

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4770-05
Bill No.: Truly Agreed To and Finally Passed CCS for SCS for HB 1135
Subject: Administrative Rules; Administrative Law; State Departments
Type: Original
Date: May 30, 2012

Bill Summary: This proposal requires the termination of all administrative rules based on the time of promulgation and allows an agency to re-promulgate a rule that is set to terminate.

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 8 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 **Budget and Planning, Capitol Police, Department of Conservation, Department of Economic Development, Department of Higher Education, Missouri Highway Patrol, Office of Attorney General, Office of the State Auditor, Office of the State Public Defender, Office of the State Courts Administrator, Office of State Treasurer** and the **State Emergency Management Agency** assume there is no fiscal impact from this proposal.

Officials from the **Office of Administration (OA)** anticipate that in fiscal years when its rules are subject to review, additional resources could be required. OA assumes any costs could be absorbed with existing resources.

Officials from the **Department of Insurance, Financial Institutions and Professional Registration (DIFP)** assume the proposal would have no fiscal impact in the fiscal years 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 at the **Department of Health and Senior Services (DHSS)** assume that existing language in section 536.041, 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.

In section 536.175, DHSS anticipates no fiscal impact for the years covered by this fiscal note

ASSUMPTION (continued)

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.

Officials from the **Department of Labor and Industrial Relations** 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 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 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.

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

Officials at the **Office of the Secretary of State** did not respond to Oversight's request for fiscal impact. However, in a response to a previous version they responded as follows:

Officials from the **Department of Mental Health (DMH)** assume this process of re-promulgating will be similar to the current process of seeking provider and small business impact statements and calculations of expected costs combined with subsequent review 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

ASSUMPTION (continued)

this process will require additional staff resources. Fiscal impact/cost is expected to be unknown greater than \$100,000.

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 **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. This calculation of 70 pages assumes that each rule under review (approximately 1,250 rules per reviewing cycle) will have to be listed individually in the Missouri Register. Furthermore, if agencies fail to conduct and submit reviews as required, additional pages in the Missouri Register will be required to list the affected rules that will, consequently, become null and void. Therefore, costs will depend heavily on agency action. Assuming, for example, agencies decide not to draft reports for 10% of their rules, this would require an additional 7 pages in the Missouri Register. Additionally, as part of the review process rules identified in the report that need to be amended or rescinded will be filed and go through the normal publication process. Assuming half of the rules being reviewed need adjustment this will result in an additional 1,245 pages in the Missouri Register. The estimated cost of a page in the Missouri Register is \$23.00.

Likewise, under the assumption stated above, that agencies will fail to file reports for 10% of their rules, these rules will become null and void and such change in status will have to be published in the Code of State Regulations. Depending on where the rules to become null and void are located in the Code of State Regulations, it is estimated that 1 or more pages will be required to be updated per null and void rule, resulting in an additional 125 pages in the Code of State Regulations. Additionally, as stated above assuming that as a result of the review and report process half of the rules being reviewed need amendment or rescission this will result in an additional 750 pages in the Code of State Regulations. For any given rule, roughly two-thirds as many pages are published in the Code of State Regulations as in the Missouri Register because cost statements, fiscal notes, and the like are not repeated in the Code. 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. 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 \$45,000 in the first year.

ASSUMPTION (continued)

Section 536.175 states that each agency shall periodically review all of its rules. 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			
<u>Various State Agencies</u> - Potential costs for state agencies to begin the review of the Code of State Regulations (Section 536.175)	<u>\$0</u>	<u>\$0</u>	\$0 or <u>(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 act 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.

FISCAL DESCRIPTION (continued)

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.

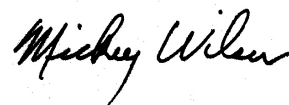
If a petition is filed with an agency requesting the adoption, amendment or rescission of a rule, the agency shall respond within 60 days with its determination as to whether a rule should be adopted, amended, or removed. Copies of the agency response shall be sent to JCAR and the Commissioner of Administration. A written petition shall constitute the required notice for purposes of current law provisions authorizing attorney fees and expenses in cases where an agency's actions were based on a statement of general applicability that should have been promulgated as a rule.

The act removes the requirement in current law that every agency with rules that affect small business must submit a list of such rules and a report to the General Assembly and Small Business Regulatory Fairness Board every two years. This report contains the same information required in the bill as part of the periodic review of all administrative 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

Budget and Planning
Capitol Police
Department of Conservation
Department of Corrections
Department of Economic Development
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 Labor and Industrial Relations
Department of Natural Resources
Department of Mental Health
Department of Public Safety
Joint Committee on Administrative Rules
Missouri Highway Patrol
Missouri Veterans Commission
Office of Administration
Office of Attorney General
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 Agency



Mickey Wilson, CPA
Director
May 30, 2012