

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1177-03
Bill No.: SCS for SB 414
Subject: Sunshine Law; Political Subdivisions; Higher Education; Crimes and Punishment;
Public Records; Public Meetings; Law Enforcement Officers and Agencies
Type: Original
Date: May 12, 2003

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
General Revenue*	(\$24,564 to Unknown)	(\$30,212 to Unknown)	(\$30,968 to Unknown)
Total Estimated Net Effect on General Revenue Fund*	(\$24,564 to Unknown)	(\$30,212 to Unknown)	(\$30,968 to Unknown)

*Costs could exceed \$100,000 in any given fiscal year.

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 15 pages.

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
Highway*	(Unknown)	(Unknown)	(Unknown)
Dept. of Revenue Information Fund	(\$1,786,457)	(\$1,774,022)	(\$1,791,762)
Conservation	Unknown to (Unknown)	Unknown to (Unknown)	Unknown to (Unknown)
Missouri Gaming Commission	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)

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

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 **Department of Agriculture, Office of the Governor, Department of Economic Development – Public Service Commission, Department of Corrections, Department of Health and Senior Services, Department of Labor and Industrial Relations, Department of Public Safety – Director’s Office, –Veterans Commission, – Division of Liquor Control, – State Emergency Management Agency, – Division of Fire Safety, – Missouri State Highway Patrol, – Capitol Police, – Division of Highway Safety, Department of Insurance, Missouri Lottery Commission, Missouri House of Representatives, Office of the Lieutenant Governor, Missouri State Employees Retirement System, Office of State Auditor, Missouri Senate, Office of Secretary of State, Central Missouri State University, and Truman State University** assume the proposed legislation would have no fiscal impact on their agencies.

Officials from the **Office of Attorney General** assume any potential costs arising from this proposal could be absorbed within existing resources.

Officials from the **Department of Natural Resources** assume the proposal would have minimal fiscal impact to their department.

In response to a previous version of this proposal, officials from the **Office of Prosecution Services** assume the proposed legislation would have no fiscal impact on prosecutors.

Officials from the **Department of Economic Development** assume no impact at the present time. Should the electronic record keeping requirements or other changes create additional costs, funding may be requested at a later date.

Officials from the **Office of Administration (COA)** assumes the **Division of Personnel** would be required to provide the amount of time accrued and amount of time used for sick leave and annual leave for individual state employees in response to requests for information under the Sunshine Law. The bill would preclude the Division from charging for staff time to generate the reports. Photocopying charges would be limited to ten cents per page. Costs for providing data electronically would be limited to the costs of the media used for providing the data. For the Division of Personnel, the costs associated with this are difficult to estimate. Reports of sick and annual leave usage and accruals by employee could be very large requests, for which the Division would not be able to charge the requestor. Potentially, millions of leave accrual and usage records would need to be extracted and analyzed to provide information within the time frames

ASSUMPTION (continued)

and other parameters sought by a requestor. These charges would be limited to the media in which the data is transmitted under this proposed legislation. Conservatively, the language in this proposed legislation could result in staff time and programming charges amounting to thousands of dollars each year which the state would not be able to recover.

The **Office of Administration** states the **Division of Accounting** responds to requests for financial information from a variety of sources. This bill would preclude the Division of Accounting from recovering the costs of responding to numerous requests for information under the sunshine law. The Division of Accounting assumes that staff time for document searches, duplication, research and programming for the number of requests they receive would equate to one FTE at the level of an Account Clerk II (at \$20,472 per year). The requests currently received by the Division of Accounting include financial records and expense accounts from a variety of sources. The proposed legislation includes the potential for additional requests without the ability of the state to recover the costs. COA assumes the cost of the proposal to be \$24,564 in FY 04; \$30,212 in FY 05; and \$30,968 in FY 06.

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 **Department of Mental Health (DMH)** assume Section 610.026 specifies that fees for copying public records shall not exceed ten cents per page. In addition, it eliminates the language collecting the costs for charging the actual cost of document search and duplication. The DMH currently charges 25 cents per copy for records and costs for staff involved with search and duplication.

In the past three fiscal years (FY 00 – FY 02) the fees the DMH has received for copying public records has averaged \$43,842. Based upon the rates the revenues impact this proposed bill, fees received by the DMH would decrease considerably. The elimination of search time and personnel cost as well as the decrease of copy cost to ten cents per page would decrease revenues by 60 percent. Assuming the same number of copies are requested, the state would lose \$17,537 per year.

ASSUMPTION (continued)

In response to a previous version of the proposal, 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 Higher Education (DHE)** assume the removal of provisions in Section 106.026 related to fees charged by a public governmental body for document copying and searching would have an unknown fiscal impact on DHE. Under this proposal, DHE could receive extensive document requests without the ability to recoup agency expenditures spent to respond to such requests.

Officials from the **Missouri Gaming Commission** assume the fiscal impact of the proposal is unknown. Currently the commission charges \$.10 per page for copy fees. However, if research of records is involved, the rate increases to \$.50 per page.

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 **Office of State Courts Administrator (CTS)** assume the proposed legislation would revise various provisions relating to public records, with monetary penalties for violations. The legislation would also provide that any governmental body developing an electronic record keeping system must do so in a common format that is not an impediment to public access. While CTS cannot provide a specific dollar amount to cover the cost of converting all judicial records into a common format, the amount would easily surpass \$100,000.

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 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 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.

ASSUMPTION (continued)

The DOR also assumes a loss in revenue. In fiscal year 2002, there were approximately 560,000 non-electronic transactions and 759,876 electronic transactions. This proposal requires that copies for non-electronic transactions would be \$.10 per page. 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	560,000	2	1,120,000	\$0.10	\$112,000	\$706,100	(\$594,100)
Electronic*	759,876	1	759,876	\$0.10	\$75,988	\$949,845	(\$873,857)
Vendor Charge Back							(\$288,500)
Total Revenue Impact							(\$1,756,457)

*The current charge is \$1.25 per record. The new legislation would only allow \$0.10.

The DOR estimates the total revenue loss due to the proposal to be \$1,465,714 (\$1,756,457/12 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 \$1,774,022 in FY 05 and \$1,791,762 in FY 06.

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. In addition, in FY 03, the DOR was funded \$929,364 from the Information Fund. This included funding for 15 FTE. Since the proposal virtually eliminates the Information Fund, this funding would have to be replaced through other funding sources, such as General Revenue or Highways and Transportation Department funds.

ASSUMPTION (continued)

Officials from the **Department of Social Services – Division of Legal Services** assume the proposal would result in an unknown loss of revenue due to the limit on the copying cost that would be collected for Sunshine Law requests, as the number and size of requests cannot be determined.

Officials from the **Department of Social Services – Division of Medical Services** assumes the number of requests might increase because of the lower cost to the requestor. Therefore, the Division believes that the fiscal impact would be unknown, but less than \$20,000 per fiscal year.

Officials from the **Department of Social Services – Division of Human Resources** assume revisions regarding the release of information on the top three candidates in a hiring process will lead to unknown increased costs. Officials assume the release of this information would generate additional employee grievances and complaints, resulting in additional staff time.

Officials from the **Department of Social Services – Division of Research and Evaluation** assume the proposal would result in a loss in revenue of approximately \$4,300 to the general revenue fund due to the limit to ten cents per page charged for locating and duplicating records.

Officials from the **State Tax Commission** assume the legislation would require any public governmental body keeping its records in an electronic format to consider in the design of such systems a way to provide the data in some common format. Furthermore, the governmental body may not enter into such contract for creation or maintenance of public records if the contract impairs the ability of the public to inspect or copy the records. Many assessors currently create and maintain records in a computer format. The State Tax Commission does not have information available on their current computer systems and the ability of the system to allow for the inspection and copying of the records in a common format. If their current systems do not allow for such inspection and copying, the assessors may need to have some modifications to their computers. The administrative cost to make such modification is unknown.

Officials from the **Columbia Police Department** assume the proposed legislation would have a significant negative impact on the Columbia Police Department. Although the exact figures are not known, the proposal could cost tens of thousands of dollars if they had to design a computer for providing data in a common and/or simple format.

ASSUMPTION (continued)

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 public bodies (including political subdivisions) would be subject to larger fines but could avoid them; and 3) 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 Administration</u>			
Personal Service (1 FTE)	(\$17,487)	(\$21,508)	(\$22,046)
Fringe Benefits	<u>(\$7,077)</u>	<u>(\$8,704)</u>	<u>(\$8,922)</u>
<u>Total Costs – Office of Administration</u>	(\$24,564)	(\$30,212)	(\$30,968)
<u>Costs – Various Agencies</u>			
Converting records to uniform format*	(Unknown)	(Unknown)	(Unknown)
<u>Losses - Various Agencies</u>			
Record Reproduction Fees	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND*	<u>(\$24,564)</u> <u>to Unknown)</u>	<u>(\$30,212)</u> <u>to Unknown)</u>	<u>(\$30,968)</u> <u>to Unknown)</u>

*Costs could exceed \$100,000 per fiscal year.

HIGHWAY FUND	FY 2004 (10 Mo.)	FY 2005	FY 2006
<u>Losses</u> – Department of Revenue			
Decreased transfers from Department of Revenue Information Fund*	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT ON HIGHWAY FUND*	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
*Losses expected to exceed (\$100,000) in any given fiscal year.			
DEPARTMENT OF REVENUE INFORMATION FUND			
<u>Savings</u> – Department of Revenue			
Reduced Transfers to Highway Fund	\$0 to Unknown	\$0 to Unknown	\$0 to Unknown
<u>Losses</u> – Department of Revenue			
Record Reproduction Fees	<u>(\$1,756,457)</u>	<u>(\$1,774,022)</u>	<u>(\$1,791,762)</u>
ESTIMATED NET EFFECT ON DEPARTMENT OF REVENUE INFORMATION FUND	<u>(\$1,756,457)</u>	<u>(\$1,774,022)</u>	<u>(\$1,791,762)</u>

CONSERVATION FUND	FY 2004 (10 Mo.)	FY 2005	FY 2006
<u>Income</u> – Department of Conservation Charges for making information available to public	Unknown	Unknown	Unknown
<u>Costs</u> – Department of Conservation To make information available to public	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT ON CONSERVATION FUND	<u>Unknown to (Unknown)</u>	<u>Unknown to (Unknown)</u>	<u>Unknown to (Unknown)</u>
MISSOURI GAMING COMMISSION FUND			
<u>Income</u> – Missouri Gaming Commission Charges for making information available to public	Unknown	Unknown	Unknown
<u>Costs</u> – Missouri Gaming Commission To make information available to public	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT ON MISSOURI GAMING COMMISSION FUND	<u>Unknown to (Unknown)</u>	<u>Unknown to (Unknown)</u>	<u>Unknown to (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)

Costs - Computer modifications

\$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.

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 ten cents per page, with no charge to allow for staff time in copying a disk or tape.

The penalty for any violation would range from \$100 to \$500. If the court finds there was a knowing violation, the court would 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.

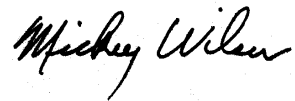
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of Attorney General
Department of Agriculture
Office of the Governor
Department of Higher Education
Office of Administration
Office of State Courts Administrator
Department of Economic Development
 – Public Service Commission
Department of Elementary and Secondary Education
Department of Transportation
Department of Mental Health
Department of Natural Resources
Department of Corrections
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
 – Division of Fire Safety
 – Missouri State Highway Patrol
 – Director’s Office
 – Capitol Police
 – Division of Highway Safety
Missouri Gaming Commission
Department of Insurance
Missouri Lottery Commission
Department of Conservation
Missouri House of Representatives
Office of the Lieutenant Governor
Missouri State Employees Retirement System
Office of Prosecution Services
Office of State Auditor
Office of Secretary of State
Office of State Treasurer

SOURCES OF INFORMATION (continued)

Missouri Senate
Columbia Police Department
Central Missouri State University
Truman State University
University of Missouri System

A handwritten signature in black ink that reads "Mickey Wilson". The signature is written in a cursive, flowing style.

Mickey Wilson, CPA
Director
May 12, 2003