

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3121H.02C
 Bill No.: HCS for HB Nos. 1961 & 2197
 Subject: Administrative Rules; State Departments
 Type: Original
 Date: March 1, 2024

Bill Summary: This proposal would requires a state agency to repeal two existing rules before enacting a new one.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2025	FY 2026	FY 2027
General Revenue*	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
Total Estimated Net Effect on General Revenue	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)

*Oversight assumes the fiscal impact to the state could reach the \$250,000 threshold.

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2025	FY 2026	FY 2027
Other State Funds	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
Total Estimated Net Effect on <u>Other State Funds</u>	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)

Numbers within parentheses: () indicate costs or losses.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2025	FY 2026	FY 2027
Federal Funds	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2025	FY 2026	FY 2027
Total Estimated Net Effect on FTE	0	0	0

- 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 2025	FY 2026	FY 2027
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Health and Senior Services (DHSS)** state the proposed legislation would create an indeterminable amount of time and effort for employees in the Department of Health and Senior Services (DHSS), Division of Regulation and Licensure (DRL). In any instance that a rule would need to be created or amended, additional time would be spent determining if two existing rules could be rescinded, identifying which two rules would be rescinded, and working to guide the rule rescission through the process. DRL cannot estimate how many rules its staff will be required to promulgate, amend, or rescind as a result of future legislation; therefore, the cost is unknown.

DHSS' Division of Community and Public Health (DCPH) administers many programs funded through federal and other dollars and if these dollars were not able to administer properly due to a lack of rules, funding would be lost for these services. The costs are unknown as the proposed legislation does not identify which rules would be affected and does not account for future rules.

The proposed legislation in HB 1961 would create an indeterminable amount of time and effort to employees of the Division of Senior and Disability Services (DSDS). In any instance that a rule would be created or amended, additional time would be spent determining if a corresponding rule must be repealed, identifying which corresponding rule to repeal, and working to guide the rule repeal through the process. DSDS cannot estimate how many rules they will be required to promulgate, amend, or repeal as a result of this legislation; therefore, cost is unknown.

The proposed legislation would create an indeterminate amount of time and effort for employees in the Department of Health and Senior Services (DHSS), Division of Cannabis Regulation (DCR) and could result in additional operating costs, a negative impact to public safety, or a decrease in cannabis revenues. In the event that a rule would need to be created, DCR staff would need time to first assess which two existing rules could be rescinded as well as time to assess the potential impact to public safety as a result of rescinding the rules. Upon completion of that assessment, staff time would be needed to complete the process to rescind the rule. Further, Article XIV states that cannabis revenues in the Veterans Health and Care Fund (medical marijuana) and the Veterans, Health and Community Reinvestment Fund (adult use) are to go first to DHSS to cover its costs to administer the cannabis programs, then a percent is to go to the Department of Revenue (DOR) to cover its costs associated with processing cannabis tax, and finally, any remaining revenues in the funds are designated for transfers. DCR's additional costs, associated with rescinding rules and regulating the resultant impact on the regulated market, could affect the amount of funds remaining for any potential transfers. In the event, the impact leads to insufficient revenues in the funds to cover DHSS' operating costs, then DHSS assumes its costs would be paid from general revenue. DCR cannot estimate how many rules its staff will be

required to promulgate, amend, or rescind as a result of future legislation; therefore, the cost is unknown.

Officials from **Department of Mental Health (DMH)** state to implement this proposal, the Department of Mental Health (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) to coordinate, review, and evaluate existing and new rules, in consultation with General Counsel, to ensure program efficiency and effectiveness. Each FTE salary is \$92,915.52 plus fringe benefits and associated expense and equipment costs.

In summary, this bill is projected to cost DMH \$260,211 in FY 2025, \$306,227 in FY 2026 and \$311,751 in FY 2027.

Officials from the **Department of Corrections** deferred to the Office of Administration. Officials from the **Office of Administration (OA)** state this bill requires that, in order to adopt a new rule, a state agency must rescind two of its existing rules. This means that if the bill passes, a review of all rules will likely need to take place anytime a new rule is proposed. Finding existing rules to rescind could also prove challenging in some instances given the administrative functions that the various divisions within OA perform.

The Division of Personnel has 21 regulations. Anytime a new rule needs to be adopted, the divisions will need to review existing rules to make recommendations. While it is difficult to know how many new rules may need to be promulgated in a given year, this estimate was based on 2 days (.008 FTE) of staff time for each regulation within the Division of Personnel given that existing rules will require review and recommendations by division staff as well as the division director.

Personnel Division Director: $(\$130,440 \times .008) \times 21 \text{ regulations} = \$21,914$.

Personnel Staff: $(\$109,070 \times .008) \times 21 = \$18,333$

Total impact: \$40,247

Purchasing only has two rules, so to amend one of them, they would need to repeal both, meaning they have one rule (covering all of the current two). Then they would be stuck, because they couldn't enact another rule, even if required to by new legislation.

FMDC - This bill requires that, in order to adopt a new rule, a state agency must rescind two of its existing rules. This means that if the bill passes, a review of all rules will likely need to take place anytime a new rule is proposed. Finding existing rules to rescind could also prove challenging in some instances given the administrative functions that the various divisions within OA perform.

FMDC has 11 regulations. Anytime a new rule needs to be adopted, the divisions will need to review existing rules in order to make recommendations. While it is difficult to know how many

new rules may need to be promulgated in a given year, this estimate was based on 2 days (.008 FTE) of staff time for each regulation within each division, given that existing rules will require review and recommendations by division staff as well as that division's director.

FMDC Division Director: $(\$130,440 \times .008) \times 11$ regulations = \$11,484

FMDC Staff: $(\$100,700 \times .008) \times 11$ regulations = \$11,479

Total impact: \$22,963

At this time, it is believed that the additional staff time and resources can be absorbed by FMDC. However, if there are multiple pieces of legislation passed where FMDC has responded that the costs can be absorbed, FMDC would need to reevaluate to see if additional staff and associated expenses would then be required.

Officials from the **Department of Social Services (DSS), Division of Legal Services (DLS)**, anticipate it would require one additional (1) attorney in order to meet the requirements of the legislation.

Based on the total number of Orders of Rulemaking for DSS in the 2019 and 2020 Missouri Register, DSS promulgates, amends, or rescinds approximately 60 regulations each year. Each year approximately 70% are amendments (42), 17% are new rules (10), and 13% are rescissions (8). Assuming that "rule proposed" means "proposed rule," then the new Section 536.014.2, RSMo, most likely only applies to new regulations and not amendments. Therefore, the proposed legislation if enacted would require DSS to rescind approximately 20 regulations each year, which is an increase of 12 rescissions per year.

Officials from the **Department of Revenue (DOR)** state Section 536.175 require an agency to review all their rules every five years (on an assigned schedule) and rescind or amend any rules that are out of date or need updating. DOR underwent their five-year review during 2023. They reviewed all 291 rules that DOR operates and rescinded 34 and have or are in the final process of amending 67. An additional 5 new rules were proposed this year, due to legislation passed in the last 2 legislative session. All the new rules involve the Taxation Division.

DOR proposes rules only when the General Assembly passes legislation that gives them rule-making authority and the program they want implement does not clearly define in the statutes how that is to happen. They also do a rule when the General Assembly adds language in a tax credit or tax deduction saying the Department needs to create the rules. Example: They want the agency to create the application form and approval process.

Under this proposal, if new legislation were passed that needed a rule to implement it, then 2 existing rules for current programs would have to be repealed potentially stopping those programs. DOR notes that in recent months the majority of the rules proposed by the Department have been to implement tax credits and tax deductions that the General Assembly recently passed.

This proposal would have an unknown negative impact on DOR and the taxpayers.

Officials from the **Missouri Department of Agriculture** assume the proposal would have an unknown fiscal impact.

Officials from the **Missouri Consolidated Health Care Plan (MCHCP)** state they regulate its health care plans through Administrative rules (Title 22) which are reviewed annually. MCHCP has customarily rescinded rules when they have become obsolete. For instance, MCHCP has rescinded 22 CSR 10-250, 051, 052, and 054 as obsolete when the medical plan type was no longer used. Currently, there are no rules in effect that are not necessary for the administration of the Plan. If this would become law, MCHCP would be limited in what it could do. For example, currently MCHCP offers three medical plan options which each have their own rule. If MCHCP would want to implement a fourth plan option, MCHCP would be forced to repeal two rules in order to publish the rule for the fourth. Since each existing rule is necessary, MCHCP would be hampered to offer additional programs such as a new type of plan design or other feature. In MCHCP's situation, repealing two rules for every one rule would not be feasible.

Officials from the **State Tax Commission (STC)** state the bill would have a unknown fiscal impact on the STC. The STC currently has 17 rules on the books, and are not currently planning to promulgate any new rules. The commission would only promulgate a new rule in response to legislation passed by the legislature that would require the rule for implementation of the legislation. It would be difficult to find two rules to rescind in this circumstance affecting the department, county assessors and taxpayers.

In response to a previous version, officials from the **Department of Labor and Industrial Relations (DOLIR)** stated the bill will have an unknown fiscal impact on DOLIR, dependent on the volume of rules to rescind and promulgate in the future. The bill could potentially have a large effect each year if multiple rule changes are required that would cause twice as many rescissions to be put forth.

Oversight notes several state departments and agencies have stated that the proposal could have a reaching impact on their operations. Some have assumed the need for additional FTE and others have simply assumed an unknown amount of additional costs. Oversight assumes the proposal could have a fiscal impact on state departments, agencies, commissions and/or boards depending on what additional rules are proposed. Therefore, Oversight will reflect a generic \$0 or (Unknown) fiscal impact to various state and federal funds for all fiscal years.

Officials from the **Department of Commerce and Insurance, Department of Economic Development, Department of Elementary and Secondary Education, Department of Higher Education and Workforce Development, Department of Natural Resources, Department of Public Safety (Director's Office, Alcohol and Tobacco Control, Fire Safety, Capitol Police, Gaming Commission, Highway Patrol, Veterans' Commission and State Emergency Management Agency), Office of the Governor, Missouri Department of Conservation, Missouri Department of Transportation, Missouri National Guard, Office of the State**

Treasurer, Missouri Lottery Commission, MoDOT & Patrol Employees’ Retirement System, Office of the State Public Defender, Missouri Office of Prosecution Services, Missouri State Employee’s Retirement System, Office of Administration - Administrative Hearing Commission, Office of Administration - Budget and Planning and the Office of the State Courts Administrator each assume the proposal would not fiscally impact their respective agencies.

Oversight notes that the above mentioned agencies have 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.

Rule Promulgation

Officials from the **Joint Committee on Administrative Rules** assume this proposal is not anticipated to cause a fiscal impact beyond its current appropriation.

Officials from the **Office of the Secretary of State (SOS)** note many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS 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 the SOS for Administrative Rules is less than \$5,000. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, the SOS also recognizes 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 the office can sustain with its core budget. Therefore, the SOS reserves 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.

<u>FISCAL IMPACT – State Government</u>	FY 2025 (10 Mo.)	FY 2026	FY 2027
GENERAL REVENUE FUND			
<u>Costs</u> – various state departments, agencies, commissions and/or boards: potential additional cost/loss for repealing two existing rules to propose a new rule	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>
ESTIMATED NET EFFECT TO THE GENERAL REVENUE FUND	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>

<u>FISCAL IMPACT – State Government</u>	FY 2025 (10 Mo.)	FY 2026	FY 2027
OTHER STATE FUNDS			
<u>Costs</u> – various state departments, agencies, commissions and/or boards: potential additional cost/loss for repealing two existing rules to propose a new rule	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>
ESTIMATED NET EFFECT TO OTHER STATE FUNDS	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>
FEDERAL FUNDS			
<u>Costs</u> – various state departments, agencies, commissions and/or boards: potential additional cost/loss for repealing two existing rules to propose a new rule	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>
ESTIMATED NET EFFECT TO FEDERAL FUNDS	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>

<u>FISCAL IMPACT – Local Government</u>	FY 2025 (10 Mo.)	FY 2026	FY 2027
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT – Small Business

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

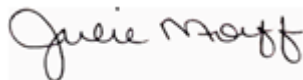
FISCAL DESCRIPTION

This bill prohibits a rule proposed by a department, agency, commission, or board from taking effect unless the entity proposing the rule also repeals at least two existing 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

Department of Health and Senior Services
Department of Mental Health
Department of Corrections
Office of Administration
Department of Labor and Industrial Relations
Department of Social Services
Missouri Lottery Commission
Missouri Consolidated Health Care Plan
Attorney General's Office
Office of Administration
Department of Commerce and Insurance
Department of Economic Development
Department of Elementary and Secondary Education
Department of Higher Education and Workforce Development
Department of Natural Resources
Department of Revenue
Department of Public Safety – Director's Office
Missouri Department of Agriculture
Missouri Department of Conservation
Missouri Department of Transportation
Office of the State Public Defender
Office of the Governor
Office of the Lieutenant Governor
Office of the State Auditor
State Tax Commission
Office of the State Courts Administrator
Missouri State Employee's Retirement System
Missouri Office of Prosecution Services
Missouri Consolidated Health Care Plan
State Tax Commission



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March 1, 2024



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March 1, 2024