

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4770-01
Bill No.: HB 1135
Subject: Administrative Rules; Administrative Laws; State Departments
Type: Original
Date: January 9, 2012

Bill Summary: This proposal requires the sunset of all administrative rules based on the time of promulgation, and allows any agency to re-promulgate a rule that is 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 9 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.

In response to identical legislation filed this year, SB 469, the officials from the **Office of the Secretary of State (SOS)** say this bill will require all state agencies that promulgate rules to re-promulgate rules at least every ten years. Existing rules will have to be re-promulgated 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 at the **Capitol Police, Department of Agriculture, Department of Corrections, Department of Higher Education, Missouri Department of Transportation, Missouri Highway Patrol, Office of Prosecution Services, Office of the State Auditor, Office of State Courts Administrator, Office of the State Public Defender, Office of State Treasurer** and the **State Emergency Management Agency** assume that there is no fiscal impact from this proposal.

In response to identical legislation filed this year, SB 469, the officials from the **Office of Administration** 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.

In response to identical legislation filed this year, SB 469, the 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.

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

ASSUMPTION (continued)

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

In response to identical legislation filed this year, SB 469, the 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 at the **Office of Attorney General** assume that any potential costs arising from this proposal can be absorbed with existing resources.

Officials at the **Department of Mental Health** assume the need for two additional staff, including one staff attorney. The impact is expected to be greater than \$100,000.

Officials at the **Department of Insurance, Financial Institutions and Professional Registration** assume no impact during the fiscal note period. However, starting in FY 2016 it could require additional legal and support FTE and expenses.

Officials at the **Department of Revenue** assume that beginning in FY 2015, the following divisions will require the following staff:

Legal Division - 1 Legal Counsel and 1 Senior Office Assistant

Taxation Division - 2 Management Analyst Specialist I

Motor Vehicle & Driver Licensing Division - 1 Management Analyst Specialist I

The projected cost of these FTE is \$338,923.

Officials at the **Missouri Veterans Commission** assume an unknown impact.

Officials at the **Department of Conservation** assume an unknown impact. The fiscal impact relates to the staff time required to re-promulgate the rules.

Officials at the **Missouri Gaming Commission** assume this would require several FTE to handle the workload of sunseting and re-promulgating rules.

Officials from the **Department of Labor and Industrial Relations (DOLIR)** state 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.

ASSUMPTION (continued)

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 **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.

In response to identical legislation filed this year, SB 469, the 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 this timeframe 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.

ASSUMPTION (continued)

Currently DHSS 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 DHSS' 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.

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

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 the 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.

<u>FISCAL IMPACT - State Government</u>	FY 2013	FY 2014	FY 2015
	(10 Mo.)		
GENERAL REVENUE			
<u>Cost - Various State Departments</u>	<u>\$0</u>	<u>\$0</u>	<u>(Unknown</u>
Additional FTE costs			<u>greater than</u>
			<u>\$100,000)</u>
 ESTIMATED NET EFFECT ON	 <u>\$0</u>	 <u>\$0</u>	 <u>(Unknown</u>
GENERAL REVENUE			<u>greater than</u>
			<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 changing.

FISCAL DESCRIPTION

The bill specifies that any administrative rules filed by a state agency on or after August 28, 2012, must automatically terminate 10 years after its effective date. Any rule in effect on August 28, 2012, will expire as follows:

- (1) Rules which became effective on or before December 31, 1989, will expire June 30, 2015;
- (2) Rules which became effective between January 1, 1990, and December 31, 1995, will expire June 30, 2016;
- (3) Rules which became effective between January 1, 1996, and December 31, 2000, will expire June 30, 2017;
- (4) Rules which became effective between January 1, 2001, and December 31, 2005, will expire June 30, 2018;
- (5) Rules which became effective between January 1, 2006, and December 31, 2007, will expire June 30, 2019; and
- (6) Rules which became effective between January 1, 2008, and August 28, 2012, including all rules filed but not yet effective as of August 28, 2012, will expire June 30, 2020.

If an agency wants to continue the effectiveness of a rule beyond its scheduled termination date, the agency must re-establish the rule at least once every 10 years.

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

Capitol Police
Department of Agriculture
Department of Conservation
Department of Corrections
Department of Economic Development

JH:LR:OD

SOURCES OF INFORMATION (continued)

Department of Elementary and Secondary Education
Department of Health and Senior Services
Department of Higher Education
Department of Insurance, Financial Institutions and Professional Registration
Department of Mental Health
Department of Natural Resources
Joint Committee on Administrative Rules
Missouri Department of Transportation
Missouri Gaming Commission
Missouri Highway Patrol
Missouri Lottery
Missouri Veterans Commission
Office of Administration
Office of Attorney General
Office of Prosecution Services
Office of the Secretary of State
Office of the State Auditor
Office of State Courts Administrator
Office of the State Public Defender
Office of State Treasurer
State Emergency Management



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Director
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