

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0796H.01I
Bill No.: HB 781
Subject: Administrative Rules; State Departments; General Assembly
Type: Original
Date: April 19, 2021

Bill Summary: This proposal enacts a sunset provision for administrative rules.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND				
FUND AFFECTED	FY 2022	FY 2023	FY 2024	Fully Implemented (FY 2026)
General Revenue	Could exceed (\$476,069)	Could exceed (\$545,732)	Could exceed (\$550,801)	Could exceed (\$738,944)
Total Estimated Net Effect on General Revenue	Could exceed (\$476,069)	Could exceed (\$545,732)	Could exceed (\$550,801)	Could exceed (\$738,944)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS				
FUND AFFECTED	FY 2022	FY 2023	FY 2024	Fully Implemented (FY 2026)
Various State Funds	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
Conservation Fund	Greater than (\$250,000)	Greater than (\$250,000)	Greater than (\$250,000)	Greater than (\$250,000)
State Road Fund	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
Total Estimated Net Effect on Other State Funds	Greater than (\$250,000)	Greater than (\$250,000)	Greater than (\$250,000)	Greater than (\$250,000)

Numbers within parentheses: () indicate costs or losses.

ESTIMATED NET EFFECT ON FEDERAL FUNDS				
FUND AFFECTED	FY 2022	FY 2023	FY 2024	Fully Implemented (FY 2026)
Various Federal Funds	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
Total Estimated Net Effect on All Federal Funds	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)				
FUND AFFECTED	FY 2022	FY 2023	FY 2024	Fully Implemented (FY 2026)
General Fund – DSS, OA, and DMH	6 FTE	6 FTE	6 FTE	7 FTE
Total Estimated Net Effect on FTE	6 FTE	6 FTE	6 FTE	7 FTE

☒ Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.

☐ Estimated Net Effect (savings or increased revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS				
FUND AFFECTED	FY 2022	FY 2023	FY 2024	Fully Implemented (FY 2026)
Local Government	\$0	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from **Joint Committee on Administrative Rules (JCAR)** assume the proposal will increase the rulemaking work for state agencies, Secretary of State and JCAR staff. It may also result in legal challenges. JCAR staff may be able to absorb the additional processing work with existing staff but that is unknown. The requirement could potentially result in additional hearings being required but it is not clear at this time so that impact is an unknown.

Oversight does not have any information to the contrary. Therefore, Oversight will reflect \$0 (no additional hearings or legal challenges) to unknown (additional hearings and legal challenges) impact as estimated by JCAR in the fiscal note.

Officials from **Department of Commerce and Insurance** assume the costs of this bill can be absorbed within their current appropriations; however until the FY22 budget is final, the department cannot identify specific funding sources. Should the cost be more than anticipated, the department would request an increase to their FTE and/or appropriations as appropriate through the budget process.

Officials from **Department of Health and Senior Services (DHSS)** assume the proposal would create an indeterminable amount of time and effort to employees of the DHSS. Reviewing and resubmitting all rules on a four year cycle, could require additional FTE; however, DHSS cannot predict the number of FTE nor the cost.

Oversight cannot estimate how many rules DHSS will have to review or resubmit as a result of legislation; therefore, Oversight will reflect a \$0 (no rules) to unknown (indeterminate amount of rules) cost on the fiscal note for this agency.

Officials from **Department of Mental Health (DMH)** assume this proposal places mandatory sunset periods on administrative rules.

To implement the proposal, the DMH would require additional staffing. The Division of Developmental Disabilities (DD) and the Division of Behavioral Health (DBH) would each require one additional full-time management-level employee (Program Manager) and one full-time administrative support employee to coordinate, review, and evaluate existing and new rules, in consultation with General Counsel, to ensure program efficiency and effectiveness. Each Program Manager FTE salary is \$86,345 plus fringe benefits and associated expense and equipment costs. Each Administrative Support Assistant FTE salary is \$33,834 plus fringe benefits and associated expense and equipment costs.

In summary, this bill is projected to cost DMH \$331,274 in FY 2022, \$382,991 in FY 2023 and \$386,500 in FY 2024. This includes salaries, fringe benefits, equipment, and expenses.

Oversight does not have any information to the contrary. Therefore, Oversight will reflect impact estimated by DMH in the fiscal note.

Officials from **Department of Natural Resources (DNR)** assume Section 536.175.6 and .7 state that all rules shall have an automatic sunset date four years after the rule has been reviewed per the statute or if created after June 30, 2022, sunset after four years. The Department's current rulemaking process takes approximately 18-24 months to complete. The proposed language will cause the Department to be in a continuous cycle of rulemaking to maintain existing rules, which could decrease certainty for the regulated community. The proposed language also creates a duplication of effort as this same statute currently requires the Department to conduct a review of all Department rules and to provide a report based on this and other criteria every five years. Requiring the Department to review all rules on a set five year schedule under 536.175 and also having to review individual rules on an unsynced four year schedule to extend the expiration date of the rule seems to create overlapping processes. This language would have an effect on the implementation of environmental functions such as permitting and enforcement given more staff time will need to be devoted to rulemaking efforts needed to keep rules up to date to maintain drinking water primacy and the Department's delegated authorities under the Clean Air Act, Safe Drinking Water Act, Resource Conservation and Recovery Act, and the Clean Water Act. Failure to address the state's obligations under federal regulation may result in the loss of drinking water primacy or delegation authorities and a loss of federal funding tied to the programs.

It is unclear if the U.S. Environmental Protection Agency would delegate drinking water primacy if federally mandated rules include sunset dates, as these rules could be considered less stringent than the corresponding federal rules that do not contain an expiration date.

All state air pollution rules approved into Missouri's State Implementation Plan must be permanent and enforceable, as required by the Clean Air Act. State rules that expire may not be deemed permanent by EPA.

DNR assumes State Revenue could potentially be impacted if the state would lose drinking water primacy or its current delegated authority to implement federal environmental laws. The U.S. Environmental Protection Agency would implement the federal regulations tied to the various federal environmental laws. The state would then lose the associated federal funding tied to the programs and related state fee revenues.

Oversight does not have any information to the contrary. Therefore, Oversight will reflect impact estimated by DNR in the fiscal note.

Oversight notes that State Revenue could potentially be impacted if the state would lose its current delegated authority to implement certain federal laws. The state would then lose the associated federal funding tied to the programs and related state fee revenues. Therefore, Oversight will reflect impact \$0 to unknown negative impact to General Revenue, Various State

Funds, and Federal Funds in the fiscal note, all dependent upon future rules action/enforcement. Oversight will reflect this possibility in FY 2024.

Officials from **Department of Social Services (DSS)** state DSS has approximately 300 active regulations. It has promulgated, amended, or rescinded approximately 120 regulations in the last two years; an average of 60 regulations each year. Approximately 70% of these regulations are amendments, 17% are newly adopted, and 13% are rescissions. [1] Therefore, DSS promulgates approximately 42 amendments, 10.2 new rules, and 7.7 rescissions per year.

The Division of Legal Services (DLS) administers the promulgation of all regulations for DSS.

There are two important assumptions to this projection:

- 1) House Bill 781 makes only one exception to the sunset dates in this bill, which is the provision in RSMo. 536.175.8 which would allow the General Assembly to establish “permanent” rules or regulations.
- 2) House Bill 781 refers to “created” rules and regulations and any rule or regulation “reviewed” under the five-year Rule Review. It does not mention regulations that undergo amendments during any of the sunset periods. Therefore, based on how the bill is written, amendments to any existing regulations do not “reset” the four-year sunset clock like they would under FN 0475-01/SB 180, resulting in all DSS regulations having to be re-promulgated starting in 2027.

536.175.6: Under this provision, any rule or regulation created after June 30, 2022 will sunset four years after the regulation is approved. Assuming that the term “created” refers to a newly promulgated regulation, this would require every new regulation created after June 30, 2022 to expire and then be re-promulgated every four years. DSS currently creates about 10.2 regulations per year. Assuming the rate of 10.2 continues, starting in 2027, the number of new regulations, combined with the re-promulgated regulations from 2023, would increase to 20.4 per year.

536.175.7: This provision sets a four-year sunset date for all currently-existing DSS regulations starting with the date on which DSS submits its final Rule Review report for the 2022 rule review under this statute, which would be June 30, 2023 at the latest. Assuming DSS files its final Rule Review report on that date, the four-year sunset requirement would subject all 300 of DSS’s regulations to expiration by June 30, 2027, assuming the General Assembly does not establish any “permanent” regulations pursuant to the new subsection 8 of this statute. DSS rescinds about 7.7 regulations per year, but the rate at which DSS creates new rules (10.2 per year) exceeds the rescission rate, so the assumption of 300 re-promulgated rules is reasonable. Therefore, starting in 2027, there will be a spike in promulgated rules every four years. This creates a rolling average of 75 (300 divided by 4) regulations per year during any five-year period that must be re-filed as proposed rules, lest they expire. DSS currently amends approximately 44.1 regulations per year on top of this amount. Assuming one-fourth of those amendments would be absorbed by the re-promulgation process (reducing amendments to 33),

this provision would result in an increase of 48 regulations per year. Adding this amount to the 60 regulations per year that DSS already creates or changes (and absorbing the increase in new regulations created by subsection 7) increases the total regulatory workload for DSS to 108 (75 + 33) regulations per year.

536.175.8: This provision allows the General Assembly to establish some rules or regulations as “permanent,” implying that those rules would not be subject to the sunset requirements. DLS projects an overall increase of at least 80% in the number of regulations that DSS will promulgate each year as a result of this legislation. DLS would require one (1) additional attorney and one (1) additional administrative staff person – totaling 2 FTE – in order to meet the requirements of the statute. This results in a negative fiscal impact to DLS.

Oversight does not have any information to the contrary. Therefore, Oversight will reflect impact estimated by DSS in the fiscal note.

Officials from **Missouri Department of Conservation (MDC)** assume the proposed legislation would have a negative fiscal impact on Department funds of more than \$250,000.

Oversight does not have any information to the contrary. Therefore, Oversight will reflect impact estimated by MDC in the fiscal note.

Officials from **Missouri Department of Transportation (MoDOT)** state MoDOT currently has 33 chapters of rules. The process of drafting and pushing a new rule through to approval takes at least 100 labor hours by professional staff, including attorneys, paralegals, and engineers. A conservative estimate of 100 hours per re-write times 7 chapters rewritten per year equals 700 hours. At \$25/hour, this is equal to \$17,500 per year, or about \$87,500 total after accounting for all rules.

Additionally, this figure does not account for longer chapters of rules, for staff time paid at greater than \$25/hour, or the staff benefits paid. Therefore, this legislation will cost MoDOT more than \$200,000 per year.

Oversight cannot estimate how many rules MoDOT will need reauthorized as a result of legislation; therefore, Oversight will reflect a \$0 (no rules) to unknown (indeterminate amount of rules) cost on the fiscal note for this agency.

Officials from **Office of Administration** assume this bill requires that, any rule or regulation created after June 30, 2022, shall have an automatic sunset date of four years after the rule or regulation was approved. Rules are also required to be periodically reviewed, and a report filed following completion of the review. This bill also requires that, any rule or regulation reviewed after June 30, 2022, shall have an automatic sunset date of four years after the rule or regulation was reviewed, and the required report is filed. There is also an allowance that permanent rules may be established by the General Assembly.

The Division of Purchasing has 4 regulations, Personnel has 21 regulations, FMDC has 11 regulations, Office of Equal Opportunity has 3 regulations, and Accounting has 5 regulations. Depending on the number of new rules that are created in a given year, and the timing of when reviews need to take place, the number of rules that will sunset and need to be re-promulgated in a given year may vary. However, this estimate was based on 2 days (16 hours) of staff time for each regulation within each division, although in reality the time needed may vary some from year to year. It is also estimated that this will require one new legal staff to review regulations, make recommendations, and help with rulemaking.

Estimated Fiscal annual impact beginning Fiscal Year 2026:

Purchasing Division Director: (\$472/day X 2 days) X 4 regulations = \$3,776

Purchasing Staff: (\$325.70/day X 2 days) X 4 regulations= \$2,606

Personnel Division Director: (\$472/day X 2 days) X 21 regulations=\$19,824

Personnel Staff: (\$378/day X 2 days) X 21 = \$15,876

FMDC Division Director: (\$472/day X 2 days) X 11 regulations= \$10,384

FMDC Staff: (\$386/day X 2 days) X 11 regulations= \$8,492

OEO Division Director: (\$312.50/day X 2 days) X 3 regulations= \$1,875

OEO Staff: (\$208.33/day X 2 days) X 3 regulations= \$1,250

Accounting Division Director: \$472/day X 2 days) X 5 regulations= \$4,720

Accounting Staff: (\$385.4/day X 2 days) X 5 regulations= \$3,854

Legal Staff Time: 1 new FTE = \$64,800

Oversight does not have any information to the contrary. Therefore, Oversight will reflect impact estimated by OA in the fiscal note. Oversight notes that the estimated annual cost to OA will begin in FY 2026.

Officials from the **Office of the Secretary of State** notes many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The Secretary of State's office is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this fiscal note to Secretary of State's office for Administrative Rules is less than \$5,000. The Secretary of State's office recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, they also recognize that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what their office can sustain with their core budget. Therefore, they reserve the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the governor.

Oversight assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation process.

Officials from the **Attorney General's Office, Office of Administration - Administrative Hearing Commission, Office of Administration – Budget and Planning, Department of Economic Development, Department of Elementary and Secondary Education, Department of Higher Education and Workforce Development, Department of Corrections, Department of Labor and Industrial Relations, Department of Revenue, Division of Alcohol and Tobacco Control, Capitol Police, Fire Safety, Office of the Director, Missouri Gaming Commission, Missouri National Guard, Missouri Highway Patrol, Missouri Veterans Commission, State Emergency Management Agency, Missouri Department of Agriculture, Missouri Ethics Commission, MoDOT & Patrol Employees' Retirement System, Office of the State Public Defender, Office of the Governor, Office of the Lieutenant Governor, Office of the State Auditor, Office of the State Treasurer, Missouri House of Representatives, Joint Committee on Education, Joint Committee on Public Employee Retirement, Legislative Research, Oversight Division, Missouri Senate, Missouri Lottery Commission, Missouri Consolidated Health Care Plan, Missouri Higher Education Loan Authority, Missouri Office of Prosecution Services, Missouri State Employee's Retirement System, Office of the State Courts Administrator, and State Tax Commission** each assume the proposal will have no fiscal impact on their organizations. **Oversight** does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note.

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<u>FISCAL IMPACT – State Government</u>	FY 2022 (10 Mo.)	FY 2023	FY 2024	Fully Implemented (FY 2026)
GENERAL REVENUE FUND				
<u>Cost – OA</u>				
Salaries	\$0	\$0	\$0	(\$114,548)
Fringe Benefits	\$0	\$0	\$0	(\$48,610)
Equipment and Expense	\$0	\$0	\$0	(\$2,732)
<u>Total Costs – OA</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>(\$165,890)</u>
FTE Change – OA	0 FTE	0 FTE	0 FTE	1 FTE
<u>Cost – JCAR</u>				
Additional hearings and legal challenges	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>
<u>Cost – DHSS</u>				
Review and resubmission of rules	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>
<u>Cost – DMH</u>				
Salaries	(\$200,298)	(\$242,762)	(\$245,189)	(\$255,095)
Fringe Benefits	(\$107,401)	(\$129,692)	(130,511)	(\$135,784)
Equipment and Expense	<u>(\$23,575)</u>	<u>(\$10,537)</u>	<u>(\$10,800)</u>	<u>(\$11,236)</u>
<u>Total Costs – DMH</u>	<u>(\$331,274)</u>	<u>(\$382,991)</u>	<u>(\$386,500)</u>	<u>(\$402,115)</u>
FTE Change – DMH	4 FTE	4 FTE	4 FTE	4 FTE
<u>Cost – DSS</u>				
Salaries	(\$74,648)	(\$90,474)	(\$91,379)	(\$95,071)
Fringe Benefits	(\$48,137)	(\$58,061)	(\$58,361)	(\$60,719)
Equipment and Expense	<u>(\$22,010)</u>	<u>(\$14,206)</u>	<u>(\$14,561)</u>	<u>(\$15,149)</u>
<u>Total Costs – DSS</u>	<u>(\$144,795)</u>	<u>(\$162,741)</u>	<u>(\$164,301)</u>	<u>(\$170,939)</u>
FTE Change – DSS	2 FTE	2 FTE	2 FTE	2 FTE
ESTIMATED NET EFFECT ON GENERAL REVENUE	Could exceed <u>(\$476,069)</u>	Could exceed <u>(\$545,732)</u>	Could exceed <u>(\$550,801)</u>	Could exceed <u>(\$738,944)</u>
Estimated Net FTE Change on General Revenue Fund	6 FTE	6 FTE	6 FTE	7 FTE

<u>FISCAL IMPACT – State Government - continued</u>	FY 2022 (10 Mo.)	FY 2023	FY 2024	Fully Implemented (FY 2026)
OTHER STATE FUNDS				
<u>Cost – MDC – Conservation Fund</u>	Greater than (\$250,000)	Greater than (\$250,000)	Greater than (\$250,000)	Greater than (\$250,000)
<u>Cost – MODOT - State Road Fund</u>				
Review and resubmission of rules	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
Various State Funds	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
ESTIMATED NET EFFECT ON OTHER STATE FUNDS	Greater than (\$250,000)	Greater than (\$250,000)	Greater than (\$250,000)	Greater than (\$250,000)
FEDERAL FUNDS				
<u>Loss – Various Federal Funds to Various State Agencies</u>	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
ESTIMATED NET EFFECT ON FEDERAL FUNDS	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)

<u>ISCAL IMPACT – Local Government</u>	FY 2022 (10 Mo.)	FY 2023	FY 2024	Fully Implemented (FY 2026)
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT – Small Business

The legislation would impact small business in that regulations reviewed or enacted after June 30, 2022, would not have any permanence beyond four years. If the statute that creates the authority for the rules still is effective it will create confusion how such requirements are to be implemented if the rule sunsets. It would be uncertain what regulatory changes or provisions would be in place or how regulations might be established by action of the general assembly. To make investments in industries that are regulated the industry needs to know what the rules are

that are in place. They would have no idea of what costs might be associated with compliance of ever changing or sunset regulation or what is required when the regulations sunset.

Also, small businesses could potentially be impacted if the state would lose drinking water primacy or its current delegated authority to implement federal environmental laws. The U.S. Environmental Protection Agency would implement the federal regulations tied to these various environmental laws.

FISCAL DESCRIPTION

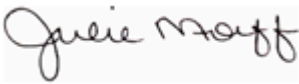
This bill requires that any rule or regulation created after June 30, 2022, have an automatic sunset date four years after it is approved. Any rule or regulation reviewed under this requirement after June 30, 2022, will have an automatic sunset date four years after the review is completed and the required report is filed. Permanent rules and regulations may be established by action of the General Assembly.

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

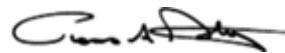
SOURCES OF INFORMATION

Attorney General's Office
Office of Administration - Administrative Hearing Commission
Office of Administration – Budget and Planning
Department of Commerce and Insurance
Department of Economic Development
Department of Elementary and Secondary Education
Department of Higher Education and Workforce Development
Department of Health and Senior Services
Department of Mental Health
Department of Natural Resources
Department of Corrections
Department of Labor and Industrial Relations
Department of Revenue
Division of Alcohol and Tobacco Control
Capitol Police
Fire Safety
Office of the Director
Missouri Gaming Commission
Missouri National Guard
Missouri Highway Patrol
Missouri Veterans Commission
State Emergency Management Agency
Department of Social Services

Missouri Department of Agriculture
Missouri Department of Conservation
Missouri Ethics Commission
Missouri Department of Transportation
MoDOT & Patrol Employees' Retirement System
Office of Administration
Office of the Secretary of State
Office of the State Public Defender
Office of the Governor
Office of the Lieutenant Governor
Office of the State Auditor
Office of the State Treasurer
Missouri House of Representatives
Joint Committee on Administrative Rules
Joint Committee on Education
Joint Committee on Public Employee Retirement
Legislative Research
Oversight Division
Missouri Senate
Missouri Lottery Commission
Missouri Consolidated Health Care Plan
Missouri Higher Education Loan Authority
Missouri Office of Prosecution Services
Missouri State Employee's Retirement System
Office of the State Courts Administrator
State Tax Commission



Julie Morff
Director
April 19, 2021



Ross Strobe
Assistant Director
April 19, 2021