COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4433-05
Bill No.: Perfected SS for SCS for SB 469
Subject: Administrative Rules; Administrative Law; State Departments
Type: Original
Date: February 13, 2012

Bill Summary: This proposal requires review of all administrative rules and modifies provisions regarding the awarding of certain fees in administrative actions.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2013	FY 2014	FY 2015
General Revenue	$0 or (Unknown)	$0 or (Unknown)	$0 or (Unknown)
Total Estimated Net Effect on General Revenue Fund	**$0 or (Unknown)**	**$0 or (Unknown)**	**$0 or (Unknown)**

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2013	FY 2014	FY 2015
Total Estimated Net Effect on Other State Funds	**$0**	**$0**	**$0**

Numbers within parentheses: ( ) indicate costs or losses.
This fiscal note contains 13 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2013	FY 2014	FY 2015
Total Estimated Net Effect on All Federal Funds	**$0**	**$0**	**$0**

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2013	FY 2014	FY 2015
Total Estimated Net Effect on FTE	**0**	**0**	**0**

☐ Estimated Total Net Effect on All funds expected to exceed $100,000 savings or (cost).

☐ Estimated Net Effect on General Revenue Fund expected to exceed $100,000 (cost).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2013	FY 2014	FY 2015
Local Government	**$0**	**$0**	**$0**

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Joint Committee on Administrative Rules** state this legislation will have a fiscal impact on their agency. There is an anticipated increase in the workload of the Joint Committee that will occur upon the passage of this legislation, due to the necessity to facilitate and monitor compliance with the provisions of the legislation. There may also be increased rulemaking activity in response to reviews conducted by state agencies as a result of the legislation. However, any anticipated fiscal impact within the time period projected by this fiscal note should be able to be absorbed within current appropriations.

In response to a previous version of this proposal, officials from the **Office of the Secretary of State (SOS)** assumed, based on calculations of how many pages will be required to print the notices of agency review/delinquency, this bill could likely require an additional 100 pages in the Missouri Register beginning in fiscal year 2015. The estimated cost of a page in the Missouri Register is $23.00. Our division calculates that, as a result of the requirements that agencies review their rules, between one third and one half of rules could become null and void. Based on calculations of how many pages will be required to print the new status of such rules, this bill could require an additional 1,350 pages in the Code of State Regulations. The estimated cost of a page in the Code of State Regulations is $27.00. The actual cost could be more or less than the numbers given. The impact of this legislation in future years is unknown and depends upon the frequency and length of rules amended, rescinded, or withdrawn. The SOS estimated a costs of roughly $40,000 per year to the General Revenue Fund as a result of this proposal.

Officials from the **Office of the State Public Defender**, **Administrative Hearing Commission**, **Office of the State Courts Administrator**, **Department of Public Safety** (Divisions of **Fire Safety**, **State Emergency Management Agency** and **Alcohol and Tobacco Control**), **Missouri Senate**, **Missouri House of Representatives**, **Office of the State Treasurer**, **Missouri Ethics Commission**, **Office of the State Auditor**, and the **Missouri Consolidated Health Care Plan** each assume the proposal would not fiscally impact their respective agencies.

In response to a previous version of this proposal, officials from the **Department of Transportation**, **Department of Public Safety** (Divisions of **Highway Patrol**, and the **Capitol Police**) and the **Office of Prosecution Services** assumed the proposal would not fiscally impact their respective agencies.

Officials from the **Department of Higher Education** assume the proposal could be implemented utilizing existing resources and would, therefore, have no direct foreseeable fiscal

ASSUMPTION (continued)

impact on their department

Officials from the **Attorney General's Office (AGO)** assume that any potential costs arising from this proposal can be absorbed with existing resources. The AGO may seek additional appropriations if there is an increase review of rules in later years.

Officials from the **Office of Administration (COA)** anticipate that in fiscal years when its rules are subject to review, additional resources could be required. COA assumes any costs could be absorbed with existing resources.

In response to a previous version of this proposal, officials from the **Missouri Gaming Commission (MGC)** stated they are in constant review and revision of it hundreds of administrative rules to regulate the gaming industry. This legislation would require the MGC to add several full time staff and greatly expand each Commission meeting hearing agenda to handle the workload of sun-setting and resubmitting rules to the Secretary of State to be in compliance with the legislative provisions of the bill.

Officials from the **Department of Elementary and Secondary Education** state the fiscal impact is unknown. The expected impact will occur beyond the scope of the fiscal note, beginning in 2015 with the first round of expirations. In succeeding years, the number of rules requiring review will increase. We will likely require additional staff to perform the reviews and promulgate rules.

In response to a previous version of this proposal, officials from the **Missouri Department of Conservation (MDC)** assumed an unknown fiscal impact from the proposal - likely less than $100,000. MDC states they have a constitutional authority for formulating the Wildlife Code of Missouri. Requiring rules to expire after 5 years appears to impose additional costs and complexity to reinstate appropriate sections of the Wildlife Code and would make regulations less consistent and more complex for the public.

Officials from the **Missouri Lottery** state when the review process begins in 2015, an additional FTE may be required. In addition, fiscal impact of the awarded fees and expenses per line 26 is an unknown negative. Whatever amount is required to be paid out in fees and expenses pursuant to this bill would reduce Lottery proceeds transferred to education.

In response to a previous version of this proposal, officials from the **Department of Economic Development (DED)** stated this proposal would result in a negative fiscal impact of less than

ASSUMPTION (continued)

$100,000 each year. DED states this assumed cost is based on the provision that would subject agencies to pay damages against its annual appropriation in the event a court finds in favor of a petitioner. Other costs are related to the review of agency rules and the preparation of an annual report that are not expected to require a new FTE but would require the resources of existing personnel.

Officials from the **Department of Labor and Industrial Relations (DOLIR)** state they administer 10 chapters within the Missouri Revised Statutes, Chapters 285-295 RSMo. Most of these chapters concern laws that affect groups with competing interests. When the Department seeks to promulgate a rule, or amend a rule, competing interests result in additional staff time and labor in promulgating, or amending a rule.

The Department estimates the proposed bill will likely require additional resources; however, the specific cost is unknown.

In response to a previous version of this proposal, officials from the **Department of Agriculture (AGR)** stated this bill requires a review every five years each of its 79 different Chapters of regulations necessary to the operation of its programs, and to file a report addressing the eight (8) categories of review specified in 536.175.4. As a regulatory agency, many of AGR's rules are very technical and complex. A thorough review and report on each of the 79 different Chapters of AGR rulemaking would require additional staff and legal time to review, re-promulgate, and meet the reporting requirements of the legislation. Although the exact costs are unknown, it would likely exceed $100,000 beginning in 2015 since the Department's rules are in Title 2 and would be included in the first group of rules to be reviewed under this bill.

Officials from the **Department of Mental Health (DMH)** assume that the process of responding to rule change petitions will require additional resources. Existing resources are not expected to be sufficient for this additional responsibility. At this time, DMH resources are deployed to prepare fiscal notes for proposed legislation, proposed initiative petitions, proposed administrative rules, and amendments to administrative rules. DMH states this legislation could require additional resources in order for the department to comply; however, the specific cost is unknown.

In response to a previous version of this proposal, officials from the **Department of Insurance, Financial Institutions and Professional Registration (DIFP)** assume the proposal would have no fiscal impact in the fiscal years reflected in the fiscal note. DIFP believes existing FTE can implement the scheduled review of department rules beginning in FY2020 and the petition

ASSUMPTION (continued)

responses required in this bill. Among other purposes, department rules establish professional licensee requirements, are a requirement for state insurance accreditation and give protections to Missouri consumers. However, if the scheduled review and petition process is more time consuming than anticipated additional FTE will be requested through the budget process.

Regarding Sections 536.041.2 and 536.087; if a legal award is larger than current appropriations would allow, DIFP would not be able to pay the award unless the department could request an increase in the department's ongoing operating appropriation in the next fiscal year budget process.

In response to a previous version of this proposal, officials from the **Department of Corrections (DOC)** stated passage of this bill will potentially require additional legal counsel/staff in order to comply with the new requirements of Section 536.041 and the review of rules as required be Section 536.175. In summary, the fiscal impact for DOC is a negative unknown for each fiscal year.

In response to a previous version of this proposal, officials from the **Department of Revenue (DOR)** stated with the changes in this substitute, DOR rules falling within Titles 11 through 14 will not begin the review process until fiscal year 2018. Based on this, the below impact identifies personnel that will be required during FY 2017 for the required training prior to beginning the review process. Total impact of the below personnel, in FY 2015 dollars, is approximately $340,000.

Section 536.175

Legal:

- All rules will require review beginning July 1, 2017 (FY-18). In order to ensure rules can be reviewed by qualified personnel, FTE will be required in fiscal year 2017.
- This legislation will create a need for additional FTE legal counsel and one (1) FTE senior office support assistant (SOSA). The personnel would be required in Fiscal Year 2017.

Taxation:

- This legislation will create a need for additional Management Analysts to accomplish the additional work of renewing regulations. The following personnel would be required in Fiscal Year 2017. Two (2) Management Analyst Specialist I (Range 23, Step N) per 25 rules to be amended, rescinded, or written. Based on current workload there are between 40-50 rules that require revisions. Thus, two (2) Full-Time Equivalents would be required.

ASSUMPTION (continued)

Motor Vehicle and Driver Licensing Division:

- There will be an impact on the Motor Vehicle and Driver Licensing Division during the period of the fiscal note beginning Fiscal Year 2017.
- This legislation will create a need for an additional Management Analyst Specialist I once the termination period starts coming up in order to accomplish the additional work of renewing regulations.
    - One (1) Management Analyst Specialist I (Range 23, Step N) Full-Time Employee (FTE) would be required.

In response to a previous version of this proposal, officials from the **Department of Natural Resources (DNR)** stated they have approximately 700 existing rules which would require review and possible rulemaking action. DNR does not have sufficient existing resources to implement the requirements of this proposal.

The Department of Natural Resource - Division of Environmental Quality (DEQ) assumes approximately 16 professional FTE (Environmental Specialist III [ES III], PS & EE costs = $1,370,804) would be requested to implement this proposal. A start FY 2016 start date is assumed to allow training time and advance rulemaking preparation to begin the work as required on July 1, 2016. Assuming that 1 year is sufficient to ramp up to accomplish the necessary tasks is a conservative estimate.

DNR currently does not have funding available to support the additional work efforts required by this bill. General Revenue would be needed to fund this program.

DEQ's FTE Calculation: 651 rules/5 years = 130 rules a year
6 rules per FTE per year = 130/6 = 22 FTE
Minus 6 existing FTE = 16 FTE

The department further assumes that an additional (1) Legal Counsel FTE with experience in environmental law as a result of Section 536.041 of this proposal.

DNR's Soil and Water Conservation Program (SWCP) has 30 current rules with the following breakdown under the SB 469 projections.

Sub Para 1) 6/30/2015 - 10 rules
Sub Para 2) 6/30/2016 - 2 rules
Sub Para 3) 6/30/2017 - 2 rules
Sub Para 4) 6/30/2018 - 12 rules

ASSUMPTION (continued)

Sub Para 5) 6/30/2019 - 0 rules
Sub Para 6) 6/30/2020 - 4 rules

The SWCP does not have sufficient staff available to absorb the efforts outlined in this proposal. One (1) ES III would be required to coordinate and undertake additional rulemaking efforts. This person would be responsible for tracking rules, reviewing the need for existing rules, coordinating the stakeholder processes and undertaking the repromulgation of needed rules.

DNR's Division of Geological Land Survey (DGLS) stated that currently most rules they are responsible for are updated infrequently. The DGLS does not have sufficient staff available to essentially double the efforts spent on this activity. The DGLS would request one Planner II (PS & EE costs approximately $81,881) who would be required to coordinate and undertake additional rulemaking efforts. This person would be responsible for tracking rules, reviewing the need for existing rules, coordinating the stakeholder processes and undertaking the repromulgation of needed rules.

Currently, DNR's Division of State Parks has 16 regulations, but this legislation would still be time-consuming. Initially examining their regulations would require at least one staff member to devote significant time to the project if no additional FTE is available. If citizens begin petitioning DSP to make rule changes, the work load on that staff member could grow exponentially given the new response requirements.

In summary, DNR assumes nineteen (19) professional-level FTE would be requested with an estimated fiscal impact of $1.7 million annually to implement this proposal on a continuing basis.

In response to a previous version of this proposal, officials from the **Department of Social Services (DOS)** had the following assumptions from the proposal:

1: DOS-ITSD assumed the need for roughly $98,000 in programming and data storage expenses.
2: The Family Support Division assumed the need for two FTE (an attorney to review agency rules one year prior to expiration and one support staff) in Fiscal Years 2014 and 2015.
3: Legal Services - expects an unknown fiscal impact beginning in FY 2013 greater than $100,000. The process for promulgating administrative rules is quite lengthy since it entails close coordination between the applicable program division, departmental leadership and the Division of Legal Services.

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ASSUMPTION (continued)

In response to a previous version of this proposal, officials from the **Department of Health and Senior Services (DOH)** stated the long-range extent of the fiscal impact of the proposed legislation is unknown because the amount of staff time required to repromulgate expiring rules cannot be determined due to several contributing factors, including the length of the administrative rules process itself, the scope and reach of the rules that are being revised, and the amount of comments received on each individual rule. At a minimum, the process generally takes at least a year to complete. Rules may be delayed beyond this time frame due to unforeseen circumstances or if a rule is challenged through the Joint Committee on Administrative Rules. Significant staff resources could be required for re-promulgation of rules that require no changes.

Currently DOH continuously reviews and amends rules as needed, in addition to adopting new rules when a need is identified. It is likely that a significant number of DOH's rules would at some point in the future fall under the 10 year termination provision. If rules related to fees were to lapse for any reason, there is the potential for an unknown negative impact on revenues in numerous funds including (but not limited to) General Revenue Fund, Mammography Fund, and Nursing Facility Quality Care Fund. DOH assumes the proposal would result in an unknown fiscal impact beginning in FY 2015.

Officials from the **Department of Economic Development - Public Service Commission (PSC)** state the statute would require agencies to review and promulgate all rules on a rolling basis beginning in 2015. The PSC has hundreds of rules in effect and promulgates several rules each year required by legislation. It is difficult to determine at this time but PSC may need to hire five additional FTE at a cost of roughly $348,000 to accomplish the task.

Officials from the **State Tax Commission (TAX)** state they are unable to project what the fiscal impact of this proposal will have on this agency. There is no way to project the amount of reasonable fees and expenses that might be awarded to a non-state party.

Officials from the **Missouri Veterans' Commission** assume the fiscal impact from this proposal is unknown.

Oversight will reflect a potential negative fiscal impact from the new requirements within Section 536.041.2. The state agencies may be required to pay reasonable fees and expenses to a petitioner if the agency should have promulgated a rule, but did not. This award must be payable from amounts appropriated to the agency for the relevant fiscal year and the agencies may not request or be granted an additional appropriation of money in order to satisfy an award made

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under this section. Oversight, for the simplicity of the fiscal note, will show the impact as being to the General Revenue Fund.

Section 536.175 states that each agency shall periodically review all of its rules. In the Senate Committee Substitute, the first scheduled review (of rules contained in titles 1 through 6 of the code of state regulations) began July 1, 2015. The Senate Substitute changes this to "no later than July 1, 2015". For the Senate Committee Substitute, **Oversight** assumed this mandated agencies begin the review process of their rules starting in FY 2016 - which is outside the scope of this fiscal note. However, under this Senate Substitute, agencies may begin their review process earlier than FY 2016. According to numerous agencies, additional expenses will be incurred during this review process. Therefore, Oversight will reflect a potential cost to numerous agencies in FY 2015 to begin this review. Oversight assumes that due to the number of rules and the time required to adopt the rules, some agencies would need additional FTE and other resources. Oversight assumes that several different state funds would be affected by this proposal, but for simplicity, Oversight will reflect the potential costs in the General Revenue Fund.

FISCAL IMPACT - State Government	FY 2013 (10 Mo.)	FY 2014	FY 2015
GENERAL REVENUE			
Costs - Various State Departments			
Potential costs of paying petitioner's fees and expenses if the agency failed to adopt a rule (Section 536.041.2)	$0 or (Unknown)	$0 or (Unknown)	$0 or (Unknown)
Costs - Various State Department			
Potential costs for state agencies to begin the review of the Code of State Regulations (Section 536.175)	$0	$0	$0 or (Unknown)
ESTIMATED NET EFFECT ON GENERAL REVENUE	**$0 or (Unknown)**	**$0 or (Unknown)**	**$0 or (Unknown)**

FISCAL IMPACT - Local Government	FY 2013 (10 Mo.)	FY 2014	FY 2015
	$0	**$0**	**$0**

FISCAL IMPACT - Small Business

Small businesses could be affected by a rule change.

FISCAL DESCRIPTION

This proposal modifies provisions regarding the updating and review of administrative rules. The Secretary of State is given the authority to make non-substantive changes to the Code of State Regulations to update state agency information, such as name or address changes.

This act provides that every state administrative rule shall be subject to a periodic review by the appropriate state agency every five years. The act creates a schedule for the periodic review of rules by their title in the Code of State Regulations. The Joint Committee on Administrative Rules (JCAR) shall cause notice to be published in the Missouri Register indicating the rules to be reviewed and also notice of the 60 day comment period. Each agency with rules under review shall prepare a report with the results of the periodic rule review. The report shall consider whether the rule: continues to be necessary or is obsolete; duplicates, overlaps or conflicts with other state, federal or local rules; needs changes or should be rescinded in order to reduce regulatory burdens on businesses, individuals or political subdivisions, or to eliminate unnecessary paperwork; and whether a less restrictive, more narrowly tailored rule could adequately protect the public or accomplish the same statutory purpose. For rules that affect small business, the agency must consider the specific public purpose or interest for adopting the rules and other reasons to justify its continued existence.

The subject agency must file its report with JCAR and the Small Business Regulatory Fairness Board within one year of notice being filed by JCAR in the Missouri Register. If the agency does not file the report, and does not receive an extension for good cause, then JCAR must notify the Secretary of State to publish notice in the Register as to the rules that are delinquent. The rules shall be void after the first sixty legislative days of the General Assembly's next regular session unless the agency cures the delinquency by providing the required report within 90 days after publication in the Register.

If a petition is filed with an agency requesting the adoption of a rule, and the agency does not promulgate such a rule, and it is later found by an adjudicatory body that a state agency's

FISCAL DESCRIPTION (continued)

statement of general applicability, which is the subject of the petition, should have been promulgated as a rule, then the adjudicatory body shall award the petitioner its reasonable fees and expenses.

This act provides that when a court awards attorney fees and other expenses against a state agency, including an award for reasonable fees and expenses under this act when it is found that an agency should have promulgated a rule, such award shall be payable from amounts appropriated to the agency for its operations. Within thirty days of the judgement awarding the fees and expenses becoming final, the agency shall forward notification of the amount of awarded fees and expenses to the chairs of the House Budget Committee and the Senate Appropriations Committee.

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

SOURCES OF INFORMATION

Office of the Secretary of State
Joint Committee on Legislative Rules
Office of Administration
Department of Social Services
Department of Revenue
Department of Natural Resources
Office of the State Public Defender
Department of Agriculture
Department of Transportation
Missouri Ethics Commission
State Tax Commission
Administrative Hearing Commission
Office of the State Courts Administrator
Office of Prosecution Services
Department of Public Safety
Department of Corrections
Department of Higher Education
Department of Elementary and Secondary Education
Department of Economic Development
Missouri Lottery Commission

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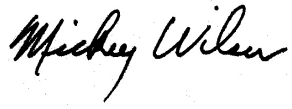
SOURCES OF INFORMATION (continued)

Department of Mental Health
Missouri Department of Conservation
Department of Labor and Industrial Relations
Missouri Gaming Commission
Department of Health and Senior Services
Attorney General's Office
Department of Insurance, Financial Institutions and Professional Registration



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