

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1409-06
Bill No.: Perfected SS for SCS for SB 375
Subject: Public Meetings and Records: Sunshine Law
Type: Original
Date: April 26, 2001

FISCAL SUMMARY

ESTIMATED NET EFFECT ON STATE FUNDS			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
General Revenue	(\$104,419 to Unknown)	(\$107,419 to Unknown)	(\$110,203 to Unknown)
Department of Revenue Information	(\$46,800)	(\$56,200)	(\$56,200)
Highway	(Unknown)	\$0	\$0
Total Estimated Net Effect on <u>All</u> State Funds	(\$151,219 to Unknown)	(\$163,619 to Unknown)	(\$166,403 to Unknown)

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
Federal	(\$43,902)	(\$53,650)	(\$55,058)
Total Estimated Net Effect on <u>All</u> Federal Funds	(\$43,902)	(\$53,650)	(\$55,058)

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
Local Government	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 9 pages.

FISCAL ANALYSIS

ASSUMPTION

Officials of the following agencies/offices/commissions stated their offices would not expect significant direct fiscal impact due to this proposal or to similar proposals: **Agriculture, Conservation, Elementary and Secondary Education, Higher Education, Insurance, Labor and Industrial Relations, Transportation, Natural Resources, Governor, Lieutenant Governor, Courts Administrator, Tax Commission, Economic Development, Gaming, Lottery, Chief Clerk of the House, Secretary of the Senate, Secretary of State, Auditor, Treasurer, Public Defender, Prosecution Services, Central Missouri State University, Southwest Missouri State University (\$300 to \$400 per year not realized), Truman State University, Harris-Stowe State College, and Missouri Western State College.**

Officials of the **University of Missouri** and the **Department of Corrections** (in response to similar proposals from previous years) noted that the proposal might provide a cause of action for additional litigation, which could have a fiscal impact depending on the amount and outcome of that litigation. For fiscal note purposes it is assumed that this would not be a direct impact of the proposal.

Officials of the **Department of Public Safety - Water Patrol** stated, in their response to the original bill, that they would request a Clerk IV to develop a separate Records Section to monitor requests for division reports and records and to assure that records are made public strictly according to Chapter 610. The public records would be moved from the communications section to a secured records room. Costs for the new employee, including fringe benefits and equipment and expense, would be approximately \$38,000 per year.

Oversight notes that the proposal does not require a separate Records Section and that agencies should already have procedures to assure that records are made public according to Chapter 610. Oversight assumes the additional records made public by this proposal would not materially affect Patrol procedures.

Officials of the **Department of Health (DOH)** noted, in responses to earlier versions of this proposal that those versions could have eliminate special copying funds such as those created in sections 192.323 and 193.265. The Department provides manpower lists, hospital and nursing home profiles, hospital revenue data among other information. The Department would not provide this information if it could not charge enough to cover costs of retrieving the information as well as for copying it. Section 610.026.1(2) in the original bill as well as the committee substitute would have limited fees for providing access to public records maintained in electronic or photographic formats to the costs of disks or tapes used for the duplication). The Document Services Fund has received an average of \$75,000 per year for the last three years.

ASSUMPTION (continued)

Oversight notes that the language in the current proposal's 610.026.1(2) is the same as in current law and that 610.026.1 of the current proposal states that "*Except as otherwise provided by law, each public governmental body shall provide access to...public records...*" (emphasis added). Section 193.265 sets fees for certain documents and assumes that the changes proposed would not affect those fees. DOH officials have not yet responded to the current version of the proposal; however, Oversight assumes that, *under the current language*, DOH would be able to charge enough to cover all costs of reproducing documents covered by 192.323.

DOH officials also noted that the part of the proposal concerning information to be included in physician reports on abortions would require the Department to revise Induced Termination of Pregnancy forms and the handbook. They would also have their computer systems vendor add additional procedures and question fields to the Induced Termination of Pregnancy System. Genesis Corporation (the vendor) informed DOH that system upgrades would cost approximately \$8,500.

Officials of the **Department of Revenue (DOR)** indicated that DOR personnel charge on a per record basis for record retrieval and would have to charge on a per page basis under terms of this proposal. This change would require changes to computer programs for motor vehicle registration and licensing functions. Officials have not had time to make an estimate of what those changes would cost, but noted that the costs would be to the Highway Fund.

They noted that their current charge is \$1.25 per record for electronic and non-electronic records. They estimated that non-electronic records average 2 pages per record and that electronic records average one page per record. Department personnel retrieved 330,543 non-electronic records and 824,867 electronic records in FY 2000. Under terms of this proposal, the Information Fund would have received \$68,108.60, on a per page basis, from non-electronic record retrieval. The estimated receipts under current law would be \$714,019.65. Under terms of this proposal, the Department could charge \$2.00 per page for electronic records. Estimated receipts, on a per page basis, would have been \$1,649,734 under the proposal and \$1,058,022.75 under current law. The net estimated effect for both types of records is a loss of \$56,199.80. The actual effect in future years would depend upon the amount of requests and the proportions of electronic and non-electronic records requested.

Oversight notes that the proposal would limit charges for copies of paper records which are 8 ½ x 14 inches or smaller to \$.10 per page. The Department of Social Services has not yet responded to the current proposal; however, they did respond to a proposal which would have limited charges to \$.05 per page.

Officials of the **Department of Social Services (DOS) - Division of Aging (DA)**, in their

ASSUMPTION (continued)

response to the original bill, anticipated the need for three additional Clerk Typists II to handle the increased need for copies due to this proposal.

They noted that the Office of Administration established a fee schedule based on the Open Meetings Law: Research Time of \$15 per hour for professional staff and \$8 per hour for clerical staff; Copying Costs of \$.50 for the first copy of an original and \$.10 for subsequent copies. That proposal represented a 90% reduction from the actual cost of researching and copying documents and is less than commercial copiers charge for making copies; therefore, there will be more requests for multiple copies from the DA. The DA's Institutional Services makes about 65,000 copies per year of documents covered by the Open Meetings Law. Last fiscal year, 18,156 copies were made at \$.50, the other 46,844 copies were made at no charge to the requesters (i.e. residents of institutions or family members). The reduction to general revenue would have been \$8,170. (Costs for reproducing color copies and photographs is not included because department personnel have these done at commercial copiers and charge requesters the cost of reproductions.)

DA officials note that most requests for records from the Institutional Services Central Office Files Unit are from attorneys requesting documents related to ongoing or potential litigation. Some of the information is readily available in paper form, but some of it is archived and some is on microfiche. (Records are kept as hard copy for two years and on microfiche for five years)

They anticipate increases in searches from one or two years worth of records to seven years and expect nine additional sets of copies per request because DA will charge \$.05 for copies as opposed to the \$.07 to \$.13 charged by commercial copiers.

6,052 x 6 =	35,312	additional copies (increase from 1 year to 7 years)
12,104 x 5 =	60,520	additional copies (increase from 2 years to 7 years)
	96,823	Subtotal
96,823 x 9	871,488	additional copies (increase of 9 sets of copies)

DA currently mails 480 packets of information per year. Officials assume this would approximately double. Additional mailing costs were estimated at \$2,285 per year. Expense and equipment for the new FTE would include, in addition to normal costs, \$16,046 for a heavy duty copier and \$20,000 for two microfiche machines.

DA officials have assumed personal service costs for three months of FY 2002. Costs would be divided 48% General Revenue Fund and 52% Federal Funds.

ASSUMPTION (continued)

Officials of DOS - Division of Family Services estimated losses to the General Revenue Fund of about \$700 per year due to reduction in charges for copies.

Oversight assumes that the language in the perfected senate substitute would reduce the above fiscal impact somewhat, but will include the Department of Social Services costs in this fiscal note.

Officials of the **Department of Mental Health** estimated that charging \$.10 per paper copy instead of the \$.25 currently charged would result in a loss of about \$22,000 per year to the General Revenue Fund.

Officials of the **Attorney General** would request and Assistant Attorney General II to carry out investigations and mediation required by this proposal. Oversight has adjusted equipment and expense requests to conform to Office of Administration guidelines and has assumed that the FTE would be located in existing space.

Officials of the several agencies noted that: 1) the increased potential penalties for violations by agencies and members could have a negative impact on state funds, and 2) the requirement that all meetings of members of public governmental meetings be posted and conducted as "public meetings" could slow work processes and increase costs of doing business.

Oversight will: 1) show lost income from copies as "Unknown", 2) assume that increased costs for violations of the Open Meetings Law are avoidable, 3) assume that state and local agencies could adjust postings to address the fact that meetings of members of public bodies as well as formal meetings of those bodies would be subject to provisions of Chapter 610, and 4) assume that coroners and medical examiners would be able to recover costs of making information regarding investigations available for public viewing and of providing autopsies to next of kin and insurance companies.

<u>FISCAL IMPACT - State Government</u>	FY 2002 (10 Mo.)	FY 2003	FY 2004
GENERAL REVENUE FUND			
<u>Cost</u> - Department of Social Services -			
Division of Aging (DOS - DA)			
Personal Service (1.44 FTE)	(\$6,950)	(\$28,493)	(\$29,205)
Fringe Benefits	(\$2,137)	(\$8,762)	(\$8,981)
Expense and Equipment	<u>(\$31,438)</u>	<u>(\$12,266)</u>	<u>(\$12,634)</u>
Administrative Costs DOS - DA	(\$40,525)	(\$49,521)	(\$50,820)

<u>FISCAL IMPACT - State Government</u>	FY 2002 (10 Mo.)	FY 2003	FY 2004
<u>Cost - Attorney General (AGO)</u>			
Personal Service (1 FTE)	(\$30,625)	(\$37,669)	(\$38,610)
Fringe Benefits	(\$10,207)	(\$12,555)	(\$12,869)
Expense and Equipment	<u>(\$14,334)</u>	<u>(\$7,674)</u>	<u>(\$7,904)</u>
Administrative Cost - AGO	(\$55,166)	(\$57,898)	(\$59,383)
 <u>Cost - Department of Health (DOH)</u>			
Expense and Equipment	<u>(\$8,500)</u>	<u>\$0</u>	<u>\$0</u>
Administrative Cost - DOH	(\$8,500)	\$0	\$0
 <u>Loss - Various State Agencies</u>			
Reduced Income from Copies	(\$22,000 to Unknown)	(\$22,000 to Unknown)	(\$22,000 to Unknown)
 ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	 <u>(\$104,191 to Unknown)</u>	 <u>(\$107,419 to Unknown)</u>	 <u>(\$110,203 to Unknown)</u>
 DEPARTMENT OF REVENUE INFORMATION FUND			
<u>Loss - Department of Revenue</u>			
Record Retrieval Fees	(\$46,800)	(\$56,200)	(\$56,200)
ESTIMATED NET EFFECT ON DEPARTMENT OF REVENUE INFORMATION FUND	 <u>(\$46,800)</u>	 <u>(\$56,200)</u>	 <u>(\$56,200)</u>
 HIGHWAY FUND			
<u>Cost - Department of Revenue</u>			
Expense - Reprogramming	(Unknown)	\$0	\$0
ESTIMATED NET EFFECT ON HIGHWAY FUND	 <u>(Unknown)</u>	 <u>\$0</u>	 <u>\$0</u>
 FEDERAL FUNDS			
<u>Cost - Department of Social Services - Division of Aging (DOS - DA)</u>			
Personal Service (1.56 FTE)	(\$7,529)	(\$30,870)	(\$31,642)
Fringe Benefits	(\$2,316)	(\$9,493)	(\$9,730)
Expense and Equipment	<u>(\$34,057)</u>	<u>(\$13,287)</u>	<u>(\$13,686)</u>
Administrative Costs DOS - DA	(\$43,902)	(\$53,650)	(\$55,058)

<u>FISCAL IMPACT - State Government</u>	FY 2002 (10 Mo.)	FY 2003	FY 2004
ESTIMATED NET EFFECT ON FEDERAL FUNDS	<u>(\$43,902)</u>	<u>(\$53,650)</u>	<u>(\$55,058)</u>

<u>FISCAL IMPACT - Local Government</u>	FY 2002 (10 Mo.)	FY 2003	FY 2004
CORONERS AND MEDICAL EXAMINERS			
<u>Income</u> - Charges for making information available to public	Unknown	Unknown	Unknown
<u>Cost</u> - to make information available to public	(Unknown)	(Unknown)	(Unknown)
ESTIMATED NET EFFECT ON CORONERS AND MEDICAL EXAMINERS	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

Small businesses could be affected by changes in charges for getting access to electronic and photographic public records.

DESCRIPTION

This proposal would require that roll call votes be taken on any votes during open or closed meetings of public bodies (except votes on procedural or ministerial matters) and, in the case of closed meetings, require that those vote be made public. It would also allow penalties of \$0 to \$2,500 to be assessed for knowing violations of the open meeting law (standard of proof is preponderance of evidence) and require judges to order payment of court costs and attorneys fees by offending officers or agencies if a violation is found to be "knowing". (Currently, penalties are only allowed if the violation is "purposeful" and only up to \$500). Penalties would not be more than five percent (5%) of the total annual budget of a public body.

The proposal would change to an exemption to the Open Meetings Law to allow closure of imminent causes of action or litigation involving public governmental bodies (current law does not include the word "imminent") and make public completed audit reports of public governmental bodies or educational institutions supported in whole or in part by public funds. Audit reports would include audited financial statements, written management letters issued by auditors in conjunction with audits, and written communications by auditors made under the statement on auditing standards.

DESCRIPTION (continued)

The proposal would extend the exception for electric utilities' records and business plans to December 31, 2003 (this is scheduled to expire December 31, 2001 if Missouri does not implement electric restructuring by then), specifically include the "Curators of the University of Missouri in the definition of education-related agencies supported in whole or in part with state funds and specifically include the Bi-State Development Agency as a public governmental agency.

It would limit fees under section 610.026 for copying public records to the amounts specified in section 28.160, RSMo. That section sets out fees for services to be rendered by the Secretary of State. (Allowable fees for copying papers, records or documents which are 8 and ½ x 14 inches and smaller are up to \$.10 per page.)

It would require coroners and medical examiners to make an incident report containing certain information from death investigations available for public examination and copying within 72 hours of occurrence or discovery of a death as well as certain information from autopsy reports within 72 hours of completion of an autopsy.

The proposal would establish a procedure for the Attorney General to investigate and mediate complaints of violations of sections 610.010 to 610.626.

This proposal would detail information to be included in physician abortion reports. The Department of Health would publish an annual statistical report with data on abortions or induced and post-abortion care. The report would not include any information that would allow the identification of a patient, physician, or hospital or abortion facility. Currently, violations of confidentiality are misdemeanors, this proposal would make these violations of confidentiality Class D felonies. A new section, 191.655, would allow civil actions for breach of medical record confidentiality, if not otherwise provided for. Damages, court costs, attorney's fees, and other relief would be allowed for negligent, willful, intentional, or reckless violation of confidentiality.

This proposal would close portions of hospital records and meetings in certain situations. It would provide that a governing body or related body of a public hospital may close records or meetings that pertain to expansion and the terms or conditions of certain contracts, including physician contracts. This information would be available to the public after a contract was terminated. The records closed pursuant to this section would be disclosed pursuant to lawful subpoena. The disclosure of any other records would be governed by Chapter 610, RSMo.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space. The proposal would affect Total State Revenue.

SOURCES OF INFORMATION

Office of Administration
Department of Agriculture
Department of Conservation
Department of Elementary and Secondary Education
Department of Transportation
Department of Insurance
Department of Labor and Industrial Relations
Department of Mental Health
Department of Natural Resources
Department of Public Safety
State Courts Administrator
State Tax Commission
Chief Clerk - House of Representatives
State Auditor
Lieutenant Governor
State Treasurer
Harris-Stowe State College
Southwestern Missouri State University
Truman State University
Missouri Western State College
University of Missouri

The following agencies provide responses which showed specific costs due to the original proposal but have not yet responded to the perfected senate substitute:

Department of Social Services
Department of Health



Jeanne Jarrett, CPA
Director
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