

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4433-01
Bill No.: SB 469
Subject: Administrative Rules; Administrative Law; State Departments
Type: Original
Date: January 9, 2012

Bill Summary: This proposed legislation requires the sunset of all administrative rules based on the time of promulgation; and allows an agency to promulgate a rule that is set to sunset.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2013	FY 2014	FY 2015
General Revenue	\$0	\$0	(Unknown over \$100,000)
Total Estimated Net Effect on General Revenue Fund	\$0	\$0	(Unknown over \$100,000)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2013	FY 2014	FY 2015
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 11 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2013	FY 2014	FY 2015
Total Estimated Net Effect on <u>All</u> 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 filings what will occur upon the passage of this legislation, due to the necessity to review rules which are re-promulgated. However, any anticipated fiscal impact within the time period projected by this fiscal note should be able to be absorbed within current appropriations.

Officials from the **Office of the Secretary of State (SOS)** say this bill will require all state agencies that promulgate rules to repromulgate rules at least every ten years. Existing rules will have to be repromulgated sooner, depending on their effective date, as early as 2015. These rules will be published by our division in the Missouri Register and the Code of State Regulations.

Based on experience with the state agencies, and current rulemaking patterns, the rules, regulations, and forms issued by the all state agencies could likely require an additional 1,410 pages in the Code of State Regulations beginning in fiscal year 2022. For any given rule, roughly half again as many pages are published in the Missouri Register as in the Code because cost statements, fiscal notes, and the like are not repeated in the Code. The estimated cost of a page in the Missouri Register is \$23.00. 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. Additionally, this legislation will require an increase in our postage & handling costs to mail out the Code of State Regulations and the Missouri Register which will result in an additional cost of approximately \$5,280 each fiscal year beginning in FY 2022. Lastly, the increase in rulemaking will require that we add three additional FTEs to our staff in FY 2022 to keep up with increased work load. This will result in annual cost of approximately \$221,940 beginning in FY 2022.

Additional Assumptions.

1. The Administrative Rules Division interprets this bill as meaning the sunset ten-year rule termination provisions reset only when the rule becomes effective, not when the amendment is filed.
2. This language does not address what happens if a rule sunsets prior to an amendment already in the rulemaking process becoming effective. Our assumption would be that the amendment would be null and a new rule would need to be promulgated since the rule had sunset.
3. The Administrative Rules Division assumes that if the sunset date is added to the authority

ASSUMPTION (continued)

section of the rulemaking that it is not required to remove the rule from the Code of State Regulations immediately upon the sunset date being reached. The Administrative Rules Division may remove the text of expired rules from Code whenever cleanup is performed, leaving only the rule number, title, and authority section for tracking purposes after the rule expiration date.

Officials from the **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** (Divisions of **Highway Patrol, Fire Safety, Capitol Police, Missouri Veterans Commission**) and the **Department of Corrections** each assume 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 impact on their department

Officials from the **Office of Administration (COA)** state the proposal is expected to have a fiscal impact five years following implementation, due to the volume of sunset rules beginning in the sixth year following implementation. The number of rules requiring review would increase each year thereafter. COA may require additional legal and support staff to conduct reviews and reestablish rules through the rulemaking process. The impact is unknown. Additional analysis is needed to determine specific cost estimates. The proposal could impact other state departments. In Fiscal Year 2010, state agencies filed approximately 530 proposed rules and 640 final orders of rulemaking.

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.

Officials from the **Department of Economic Development** states this proposal would result in a negative fiscal impact due to the need for additional staff and legal time devoted to the review and re-promulgation of rules adopted previously. The amount of impact is unknown, in excess of \$100,000.

ASSUMPTION (continued)

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 an additional FTE or consultant to accomplish what will become a continuing obligation in 2015.

Officials from the **Missouri Lottery** state there is no current impact to their agency; however, when the sunsets begin in 2015, additional FTE may be required to repromulgate the rules.

Officials from the **Department of Mental Health (DMH)** assume that the process of responding to rule change petitions will require additional resources. It is assumed that the process of re-promulgating rules will continue to require service provider and small business impact statements, anticipated cost calculations and subsequent reviews for actual costs. 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. It is expected this process will require additional staff resources. It is not known how many petitions DMH can expect to receive during a fiscal year; therefore, the fiscal impact is expected to be an unknown cost of less than \$100,000.

Officials from the **Missouri Department of Conservation (MDC)** assume 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 and the proposed regulation limits that constitutional authority. Requiring rules to expire after 10 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 **Department of Labor and Industrial Relations (DOLIR)** state the proposed legislation enacts Section 536.175, which would automatically terminate future rules ten years after their effective date. All current rules would expire over a five year period, starting in June 2015. DOLIR would have approximately eight years to review and republish all of its current rules.

In addition to republication of the current rules, DOLIR is required to ascertain the following:

- Whether a less restrictive, more narrowly tailored or alternative rule could adequately protect the public or accomplish the same statutory purpose; and

ASSUMPTION (continued)

- Whether the rule needs amendment or rescission to reduce regulatory burdens on individuals, businesses, or political subdivisions or eliminate unnecessary paperwork.

DOLIR administers 10 chapters within the Missouri Revised Statutes, Chapters 285-295 RSMo. Most of these chapters concern laws that affect groups with competing interests. When DOLIR seeks to promulgate a rule, or amend a rule, competing interests result in additional staff time and labor in promulgating, or amending a rule.

DOLIR estimates that if amendment of a rule is not opposed, it takes approximately 10 hours of clerical time to publish the rule. There is also approximately 15 hours of attorney time in dealing with the clerical side and the administrative side. In addition, there is approximately 25 hours expended by staff who administer the law and the rule.

There are times, however, when rules are very controversial. It is unclear which rules can be amended without controversy and which rules will be an enormous drain on resources. Therefore, DOLIR estimates it takes twice as long to amend an opposing rule. DOLIR currently has 163 rules. As such, DOLIR will be amending approximately 20 rules a year.

DOLIR estimates at least 400 hours of clerical time, 600 hours of attorney time and 1,000 hours of administrative time. When additional rules are promulgated over the years, the labor time will be increased because of the bill. Therefore, DOLIR would need a part time clerical and part time attorney to handle the additional workload.

DOLIR estimated costs of roughly \$60,000 per year for the three years contained in the fiscal note.

Officials from the **Missouri Gaming Commission (MGC)** state 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 Health and Senior Services (DOH)** state 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

ASSUMPTION (continued)

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 Natural Resources (DNR)** state keeping track of the status of individual rules and their expiration date, initiating the necessary rulemaking to repromulgate the rule, conducting analysis and ensuring critical rules meant to protect the health and welfare of Missouri citizens did not sunset would require additional resources or FTE. The process to repromulgate a rule would need to begin a minimum of two years prior to the ten year expiration date of the rule in order to make sure the rule is readopted and in effect prior to the expiration date. With the time necessary to readopt a rule, almost every rule would be in a continual cycle of updating the rule, amending the sunset date, and conducting the analysis required to support the readoption of an existing rule.

The additional staff effort as a result of this proposal would be required in FY 2014 and be continuous after that time frame since rules would be amended and added on a continuous basis.

DNR's Division of Environmental Quality (DEQ) assumes approximately 5 FTE (Environmental Specialist IIIs (each at \$46,248 annually) would be needed to implement this proposal as it relates to repromulgating DEQ's existing 651 rules every ten years.

DNR's Soil and Water Conservation Program (SWCP) has 30 current rules. SWCP would request an additional FTE Environmental Specialist III (at \$46,248 annually) as early as FY 2013 in order to get an individual trained and in place to start working the changes and updates prior to the June 30, 2015 sunset dates.

DNR's Division of Geological Land Survey (DGLS) assumes the need for one Planner II (at \$46,248 annually) to coordinate and undertake additional rulemaking efforts.

In summary, DNR assumes the need for seven additional FTE with a total estimated annual cost of roughly \$550,000 to the General Revenue Fund starting in FY 2014.

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ASSUMPTION (continued)

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.

Officials from the **Office of the Attorney General (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 increased review of rules in later years.

Officials from the **Department of Insurance, Financial Institutions and Professional Registration (DIFP)** state the proposal would not have a fiscal impact to their agency in the three years of the fiscal note. The proposed legislation would have a significant unknown fiscal impact to DIFP beginning in FY 2016 due to the scheduled review and repromulgation of department rules. Among other purposes, department rules establish professional licensee requirements, are a requirement for state insurance accreditation and give protections to Missouri consumers. Additional legal and support FTE and expenses needed to review rules would be requested through the appropriations process.

Officials from the **Department of Revenue (DOR)** state in order to ensure that rules expiring on June 30, 2015 are amended, rescinded or written, FTE will be required in FY 2015. DOR's Legal Division assumes the need for one additional FTE Legal Counsel (at \$50,076 annually) and one FTE Senior Office Support Assistant (at \$27,564 annually). DOR's Taxation Division plus the Motor Vehicle and Driver Licensing Division combined assume the need three FTE Management Analyst Specialist Is (each at \$40,968 annually). The total costs for the these five FTE is roughly \$325,000 per year starting in FY 2015.

Oversight assumes any fiscal impact resulting from Sections 536.032 and 536.041 can be absorbed by the current agency staff and appropriation.

ASSUMPTION (continued)

Oversight assumes Section 536.175.1 would require all rules promulgated by state agencies after August 28, 2012 to sunset ten years after their effective date. Oversight assumes state agencies who promulgate rules, after the ten year sunset period, will incur ongoing unknown costs related to the review of state agency rules starting in FY2023.

Oversight assumes that Section 536.175.2 would sunset all current rules on the timetable outlined in this proposal. Oversight assumes that due to the number of rules and the time required to adopt the rules some agencies would need additional FTE resources. The timetable set up in this proposal requires re-promulgation of some rules as of June 15, 2015. Therefore the agencies would need to start the re-promulgation process of the rules in FY 2015. Oversight assumes that several different state funds could be affected by this proposal. Oversight, for the simplicity of the fiscal note, will show the whole impact as being to General Revenue for the various state agencies beginning in FY 2015. Based upon the various responses, Oversight will reflect a cost of Unknown - over \$100,000.

<u>FISCAL IMPACT - State Government</u>	FY 2013 (10 Mo.)	FY 2014	FY 2015
GENERAL REVENUE			
<u>Cost - Various State Departments</u>			(Unknown greater than \$100,000)
Additional FTE costs to repromulgate all rules filed by any state agency	<u>\$0</u>	<u>\$0</u>	<u>\$100,000</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE	<u>\$0</u>	<u>\$0</u>	(Unknown greater than <u>\$100,000</u>)

<u>FISCAL IMPACT - Local Government</u>	FY 2013 (10 Mo.)	FY 2014	FY 2015
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

Small businesses could be affected by a rule change.

FISCAL DESCRIPTION

This proposed legislation provides that every state administrative rule that is filed by any state agency after August 28, 2012, shall automatically sunset ten years after their effective date. The act creates a schedule for the expiration of currently enacted rules. If an agency wants to continue the effectiveness of the rule beyond ten years, the agency shall repromulgate the rule at least once every ten years after its sunset.

For each rule filed, amended or repromulgated under this act, the agency shall review the rule to determine 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.

Within sixty days after receipt by an agency of a petition filed by an individual requesting an agency to adopt, amend or repeal a rule, the act requires an agency to submit a written response to the petitioner, the Joint Committee on Administrative Rules, and the Commissioner of Administration containing its determination, along with the basis for its determination.

The Joint Committee on Administrative Rules shall provide a semi-annual report to state departments and the Secretary of State on rules that are scheduled to expire, however, the state agencies retain ultimate responsibility for monitoring the effectiveness of their rules.

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

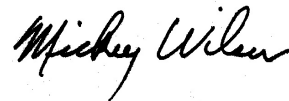
SOURCES OF INFORMATION

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

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SOURCES OF INFORMATION (continued)

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
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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