

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1177-02
Bill No.: SB 414
Subject: Sunshine Law; Political Subdivisions; Higher Education; Crimes and Punishment;
Public Records; Public Meetings; Law Enforcement Officers and Agencies
Type: Original
Date: February 17, 2003

FISCAL SUMMARY

| ESTIMATED NET EFFECT ON GENERAL REVENUE FUND | | | |
|-----------------------------------------------------------------------|------------------------------------|------------------------------------|------------------------------------|
| FUND AFFECTED | FY 2004 | FY 2005 | FY 2006 |
| General Revenue | (\$57,869) to (Unknown) | (\$61,102) to (Unknown) | (\$62,671) to (Unknown) |
| Total Estimated Net Effect on General Revenue Fund | (\$57,869) to (Unknown) | (\$61,102) to (Unknown) | (\$62,671) to (Unknown) |

| ESTIMATED NET EFFECT ON OTHER STATE FUNDS | | | |
|----------------------------------------------------------------|---------------------------------|---------------------------------|---------------------------------|
| FUND AFFECTED | FY 2004 | FY 2005 | FY 2006 |
| Highway* | (Unknown) | (Unknown) | (Unknown) |
| Department of Revenue Information Fund | \$0 to (\$283,470) | \$0 to (\$343,565) | \$0 to (\$347,001) |
| Conservation | Unknown to (Unknown) | Unknown to (Unknown) | Unknown to (Unknown) |
| Total Estimated Net Effect on Other State Funds | Unknown to (Unknown) | Unknown to (Unknown) | Unknown to (Unknown) |

*Costs expected to exceed (\$100,000) in any given fiscal year.

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 12 pages.

| ESTIMATED NET EFFECT ON FEDERAL FUNDS | | | |
|---------------------------------------------------------------|----------------|----------------|----------------|
| FUND AFFECTED | FY 2004 | FY 2005 | FY 2006 |
| None | | | |
| | | | |
| Total Estimated Net Effect on <u>All</u> Federal Funds | \$0 | \$0 | \$0 |

| ESTIMATED NET EFFECT ON LOCAL FUNDS | | | |
|--------------------------------------------|-------------------------|-------------------------|-------------------------|
| FUND AFFECTED | FY 2004 | FY 2005 | FY 2006 |
| Local Government | \$0 to (Unknown) | \$0 to (Unknown) | \$0 to (Unknown) |

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of the Governor, Department of Higher Education, Office of Administration, Department of Mental Health, Department of Natural Resources, Department of Health and Senior Services, Department of Labor and Industrial Relations, Department of Social Services, Department of Revenue – State Tax Commission, Department of Public Safety – Veterans Commission, – Division of Liquor Control, – State Emergency Management Agency, – Office of Adjutant General, – Division of Fire Safety, – Missouri State Water Patrol, – Missouri State Highway Patrol, Department of Insurance, Missouri House of Representatives, Office of the Lieutenant Governor, Office of State Auditor, Missouri Senate, Office of Secretary of State, Central Missouri State University, Missouri Western State College, Truman State University, Southwest Missouri State University, and the Bi-State Development Agency** assume the proposed legislation would have no fiscal impact on their agencies.

ASSUMPTION (continued)

Officials from the **Office of Prosecution Services** assume the proposed legislation would have no fiscal impact on prosecutors.

Officials from the **Department of Elementary and Secondary Education (DESE)** assume the proposed legislation would have no fiscal impact on their agency. However, DESE assumes school boards and all other governing bodies of political subdivisions would be subject to a civil penalty for a “knowing” violation of the open meeting laws. Current language refers to a civil fine for “purposely” violating the open meeting laws. Additionally, some additional administrative consideration would likely be given to the passage of this proposal and its ramifications to the public meeting laws which boards must comply with. The administrative impact is not expected to be significant.

Officials from the **University of Missouri System** assume, based on examinations and analysis, and specifically after determining that the provisions of Section 28.160, RSMo, currently provide for the same fees for document search and copying as permitted by proposed Section 610.026.1(1), RSMo, the fiscal impact of the proposal on the University of Missouri System, if passed, is not substantial.

Officials from the **Department of Public Safety – Director’s Office** assume the proposal would result in unknown costs to their Division.

Officials from the **Department of Conservation** assume the proposed legislation would have fiscal impact on Conservation funds. The amount of impact is unknown.

Officials from the **Department of Transportation (MoDOT)** assume the legislation would impose a cap on the amount that can be charged for inspection and copying of public records. Currently, MoDOT charges \$.25 per page, which is a reasonable fee to cover the actual cost of copying. This bill does not allow search costs that are provided for in the current statute. Currently, MoDOT will occasionally impose a fee for locating records when a request is for thousands of documents. While MoDOT does its utmost to waive all costs for easily accessible information, cost is the only deterrent to repeated “curiosity” requests for the benefit of a single citizen at the expense of the tax dollars of many. The reduction in ability to charge a fee for actual costs involved with responding to Sunshine Act requests could encourage an increase in the amount of Sunshine Act requests that MoDOT would receive.

ASSUMPTION (continued)

MoDOT would likely incur some increased costs due to the limit on the amount that can be charged for information, but those additional costs would be paid out of MoDOT's current appropriations. However, any loss of reimbursement costs will result in less money being available to spend on highway maintenance or construction.

Officials from the **Office of Attorney General (AGO)** assume Section 610.027.6 will formalize the AGO's role in handling Sunshine Law complaints and anticipate the need for one FTE Assistant Attorney General II (at \$36,750 per year) to carry out this function. The AGO estimates the cost of the proposal to be \$61,161 in FY 04; \$63,934 in FY 05; and \$65,588 in FY 06.

Officials from the **Office of State Treasurer (STO)** assume the proposal would result in additional costs to their agency. Historical costs to STO have ranged from \$500 to \$3,500 per year. Based on this proposal, STO's expenses for copying public records would have to be charged to the General Revenue Fund.

Officials from the **Department of Revenue (DOR)** assume all systems within the Division of Motor Vehicle and Drivers Licensing, Driver and Vehicle Services Bureau calculate fees for copies of records based on a per record fee. This proposal requires the department to change these systems to actually count the number of pages per record. This will require significant programming changes to the following systems:

Missouri Driver License System (MODL) - driver records, Field Automated System for Titling and Registrations (FASTR) - motor vehicle records, the department's billing system (PEACHTREE Accounting System), and the DARS accounting system.

This will also require additional time for employees to *manually* count pages of the search for billing purposes. This will slow customer service turnaround time and require additional hours to be spent counting pages that could be used in more productive ways.

This proposed legislation will have a significant unknown negative fiscal impact on the Driver and Vehicle Services Bureau (DVSB).

To implement this legislation, the DOR will require additional funds. In the past, the programs included in this legislation have been paid for with highway funds. See Mo. Const. Article IV, Section 30(b) and Section 226.200.2, RSMo 2000. This year, however, highway funds may not be available for this purpose as a result of legislation enacted by the General Assembly in 2000

that limits the use of highway funds. This limitation is found in Section 226.200.3, RSMo. It ASSUMPTION (continued)

places a cap on the highway funding available to state departments other than the Department of Transportation. The total amount of highway funds appropriated to these other state departments (including the Department of Revenue) cannot exceed the total amount of their fiscal year 2001 highway appropriations. This cap limits the highway funds that will be available for the implementation of this legislation. If highway funds are not available, then another source of funding must be identified to pay for the cost of implementing this legislation.

The DOR also assumes a loss in revenue. In fiscal year 2002, there were approximately 466,182 non-electronic transactions and 759,876 electronic transactions. This proposal requires that copies for non-electronic transactions would be \$.10 per page and up to \$2.00 per page for electronic transactions. The DOR charges documents based on a record which may include more than one page. For purposes of this fiscal note the department has projected non-electronic transactions would have an average of two pages per document and the fee for electronic records would be increased to \$1.50. It would be extremely difficult for the department to justify increasing the cost of electronic records by a full \$.75.

| | Transactions | # of Pages | Total # of Pages | Charge per page | Total Revenue | Current Revenue | Revenue Gain/Loss |
|-----------------------------|--------------|------------|------------------|-----------------|---------------|-----------------|--------------------|
| Non Electronic | 466,182 | 2 | 932,364 | \$0.10 | \$93,236 | \$623,369 | (\$530,133) |
| Electronic* | 759,876 | 1 | 759,876 | \$1.50 | \$1,139,814 | \$949,845 | \$189,969 |
| Total Revenue Impact | | | | | | | (\$340,164) |

*The current charge is \$1.25 per record. The new legislation could allow the division to increase the fee up to \$2.00.

The DOR estimates the total revenue loss due to the proposal to be \$283,470 (\$350,164/12 x 10 months) in FY 04.

DVSB estimated a 1% increase in record sales for FY 05 and FY 06. Therefore, the estimated loss would be \$343,565 in FY 05 and \$347,001 in FY 06.

ASSUMPTION (continued)

The fees collected for electronic and non-electronic record sales are deposited into the Department of Revenue Information Fund. This fund is utilized strictly for the sale of records. Any excess fund balance on an annual basis is transferred from the Information Fund to the State Highways and Transportation Department Fund. Any decrease in fees would ultimately affect the amount of money that is transferred to the State Highways and Transportation Department Fund.

Oversight assumes, for purposes of this fiscal note: 1) that the proposal does not mandate increased litigation and that costs due to any permanent increase in the amount of litigation (and costs, if any, due to larger fines and imposition of court costs and attorney fees for violations of Chapter 610) would be matters for decision items in agency budgets; 2) that the Assistant Attorney General would be located in existing space; 3) that public bodies (including political subdivisions) would be subject to larger fines but could avoid them; and 4) that coroners and medical examiners would be able to recover costs of making information regarding investigations available for public viewing.

| <u>FISCAL IMPACT - State Government</u> | FY 2004 (10 Mo.) | FY 2005 | FY 2006 |
|---------------------------------------------------------|--------------------------------------------------|--------------------------------------------------|--------------------------------------------------|
| GENERAL REVENUE FUND | | | |
| <u>Costs – Office of Attorney General</u> | | | |
| Personal Service (1 FTE) | (\$30,625) | (\$37,669) | (\$38,610) |
| Fringe Benefits | (\$12,394) | (\$15,245) | (\$15,626) |
| Equipment and Expense | <u>(\$14,850)</u> | <u>(\$8,188)</u> | <u>(\$8,435)</u> |
| <u>Total Costs – AGO</u> | (\$57,869) | (\$61,102) | (\$62,671) |
| <u>Loss - Various Agencies</u> | | | |
| Record Reproduction Fees | <u>(Unknown)</u> | <u>(Unknown)</u> | <u>(Unknown)</u> |
| ESTIMATED NET EFFECT ON GENERAL REVENUE FUND | <u>(\$57,869)</u> <u>to (Unknown)</u> | <u>(\$61,102)</u> <u>to (Unknown)</u> | <u>(\$62,671)</u> <u>to (Unknown)</u> |

HIGHWAY FUND

Costs – Department of Revenue

| | | | |
|------------------------|------------------|------------------|------------------|
| Increased labor costs* | <u>(Unknown)</u> | <u>(Unknown)</u> | <u>(Unknown)</u> |
|------------------------|------------------|------------------|------------------|

ESTIMATED NET EFFECT ON HIGHWAY FUND

| | | |
|------------------|------------------|------------------|
| <u>(Unknown)</u> | <u>(Unknown)</u> | <u>(Unknown)</u> |
|------------------|------------------|------------------|

*Costs expected to exceed (\$100,000) in any given fiscal year.

DEPARTMENT OF REVENUE INFORMATION FUND

Savings – Department of Revenue

| | | | |
|-----------------------------------|----------------|----------------|----------------|
| Reduced Transfers to Highway Fund | \$0 to Unknown | \$0 to Unknown | \$0 to Unknown |
|-----------------------------------|----------------|----------------|----------------|

Losses – Department of Revenue

| | | | |
|--------------------------|--------------------|--------------------|--------------------|
| Record Reproduction Fees | <u>(\$283,470)</u> | <u>(\$343,565)</u> | <u>(\$347,001)</u> |
|--------------------------|--------------------|--------------------|--------------------|

ESTIMATED NET EFFECT ON DEPARTMENT OF REVENUE INFORMATION FUND

| | | |
|-------------------------------------|-------------------------------------|-------------------------------------|
| <u>\$0 to</u> <u>(\$283,470)</u> | <u>\$0 to</u> <u>(\$343,565)</u> | <u>\$0 to</u> <u>(\$347,001)</u> |
|-------------------------------------|-------------------------------------|-------------------------------------|

CONSERVATION FUND

Income – Department of Conservation

| | | | |
|-------------------------------------------------------|---------|---------|---------|
| Charges for making information available to public | Unknown | Unknown | Unknown |
|-------------------------------------------------------|---------|---------|---------|

Costs – Department of Corrections

| | | | |
|--------------------------------------------|------------------|------------------|------------------|
| To make information available to public | <u>(Unknown)</u> | <u>(Unknown)</u> | <u>(Unknown)</u> |
|--------------------------------------------|------------------|------------------|------------------|

ESTIMATED NET EFFECT ON CONSERVATION FUND

| | | |
|---------------------------------------|---------------------------------------|---------------------------------------|
| <u>Unknown to</u> <u>(Unknown)</u> | <u>Unknown to</u> <u>(Unknown)</u> | <u>Unknown to</u> <u>(Unknown)</u> |
|---------------------------------------|---------------------------------------|---------------------------------------|

FISCAL IMPACT - Local Government

FY 2004
(10 Mo.)

FY 2005

FY 2006

POLITICAL SUBDIVISIONS

Loss - Record Reproduction Fees

\$0 to
(Unknown)

\$0 to
(Unknown)

\$0 to
(Unknown)

**ESTIMATED NET EFFECT ON
POLITICAL SUBDIVISIONS**

\$0 to
(Unknown)

\$0 to
(Unknown)

\$0 to
(Unknown)

**CORONERS AND MEDICAL
EXAMINERS**

Income - Charges for making information
available to public

Unknown

Unknown

Unknown

Costs - to make information available to
public

(Unknown)

(Unknown)

(Unknown)

**ESTIMATED NET EFFECT ON
CORONERS AND MEDICAL
EXAMINERS**

\$0

\$0

\$0

FISCAL IMPACT - Small Business

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

DESCRIPTION

The proposed legislation would revise various provisions relating to public records. When investigating a death, the coroner's or medical examiner's office would be required to make certain information available as an incident report within 72 hours of death. The proposal would define a public governmental body to specifically include the Curators of the University of Missouri, as well as a Bi-State Development Agency.

DESCRIPTION (continued)

Currently, any votes taken during a closed meeting shall be by roll call. The proposal would extend this requirement to open meetings as well, except for votes on procedural or ministerial matters. Meetings relating to legal actions, imminent causes of action, or litigation involving a public governmental body could be closed. Any vote regarding leasing or purchasing of real estate would be made public upon execution of the lease or sale. Certain bases for closing a meeting or record relating to competitive bidding and auditor work product would be repealed.

The proposal would provide a method for any member to record an objection to closing the meeting. The proposal would require production of public records. Fees for copying would not exceed the amounts charged for copies by the Secretary of State, with no charge to allow for staff time in copying a disk or tape.

A public governmental body would be required to cooperate if the Attorney General would attempt to resolve a written complaint. In determining compliance, the Attorney General would be entitled to copies of records, except those of privileged communications. Records identified by the public body as closed would remain so, except that the Attorney General could use such records in a court proceeding to enforce compliance.

The penalty for any violation would range from \$100 to \$2,500. If the court finds there was a knowing violation, the court could order the payment of attorney's fees and costs. Currently, any person may request a law enforcement agency to open incident reports and arrest records that are unlawfully closed. If the court would find there was any violation, the same penalties listed above would apply.

Any public governmental body developing a electronic record keeping system would be required to do so in a common format that would not be an impediment to public access.

In a criminal proceeding where no conviction results, the court's judgment or order or the final action taken by the prosecuting attorney could be accessed. The proposal would delete the provision prohibiting law enforcement from releasing accident or incident report to any person who is not an interested party for 60 days.

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

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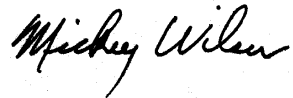
BLG:LR:OD (12/02)

SOURCES OF INFORMATION

Office of Attorney General
Office of the Governor
Department of Higher Education
Office of Administration
Department of Elementary and Secondary Education
Department of Transportation
Department of Mental Health
Department of Natural Resources
Department of Health and Senior Services
Department of Labor and Industrial Relations
Department of Revenue
 – State Tax Commission
Department of Social Services
Department of Public Safety
 – Veteran’s Commission
 – Division of Liquor Control
 – State Emergency Management Agency
 – Office of Adjutant General
 – Division of Fire Safety
 – Missouri State Water Patrol
 – Missouri State Highway Patrol
 – Director’s Office
Department of Insurance
Department of Conservation
Missouri House of Representatives
Office of the Lieutenant Governor
Office of Prosecution Services
Office of State Auditor
Office of Secretary of State
Office of State Treasurer
Missouri Senate

SOURCES OF INFORMATION (continued)

Central Missouri State University
Missouri Western State College
Truman State University
Southwest Missouri State University
University of Missouri System
Bi-State Development Agency

A handwritten signature in black ink that reads "Mickey Wilson". The signature is written in a cursive style with a large, stylized "M" and "W".

Mickey Wilson, CPA
Director
February 17, 2003