# COMMITTEE ON LEGISLATIVE RESEARCH OVERSIGHT DIVISION

### **FISCAL NOTE**

L.R. No.: 3224S.03I Bill No.: SB 670

Subject: County Officials; Elections; Secretary of State

Type: Original

Date: March 1, 2022

Bill Summary: This proposal modifies provisions relating to elections.

# **FISCAL SUMMARY**

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND					
FUND AFFECTED	FY 2023	FY 2024	FY 2025		
<b>Total Estimated Net</b>					
Effect on General					
Revenue	<b>\$0</b>	\$0	\$0		

ESTIMATED NET EFFECT ON OTHER STATE FUNDS					
FUND AFFECTED	FY 2023	FY 2024	FY 2025		
Other State Funds*	\$0 to Unknown	\$0 to Unknown	\$0 to Unknown		
<b>Total Estimated Net</b>					
Effect on Other State					
Funds	\$0 to Unknown	\$0 to Unknown	\$0 to Unknown		

Numbers within parentheses: () indicate costs or losses.

<sup>\*</sup> The State's "Fair Share" of election costs when appropriated, the Efficiency Grant, absentee mail postage reimbursements and reimbursements for updating the state MCVR database, any and all of these funds could be withheld by the SOS from the LEA. These funds vary by size of election and LEA and are difficult to calculate a total. Withholding all these funds would be a potential loss to LEAs exceeding \$250,000 but be offset with savings to Other State Funds in the same amount.

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ESTIMATED NET EFFECT ON FEDERAL FUNDS				
FUND AFFECTED	FY 2023	FY 2024	FY 2025	
<b>Total Estimated Net</b>				
Effect on All Federal				
Funds	\$0	\$0	\$0	

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)				
FUND AFFECTED	FY 2023	FY 2024	FY 2025	
<b>Total Estimated Net</b>				
<b>Effect on FTE</b>	0	0	0	

- ☐ 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.

ESTIMATED NET EFFECT ON LOCAL FUNDS				
FUND AFFECTED	FY 2023	FY 2024	FY 2025	
<b>Local Government</b>	Unknown to	Unknown to	Unknown to	
	(Unknown)	(Unknown)	(Unknown)	

## **FISCAL ANALYSIS**

## **ASSUMPTION**

Officials from the **Office of the Secretary of State (SOS)** note this bill would require all direct-record electronic voting machines (DREs) be removed from service by January 1, 2024, with the exception of any machine used solely for disabled voters. Based on most recent survey conducted in 2020, there are 330 DREs in service statewide. All local election authorities (LEAs) which disclosed the use of DREs on the survey have already replaced or have indicated that they are actively planning to replace those machines prior to the date specified in the bill. Therefore, the SOS does not anticipate being required to cover the costs under Article X, Section 21, but will provide assistance to those LEAs using existing grant programs.

**Oversight** notes this response from the SOS is different from previous years. SOS' response to similar proposals in 2021 (i.e. HB 925) included a per-machine replacement cost of \$5,000 for the 330 DREs in service statewide (for a total of \$1.65 million). Oversight will utilize SOS' assumption that this change is already in progress and that this bill will not create an additional fiscal impact to the state.

The **SOS** also assumes many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS 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 the SOS for Administrative Rules is less than \$5,000. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, SOS also recognizes 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 the office can sustain with its core budget. Therefore, the SOS reserves 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 **Department of Revenue (DOR)** state:

### §115.151.3

Requires the Department to transmit voter registration application forms to the appropriate election authority and modifies the requirement to transmit no later than three business days after the form is completed by the applicant.

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## §115.160.3

Requires the Department to utilize electronic voter registration application forms and to ensure the confidentiality and integrity of the data collected, maintained, received, or transmitted.

## §115.160.5

Requires the Department to transmit voter registration information in a secure and electronic manner, including electronic image of the signature of the applicant, in a format compatible with the Missouri voter registration system established in §115.158. The proposed changes further define that each election authority receiving application forms must forward any application that pertains to a different election authority that that election authority in a secure and electronic manner.

The Department and the Office of the Secretary of State are currently working to complete a project to implement an electronic exchange of voter registration application information, including the signature, which is currently scheduled to be completed in early 2022. Such implementation would meet the provisions of this bill, assuming there is not an expectation for the Department to submit data to each individual county election authority. Therefore, any cost associated with this legislation has already been absorbed.

## §115.427.2(1)

The proposed change removes the language requiring the individual to sign a statement certifying the individual has no other form of personal identification that meets the current requirements of §115.427.2(1) when applying for a Nondriver identification card for voting transactions.

### **Administrative Impact**

Currently the Department is required to have the individual who is applying for a Nondriver license for voting purposes, sign a statement at time of application, certifying under penalty of perjury that they have no other form of personal identification that would meet the current requirements of §115.427.2(1).

To implement the proposed change, the Department would be required to:

- Complete business requirements and design documents to modify the Missouri Electronic Driver License (MEDL) issuance system, MEDL central applications and supporting systems to remove nondriver for voting statement no longer required, update denial tracking application and to generate an electronic voter registration statement in lieu of a printed form;
- Complete programming and user acceptance testing of the Missouri Electronic Driver License (MEDL) issuance system;
- Coordinate with the Secretary of State to develop requirements for the data and signature file specifications for electronic transfer of voter registration application data;

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- OA-ITSD must develop a secure process that is a format compatible with the Missouri voter registration system for sending the required signature and voter registration information file to the data file for submission to the Secretary of State:
- OA-ITSD Test the file generation and secure transfer process to ensure all required data elements and signature are sent as required;
- Obtain format and procedure approvals from Secretary of State and others as applicable;
- Update policies, procedures, and the Uniform License Issuance Manual (ULIM);
- Update forms, manuals, and the Department website;
- Complete training as required.

## FY 2023 - Driver License Bureau

Research/Data Assistant	220 hrs. @ \$16.30 per hr.	=\$3,586
Research/Data Analyst	260 hrs. @ \$24.29 per hr.	=\$6,315
Administrative Manager	80 hrs. @ \$26.37 per hr.	<u>=\$2,110</u>
Total		\$12,011

### FY 2023 - Personnel Services Bureau

Associate Research/Data Analyst	20 hrs. @ \$19.47 per hr.	=\$389
Associate Research/Data Analyst	10 hrs. @ \$19.47 per hr.	<u>=\$195</u>
Total		\$584

**Total Costs** \$12,595

Oversight notes that IT costs for §115.427.2(1) according to DOR are contracted at \$95 per hour. This section would result in \$2,873 (30.24 hours x \$95) in FY 2023.

## **Revenue Impact**

**DOR** states currently persons who already hold an acceptable identification for voting are not allowed the no cost nondriver for voting since they cannot complete the required affidavit statement. The removal of this limitation may allow persons who already have a valid driver license or other eligible document to apply for the no cost nondriver for voting. The estimated number of potential applicants who may have a current acceptable identification document for voting and yet request an NDL for voting purposes is 53. This number was determined by reviewing the maximum office denial count statewide in 2021.

The estimated loss of revenue below reflects the office transaction fee and office processing fee since currently the offices are reimbursed for processing fees related to no fee nondriver for voting transactions not collected at the time of issuance.

Potential annual loss of NDL Transaction Fee =  $$6.00 \times 53$ = \$318 10 months (FY23) = \$265\$318

Total Loss of State General Revenue FY 24, FY 25 and on-going

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Potential savings from General Revenue by removing reimbursement of processing fees to license offices for current issuance volumes of nondriver for voting documents would be:

 $12.00 \times 1,001(948 \text{ annual NDL Voting issuance} + 53 \text{ denials}) = 12,012 \text{ potential revenue savings}$ 

Vendor per card cost including postage for NDL  $2.44112 \times 53 = 129$  annually FY 24, 25 and on-going (this is assuming thee applicants would not have completed application today if fee not waived).

# This impact could potentially increase on election years when more citizens will utilize the provisions.

\*\*Oversight notes that there may be a potential increase in loss of revenue during an election year when more citizens will utilize the provisions. According to DOR, the denial count statewide out of 182 offices was 1,442 persons YTD in 2020 (Presidential Election Year). The loss of revenue is reflected below:

NDL Transaction Fee (Loss) = $$6.00 \times 1,442$ =	(\$ 8,652)
Office Processing Fee (Savings) = \$12.00 x 1,442=	\$17,304
Total Effect on State General Revenue FY 23, FY 24 and on-going	\$8,652

**Oversight** assumes that Department of Revenue will be able to accomplish the requirements of §115.427.2(1) with existing resources; however, during presidential election years, the cumulative impact may require additional appropriations.

Officials from the Office of the State Public Defender, Attorney General's Office, Department of Corrections, Department of Public Safety- Missouri Highway Patrol, Missouri Office of Prosecution Services, and Office of the State Courts Administrator each assumed the proposal will have no fiscal impact on their organizations. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note.

Officials from the **Platte County Board of Elections** and **Daviess County Clerk** both assume the proposal will have no fiscal impact on their organizations.

Officials from the **St. Louis County Board of Elections** assume the proposed section 28.960 is vague at best and could have negative financial ramifications for county election authorities. This proposed section allows the SOS to conduct discretionary audits of voter records in any Missouri county. The section states that the SOS shall verify whether a voter is alive, where the voter resides, and whether the voter is entitled to vote. This may sound straightforward to the uninitiated, but verifying these things can be difficult in practice. For example, many Missouri voters registered to vote decades ago before the last four digits of the Social Security Number were required when registering. It can be quite difficult to match a death record against a voter with no Social Security Number in the voter database. This same type of ambiguity also exists in

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questions of residency. Presumably the Secretary of State's office, which heretofore has had no statutory role in registering voters or maintaining the voter list, could make some arbitrary decision that a certain voter or voters should be deleted and the local election authority may disagree with this decision. In a case such as this, the local election authority would in the precarious position of having funding withheld. This provision does not detail what funding may be withheld or how much. In a worst case scenario the Secretary of State could withhold the State's portion of the potential election funding for the August and November 2022 elections. For St. Louis County this would be about \$1.4 million.

In addition, having the DMV electronically transfer voter registrations to the Board office would save 350 hours of work a year. At the lowest temporary employee salary, this would save us \$13,000 annually.

Officials from the **St. Charles County Election Authority** assume Section 28.960.3 and Section 115.225.6 state that the SOS may withhold funds from the Local Election Authorities (LEAs). The language does not state which funds may be withheld. As the SOS distributes federal grant funds, the State's "Fair Share" of election costs when appropriated, the Efficiency Grant, absentee mail postage reimbursements and reimbursements for updating the state MCVR database, any and all of these funds could be withheld by the SOS from the LEA. These funds vary by size of election and LEA and are difficult to calculate a total. Withholding all these funds in 2020 would have cost St. Charles County Election Authority \$1,047,000.

Officials from **Jackson County Board of Elections** state currently the Board uses ballot marking devices for absentee voting. Limiting the use of the ADA ballot marking devices to only those with disabilities will increase ballot printing costs substantially.

The Jackson County Election Board can have up to three hundred (300) different ballot styles in an election and would have to print absentee ballots for each ballot style for absentee voting at a cost of .35 cents per ballot. The Board have no way of knowing who will be voting absentee so at least 2% of each ballot style would have to be printed to cover the walk-in and permanent absentee voters. Currently the Board prints enough for permanent/disabled voters to mail to them and have a small amount for walk-in absentees if they choose a paper ballot over the ballot marking device. The ballot marking device allows them to pull up any individual's particular ballot style while also producing a paper ballot at a substantial cost savings.

The Jackson County Election Board along with other Missouri election authorities have invested millions of dollars in ADA machines which are not widely used at the polling locations so making use of them in our absentee department is fiscally responsible and our voters like the machines.

Cost to Election Authority/County

Small Elections \$3,500 per election/per year Large Elections \$10,000 per election/per year

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**Oversight** notes that §115.160 states the Director of Revenue shall utilize electronic voter registration application forms and provide for secure electronic transfer of voter registration information to election authorities. As stated above by the St. Louis County Board of Elections there would be a savings as a result of electronic registrations. Therefore, Oversight will reflect an unknown positive impact to local election authorities in the fiscal note.

Oversight notes that §28.960.3 and §115.225.6 state that the SOS may withhold funds from the LEAs. The language does not state which funds may be withheld. As mentioned above by St. Charles Election Authority the SOS distributes federal grant funds, the State's "Fair Share" of election costs when appropriated, the Efficiency Grant, absentee mail postage reimbursements and reimbursements for updating the state MCVR database, any and all of these funds could be withheld by the SOS from the LEA. These funds vary by size of election and LEA and are difficult to calculate a total. Therefore, Oversight will reflect a potential loss of \$0 (no funds withheld by SOS) to Unknown (funds withheld by SOS) to the LEAs on the fiscal note. Oversight will reflect a potential savings of \$0 (no funds withheld by SOS) to Unknown (funds withheld by SOS) to the Other State Funds on the fiscal note.

Oversight also notes that at the beginning of January 1, 2024, no electronic voting systems shall be used. The use of remaining direct-record electronic voting machines shall be phased out upon mechanical failure. Based on most recent survey conducted in 2020, there are 330 DREs in service statewide. All local election authorities (LEAs) which disclosed the use of DREs on the survey have already replaced or have indicated that they are actively planning to replace those machines prior to the date specified in the bill. Therefore, Oversight does not anticipate fiscal impact to LEAs.

**Oversight** only reflects the responses received from state agencies and political subdivisions; however, other local election authorities and county clerks were requested to respond to this proposed legislation but did not. A listing of political subdivisions included in the Missouri Legislative Information System (MOLIS) database is available upon request.

FISCAL IMPACT – State Government	FY 2023	FY 2024	FY 2025
	(10 Mo.)		
OTHER STATE FUNDS			
<u>Savings</u> – SOS - §28.960.3 and	<u>\$0 to</u>	<u>\$0 to</u>	\$0 to
§115.225.6 Potential withholding of	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
"Fair Share" funding to LEAs (p. 7)			
ESTIMATED NET EFFECT ON	\$0 to	\$0 to	\$0 to
OTHER STATE FUNDS	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>

FISCAL IMPACT – Local Government	FY 2023 (10 Mo.)	FY 2024	FY 2025
LOCAL POLITICAL SUBDIVISIONS			
Savings - §115.160.3 Electronic registrations (p. 7)	Unknown	Unknown	Unknown
Loss – §28.960.3 and §115.225.6 Potential withholding by SOS of "Fair Share" funding to LEAs (p. 7)	\$0 to ( <u>Unknown</u> )	\$0 to (Unknown)	\$0 to (Unknown)
ESTIMATED NET EFFECT ON LOCAL POLITICAL SUBDIVISIONS	Unknown to (Unknown)	Unknown to (Unknown)	Unknown to (Unknown)

### FISCAL IMPACT – Small Business

There could be an impact from the potential statewide loss of Contract Office Processing Fee monies from additional no fee nondriver for voting applications and removal of appropriations language that previously covered the reimbursement of processing fees to contracted license offices. With this proposed language the DOR assumes they will no longer return those fees since funding is not allowed for such and the contractor may see a reduction based on their office nondriver for voting volume.

## FISCAL DESCRIPTION

This act modifies various provision relating to elections.

# (Section 28.960)

The Secretary of State (SOS) is authorized to audit the voter registration records of any local election authority (LEA). Each such audit shall determine whether the LEA has performed certain voter registration list maintenance activities that are required by law. If, after completing the audit, the SOS determines that the LEA has not performed such activities, then the SOS may withhold funds from the LEA.

## (Section 115.004)

The act prohibits amendments or modifications of any kind to all election laws, rules, and regulations in the 26 weeks preceding a presidential election.

# (Section 115.013)

Current law defines automatic tabulating equipment as the apparatus necessary to examine and automatically count votes, including any data processing machines used for counting votes and

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tabulating results. This act requires such equipment to additionally be air gapped and not connected to a network.

# (Sections 115.031 to 115.107)

Current law requires election commissioners to be a registered voter and a resident of the jurisdiction for which he or she is appointed for at least one year preceding his or her appointment. This act repeals the one year residency requirement.

The act stipulates that no employee of a board of election commissioners shall be required to reside and be a registered voter within the jurisdiction of the LEA unless directed by the board. (Section 115.045) The act also stipulates that no deputy county clerk shall be required to reside and be a registered voter within the jurisdiction of the county clerk unless directed by the clerk.

#### (Section 115.051)

The act permits the committee of each major political party within the jurisdiction of a particular LEA to provide the LEA with a list of candidates for the position of election judge. If the committee fails to submit a number of candidates equal to the number of positions available for election judge, then the LEA may fill the positions as otherwise required by law. Furthermore, if the LEA determines that a candidate submitted by the committee does not meet the qualifications for election judge, the LEA shall notify the committee and permit it to submit a new name prior to filling the position. (Section 115.081)

Current law permits a LEA to appoint election judges who are registered voters of another LEA's jurisdiction only after receiving the written consent of the other LEA. This act repeals that requirement. (Section 115.085)

Current law requires any election challenger to be a registered voter in the jurisdiction of the LEA for which the challenger is designated as a challenger. This act repeals that requirement. (Section 115.105)

The act provides that poll watchers designated by the chairman of the county political party committee shall not be required to reside within the jurisdiction of the LEA, provided that if the LEA determines that the person designated as poll watcher does not meet the qualifications to serve as a poll watcher then the chairman of the committee shall be permitted to designate a new poll watcher. The act additionally permits candidates to select his or her own poll watchers at his or her own expense, provided that such persons meet the qualifications to be a poll watcher. (Section 115.107)

## (Sections 115.151 to 115.205)

This act requires the use of electronic voter registration application forms by the Director of Revenue. The Director must additionally provide for the secure electronic transfer of voter registration information to election authorities in the manner described in the act. (Section 115.160)

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The act requires the Division of Motor Vehicle and Drivers Licensing to transmit voter registration application forms to the appropriate LEA not later than 3, rather than 5, business days after the form is completed by the applicant. (Section 115.151) LEAs are required to accept and process such forms. (Section 115.960)

The act requires LEAs to forward voter history to the Missouri voter registration system not later than 3 months after each election. Current law gives LEAs up to 6 months. (Section 115.157) The act modifies the voter registration information that a LEA or the SOS may furnish to any member of the public. Specifically, in furnishing electronic media printouts containing voter registration information a LEA or the SOS may only include unique voter identification numbers, voters' names, years of birth, addresses, and townships or wards, and precincts. Furthermore, any information so furnished shall not be used for commercial purposes. (Section 115.157)

The act repeals a provision allowing a candidate, campaign committee, or a political party committee to request information regarding the names of voters within a particular jurisdiction who have requested an absentee ballot. Another provision is repealed requiring local election authorities to supply voter registration lists to all candidates and party committees that request them. (Section 115.157)

The act prohibits any person from being paid or otherwise compensated for soliciting voter registration applications, provided that a governmental entity or person paid or compensated by a governmental entity may solicit such applications. Any person who solicits more than 10 voter registration applications is required to register with the SOS for every election cycle. (Section 115.205)

## (Sections 115.225 and 115.237)

The act prohibits the use of touchscreen, direct-recording, electronic vote-counting machines beginning January 1, 2024, except for use by voters who are disabled. Upon the removal of such a machine from an LEA's inventory because of mechanical malfunction, wear and tear, or any other reason, the machine shall not be replaced and no additional direct-recording electronic vote-counting machine shall be added to the LEA's inventory. Replacement of equipment for use by voters who are disabled shall be with paper ballot marking devices designed to assist voters. Each LEA is required to be a member of the Elections Infrastructure Information Sharing and Analysis Center (EI-ISAC) and must allow a cyber-security assessment of their office by the SOS. If an LEA denies access for a cyber-security assessment, the SOS may publicize a notice of noncompliance in a newspaper within the jurisdiction of the LEA or in electronic format. The SOS may also withhold funds from an LEA in violation of this provision unless such funding is a federal mandate or part of a federal and state agreement.

The SOS may require cyber security testing, including penetration testing, of vendor machines, programs, and systems. Failure to participate in such testing shall result in a revocation of vendor certification. Upon notice from another jurisdiction of cyber security failures or certification withholds or revocation, the SOS may revoke or withhold certification for vendors. The

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requirements of this provision shall be subject to appropriation for the purpose of cyber security testing. (Section 115.225)

Beginning January 1, 2024, the official ballot shall be a paper ballot that is hand-marked by the voter, or in the case of voters who are disabled who need assistance, by a paper ballot marking device designed to assist voters, except as otherwise provided by law. (Section 115.237)

(Sections 115.257 to 115.291)

Election authorities are required to cause voting machines, if used, to be put in order, set, adjusted, tested, and made ready for voting within one business day of the printing of absentee ballots for the purpose of processing any absentee ballot cast in person by a voter. (Section 115.257)

The act provides that an absentee ballot includes any ballot cast in the office of the LEA or other authorized location designated as a polling place by the LEA. (Section 115.275(1)).

The act expands the use of absentee voting to members of the Space Force as well as their spouses and dependents. (Section 115.275) The Uniformed Military and Overseas Voters Act is also amended to include members of the Space Force as well as their spouses and dependents. (Section 115.902)

This act provides that any person may cast an absentee ballot in person at a place determined by the LEA by providing a form of personal identification required by law. (Section 115.277.1) A person may cast an absentee ballot not in person by having his or her ballot envelope notarized. (Section 115.277.2).

For persons voting absentee not in person, if the reason for such person voting absentee is due to incapacity or confinement due to illness or physical disability, such person must expect to have such incapacity or confinement on election day. Furthermore, if the reason for voting absentee is due to being primarily responsible for the physical care of a person who is incapacitated or confined due to illness or disability, the person voting must live at the same address as the person that is being cared for. (Section 115.277.2(2))

No individual, group, or party shall solicit a person to obtain an absentee ballot application. Furthermore, absentee ballot applications shall not have any information pre-filled prior to being provided to an applicant. (Section 115.279.2)

The act stipulates that absentee ballots that are received by an LEA in person are deemed cast when received prior to Election Day and absentee ballots that are received through a common carrier are deemed cast when received prior to the closing of polls. Furthermore, absentee ballots received by the LEA through a common carrier such as the United States Postal Service are required to be received prior to the time fixed by law for the closing of polls on Election Day. (Section 115.286)

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Under current law, in charter counties and the cities of St. Louis and Kansas City, if the LEA receives ten or more applications for absentee ballots from the same address it may appoint a team to deliver and witness the voting and return of absentee ballots by voters residing at that address. This act expands this provision to all LEAs and furthermore requires, rather than permits, a team to be appointed to deliver and witness the voting and return of the ballots. (Section 115.287)

# **SOURCES OF INFORMATION**

Attorney General's Office
Department of Corrections
Department of Revenue
Missouri Highway Patrol
Office of the Secretary of State
Office of the State Public Defender
Missouri Office of Prosecution Services
Office of the State Courts Administrator
Platte County Board of Elections
Jackson County Board of Elections
St. Charles Election Authority
St. Louis County Board of Elections
Daviess County Clerk

Julie Morff Director

March 1, 2022

Ross Strope Assistant Director March 1, 2022