescind rules identified as unnecessary, obsolete, overlapping, duplicating or conflicting with other state rules, accomplished by a less restrictive rule, or burdensome unless the agency provides good cause.

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

Attorney General's Office  
Office of Administration - Administrative Hearing Commission  
Office of Administration - Budget and Planning  
Department of Commerce and Insurance  
Department of Economic Development  
Department of Elementary and Secondary Education  
Department of Higher Education and Workforce Development  
Department of Health and Senior Services  
Department of Mental Health  
Department of Natural Resources  
Department of Corrections  
Department of Labor and Industrial Relations  
Department of Revenue  
Division of Alcohol and Tobacco Control  
Capitol Police  
Fire Safety  
Office of the Director  
Missouri Gaming Commission  
Missouri National Guard  
Missouri Highway Patrol  
Missouri Veterans Commission  
State Emergency Management Agency  
Department of Social Services  
Missouri Department of Agriculture  
Missouri Department of Conservation  
Missouri Ethics Commission  
Missouri Department of Transportation  
MoDOT & Patrol Employees' Retirement System  
Missouri Office of Prosecution Services  
Office of Administration  
Office of the Secretary of State  
Office of the State Public Defender  
Office of the Governor  
Office of the State Auditor  
Office of the State Treasurer  
Missouri House of Representatives  
Joint Committee on Administrative Rules  
Joint Committee on Education  
Joint Committee on Public Employee Retirement  
Legislative Research  
Oversight Division

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Missouri Senate

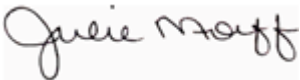
Missouri Lottery Commission

Missouri Consolidated Health Care Plan

Missouri State Employee's Retirement System

Office of the State Courts Administrator

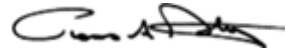
State Tax Commission



Julie Morff

Director

March 1, 2021



Ross Strobe

Assistant Director

March 1, 2021