COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. NO.: 3809-09
BILL NO.: HCS for SB 858
SUBJECT: Sunshine Law: Meetings and Records
TYPE: Original
DATE: April 19, 2000

FISCAL SUMMARY

ESTIMATED NET EFFECT ON STATE FUNDS			
FUND AFFECTED	FY 2001	FY 2002	FY 2003
Total Estimated Net Effect on All State Funds	**$0**	**$0**	**$0**

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2001	FY 2002	FY 2003
Total Estimated Net Effect on All Federal Funds	**$0**	**$0**	**$0**

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2001	FY 2002	FY 2003
Local Government	**$0**	**$0**	**$0**

Numbers within parentheses: ( ) indicate costs or losses.
This fiscal note contains 6 pages.

FISCAL ANALYSIS

ASSUMPTION

Officials of the following agencies/offices/commissions stated their offices would not be directly impacted fiscally by this, or similar, proposal: **Agriculture, Conservation, Elementary and Secondary Education, Higher Education, Transportation, Natural Resources, Revenue, Governor, Lt. Governor, Social Services, Attorney General, Courts Administrator, Tax, Health, Economic Development, Gaming, Lottery, Chief Clerk of the House, Secretary of the Senate, Auditor, Treasurer, Public Defender, Prosecution Services, Harris-Stowe State College,** and **Missouri Western State College.**

Officials of the **University of Missouri,** the **Department of Public Safety,** the **Department of Labor and Industrial Relations,** the **Office of Administration** and the **Department of Mental Health** noted that the proposal might provide a cause of action for additional litigation, which could have a fiscal impact depending on the amount and outcome of that litigation. For fiscal note purposes it is assumed that this would not be a direct impact of the proposal.

Officials of the **Secretary of State** stated:

> "This proposed legislation imposes strict liability and penalties on public governmental bodies and their employees. Although this office does not purposefully violate the provisions of Chapter 610, the nature of our primary business is such that if this legislation passes we must enact office-wide request tracking to ensure 72 hour compliance and protect our employees from the imposition of fines."
>
> "The Office of the Secretary of State is known as the "Information Place" and therefore receives an inordinate amount of requests for public information. During 1999, this office received and responded to approximately 750,000 requests for information which fall under the provisions of Chapter 610. Based on estimates from prior years, we anticipate the number of requests increasing by at least thirty (30) percent within the next year due to the expanded use and ease of requesting information via electronic and facsimile transmissions and an increase in public awareness regarding the vast information retained by the Secretary of State. If this office inadvertently misses the deadline on only 100 out of one million public information requests (.01%), the join and severable fines would be at least $50,000."

ASSUMPTION (continued)

The Secretary of State would request four FTE (Range 17) to insure requests are identified and fulfilled within three days. The four FTE would develop a specialty on Chapter 610 requests and would work in all areas of the office. Costs for the FTE would be approximately $200,000 per year.

Officials of the **Department of Corrections** stated:

> "In addition to increasing the penalty provisions from a maximum civil fine of $500 to a range between $500 to $25,000, the proposal removes the requirement that the governmental body be found by a court to have purposely violated sections of the current statute. Instead the proposal establishes a statutory "presumption of a violation" if the original request for information was in writing. *The likely result of these changes is to increase the frequency of requests and incidence of litigation.*"
>
> "As the statute places the burden of persuasion on the agency to demonstrate compliance with each request, the DOC will establish the public information office as the agency's central collection point and clearinghouse for such requests. The DOC estimates the number of written requests for information processed through the department's legal office in excess of 300 per year and another ten e-mail inquiries received *daily* through the office of public information. Additional clerical support for this function will be required to ensure that all requests for information are processed and resolved in accordance with the provisions of the "sunshine request" statute."
>
> "The DOC estimates that an additional clerical staff will be needed to document incoming requests, assist in compiling requested information and documenting the delivery of information to the requestor. The annual salary only for a Clerk Typists (sic) II is $19,452, not counting start-up and on-going expense and equipment"
>
> "The DOC is unable to determine if a significant amount of additional legal expense will be incurred due to increased litigation. The DOC proposes to contract for legal services to assist in the preparation and presentation of evidence necessary to meet the burden of persuasion required by the statute."

DOC also notes that the Department would be requesting additional resources, if needed, through normal budgetary request procedures.

ASSUMPTION (continued)

Oversight notes that this proposal does not impose any additional duties except for the taking and making public of certain roll call votes.

Oversight also notes that although the proposal contains a presumption that a request for a record is valid under the "sunshine law" if the request contains a reference to the law, the proposal does not change any of the definitions of records which are subject to or exempt from the sunshine law. If a record or meeting is, in fact, exempt from sunshine law disclosure, then the presumption created under terms of this proposal would be rebutted.

Oversight assumes, for purposes of this fiscal note, that the proposal does not mandate increased litigation and that costs due to any permanent increase in the amount of litigation (and costs, if any, due to larger fines for violations of Chapter 610) would be matters for decision items in agency budgets.

FISCAL IMPACT - State Government	FY 2001 (10 Mo.)	FY 2002	FY 2003
	$0	$0	$0

FISCAL IMPACT - Local Government	FY 2001 (10 Mo.)	FY 2002	FY 2003
	$0	$0	$0

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

DESCRIPTION

This proposal would require that roll call votes be taken and made public on matters where meetings themselves could be closed under the open meetings law. It would also: allow penalties to be assessed for any violation of the open meetings law (currently, penalties are only allowed if the violation is "purposeful"); increase possible penalties for violations of the law from $500 to $25,000; and, limit the circumstances under which courts could order public bodies or members of public bodies to pay costs and attorney fees of parties successfully establishing violations of the Open Meetings Law to those occasions when the court found the violation to be "a knowing

DESCRIPTION (continued)

violation".

The proposal would make exemptions to the Open Meetings Law for certain records of public hospitals and related organizations of public hospitals; proprietary information submitted as part of sealed bids, proposals or application for certification of minority or woman-owned businesses; records of municipally-owned gas and electric utilities which are related to future marketing and service expansion areas; and personally identifiable information concerning participants and beneficiaries of accounts established in the Missouri higher education savings program.

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

SOURCES OF INFORMATION

Office of Administration
Department of Agriculture
Department of Conservation
Department of Economic Development
Department of Elementary and Secondary Education
Department of Health
Department of Higher Education
Department of Transportation
Department of Insurance
Department of Labor and Industrial Relations
Department of Mental Health
Department of Natural Resources
Department of Public Safety
Department of Revenue
Department of Social Services
State Courts Administrator
State Tax Commission
Office of Prosecution Services
State Public Defender
Chief Clerk - House of Representatives
State Auditor
Governor
Lieutenant Governor

SOURCES OF INFORMATION (continued)

Secretary of State
State Treasurer
Harris-Stowe State College
Missouri Western State College
University of Missouri

Jeanne Jarrett, CPA
Director
April 19, 2000