

**MISSOURI STATE AUDITOR'S OFFICE
FISCAL NOTE (20-143)**

Subject

Initiative petition from James Owen regarding a proposed amendment to Chapter 393 of the Revised Statutes of Missouri. (Received January 6, 2020)

Date

January 27, 2020

Description

This proposal would amend Chapter 393 of the Revised Statutes of Missouri.

The amendment is to be voted on in November 2020.

Public comments and other input

The State Auditor's office requested input from the **Attorney General's office**, the **Department of Agriculture**, the **Department of Economic Development**, the **Department of Elementary and Secondary Education**, the **Department of Higher Education and Workforce Development**, the **Department of Health and Senior Services**, the **Department of Commerce and Insurance**, the **Department of Mental Health**, the **Department of Natural Resources**, the **Department of Corrections**, the **Department of Labor and Industrial Relations**, the **Department of Revenue**, the **Department of Public Safety**, the **Department of Social Services**, the **Governor's office**, the **Missouri House of Representatives**, the **Department of Conservation**, the **Department of Transportation**, the **Office of Administration**, the **Office of State Courts Administrator**, the **Missouri Senate**, the **Secretary of State's office**, the **Office of the State Public Defender**, the **State Treasurer's office**, **Adair County**, **Boone County**, **Callaway County**, **Cass County**, **Clay County**, **Cole County**, **Greene County**, **Jackson County**, **Jasper County**, **St. Charles County**, **St. Louis County**, **Taney County**, the **City of Cape Girardeau**, the **City of Columbia**, the **City of Jefferson**, the **City of Joplin**, the **City of Kansas City**, the **City of Kirksville**, the **City of Mexico**, the **City of Raymore**, the **City of St. Joseph**, the **City of St. Louis**, the **City of Springfield**, the **City of Union**, the **City of Wentzville**, the **City of West Plains**, **Cape Girardeau 63 School District**, **Hannibal 60 School District**, **Malta Bend R-V School District**, **Mehlville School District**, **Wellsville-Middletown R-1 School District**, **State Technical College of Missouri**, **Metropolitan Community College**, **University of Missouri**, **St. Louis Community College**, and the **Missouri Joint Municipal Electric Utility Commission**.

James Owen provided information to the State Auditor's office.

Assumptions

Officials from the **Attorney General's office** indicated they expect that, to the extent that the enactment of this proposal would result in increased litigation, they expect that their office could absorb the costs associated with that increased litigation using existing resources. However, if the enactment of this proposal were to result in substantial additional litigation, they may be required to request additional appropriations.

Officials from the **Department of Agriculture** indicated no fiscal impact on their department.

Officials from the **Department of Economic Development** indicated they anticipate no impact as a result of the proposed initiative petition.

Officials from the **Department of Elementary and Secondary Education** indicated no impact to their department.

Officials the **Department of Higher Education and Workforce Development** indicated no impact to their department.

Officials from the **Department of Health and Senior Services** indicated this initiative petition has no impact on their department.

Officials from the **Department of Commerce and Insurance** indicated:

Office of Public Counsel (OPC):

This petition, if passed, will have a cost to the Office of the Public Counsel. Their office would need an additional auditor to review the program expenditures, at a cost of approximately \$60,000.

Public Service Commission (PSC):

This petition, if passed, will have a cost to the Public Service Commission. In order for the Commission to determine, within the specified timeframe, whether the electric utilities' Solar Renewable Energy Credit (S-REC) tariff(s) comply with this section, the Commission staff would have to complete its analysis of compliance within 30-45 days. This analysis might necessitate the need for additional staff resources. Accordingly, the PSC may need to request one additional full-time employee (a Utility Regulatory Engineer I or a Regulatory Economist III). There are also additional costs to the PSC associated with the required tariff filings of approximately \$3,700. Both the costs for the filings as well as for the full-time employee are estimated to be approximately \$83,500 ongoing annual costs.

Additionally, the proposal will also require at least one, but perhaps two, rulemakings at an estimated one-time cost to the PSC of up to approximately \$8,600.

All other DCI Divisions:

This petition, if passed, will have no cost or savings to the remaining divisions within the Department of Commerce and Insurance.

Officials from the **Department of Mental Health** indicated this proposal creates no direct obligations or requirements to their department that would result in a fiscal impact.

Officials from the **Department of Natural Resources** indicated they would not anticipate a direct fiscal impact from this proposal.

Officials from the **Department of Corrections** indicated the fiscal impact is unknown. They are unable to estimate the impact of this legislation on their utility costs. However, based on research, including research completed by the Heritage Foundation, the proposed regulatory changes would be difficult to implement and could significantly increase costs to their department.

Officials from the **Department of Labor and Industrial Relations** indicated they anticipate no fiscal impact for this initiative petition.

Officials from the **Department of Revenue** indicated this initiative petition will have a fiscal impact on their department.

Revenue Impact

This proposal requires that electric companies must purchase or generate electricity from renewable energy sources. Those sources include solar and wind production and do not include coal or nuclear power (by which most electricity is generated). Currently there is one solar farm being built in Missouri and 6 wind farms, which would not generate enough to meet the requirements of this proposal. Therefore, this proposal could potentially result in higher utility costs for their department. The impact at this time is unknown.

Officials from the **Department of Public Safety - Office of the Director** indicated no impact for their department.

Officials from the **Department of Social Services** indicated this initiative petition should have no fiscal impact to their department.

Officials from the **Governor's office** indicated there should be no added costs or savings to their office.

Officials from the **Missouri House of Representatives** indicated no fiscal impact to their office.

Officials from the **Department of Conservation** indicated no adverse fiscal impact to their department would be expected as a result of this proposal.

Officials from the **Department of Transportation** indicated this initiative petition would not have a fiscal impact to their department/Missouri Highways and Transportation Commission.

Officials from the **Office of Administration** indicated this proposal would change the renewable energy statutes enacted pursuant to the Missouri Clean Energy Act (Proposition C) in November 2008. This should have no impact on Total State Revenue or the calculation under Article X, Section 18(e) of the Missouri Constitution.

The Division of Facilities Management, Design & Construction (OA-FMDC) assumes that Missouri electric providers would be required to install new renewable energy sources to meet the requirements of this petition. According to the United States Energy Information Administration, renewable energy resources accounted for only 5.5% of Missouri's net electricity generation in 2018. <https://www.eia.gov/state/?sid=MO>. OA-FMDC assumes that capital costs for installing renewable energy equipment would make it more costly for electric providers to meet the requirements of this petition and that some of those costs would be passed along to consumers.

For the Office of Administration, OA-FMDC assumes that this petition would result in higher electricity costs for state facilities; however, OA-FMDC has no way of calculating how much that increase would be.

Officials from the **Office of State Courts Administrator** indicated there is no fiscal impact on the courts.

Officials from the **Missouri Senate** indicated they anticipate no fiscal impact.

Officials from the **Secretary of State's office** indicated many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. Their 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 their office for Administrative Rules is less than \$5,000. Their 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.

Unless a special election is called for the purpose, Referendums are submitted to the people at the next general election. Article III section 52(b) of the Missouri Constitution authorizes the general assembly to order a special election for measures referred to the people. If a special election is called to submit a Referendum to a vote of the people, Section 115.063.2 RSMo. requires the state to pay the costs. The cost of the special election has been estimated to be \$7.8 million based on the cost of the 2016 Presidential Preference Primary.

Their office is required to pay for publishing in local newspapers the full text of each statewide ballot measure as directed by Article XII, Section 2(b) of the Missouri Constitution and Section 116.230-116.290, RSMo. Funding for this item is adjusted each year depending upon the election cycle. A new decision item is requested in odd numbered fiscal years and the amount requested is dependent upon the estimated number of ballot measures that will be approved by the General Assembly and the initiative petitions certified for the ballot. In fiscal year (FY) 2014, the General Assembly changed the appropriation so that it was no longer an estimated appropriation.

In FY19, over \$5.8 million was spent to publish the full text of the measures for the August and November elections. They estimate \$65,000 per page for the costs of publications based on the actual cost incurred for the one referendum that was on the August 2018 ballot.

Their office will continue to assume, for the purposes of this fiscal note, that it should have the full appropriation authority it needs to meet the publishing requirements. Because these requirements are mandatory, they reserve the right to request funding to meet the cost of their publishing requirements if the Governor and the General Assembly again change the amount or continue to not designate it as an estimated appropriation.

Officials from the **Office of the State Public Defender** indicated this initiative petition will not have a significant impact on their office.

Officials from the **State Treasurer's office** indicated no fiscal impact to their office.

Officials from **Greene County** indicated there are no estimated costs or savings to report from their county for this initiative petition.

Officials from **St. Louis County** indicated they see no fiscal impact on the operations of their county government were Chapter 393, RSMo amended as proposed.

Officials from the **City of Kansas City** indicated this amendment will have no fiscal impact on their city.

Officials from **Wellsville-Middletown R-1 School District** indicated they are unable to determine what, if any, fiscal impact this petition will have on their school district.

Officials from **State Technical College of Missouri** indicated there is no fiscal impact to their college.

Officials from **Metropolitan Community College** indicated additional expenses are always passed down to the consumer (assuming the electric utilities have additional expense converting energy sources). Without knowing the cost to the utility company(ies) and the downhill affect, it is difficult to know how it will affect Metropolitan Community College (MCC). Last fiscal year (7/1/18-6/30/19), MCC paid \$2.3 million for electricity. The smallest increase could easily have a significant impact. For example, a 1% increase would result in \$23,000 ongoing additional expense.

James Owen provided the following information:



January 6th, 2020

Renew Missouri Advocates, Inc.
409 Vandiver, Building 5, Suite 205
Columbia, Missouri 65202

State Auditor's Office
301 West High Street # 880
Jefferson City, MO 65101

Delivered in-person and by Email

Re: Analysis on Missourians for Clean and Affordable Energy Ballot
Initiative Petitions filed on January 3rd of 2020

To the State Auditor's Office:

Renew Missouri, a 501(c)(3) based out of Columbia, represents Missourians for Clean and Affordable Energy (MACE) and submits this letter as a precursory explanation for proposed ballot initiatives petitions filed on January 3rd of this year that intend to amend the statutes governing renewable energy statutes. It is Renew Missouri's belief these previous fiscal notes filed regarding previous ballot initiative petitions failed to consider other aspects of the law designed to cap utility rates at increases of no more than one percent per year. We respectfully offer this analysis for the State Auditor's consideration to reconsider how to draft similar fiscal notes from these new ballot initiative petitions.

In August of 2019, MACE filed similar ballot initiative petitions – designed to amend Sections 393.1025-393-1030 of the Revised Missouri statutes – and were numbered “2020-113”, “2020-114”, and “2020-115.” (A fourth version – “2020 116” – was vacated by MACE's request in December of 2019.) The Missouri State Auditor's office responded to these petitions with a fiscal note that was certified with the Missouri Secretary of State's Office. In those fiscal notes, the State Auditor's wrote:

State governmental entities estimate additional employment costs of approximately \$88,000 annually. Additionally, state and local governmental entities anticipate possible increased costs of electricity, *but the amount is unknown.* (Emphasis added.)

As the State Auditor is aware, this language from these previously-issued fiscal notes is the subject matter of a lawsuit filed in the Cole County Circuit Court by James Owen in his capacity as Treasurer for MACE. The contention in that action is the same contention we offer in this letter: separate statutes – not being amended by these proposed ballot initiative petitions - dictate the fiscal impact of the increase of the renewable energy standard.

Sections 393.1030.2(1) and 393.1045, RSMo limits any potential increase to retail rates charged to the customers of utilities due to compliance with the renewable energy standards to no more than an **annual average of one percent**. Section 393.1045 RSMo reads in pertinent part:

“Any renewable mandate required by law shall not raise the retail rates charged to the customers of electric retail suppliers by an average of more than one percent in any year...”

It is Renew Missouri's belief that a more accurate version of the fiscal note language would read:

State governmental entities estimate additional employment costs of approximately \$88,000 annually. The average annual rate impact to customers will not exceed one percent per year.

Of course, we do not know if the state governmental entities will have a different number for estimated employment cost for these new petitions filed on January 3rd. But we can say with certainty that the amount that electric rates will rise is limited to more than one percent per year, as a matter of law.

As a penultimate matter I would note that our lawyer who has been the primarily point of contact on this matter, Tim Opitz, is currently on paternity leave so, for the next month, I will be the main point of contact on this matter.

Renew Missouri thanks you in advance for your consideration of our request. Please contact me at 417-496-1924 or james@renewmo.org to discuss this issue in more detail.

Professionally,

A handwritten signature in black ink, appearing to read "James Owen", with a long horizontal flourish extending to the right.

James Owen
Executive Director, Renew Missouri
Missouri Bar #56835

The State Auditor's office did not receive a response from **Adair County, Boone County, Callaway County, Cass County, Clay County, Cole County, Jackson County, Jasper County, St. Charles County, Taney County, the City of Cape Girardeau, the City of Columbia, the City of Jefferson, the City of Joplin, the City of Kirksville, the City of Mexico, the City of Raymore, the City of St. Joseph, the City of St. Louis, the City of Springfield, the City of Union, the City of Wentzville, the City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, University of Missouri, St. Louis Community College, and the Missouri Joint Municipal Electric Utility Commission.**

Fiscal Note Summary

State governmental entities estimate additional ongoing costs of approximately \$143,500 annually. Additionally, state and local governmental entities anticipate a possible unknown increase in electricity costs from this proposal, which is limited by existing law to be no more than an average retail rate increase of one percent annually.