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# **MARSS Working Group**

Report to the Legislature

As Required by 2017 Minn. Laws, First Special Session, Ch. 4, Art. 2, Sect. 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. See 2017 Minn. Laws, First Special Session, Ch. 4, Art. 2, Sect. 60.

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.

(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 the history of the existing MARSS system. The existing MARSS beta system is the product of decades of work and effort by the Revisor's Office to improve public access to and the preservation of historical rulemaking records. The proposed MARSS system also builds on the MARSS pilot project completed largely in 2016. The goal of the proposed MARSS system is 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 also serve as a single internet location for the public to track rulemaking process and access the official rulemaking record. Agencies could also fulfill their statutory requirement to maintain and preserve the official rulemaking record by capturing these records in the online MARSS system.

This report also details the work of the MARSS working group established during the 2017 legislative session. The working group identified the functional and non-functional requirements of the proposed MARSS system. The group also determined several funding mechanism options that can be pursued as a way to fund the initial build and/or maintenance of the proposed MARSS system and can spread these costs amongst state agencies and departments.

## Introduction

This legislative report describes a brief history of the existing MARSS beta system and the efforts of the MARSS working group between July 2017 and January 2018. The MARSS working group was established during the 2017 legislative session. This group was tasked with identifying the functional and nonfunctional requirements of the proposed MARSS system and to define a funding mechanism to share the cost to build and maintain the MARSS system among state agencies and departments. The goal of the proposed MARSS system 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 working group worked with Revisor IT staff to determine necessary and desired functional and nonfunctional requirements of the proposed MARSS system. The working group also considered various options for a funding mechanism that would share the cost to build and maintain the proposed MARSS system across state agencies and departments. These findings are set forth in the following report.

## History of MARSS System

State agencies and other entities with rulemaking authority (past or present) must permanently preserve and provide public access to their official rulemaking records.<sup>1</sup> How preservation and access to public records is accomplished varies by agency. Records can be maintained in a variety of forms, such as paper or online. Historically, it was difficult for the public to gain access to rulemaking records due to variations in preservation methods and lack of completeness of rulemaking records. The goal of the proposed MARSS system is to improve public access, security, preservation, and transparency of state agencies' official rulemaking records and to streamline certain rulemaking requirements for agency staff. This section provides a brief overview of the history of the existing MARSS system over the years.

### Revisor Rule Status "Beta" System

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

During the 2012 legislative session the Revisor's Office received an appropriation for 35K from the arts and cultural heritage fund, part of the legacy funding available through the state, to design and implement a website to provide the public search-able access to historical documents relating to state agency rulemaking."<sup>2</sup> The Revisor's Office matched this appropriation with carryforward funds and used these funds to design and implement a beta MARSS system website that made state agency rulemaking documents accessible and searchable by the public and rulemaking professionals. As part of this initiative the Revisor's Office scanned in all of the paper rulemaking documents it has been collecting or received from state agencies over the years to capture and preserve them in the online system.

In the same year, the Revisor's Office unveiled a system that allowed public access and searching of the collected rulemaking data. At the time of release this system was being "beta" tested, hence the system was called the Rule Status "Beta" System." This system is still in operation and widely used today. The beta system has been extremely helpful in gathering information about users and what works well and what could be improved about the existing MARSS system.

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<sup>1</sup> Minn. Stat. § 14.365 sets forth requirements of the official rulemaking record. Each agency must make these documents available for public inspection and permanently preserve them.

<sup>2</sup> 2012 Minn. Laws, Ch. 4, Art 5, Sect. 7.

## **MARSS Pilot Project**

The Revisor's Office secured funds provided by the legislature during the 2015 legislative session to conduct a pilot project of the possible future MARSS system between July 2016 and January 2017.<sup>3</sup> This pilot project built on the success of the Rule Status "Beta" System and worked to incorporate ideas and vision for a more sophisticated rulemaking system in the state. The MARSS system was a concept for a new software application that would improve public access, security, preservation, and transparency of official state agency rulemaking records through the creation of a single online records system. The hope was that this system would serve as a single internet location for the public to track rulemaking progress and access the official rulemaking record. Another possible goal of the MARSS system was for the system to serve as a way for agencies to fulfill their requirements to maintain and preserve the official rulemaking record by submitted required documents to the Revisor for inclusion in the online records system. Ideally the MARSS system would become a permanent system and records and data maintained by the system would be permanently preserved and available. The system would include Revisor staff, computer hardware and software and rulemaking data and records.

The pilot project team learned about the current rulemaking process and workflows and researched applicable technologies. Short-term licenses were obtained for three of the most promising commercial software products. A prototype was built using two of the commercial products. The pilot project team also contacted states with similar systems. The team weighed the pros and cons of a buy vs. build approach and determined that a build approach would be the most appropriate for the state of Minnesota given that the rulemaking process state agencies follow does not fit well with most commercial products available for purchase. The team recommended that the MARSS system be built entirely in-house because no complete, out of the box, commercial product covered all the desired MARSS requirements. Using an in-house team would also allow the team to benefit from the extensive rulemaking process knowledge and understanding versus hiring an outside vendor without this expertise. Vendors contracted to assist with the project would work closely with the Revisor's Office to create software built to meet MARSS requirements. The resulting knowledge is captured and described in the January 2017 report completed by the pilot project team.

The MARSS pilot project was not funded during the 2017 legislative session. Due to a lack of funding a legislative working group was created to continue the work supporting the MARSS pilot project.

## **MARSS Working Group**

Following the completion of the MARSS Pilot Project in January of 2017 a working group was established during the 2017 legislative session.<sup>4</sup> The legislative charge for this group included a similar vision that the MARSS system would be built and maintained by the Revisor's Office. Executive branch agencies and other entities engaged in rulemaking would upload official rulemaking records to the system. The goals of the MARSS system remain the same as those set forth in the pilot project. The ultimate goal of the MARSS system is to improve public access, security, preservation, and transparency of state agencies' official rulemaking records through the

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<sup>3</sup> Insert citation to appropriation.

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

creation of a single online records system. The MARSS system would also serve as a single internet location for the public to use to track rulemaking project progress and to access official rulemaking records when a project is completed. Lastly, the MARSS system could serve as a vehicle for agencies to 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.

The MARSS working group had three clear duties<sup>5</sup>: 1) to submit a report by February 1, 2018, to the chairs and ranking minority members in the house of representatives and senate with jurisdiction over policy and finance for the legislature; 2) the working group must identify the functional and nonfunctional requirements of the MARSS system; and 3) the working group must define a funding mechanism to share the cost to build and maintain the MARSS system among state agencies and departments. The working group was supported administratively by the Revisor’s Office.

The working group was comprised of the following nine members as set forth in the enabling legislation:

<b>Name</b>	<b>Professional Title</b>	<b>Agency/Entity</b>	<b>MARSS Working Group Role</b>
Bert Black	Legal Advisor	Office of Minnesota Secretary of State (SOS)	Designee from SOS
Denise Collins	Court Administrator	Minnesota Office of Administrative Hearings (OAH)	Designee from OAH
Rebecca Gaspard	Policy Analyst	Minnesota Board of Cosmetology (BOC)	Representative from a health-related board
Kerstin Forsythe Hahn	Rulemaking Coordinator & Records Manager	Minnesota Department of Education (MDE)	Working Group Chair and Representative from Interagency Rules Committee (IRC)
Wendy Willson Legge	Chief Legal Counsel	Minnesota Department of Labor and Industry (DLI)	Representative from DLI

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<sup>5</sup> See full legislative language included supra in the Legislative Charge section of this report.

Mary H. Lynn	Agency Rule Coordinator, Agency Rules Unit	Minnesota Pollution Control Agency (MPCA)	Representative from MPCA
Jodi Pope	Legal/Management Analyst	Minnesota Campaign Finance and Public Disclosure Board	Representative from a non- health-related board
Elizabeth Richter Scheffer	Associate Legal Counsel and Rules Coordinator Office of Chief Counsel	Minnesota Department of Transportation (DOT)	Representative from DOT
Patricia Winget	Rules Coordinator and Legal Counsel	Minnesota Department of Health (DOH)	Representative from DOH

Revisor Office staff also regularly attended many of the working group meetings. The working group worked closely with Paul Marinac, Revisor, and Revisor IT staff members, Melissa Patsch, Software Developer, and LeAnn Simonson, Contract Business Process Analyst. Revisor Editorial Staff members Ellen Purtle and Justin Carlson also provided administrative support.

The full MARSS Working group met ten times, approximately every 3 weeks, between July, 2017 and January, 2018. Materials from the MARSS meetings are available online at the Minnesota Revisor’s Office webpage: <https://www.revisor.mn.gov/office/meetings/>

A smaller subgroup of the full MARSS working group met weekly for 4 weeks in August and September, 2017 and focused on reviewing the current rulemaking process in Minnesota and made determinations about what system requirements were necessary vs. desired to improve the current MARSS system.<sup>6</sup> The smaller subgroup worked to define the system requirements that became the functional and non-functional requirements of the proposed MARSS system. These system requirements were brought back to the full MARSS working group for discussion and final approval. The working group also discussed and crafted a scope document based on the enabling legislation to help guide and focus the group’s work.<sup>7</sup>

The full MARSS working group also considered and discussed as a large group multiple possible funding mechanisms. These options will be set forth below.

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<sup>6</sup> See Appendix F-Small Sub Group Requirements Recommendations.

<sup>7</sup> See Appendix A-Scope Document.

## Analysis

As stated above, the MARSS working group was charged with identifying the functional and non-functional requirements of the MARSS system and to define a funding mechanism to share the cost to build and maintain the MARSS system among state agencies and departments. The MARSS working group relied on the long-standing work of the Revisor's Office in creating the "beta system", the previously discussed pilot project and the Revisor staff team that sat on the working group to make its determinations.

The working group began its work by reviewing materials available from the Revisor's Office about the history of the MARSS project and the build vs. buy options and cost. The group continued the discussion of whether to buy an existing product or build the system in-house, ultimately deciding that an in-house build was the appropriate choice for the proposed system. The final MARSS project plan involves largely building the system in-house using existing Revisor IT resources as well as hiring additional external resources, coupled with purchasing some software and hardware components. Although this decision was not a specific requirement of the working group, this determination was necessary prior to finalizing the functional and non-functional requirements of the proposed system.

### **I. Description of the Functional and Nonfunctional Requirements of the Minnesota Administrative Rules Status System (MARSS).**

In order 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 Staff to understand the current rulemaking process and workflow. This was a very detailed process that enabled working group members and Revisor staff to have clear understanding of whether a "build or buy" approach would be appropriate. Once the functional and nonfunctional requirements were determined the working group found that similar to the pilot project team, an in-house build approach was the best fit to meet all the proposed MARSS system requirements and to preserve future desired capabilities. Another reason an in-house build approach is most suitable for the MARSS system is that this option can better preserve future system capabilities that would be difficult to add on or incorporate at a later date to an existing product. This knowledge helped guide the working group in determine additional requirements for the system that may not be part of the initial build but that could be added on as the system grew and improved and became more sophisticated.

As discussed above the smaller sub-group met frequently over a period of several weeks to determine a list of desired requirements for the future MARSS system. These requirements were broken down 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 the initial build of the MARSS software system are described below in narrative language that shows how the capabilities are linked to the goals of the MARSS system. Further and more technical detail is provided via the functional and non-functional requirements document in Appendix B, written as software requirements specifications for the technical team.

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

The MARSS system will provide a mechanism to provide the desired transparency and access to information related to rulemaking. The onus of responsibility for submission of rulemaking information to MARSS will continue to rest with each agency or entity that conducts rulemaking. The agencies will receive support from the MARSS system in their aim to provide process transparency and information access. This aim will be made easier to achieve by virtue of maintaining official rulemaking records in one place rather than by each of the more than seventy agencies with rulemaking authority.

Internet and mobile access to rulemaking information will be provided to the public as well as to legislative staff, officials, and committees. Robust search options will be provided to promote greater access to relevant rulemaking information. This information will include adopted rules, the status of active rulemaking proceedings, the status of potential rulemaking proceedings via each agency's Docket, and abandoned rules and historical rules prior to MARSS, to the extent possible.

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

The MARSS system will provide notifications of pertinent rulemaking events to legislative staff and officials as well as to legislative committees associated with rulemaking proceedings. Notifications will also be provided to agencies, such as when statutory, rule or law changes that could result in potential rule impacts.

The MARSS system will initially include only public information and this data will be presented with relevance and presentation in mind. The public, including all interested persons, will be provided with a timeline display of rulemaking activity and status. The system will also allow agencies to control when rulemaking information in development is ready and appropriate for public review and access via the system up through the adoption of a rule, at which point the official rulemaking record items will be entirely publicly accessible and permanent.

### **1. Efficiency and Consistency**

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

### **2. System Robustness**

The MARSS system will be built as a robust, secure, reliable system appropriate for the permanent preservation of official rulemaking records. The system will also be built to gracefully change to accommodate capabilities desired in the future. Some capabilities to enhance MARSS in the future have been identified and are described below.

## **C. Future Capabilities**

### **1. Assigned Reviews**

One possible future capability the system could include is support for access and required statutory reviews to be completed by authorized reviewers, such as the Minnesota Management and Budget Office (MMB), the

Governor's Office, and the Office of Administrative Hearings (OAH). These review options may be added in the future. The edit rights necessary to complete these reviews would be provided through internet or mobile device access. These reviews might include adding rulemaking items to the rulemaking record during the rulemaking proceeding, providing review consultation related to a rulemaking record item, and/or providing an electronic signature for a rulemaking record item where required.

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

A second possible future capability the system could include is the support for agency users through a personal dashboard for tracking rulemakings of interest, reports and topics of interest. This option might also be extended in the future to the public as well as legislative staff, officials and committees.

A third possible future capability the system could include 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 likely also support the agencies' requirement to maintain lists which identify interested and impacted persons and entities for the purpose of notification 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 initial build of MARSS will support public information only, the design will be built knowing that security capabilities may need to accommodate the possible future inclusion of information associated with workflow support that is not public.

## **II. Funding Mechanism Options**

The MARSS working group considered several different funding mechanism options that could share the cost to build and maintain the MARSS system among state agencies and departments. This section will briefly outline the options the working group discussed that could be pursued in the future as possible funding mechanisms to support the MARSS system. All options the group considered are set forth in this section, including options that the group found not to be viable at this time. The Odyssey Fund, Legacy Fund and Appropriation Options could be pursued as possible funding mechanism in the future. The Pay Per Use, Private Funding and Ad Revenue were determined to not be viable options to pursue as a possible funding mechanism in the future.

### **A. Odyssey Funding Option**

The MARSS working group consulted with MNIT staff and legal counsel regarding the option of utilizing Odyssey Funding as a funding mechanism to support the MARSS system project. Dave Osteraas and Jon Eichten, representatives of MNIT attended an October working group meeting to initially present about and discuss the Odyssey fund option. Minnesota Statutes section 16E.21 outlines the purpose of the Odyssey Fund Account and the permitted use of funds. Minnesota Statutes section 16E.21, Subd. 2 states:

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, Subd. 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 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).

At the meeting a question was asked about whether Odyssey Fund money can be used to support a project that is not managed or built by an executive branch agency, such as the Revisor's Office, given that this had never been done before according to MNIT. MNIT agreed to look into that question. The working group thought that the Revisor's Office might be able to access these funds as an "other governmental entity" as stated in Minnesota Statutes section 16E.21, Subd. 2. Follow up conversations with MNIT's executive team and legal counsel determined that MNIT disagreed with the working group's interpretation. MNIT interprets the above listed statutes to only permit Odyssey Fund money to be used for executive branch state agency IT projects because Minnesota Statutes 16E.0466, Subd. 1 uses the term "State agency" and not the term "state agencies and other governmental entities" as used in Minnesota Statutes section 16E.21. Because the Revisor's Office, a non-executive state agency, would be the entity building and maintain the MARSS system, the Revisor's Office would thus not fall within the scope of entities who could appropriately receive Odyssey Funding to support an IT project. MNIT also stated that the term "other governmental entities" had recently not been broadly interpreted to include entities that were not executive branch agencies.

The working group respects MNIT's interpretation and position on the current statutory language. However this funding mechanism option could be reconsidered if a statutory change was made clarifying what entities are appropriate recipients of Odyssey Funding. This avenue may be appropriate given that one of the goals of the MARSS system is to support executive agencies during the rulemaking process.

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

Another potential funding mechanism option considered by the working group was a grant from the fund commonly known as the "Legacy Fund." On November 4, 2008, Minnesota voters approved the Clean Water, Land and Legacy Amendment, which amends the Minnesota Constitution and creates 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>8</sup> This money funds the Minnesota Historical and Cultural Heritage Grants Program.

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 eligible 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, Subd. 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 use of the ACHF is “providing every Minnesotan lifelong access to programs and activities that engage him or her as ...historian...and creator of Minnesota’s future.”<sup>9</sup> One type of project that is consistent with the themes 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 dated 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 for the predecessor beta MARSS system. This direct appropriation was made to the Revisor’s Office in the amount of \$35,000 for creation of the rulemaking records beta project. The appropriation also required the use of Revisor’s Office matching funds, for a total funding source of \$70,000.<sup>10</sup>

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<sup>8</sup> Minnesota Constitution, Article XI, Sec. 15.

<sup>9</sup> Minnesota State of Innovation: A Twenty-Five Year Vision, Framework, Guiding Principles, and Ten-Year Goals for the Minnesota [ACHF].

<sup>10</sup> Minnesota Laws 2012, Chapter 264, Article 5, Section 7.

Most recently, however, the Revisor’s Office applied for a 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, in light of the fact that 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 MARSS system. Still, one option for the Legislature is to make a direct appropriation of funds under Minnesota Statutes, section 129D.17, Subd. 2(d), as it did in 2012 for the beta system. For the reasons described above, an appropriation under this section would be wholly consistent with the goals of the historical preservation fund.

### **C. Appropriation Option**

A direct appropriation from the Minnesota Legislature (separate from the above mentioned appropriation from the Arts and Cultural Heritage Fund) is another funding mechanism option that the working group considered. The MARSS system could be entirely or partially supported by a direct appropriation for start-up costs and/or annual maintenance costs. These costs could be and are expected to be spread out over a 5 year period of development and maintenance as described in Appendix D, which details the initial build and maintenances costs of the proposed system. The legislature has provided appropriations for the MARSS system in the past that have supported the continued development of the system. An appropriation is a viable option for a funding mechanism given the goals of the MARSS system of improving public access to the rulemaking process and rulemaking records. The system also supports agency and legislative access, aiding in preservation and transparency of rulemaking records and promotes the vision of streamlining some of Minnesota’s unique rulemaking record keeping requirements.

### **D. Pay Per Use Option**

The MARSS working group also considered funding the initial development of the MARRS system by charging agencies or other entities engaged in rulemaking for each use of the system. The group obtained information from the Revisor of Statutes regarding the number of rulemakings opened each year by state agencies.<sup>11</sup> The chart below shows this information for the five years before the working group convened.

Year	# Opened	Agencies with more than 1 proceeding (# of proceedings)
2016	51	DNR (21), DLI (6), Health (4), Racing Comm’n (4), Ag (2), Gambling Control Bd (2)

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<sup>11</sup> See Appendix E, Rulemaking Statistics.

2015	65	DNR (23), DLI (7), Health (7), PCA (5), Commerce (2), Cosmetologist Bd (2), Teaching Bd (2)
2014	56	DNR (21), Health (6), DLI (4), Public Safety (3), Ed (2), PCA (2), Cosmetologist Bd (2), Sec'y of State (2), Racing Comm'n (2)
2013	71	DNR (26), PCA (5), DLI (5), DEED (4), PUC (3), Health (3), Chiropractic Exam. Bd (3), Sec'y of State (2)
2012	86	DNR (28), DLI (18), PCA (12), DHS (5), Health (4), Racing Comm'n (3), Public Safety (2), Plumbing Bd (2), EQB (2)

If the cost of the MARSS system was assessed using the average number of rulemakings opened in one year, the cost per use would be nearly \$20,000. The workgroup determined that no agency could absorb this additional cost of rulemaking.

The MARSS system plan states that the cost of the system will be amortized over five years. If the initial cost of the system was assessed using the total number of rulemakings in the last five years, the cost per use would be approximately \$4,000. The workgroup determined that no small agency or board could absorb this additional cost and that even larger agencies would find it difficult to pay this additional amount, particularly if the agency needed to pursue more than one rulemaking.

The workgroup 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 system. If emergency and expedited rulemakings were excluded from the per-use calculation, the already prohibitive per-use cost would be even higher.

The workgroup examined whether the cost of the system could be offset by any savings to agency users but discovered that, in general, the cost savings would be minimal. Although some agencies believed that they would use the MARSS system to store their rulemaking records, other agencies planned to continue maintaining their own storage systems. In any event, given the low cost of electronic storage, the savings from using the MARSS system to store rulemaking records was minimal.

The workgroup also explored dividing the cost of the MARSS system among all agencies on an FTE basis. The workgroup rejected this option because it would have required large agencies to bear most of the cost of the system even if they did little rulemaking. In addition, small agencies and boards would have had difficulty absorbing this additional cost.

The annual maintenance cost of the MARSS system is budgeted at \$372,000 per year. If the annual maintenance cost is 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

working group, however, believed that a small per-use fee could be an option to offset some of the MARRS system's annual maintenance costs.

### **E. Private Funding Source Option**

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

### **F. Ad Revenue Option**

The working group considered advertising revenue as a possible funding mechanism for raising revenue in order to support the initial build and maintenance of the MARSS system. This option would involve generating advertising revenue for ads placed on the web pages of the MARSS site. 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 of course, state government sites operate in different settings.

An inquiry was sent to all 50 states and the District of Columbia through the list-serv of the International Association of Commercial Administrators, (offices that are 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 did respond, not one was using advertising on their websites. 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 working determined that the ad revenue option was not a viable funding mechanism to pursue.

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

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

## **Conclusion**

The proposed MARSS system is the product of decades of effort to improve public access to and the preservation of rulemaking records in Minnesota. The MARSS will support many desired capabilities and greatly enhance the existing beta system. Transparency in the rulemaking process and access to rulemaking information for all interested parties are primary benefits to be provided through establishing this system. In addition, the system will allow for proactive engagement methods to be put in place to provide relevant rule information to the public and legislative staff, officials and committees. The system will also bring efficiency and consistency into the rulemaking process and will be built to a level of robustness and security appropriate for the official repository for the permanent preservation of rulemaking records. The system will be built with future desired capabilities in mind, such as workflow support for authorized reviews by entities other than agencies and expanded methods for engagement and notification. The move from distributed, manual support to centralized, automated support for rulemaking will provide solutions for many expressed needs of the public, the legislature and agencies. 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.

## **Bibliography**

2012 Minn. Laws, Ch. 4, Art. 5, Sect. 7.

2017 Minn. Laws, First Special Session, Ch. 4, Art. 2, Sect. 60.

Minn. Stat. § 14.365

Minnesota Constitution, Article XI, Sec. 15.

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

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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