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# MARSS Working Group

Report to the Legislature

As Required by 2017 Minnesota Laws, First Special Session, Chapter 4,  
Article 2, Section 60

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As requested by Minnesota Statutes, section 3.197: This report cost approximately **[\$amount]** to prepare, including staff time, printing and mailing expenses.

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## Legislative Charge

The 2017 Minnesota legislature established the Minnesota Administrative Rules Status System (MARSS) Working Group with the following directive<sup>1</sup>.

Sec. 60. MINNESOTA ADMINISTRATIVE RULES STATUS SYSTEM (MARSS) WORKING GROUP.

Subdivision 1. Creation. The MARSS working group consists of the following nine members:

- (1) the chief judge of the Office of Administrative Hearings, or a designee;
- (2) the secretary of state, or a designee;
- (3) a representative from the Interagency Rules Committee (IRC) appointed by the committee;
- (4) a representative from each of the following agencies with rulemaking experience appointed by the appropriate commissioner:
  - (i) the Department of Health;
  - (ii) the Minnesota Pollution Control Agency;
  - (iii) the Department of Transportation; and
  - (iv) the Department of Labor and Industry;
- (5) as designated by the IRC, a representative from a health-related board; and
- (6) as designated by the IRC, a representative from a non-health-related board.

Subd. 2. MARSS description. The Minnesota Administrative Rules Status System (MARSS) is a concept for a new software application. The application would be built and maintained by the Revisor's Office. Executive branch agencies and others would upload official rulemaking record documents to the system. The goal is to improve public access, security, preservation, and transparency of state agencies' official rulemaking records through the creation of a single online records system. The system would serve as a single Internet location for the public to track rulemaking progress and access the official rulemaking record. Agencies would fulfill their requirement to maintain and preserve the official rulemaking record by submitting required documents to the revisor for inclusion in the online records system.

Subd. 3. Duties. The working group must report by February 1, 2018, to the chairs and ranking minority members of the committees in the house of representatives and senate with jurisdiction over policy and finance for the legislature. The report must identify the functional and nonfunctional requirements of the MARSS system. The working group must define a funding mechanism to share the cost to build and maintain the MARSS system among state agencies and departments.

Subd. 4. Administration provisions. (a) The revisor of statutes or the revisor's designee must convene the initial meeting of the working group by August 1, 2017. Upon request of the working group, the revisor must provide meeting space and administrative services for the group.

(b) The working group must elect a chair from among its members at the first meeting.

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<sup>1</sup> 2017 Minn. Laws, First Special Session, Ch. 4, Art. 2, Sect. 60.

(c) Members serve without compensation and without reimbursement for expenses.

(d) The working group expires on February 1, 2018, or upon submission of documents fulfilling its duties, whichever is earlier.

Subd. 5. Deadline for appointments and designations. The appointments and designations authorized by this section must be completed by July 1, 2017.

## Executive Summary

This report summarizes and builds upon the history of the existing Minnesota Administrative Rules Status System (MARSS or MARSS System) project and details the work of the 2017 MARSS working group.<sup>2</sup> The MARSS system is a product of decades of work and effort by the Revisor's Office and state agency representatives, all focused on improving public access to and the better preservation historic rulemaking records. The MARSS system has been operational in a beta mode since 2012. As detailed in the Minnesota Administrative Rules Status System Pilot Project report filed with the legislature in January, 2017, the MARSS system could be further developed. The proposed MARSS system incorporates possible future developments to the MARSS system. The goals of the proposed MARSS system are to improve public access, security, preservation, and transparency of state agencies' official rulemaking records through the creation of a single online records system. This system would be a database of post-adoption rulemaking data and records that would also serve as a single internet location for the public to track rulemaking process and access to all agencies' official rulemaking record. The proposed MARSS system would allow state agencies to more cohesively fulfill their statutory requirements to maintain and preserve the official rulemaking record.

The MARSS working group was established by the 2017 Legislature to propose a new software application to update the existing MARSS system. As directed by the Legislature, the MARSS working group identified the functional and nonfunctional requirements of the proposed MARSS system. This report describes those requirements. The MARSS working group also identified and addresses the viability of several options to finance the initial build and/or annual maintenance of the proposed MARSS system, including those that spread the costs among state agencies. The working group found that the proposed MARSS system initial build costs and annual maintenance costs could be supported in whole or in part by four possible funding mechanisms: 1) Use of Odyssey Funds if deemed eligible following legislative changes; 2) Legacy Funding if funds were awarded; 3) Direct Appropriation from the Minnesota Legislature; and/or a 4) small per-use fee for a portion of the annual

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<sup>2</sup> This report will refer to the existing MARSS beta system as the "MARSS System" using the same nomenclature used in the legislative charge for the MARSS working group. The MARSS pilot project that took place in 2015-2016, prior to the establishment of the MARSS working group, will be referred to as the "MARSS pilot project" or the "pilot project". The proposed MARSS project set forth in this report will be referred to as the "proposed MARSS project or system"

maintenance costs. Ultimately, the group could not define such a funding mechanism and suggests a direct appropriation to be more workable.

## Administrative Rulemaking

Administrative rulemaking is the process that executive branch agencies use to adopt or change administrative rules, which have the force and effect of law. As required by state law in Minnesota Statutes chapter 14, rulemaking requires various public notice efforts, can involve a public hearing, and results in the creation of various documents. As many as 11 different types of documents constitute the official rulemaking record in each rulemaking proceeding.<sup>3</sup> Rulemaking agencies must make documents in the record available for public inspection and preserve the documents permanently, in accordance with applicable law.

Most, rulemaking proceedings involve an approval process conducted by operation of law by administrative law judges at the Office of Administrative Hearings. Administrative law judges review rule filings, including public notice plans, conduct public hearings when required by law, and issue written orders approving or disapproving various rule provisions based on the criteria set forth in Minnesota law.

In January 2015, the Office of Administrative Hearings implemented an electronic filing system, at an installation cost of under \$10,000 and an annual license maintenance charge of \$4,000. Since 2015, all state agency rulemaking proceedings submitted to the Office of Administrative Hearings have been eFiled and maintained in digital form.

In addition to the electronic record kept at the Office of Administrative Hearings, post-adoption rulemaking records are maintained by the promulgating agency in a variety of forms, including on paper and in digital content. Historically, it was difficult for the public to access rulemaking records due to the agencies' variations in preservation methods and the lack of completeness of rulemaking records from decades past.

Currently and on average, state agencies commence approximately 70 new rulemaking proceedings annually.<sup>4</sup>

## History of MARSS System

Since 1980 the Revisor's Office has collected rulemaking documents and data to help with historical maintenance and research related to rulemaking in Minnesota. These collected rulemaking records and data have been gathered in various formats, including paper and digital; and have come from various sources, including the Minnesota State Archives, the Legislative Reference Library, the Minnesota Office of Administrative Hearings, and from state agencies or other entities that worked on rulemaking projects.

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<sup>3</sup> Minn. Stat. § 14.365 sets forth the requirements of the official rulemaking record.

<sup>4</sup> See Appendix E for rulemaking statistics.

## A. Existing MARSS System

During the 2012 legislative session the Revisor's Office received an appropriation of \$35,000 from the Arts and Cultural Heritage fund, part of the Legacy Funding available through the state, to design and implement a website to provide public online searchable access to historical documents relating to state agency rulemaking.<sup>5</sup> The Revisor's Office matched this appropriation with carryforward funds and used these combined funds to design and implement the existing MARSS system database/website. The Revisor's Office scanned and uploaded to the MARSS system all paper rulemaking documents that it had collected or received from state agencies. Later in 2012, the Revisor's Office unveiled the existing MARSS system that allows public access to and searching of the collected rulemaking data. Because the MARSS system was being "beta" tested at the time of release, the system was originally called the "Rule Status Beta System" "or "beta system." Today, the MARSS system still operates and rulemaking professionals and the public use it regularly. The existing MARSS system provides helpful information about current users and potential future development of the current system.

The MARSS system (in its beta form) continues to be used today. According to the Revisor's website, the beta system provides access to "the entire State Register in searchable electronic form, over 1,210 agency SONARs (statement of need and reasonableness), and over 1,100 documents from the Office of Administrative Hearings."<sup>6</sup> In total, the MARSS system has 9758 documents available for public access.<sup>7</sup> According to the recently republished Administrative Law Deskbook:

The revisor's office also has developed and made available on its web site a public rules status system that allows a user to follow many of the actions taken by state departments and agencies when they adopt administrative rules. It also provides access to historical rule information, documents and notices for rules adopted since 1980. This system provides access to the entire State Register in searchable electronic form, agency SONARs (statement of need and reasonableness), final drafts of proposed and adopted rules approved by the revisor, and orders on review of rules and ALJ reports from the Office of Administrative Hearings.<sup>8</sup>

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<sup>5</sup> 2012 Minn. Laws, Ch. 4, Art 5, Sect. 7.

<sup>6</sup> See The MARSS Rule Status System main webpage, available at [https://www.revisor.mn.gov/rules/rule\\_search.php](https://www.revisor.mn.gov/rules/rule_search.php).

<sup>7</sup> This number is the total number of documents in the MARSS system and not the total number of documents included in rulemakings. Some documents are uploaded into the MARSS System and included in the document count, however many documents from the State Register or Legislative Reference Library, or OAH are linked within the system rather than uploaded. The most recent data from the Revisor's office includes the following breakdown of documents in the MARSS system: 1) 4 documents from Attorney General's Office; 2) 1,215 SONARs from the Legislative Reference Library, 1,104 documents from the Office of Administrative Hearings and its Administrative Law Judges; and 3) 2,803 Adopted Rule documents, 3,386 Certificates and 1,066 Rule drafts from the Revisor's Office.

<sup>8</sup> *Minnesota Administrative Procedure*, Edited By George A. Beck & Mehemet Konar-Steenberg, 3<sup>rd</sup> Ed., Revised 2014, available at <https://mitchellhamline.edu/minnesota-administrative-procedure/18-4-editing-compiling-publishing-and-preserving/>.

Looking ahead, the Revisor's office estimates that the proposed MARSS system would need to account for approximately 1140 rulemaking related documents added to it per year. This figure includes all documents that are part of a rulemaking project.

## **B. MARSS Pilot Project**

The Revisor's Office secured funds from the Legislature in 2015 to conduct a pilot project between July 2016 and January 2017 of possible future improvement of the existing MARSS system.<sup>9</sup> This pilot project system worked to incorporate ideas for a more sophisticated post-adoption rulemaking official record storage system in the state in order to aid in the development of a new software application that would improve public access, security, preservation, and transparency of official state agency rulemaking records by creating a single online records system. The hope was that this evolved system would serve as a single internet location for the public to access official rulemaking records for adopted rules. Agencies could fulfill their statutory requirement to maintain and preserve official rulemaking records by submitting the required documents to the Revisor's Office for inclusion in the MARSS system. Ideally, the pilot project system would permanently preserve and maintain the records and data with security on par with the Revisor's Office security for statutes and rules.

The pilot project team researched applicable technologies, contacted states with similar systems and built a prototype using two different commercial products. The pilot project team weighed the pros and cons of a buy versus build approach a system in-house. It determined that an in-house-built approach would best meet the needs of Minnesota. Minnesota's rulemaking procedures do not fit well with most commercial products available for purchase. The team recommended that the improved system be built entirely in-house by the Revisor's Office because no complete, out-of-the-box, commercial product covered all the desired requirements and using in-house staff would allow the team to benefit from the extensive rulemaking process knowledge already amassed within the state. Vendors contracted for assisting with the project would work closely with the Revisor's Office to create software built to meet specified requirements. The work of and knowledge derived from the pilot project was captured in its January 31, 2017 report.<sup>10</sup>

The MARSS pilot project was not funded during the 2017 legislative session. A legislative working group was created to continue to the work supporting the MARSS pilot project.

## **MARSS Working Group**

Following the completion of the MARSS Pilot Project in January of 2017, the legislature established the MARSS working group. As directed by the 2017 Legislature, the MARSS working group had three clear duties<sup>11</sup>: 1) to

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<sup>9</sup> [2015 Minn. Laws, Ch. 77, Art. 1, Sec. 2.](#)

<sup>10</sup> *Minnesota Administrative Rules Status System (MARSS) Pilot Project Report*, Prepared for the Office of the Revisor of Statutes, Minnesota Legislature, Prepared by Janice Kuschner, Project Consulting Group (January 31, 2017), available at <https://www.revisor.mn.gov/office/meetings/>.

<sup>11</sup> See full legislative language included supra in the Legislative Charge section of this report.



submit a legislative report by February 1, 2018; 2) that identified the functional and nonfunctional requirements of the proposed MARSS system; and 3) defined a funding mechanism to share the cost to build and maintain the MARSS system among state agencies and departments.

The MARSS working group was comprised of the following nine members as required by the enabling legislation:

<b>Name and Title</b>	<b>Agency/Entity</b>	<b>MARSS Working Group Role</b>
Bert Black <i>Legal Advisor</i>	Office of Minnesota Secretary of State (SOS)	Designee from SOS
Denise Collins <i>Court Administrator</i>	Minnesota Office of Administrative Hearings (OAH)	Designee from OAH
Rebecca Gaspard <i>Policy Analyst</i>	Minnesota Board of Cosmetology (BOC)	Representative from a health-related board
Kerstin Forsythe Hahn <i>Rulemaking Coordinator &amp; Records Manager</i>	Minnesota Department of Education (MDE)	Working Group Chair and Representative from Interagency Rules Committee (IRC)
Wendy Willson Legge <i>Chief Legal Counsel</i>	Department of Labor and Industry (DLI)	Representative from DLI
Mary H. Lynn <i>Agency Rule Coordinator, Agency Rules Unit</i>	Minnesota Pollution Control Agency (MPCA)	Representative from MPCA
Jodi Pope <i>Legal/Management Analyst</i>	Minnesota Campaign Finance and Public Disclosure Board	Representative from a non-health-related board
Elizabeth Richter Scheffer <i>Associate Legal Counsel and Rules Coordinator, Office of Chief Counsel</i>	Minnesota Department of Transportation (DOT)	Representative from DOT
Patricia Winget <i>Rules Coordinator and Legal Counsel</i>	Minnesota Department of Health (MDH)	Representative from MDH

Staff from the Revisor's Office also attended many of the MARSS working group meetings. The working group worked closely with: Revisor, Paul Marinac; Deputy Revisor, Cindy Maxwell; and Revisor Technology staff members, Melissa Patsch, Software Developer, and LeAnn Simonson, Contract Business Process Analyst. Revisor's Office Editorial Staff members Ellen Purtle and Justin Carlson also provided administrative support. The working group appreciates all the work of these dedicated public servants.

The MARSS Working group met ten times, approximately every three weeks, between July 2017, and January 2018. Materials from the MARSS working group meetings are available online at the Revisor's Office webpage.<sup>12</sup>

A subgroup of the MARSS working group met weekly for four weeks in August and September 2017. This subgroup focused on reviewing the current rulemaking process in Minnesota making recommendations about what system requirements were necessary vs. merely desired to improve the existing MARSS system.<sup>13</sup> This subgroup worked to define the system requirements that became the functional and nonfunctional requirements of the proposed MARSS system. The MARSS working group reviewed these requirements, discussed them, and approved them.<sup>14</sup> The MARSS working group discussed and crafted a scope document, based on the enabling legislation, to help guide and focus its work.<sup>15</sup> The MARSS working group also considered and discussed multiple possible funding mechanisms. The funding mechanism options are set forth below.

## Proposed MARSS System

The MARSS working group began its work by reviewing Revisor's Office materials about the history of the MARSS project. The working group relied on the recommendation shared by Revisor Office technology staff at working group meetings and also set forth in the pilot project report that a build versus buy approach was the recommended pathway for the proposed MARSS system. Knowing whether a build versus buy approach was recommended for the proposed MARSS system was necessary in order for the MARSS working group to identify the appropriate functional and nonfunctional requirements of the proposed MARSS system.<sup>16</sup> Consequently, the proposed MARSS project system requirements are based on a system built in-house using existing Revisor IT resources, supplemented by hiring additional external resources and purchasing some software and hardware components.

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<sup>12</sup> See the 'Meetings' webpage on the Revisor's main website *available at:* <https://www.revisor.mn.gov/office/meetings/>.

<sup>13</sup> See Appendix F-Small Sub Group Requirements Recommendations.

<sup>14</sup> See Appendix B and F.

<sup>15</sup> See Appendix A-Scope Document.

<sup>16</sup> A buy approach would have resulted in different functional and nonfunctional requirements than a build approach, hence why the working group needed to know what recommended pathway would direct its work regarding system requirements.

## **A. Functional and Nonfunctional Requirements of the Proposed MARSS System**

To determine the functional and nonfunctional requirements of the MARSS system, the working group took a similar approach as the pilot project team. The smaller subgroup worked closely with Revisor's Office Staff to understand how the current rulemaking process and workflow fit well into a technical database context. The system requirements in the MARSS pilot project was divided into two phases, Phase 1 and Phase 2. The MARSS working group went through these requirements and determined that several requirements in Phase 2 were unnecessary and folded other Phase 2 requirement into Phase 1 due to their importance. The MARSS working group ultimately decided to remove the references to Phase 1 and Phase 2 that related to the requirements in the initial build of the proposed MARSS system. The requirements in Appendix B describe the functionality of the initial build of the system. These requirements correspond to the cost estimates outlined in Appendix D. The proposed MARSS system would be built in-house with the flexibility to add additional features in the future as a need for those capabilities arises.

The sub-group met frequently over several weeks to determine a list of requirements for the proposed MARSS system. The group broke these requirements into three groups: 1) need; 2) nice to have/or future capabilities or sophistication the working group wanted to preserve; and 3) not needed. Appendixes B and F set out these system priorities in more detail.

The capabilities to be supported through building the initial MARSS software system are described below in narrative language that shows how the capabilities are linked to the goals of the proposed MARSS system. Further and more technical detail is provided via the functional and nonfunctional requirements document in Appendix B, written as software requirements specifications for the technical team that would ultimately build or develop the proposed system.

### *Transparency in the Rulemaking Process and Access to Rulemaking Information*

The proposed MARSS system would provide increased transparency and access to rulemaking information post-adoption of proposed rules. Agencies engaged in rulemaking would be responsible for submitting rulemaking information to the proposed MARSS system. The agencies would receive support from the proposed MARSS system in their aim to provide process transparency and information access. This aim would be easier to achieve once the official post-adoption rulemaking records are maintained in one place, rather than being held at each of the more than 70 agencies with rulemaking authority.

The proposed MARSS system would also provide internet and mobile access to post-adoption rulemaking information to the public as well as to legislative staff, officials, and committees. The proposed MARSS system would provide robust search options to promote greater access to relevant rulemaking information. This information would include adopted rules, active rulemaking proceedings status, abandoned and historical rules that precede the MARSS system, to the extent possible. Because the rulemaking information posted by agencies

would be stored permanently in the proposed MARSS system, it would create historical rulemaking records that can easily be accessed in the future.<sup>17</sup>

### *Proactive Engagement through the Provision of Relevant Rule Information*

The proposed MARSS system could notify relevant parties, including legislative staff, and legislative committees associated with rulemaking proceedings of pertinent rulemaking events. The proposed MARSS system could also notify agencies of important developments, such as statutory, rule, or law changes that could impact rules.

The proposed MARSS system would initially include only public information. This data would be presented, with relevance and presentation in mind. All interested members of the public would be able to see a timeline displayed with current rulemaking activity and status. The proposed MARSS system would also allow agencies to swiftly release rulemaking information to the public via the MARSS system as soon as it is ready for public review. After rule adoption, the entire official rulemaking record would be publicly accessible through the proposed MARSS system and permanently maintained.

#### *1. Efficiency and Consistency*

Improved efficiencies and consistency would be achieved from agencies all using a deliberately designed, uniform shared system. Agencies would have greater support for their rulemaking activities and documentation. For instance, agencies would have process support through a personal dashboard for tracking their rulemaking, reports, and topics of interest.

#### *2. System Robustness*

The proposed MARSS system would be built as a robust, secure, reliable system appropriate for permanent preserving official rulemaking records. The proposed MARSS system would also be built with flexibility to evolve easily to accommodate capabilities needed or desired in the future. Some capabilities to enhance the proposed MARSS system in the future have been identified and are described below.

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<sup>17</sup> For an example of an existing publicly accessible rulemaking database system with high-level functionality see the State of Connecticut's "State Agency eRegulations System." This system can be found at <https://eregulations.ct.gov/eRegsPortal/>. This web site contains "Quick Links" to "Final Approved Regulations" and "Regulations in Process." The front page also contains live links to all "Regulations Open for Comment." It also contains "Regulations Process 101." This system makes its regulations accessible and transparent and would be a helpful model to examine if additional information about an existing system is needed.

## *Future Capabilities*

### *1. Assigned Reviews*

A future capability the proposed MARSS system could be to facilitate support for statutory reviews that must be completed, such as the Minnesota Management and Budget Office, the Governor's Office. These entities could be authorized reviewers and given specific access to items in the proposed MARSS system that are not yet available to the public. Internet or mobile device access could provide the necessary avenue for completing these reviews.

### *2. Expanded Proactive Engagement and Advanced Notifications*

A second possible future capability is the support for agency users through a system-generated personal dashboard for tracking relevant rulemakings, reports, and topics. This option might also be extended to legislative staff and committees, other officials, and the public.

A third possible future capability is enhancing the public's access to rulemaking information through publicly available rule-topic or rule event-based subscription services. Anyone would be able to subscribe to specific rulemaking information through a self-help interface. This capability could also replace the requirement that agencies maintain lists that identify interested and affected persons or entities for the purpose of notifying them when relevant rule information is available.

Lastly, the future system capabilities could be expanded to include workflow support, such as alerting an assigned reviewer of an upcoming review deadline. While the proposed MARSS system would support public information only, the system would be designed with flexibility to accommodate future security needs.

## **B. Funding Mechanism Options**

To carry out the legislative directive to define a funding mechanism to share the cost to build and maintain the proposed MARSS system among state agencies and departments, the MARSS working group examined several options.

This section would briefly outline all options that the working group discussed that could be pursued in the future as possible funding mechanisms to support the proposed MARSS system. The MARSS working group rejected some options as not viable and identified others that might be pursued in the future. This report contains all options the working group considered. The Pay Per Use, Private Funding, and Ad Revenue options were determined to be not viable. The Odyssey Fund, Legacy Fund, and Appropriation options, as well as a small –per use fee, could be pursued as possible funding mechanism in the future.

## Appropriation Option

A direct appropriation from the legislature (distinct from the below-mentioned Arts and Cultural Heritage Fund appropriation option) is the most direct funding mechanism option considered by the MARSS working group. The proposed MARSS system could be entirely or partially supported by a direct appropriation for the initial build costs and/or annual maintenance costs. These costs are expected to be spread out over a five-year period of development and maintenance as described in Appendix D, which details the initial build and maintenance costs of the proposed MARSS system. The legislature has provided appropriations for the MARSS system in the past, establishing that an appropriation is a viable funding option and would support the public policy goals of improving public access to the rulemaking process and maintaining permanent rulemaking records through an investment in the proposed MARSS system.

## Odyssey Funding Option

The MARSS working group consulted with MN.IT staff and legal counsel about using Odyssey Funding for funding the proposed MARSS project.<sup>18</sup> Odyssey Fund accounts are a way to preserve state-agency's unused funds have been previously appropriated to an agency and then are dedicated for agency IT purposes. This funding option is only available when executive agencies have unused funds available and subsequently approve the use of unused funds for this purpose. Specifically, the MARSS working group considered whether state agencies could utilize unused funds with approval after these funds were transferred to MN.IT to fund an Odyssey account for the Revisor to use to support the initial build or maintenance of the proposed MARSS system. None of the agencies represented in the MARSS working group sought agency approval for this funding option at this time.

Minnesota Statutes, section 16E.21, Subd. 2, outlines the Odyssey Fund Account's purpose and the permitted use of funds as follows:

Subd. 2. Charges. Upon agreement of the participating agency, the Office of MN.IT Services may collect a charge or receive a fund transfer under section 16E.0466 for purchases of information and telecommunications technology systems and services by *state agencies and other governmental entities* through state contracts for purposes described in subdivision 1 (emphasis added).

Minnesota Statutes section 16E.0466, Subdivision 1, states the following:

16E.0466 STATE AGENCY TECHNOLOGY PROJECTS.

Subdivision 1. Consultation required. (a) Every *state agency* with an information or telecommunications project must consult with the Office of MN.IT Services to determine the information technology cost of the project. Upon agreement between the commissioner of a

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<sup>18</sup> Overview documents of the Odyssey Funding purpose and process provided to the MARSS working group by MN.IT staff are available in Appendix G.

particular *agency* and the chief information officer, the *agency* must transfer the information technology cost portion of the project to the Office of MN.IT Services. Service level agreements must document all project-related transfers under this section. Those agencies specified in section 16E.016, paragraph (d), are exempt from the requirements of this section (emphasis added).

MN.IT 's executive team and legal staff advised the MARSS working group that its position was that the current statutory authority does not allow Odyssey Fund money to support a project that is managed or built by the Revisor's Office, rather than an executive branch agency. The MARSS working group asked MN.IT if the Revisor's Office might be able to access these funds as an "other governmental entity" under Minnesota Statutes, section 16E.21, subdivision 2. MN.IT's position was that because the Revisor's Office, a non-executive state agency, would be the entity building and maintaining the proposed MARSS system, that the Revisor's Office would thus not fall within the scope of an "other governmental entity" under the statute who could appropriately receive Odyssey funding to support a technology project.

MN.IT staff pointed to the use of the term "state agency" in Minnesota Statutes, section 16E.0466, subdivision 1 in support of its position. In addition, MN.IT legal counsel noted that both Minnesota Statutes 16E.21 and 16E.0366 provide that the cost of a project supported by Odyssey Funding must be transferred to MN.IT, and in the case of the proposed MARSS system, the money would not be transferred to be spent by MN.IT. Instead, the money would be transferred to and spent by the Revisor's Office. MN.IT legal counsel noted further that Minnesota Statutes 16E.0466 discusses MN.IT and the *agency* entering into an service level agreement for the technology project, and in the case of the proposed MARSS system, MNIT would not be leading the project, so the proposed arrangement would not fit into the statutory language that requires the fund transfer and the service level agreement for MNIT to lead the project.

The working group respects MN.IT's interpretation of the current statutory language. However, this funding option could be reconsidered, if the legislature amended the Odyssey Fund statutes to make it available for use by the Revisor's Office and clarified the "other governmental entities" that would be appropriate recipients of Odyssey Funding.

### **Legacy Fund-Arts and Cultural Heritage Fund (ACHF) Option**

The MARSS working group considered a grant from the "Legacy Fund" as a funding option. On November 4, 2008, Minnesota voters approved the Clean Water, Land and Legacy Amendment, which amended the Minnesota Constitution to create a new 3/8 cent sales tax. The Legacy Amendment created four funds, one of which is the Arts and Cultural Heritage Fund (ACHF). Nineteen and one-half percent of the total Legacy Fund proceeds are dedicated to the ACHF. The Legacy Amendment mandates that a portion of the ACHF be used "to preserve Minnesota's history and cultural heritage."<sup>19</sup> This money funds the Minnesota Historical and Cultural Heritage Grands Program.

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<sup>19</sup> Minnesota Constitution, Article XI, Sec. 15.

For each biennium during the 25-year life of the tax, the Legislature appropriates funds from the ACHF to the Minnesota Historical Society for this grant program. As required by law, the Society appointed a volunteer citizen panel to guide decisions for the grants. Following a competitive award process, the panel makes recommendations to the Society's governing board. The governing board makes the final approval of any grants.

The grant program provides funding to projects in the state of Minnesota focused on preserving Minnesota's history and cultural heritage. State and local governments are among the entities eligible for a grant, including state agencies. Grants are awarded based on a review of detailed information in the grant application, including project need and rationale, responsible persons, budget and time and impacts.

An alternative avenue to receive funding from the ACHF is a direct appropriation. Under Minnesota Statutes, section 129D.17, Subdivision 2(d), the Legislature may make a direct appropriation from the fund to a state agency or other recipient consistent with fund goals.

Part of the long-term vision for ACHF use is "providing every Minnesotan lifelong access to programs and activities that engage him or her as ...historian...and creator of Minnesota's future."<sup>20</sup> One type of project that is consistent with this theme of engaging a citizen as a historian and participant in government is preserving documents that show the development of law in Minnesota. Preserving these important records permits Minnesotans to research past policy trends and more knowledgeably participate in the future development of State policy. As explained below, a review of past expenditures of fund resources shows that preserving these types of legal records is an appropriate use of grant funds.

Several years ago, the Historical Society approved a grant from the Cultural Heritage Grants Program to the Revisor's Office to digitally preserve and archive State statutes. Records of statutes dating back to the earliest territorial days, and were housed in the few remaining copies of old, physically deteriorating books. Preservation of these records saved one of the best source of history about the development of public policy in Minnesota.

As stated earlier in this report, in 2012, the Legislature made a direct appropriation of program funds under Minnesota Statutes to the Revisor's Office in the amount of \$35,000 for creation of the existing MARSS system. The appropriation required using Revisor's Office matching funds, for a total funding source of \$70,000.<sup>21</sup>

Most recently, however, the Revisor's Office applied for an ACHF grant to fund the MARSS system. That application was denied.

The MARSS working group considered the option of applying for a grant from the Cultural Heritage Grants Program to fund the initial build-out of the MARSS system. However, because the most recent grant application for MARSS funding was turned down, the working group concluded that a grant is not a likely source of significant funding for the proposed MARSS system. One option is for the Legislature to make a direct appropriation of funds under Minnesota Statutes, section 129D.17, subdivision 2(d), as it did in 2012 for the

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<sup>20</sup> Minnesota State of Innovation: A Twenty-Five Year Vision, Framework, Guiding Principles, and Ten-Year Goals for the Minnesota [ACHF].

<sup>21</sup> Minnesota Laws 2012, Chapter 264, Article 5, Section 7.



existing MARSS system. For the reasons described above, an appropriation under this section would be consistent with the goals of the historical preservation fund.

Consistent with the MARSS Working Group's charge to find a funding mechanism that shares system costs among agencies, another option would be for several interested agencies to jointly submit another grant application seeking Legacy funds to support the proposed MARSS project in full or in part.

## Direct Agency Funding

The MARSS working group considered agencies' funding the initial development of the proposed MARSS system by charging agencies or other entities engaged in rulemaking for each use of the system. The Revisor of Statutes provided the number of rulemakings opened each year by state agencies for the five years before the working group convened. This data is available in Appendix E.<sup>22</sup>

If the cost of the proposed MARSS system were assessed using the average number of rulemakings opened in one year, the cost per use would be nearly \$20,000.<sup>23</sup> No agency could absorb this additional rulemaking cost.

The proposed MARSS system plan assumes the cost of the system would be amortized over five years. If the initial cost of the system were assessed using the total number of rulemakings in the last five years, the cost per use would be approximately \$4,000. The MARSS working group determined that no small agency or board could absorb this additional cost. Plus, even larger agencies would find it difficult to pay this additional amount, particularly if the agency needed to adopt or revise multiple rules.

The MARSS working group also noted that one agency is required to pursue more rulemakings than other agencies. Under a fee-per-use funding system, this agency would bear the majority of the cost of the proposed system. If emergency and expedited rulemakings were excluded from the per-use calculation, the already prohibitive per-use cost would be even higher.

The MARSS working group examined whether the proposed MARSS system would generate savings for agency users that could offset the system's costs. The group discovered that, in general, such cost savings would be negligible. Although some agencies anticipated using the proposed MARSS system to store their rulemaking records, other agencies deemed it necessary to continue maintaining their own storage systems. Considering the low cost of electronic storage, the anticipated savings from using the proposed MARSS system to store rulemaking records would be minimal.

The MARSS working group also explored dividing the proposed MARSS system on-going maintenance costs among all agencies on an FTE basis. The workgroup rejected this option because large agencies would bear most

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<sup>22</sup> See Appendix E, Rulemaking Statistics.

<sup>23</sup> This figure was derived from dividing the estimated cost of the initial build and maintenance of the proposed MARSS system by the approximately 70 agencies and entities that have rulemaking authority.

of the cost even if they did little rulemaking. In addition, small agencies and boards would have had difficulty absorbing this additional cost.

The projected annual maintenance cost of the proposed MARSS system is \$372,000 per year. If this annual cost were divided by the average number of rulemakings filed per year, the fee for annual maintenance would be approximately \$5,700 per rulemaking. Again, even large agencies would find it difficult to absorb this cost. The MARSS working group, however, believed that a small per-use fee could be an option to offset some of the proposed MARSS system's annual maintenance costs.

### **Private Funding Source Option**

The MARSS working group considered the possibility of a private-sector entity being interested in developing the proposed MARSS system as a business opportunity but ultimately rejected this idea. The proposed MARSS system is not a likely prospect for generating revenue. Private enterprises would typically require either profit or some other recompense for their contributions, thus increasing costs to taxpayers, an unacceptable waste of public funds.

### **Ad Revenue Option**

The MARSS working group considered advertising revenue as another possible funding mechanism to support the initial building and the maintenance of the proposed MARSS system. This option would involve generating revenue for advertisements placed on the web pages of the proposed MARSS system website. Ad revenue can be generated either by static or dynamic advertisements. Static ads are display ads, similar to what one might see in a publication such as a newspaper or magazine. Dynamic ads would solicit a user to click through to another website, presumably that of the advertiser. Both types of ads are ubiquitous in the commercial realm, but very uncommon to non-existent on, state government websites.

An inquiry was sent to all 50 states and the District of Columbia through the list-serv of the International Association of Commercial Administrators, (registries of business filings and secured financing liens) asking:

“Do any of you have, or do any of your jurisdictions have, paid advertising on your official web sites?”

Most jurisdictions did not respond. The following states did respond: Arizona, Florida, Hawaii, Indiana, Kansas, Louisiana, Nevada, North Carolina, Ohio, Pennsylvania, Texas, Utah, Washington, West Virginia, and Wyoming. The District of Columbia also responded. Of all the jurisdictions that responded, not one was using website advertising. Arizona prohibits the practice. Kansas expressed concerns about equal access to this advertising. Utah thought there was a potential conflict of interest in advertising. While most states did not respond, the question was put in the positive, meaning that a nonresponse is more likely to mean that the jurisdiction did not have advertising on their sites.

In discussion with technical staff, it was also determined that there might be security concerns; one expert stated:

“In the past, I have run across situations where ad feeds from third parties have been infected with malware. These situations pose risks to users of the systems, whose machines are probed and scanned behind the scenes by malware in the ad feeds. We had this happen a while back where some state users picked up malware from ad feeds on the Star Tribune site.”

In addition, it was unclear whether any substantial amount of revenue could be raised from this method, as rates are relatively low for click-throughs as well as banner ads. After considering the information gathered about this funding mechanism option, the MARSS working group determined that the ad revenue option was not a viable funding mechanism to pursue.

### **Summary of Working Group Funding Mechanism Option Findings**

The MARSS working group found that the MARSS system initial build costs and annual maintenance costs could be supported in whole or in part by four possible funding mechanisms: 1) Use of Odyssey Funds, if deemed eligible following legislative changes; 2) Legacy Funding; or 3) Direct Appropriation from the Minnesota Legislature; and/or 4) a small per-use fee for a portion of the annual maintenance costs. The proposed MARSS system could be funded by one of these options entirely or by a combination of two or three of all four options.

The MARSS working group has worked to provide the 2018 Minnesota Legislature with the most current information on the requirements of the proposed MARSS system and on options to fund the proposed MARSS system. The MARSS working group is committed to continue to assist the 2018 Minnesota Legislature and the legislature in the future if necessary regarding the future of the proposed MARSS project.

There were two dissenting members of the MARSS working group: Denise Collins, on behalf of Chief Judge Tammy Pust of the Office of Administrative Hearings, and Bert Black, on behalf of the Secretary of State Steve Simon. Dissent was based on the perceived lack of demand or need for the system at the present time as well as concerns over funding and cost issues in this time of budget shortfall.

### **Conclusion**

The proposed MARSS system is the product of decades of effort to improve public access to and the preservation of executive branch rulemaking records in Minnesota. The proposed MARSS system would greatly enhance the existing MARSS system and support the primary benefits of government, transparency of the rulemaking process and public access to rulemaking information. In addition, the system would put proactive engagement methods in place to provide timely relevant rule information to all, including legislative staff and committees, and officials. The system would be built with future need and expansion in mind and would increase efficiency and consistency in the rulemaking process by providing the level of robustness and security appropriate for the official permanent repository of rulemaking records in the state.

Several funding mechanism options are available to pursue spreading the initial cost of building and maintaining the proposed MARSS system between existing state agencies and departments over several years.

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All documents utilized at and prepared for the MARSS working group meetings are posted on the Revisor's Office webpage and available online at: <https://www.revisor.mn.gov/office/meetings/>.

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