

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 0633-05  
Bill No.: SB 224  
Subject: Civil Procedure; Courts  
Type: Original  
Date: February 11, 2019

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Bill Summary: This proposal modifies Supreme Court Rules 56.01, 57.01, 57.03, 57.04, and 59.01 relating to discovery.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
General Revenue	(Unknown)	(Unknown)	(Unknown)
<b>Total Estimated Net Effect on General Revenue</b>	<b>(Unknown)</b>	<b>(Unknown)</b>	<b>(Unknown)</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
State Road Fund	(Unknown, less than \$50,000)	(Unknown, less than \$50,000)	(Unknown, less than \$50,000)
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>(Unknown, less than \$50,000)</b>	<b>(Unknown, less than \$50,000)</b>	<b>(Unknown, less than \$50,000)</b>

Numbers within parentheses: ( ) indicate costs or losses.

This fiscal note contains 6 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b>			
<b>FUND AFFECTED</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>
<b>Total Estimated Net Effect on FTE</b>	<b>0</b>	<b>0</b>	<b>0</b>

Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any of the three fiscal years after implementation of the act.

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>
<b>Local Government</b>	<b>(Unknown)</b>	<b>(Unknown)</b>	<b>(Unknown)</b>

## FISCAL ANALYSIS

### ASSUMPTION

Officials at the **Missouri Department of Transportation (MoDOT)** assume an unknown negative fiscal impact of less than \$50,000. In terms of negative impacts, Rule 56.01 is modified to require designated expert witnesses to prepare written reports. The reports will require additional funds to be expended by the party employing the expert witness. Currently, MoDOT does not ask its experts to prepare written reports and their opinions are shared with the Chief Counsel's Office (CCO) orally and only in response to specific questions and documents. The total costs that will be incurred by MoDOT to pay for written reports for CCO experts is unknown, as CCO cannot estimate accurately how many designated expert witness reports will be required annually and how much time such reports will take in order to estimate the likely costs.

The benefit to the CCO is that opposing counsel will be required to provide written reports of its experts at least 90 days in advance of a deposition. This will provide MoDOT and CCO a much better opportunity to prepare for its cross-examination of opposing expert witnesses. There is no way to estimate the positive fiscal impact resulting from this benefit.

**Oversight** will use the Missouri Department of Transportation response for this proposal.

Officials at the **Office of the State Public Defender (SPD)** assume this proposal would only affect Post Conviction Relief (PCR) cases and the deposition changes would have little fiscal impact. The one thing that would have a minor fiscal impact is the provision that requires an expert to prepare a written report. To the extent the proposed legislation requires experts in some PCR cases to prepare written reports would increase the costs from the expert witness.

**Oversight** inquired the SPD further about the fiscal impact of this proposal. SPD estimates a cost of less than \$50,000 each year. This proposal would require additional investigations to be done and additional expert witness hours to prepare written reports. Oversight will use the SPD response for this proposal.

Officials at the **Office of the State Courts Administrator**, the **Department of Insurance, Financial Institutions and Professional Registration**, the **Department of Corrections** and the **Office of Prosecution Services** each assume no fiscal impact to their respective agencies from this proposal.

ASSUMPTION (continued)

**Oversight** notes that the Office of the State Public Defender, the Office of the State Courts Administrator, the Department of Insurance, Financial Institutions and Professional Registration, the Department of Corrections and the Office of Prosecution Services each has stated the proposal would not have a direct fiscal impact on their organization. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact on the fiscal note for these agencies.

**Oversight**, upon review, realized that this could impact the Office of the Attorney General (AGO) and sent them a request for information on February 8, 2019. As of the printing of this fiscal note, Oversight has not received a response from the AGO. However, Oversight assumes this proposal could increase litigation costs to the AGO and to political subdivisions based upon responses from the Office of the State Public Defender and Department of Transportation. Oversight assumes changes in the proposal could result in an increased number of depositions requested and performed, increasing costs.

<u>FISCAL IMPACT - State Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022
<b>GENERAL REVENUE FUND</b>			
<u>Costs</u> - potential increase in litigation costs	(Unknown)	(Unknown)	(Unknown)
<u>Cost</u> - SPD - for additional investigations and expert hours to prepare written reports	(Less than <u>\$50,000</u> )	(Less than <u>\$50,000</u> )	(Less than <u>\$50,000</u> )
<b>ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND</b>	<b><u>(Unknown)</u></b>	<b><u>(Unknown)</u></b>	<b><u>(Unknown)</u></b>
<b>STATE ROAD FUND</b>			
<u>Cost</u> - MODOT - increase cost relating to discovery in litigation	(Unknown, less <u>than \$50,000</u> )	(Unknown, less <u>than \$50,000</u> )	(Unknown, less <u>than \$50,000</u> )
<b>ESTIMATED NET EFFECT ON STATE ROAD FUND</b>	<b><u>(Unknown, less than \$50,000)</u></b>	<b><u>(Unknown, less than \$50,000)</u></b>	<b><u>(Unknown, less than \$50,000)</u></b>

<u>FISCAL IMPACT - Local Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022
<b>POLITICAL SUBDIVISIONS</b>			
<u>Costs</u> - potential increase in litigation costs	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
<b>ESTIMATED NET EFFECT TO POLITICAL SUBDIVISIONS</b>	<b><u>(Unknown)</u></b>	<b><u>(Unknown)</u></b>	<b><u>(Unknown)</u></b>

FISCAL IMPACT - Small Business

Small businesses involved in litigation could be impacted by this proposal.

FISCAL DESCRIPTION

This act modifies numerous Supreme Court rules relating to discovery in litigation to become more consistent with the Federal Rules of Civil Procedure.

REQUIREMENT OF PROPORTIONALITY

The act requires that parties may discover any relevant, non-privileged matter, as described in the act, provided that the matter is proportional to the needs of the case considering several factors described within the act.

REQUIREMENT OF REPORTS ON EXPERT WITNESSES

The act requires any interrogatory identifying a witness as an expert to be accompanied by a report, prepared and signed by such expert.

LIMITS ON INTERROGATORIES AND DEPOSITIONS

The act limits the number of written interrogatories that may be served upon a party to 30, including all discrete subparts.

For oral or written depositions, leave of court is required if the deponent is confined in prison or the parties have not stipulated to a deposition and:

- The deposition would result in more than 10 depositions being taken by the plaintiffs, or by the defendants, or by the third-party defendants;

FISCAL DESCRIPTION (continued)

- The deponent has already been deposed in the case; or
- The plaintiff seeks a deposition prior to the expiration of 30 days after the service of the summons and petition upon any defendant, except leave is not required if a defendant has served a notice of taking deposition or otherwise sought discovery.

The act additionally limits the length of any oral deposition to one day of seven hours, provided that the court may order additional time for any deposition under certain circumstances. The court is permitted to impose sanctions on persons who impede, delay, or otherwise frustrate the fair examination of a deponent.

LIMITS ON REQUESTS FOR ADMISSIONS


The act limits the number of written requests for admission that may be served upon a party to 30 without leave of the court. However, this limitation shall not apply to requests regarding the genuineness of documents.

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

Missouri Department of Transportation  
Office of the State Public Defender  
Office of the State Courts Administrator  
Department of Insurance, Financial Institutions and Professional Registration  
Department of Corrections  
Office of Prosecution Services

Kyle Rieman  
Director  
February 11, 2019



Ross Strope  
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February 11, 2019