

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4433-08
Bill No.: HCS for SS for SCS for SB 469
Subject: Administrative Rules; Administrative Law; State Departments
Type: Original
Date: April 23, 2012

Bill Summary: This proposal requires review of all administrative rules and changes various provisions regarding the licensure and inspection of hospitals.

FISCAL SUMMARY

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

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 12 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 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.

Officials from the **Office of the Secretary of State (SOS)** assume, 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 70 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 1,245 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.

Furthermore, based on calculations of how many pages will be required to print amendments and recessions related to the Department of Health and Senior Services review under 197.080, RSMo, this bill could likely require an additional 75 pages in the Missouri Register. This calculation of 75 pages assumes that roughly half of the rules issued by Division 30 of the Department of Health and Senior Services will require agency action.

The actual cost could be more or less than the numbers given. Assuming that the major problems with rules that are uncovered as a result of the first mandatory review cycle, the estimated costs above would recur for the years 2015 through 2019 and decrease thereafter. 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 assumed a cost of roughly \$60,000 per year within the scope of this fiscal note.

ASSUMPTION (continued)

Officials from the **Office of the State Public Defender, Administrative Hearing Commission, Office of the State Courts Administrator, Department of Public Safety** (Divisions of **Missouri Highway Patrol, State Emergency Management Agency, Fire Safety, and Capitol Police**), **Missouri Senate, Missouri House of Representatives, Office of the State Treasurer, Missouri Ethics Commission, Office of the State Auditor, Office of Administration - Budget and Planning, Legislative Research, MOSERS, Office of Prosecution Services, Office of the Governor, State Tax Commission,** 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** and the **Department of Public Safety -Alcohol and Tobacco** assumed the proposal would not fiscally impact their respective agencies.

In response to a previous version of this proposal, officials from the **Department of Higher Education** assumed the proposal could be implemented utilizing existing resources and would, therefore, have no direct foreseeable fiscal 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 **Department of Revenue** state they will defer to the Office of Administration.

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.

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 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

ASSUMPTION (continued)

promulgate rules.

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. 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 2018, an additional FTE may be required.

Officials from the **Department of Economic Development (DED)** state this proposal could have an impact on their General Counsel. The proposal could require additional resources but specific costs are unknown.

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.

Officials from the **Department of Agriculture (AGR)** state the bill could require additional resources but the specific costs are unknown.

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.

Officials from the **Department of Insurance, Financial Institutions and Professional Registration (DIFP)** assume the proposal would have no fiscal impact in the fiscal years

ASSUMPTION (continued)

reflected in the fiscal note. DIFP believes existing FTE can implement the scheduled review of department rules beginning in FY2020 and the petition 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.

Officials from the **Department of Corrections (DOC)** state 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 by Section 536.175. In summary, the fiscal impact for DOC is a negative unknown for each fiscal year.

Officials from the **Department of Natural Resources (DNR)** state 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. Therefore, DNR states the direct fiscal impact from this proposal is unknown, but could be significant.

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: The Children's Division assume Section 536.175.1 (periodic review of all rules) would have an unknown fiscal impact as reviewing rules could require an unknown number of labor intensive hours. The cost of the increased amount of work is unknown at this time. However, it is anticipated the additional work would be absorbed by existing staff.
- 2: The Missouri HealthNet Division assumed the need for two FTE (an attorney and one support staff) in Fiscal Year 2017. The cost for the two FTE would exceed \$100,000.
- 3: Legal Services - expects an unknown fiscal impact beginning in FY 2018 greater than \$100,000 because it is impossible to forecast how many administrative rules could be subject to the provisions in the future.
- 4: The Information Technology Services Division state due to the large number of rules needed to be reviewed in a short amount of time, DOS would benefit from developing a new computer application to track all DOS rules. The one-time development cost is approximately \$98,307, with ongoing annual maintenance of \$3,271.

Officials from the **Department of Health and Senior Services (DHSS)** state Section 197.080.2 of the proposed legislation would require the DHSS to review and revise hospital licensure and enforcement regulations in order to promote hospital and regulatory efficiencies and eliminate duplicative regulations and inspection by state and federal agencies. The department is currently

ASSUMPTION (continued)

involved in a comprehensive review and revision of the existing hospital regulations and therefore assumes there to be no fiscal impact to implement the rule review/revision part of the proposed legislation.

Section 197.080.2(1) of the proposed legislation states that each finding of a regulatory deficiency must refer to the associated written interpretative guidance that forms the basis for the citation. There are currently no interpretative guidelines for state regulations. Such guidelines would have to be developed and updated on a continuous basis. One Health Facilities Nursing Consultant position will be required in order to analyze all hospital-related rules (currently 48 rules), research and write the initial set of interpretative guidelines, and provide continuous updates. Standard expense and equipment costs are included for the new position.

Section 197.080.2(3)(c) would require DHSS to provide a report of all complaints made against the hospital. The report must include the nature of the complaint, the date of the complaint, the department conclusions regarding the complaint, the number of investigators and days of investigation resulting from each complaint. The department assumes this function can be absorbed with existing resources.

Section 197.080.2(4) would require DHSS to designate sufficient resources to the annual inspection of hospitals necessary for licensure, including but not limited to resources for consultation services and collaboration with hospital personnel to facilitate improvements. As a result of this provision, the department would need one additional registered nurse manager, two health facility consultants (telecommuters), and five health facility nursing consultants (telecommuters). These additional positions would fulfill the needs related to performing annual hospital licensure inspections as well as the consulting and collaboration requirements of this proposal. The registered nurse manager will supervise the health facility consultants and health facility nursing consultants. DHSS assumes a salary for this position commensurate with other registered nurse managers within the section and at a level higher than the positions supervised.

Section 197.080.2(5) would require DHSS to provide hospital and hospital representatives the opportunity to participate in annual training sessions provided to state licensure surveyors at least annually. This section also states that hospitals and hospital representatives shall assume all costs for their participation and use of curriculum materials. The department currently provides an annual surveyor training session each fall. Currently, only select industry members are invited to attend due to cost factors and facility requirements. If this proposal were to pass, DHSS would be required to provide a training session to accommodate the entire hospital industry and any representatives of the industry. At present, there are 163 licensed hospitals in Missouri. At a minimum, space and materials for the training would need to accommodate 163 additional

ASSUMPTION (continued)

attendees. It is assumed the department would be allowed to charge a registration fee to all hospital and hospital representatives to cover all costs associated with the training. This fee would include such costs as meeting room rental, audio-visual equipment, copying of materials, provided meals and breaks, etc. DHSS assumes this fee would cover all additional costs associated with conducting the trainings. If this is not the case the department assumes additional resources would be needed to allow hospitals to attend the department's trainings.

Section 197.100 - The proposed legislation's changes to Section 197.100.1 would require the DHSS to accept reports of hospital inspections from other governmental and recognized accrediting organizations in lieu of annual state inspections. Currently, licensure inspections are performed simultaneously during certification surveys mandated by CMS or incorporated with complaint investigations. Since these activities would need to be continued to meet federal mandates, there is considered to be no cost savings associated with accepting these reports instead of doing a state inspection.

Section 536.041 - Existing language in this section allows for the filing of a petition requesting the adoption, amendment, or repeal of a rule. The proposed language would expand the department's requirements regarding the review and conclusions related to the petition. DHSS is unable to anticipate how many persons will file written petitions requesting the adoption, amendment, or repeal of any rule, therefore the fiscal impact is considered unknown.

Section 536.175 - DHSS anticipates no fiscal impact for the years covered by this fiscal note since the proposed legislation results in rule termination/re-promulgation requirements since DHSS' rules are contained in Title 19, it is assumed that DHSS will not begin the review process until July 1, 2018. This may result in an unknown increase for additional staff and all associated expenses. DHSS is not able to estimate the staff time required for the review of rules and may result in a substantial amount of increased staff efforts. DHSS therefore assumes no fiscal impact for the requirements of this section during FY 2013, FY 2014, and FY 2015.

In summary, DHSS assumes a cost for the nine additional FTE to the General Revenue Fund to be \$663,204 in FY 2013, \$777,314 in FY 2014, and \$786,420 in FY 2015.

Oversight assumes the DHSS could absorb the additional guideline caseload that may result from this proposal (section 197.080.2(1)) with existing resources. **Oversight** further assumes the DHSS is already inspecting hospitals and has consultation time with the hospitals and would not need eight (8) FTE for section 197.080.2(4). Therefore, **Oversight** assumes the DHSS could absorb nine (9) FTE. **Oversight** further assumes any significant increase in the workload of the DHSS would be reflected in future budget requests.

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ASSUMPTION (continued)

In response to a similar proposal from this year (HB 1123), officials from **Barton County Memorial Hospital** stated the proposal will not result in a direct financial benefit to the hospital. However, it should simplify any inspections and/or complaints that are investigated by the state on behalf of the Center for Medicare and Medicaid Services.

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

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 proposal, 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.

<u>FISCAL IMPACT - State Government</u>	FY 2013 (10 Mo.)	FY 2014	FY 2015
GENERAL REVENUE FUND			
Various State Agencies - Potential costs for state agencies to begin the review of the Code of State Regulations (Section 536.175)	<u>\$0</u>	<u>\$0</u>	<u>\$0 or (Unknown)</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE	<u>\$0</u>	<u>\$0</u>	<u>\$0 or (Unknown)</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 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.

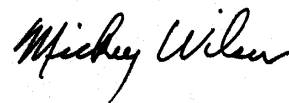
The subject agency must file its report with JCAR and the Small Business Regulatory Fairness Board within one year of notice being filed by JCAR in the Missouri Register. If the agency does not file the report, and does not receive an extension for good cause, then JCAR must notify the Secretary of State 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.

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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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
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
Barton County Memorial Hospital



Mickey Wilson, CPA
Director

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