

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3405-01
Bill No.: HB 1445
Subject: Sunshine Law, Meetings, and Records; Public Records; Public Meetings
Type: Original
Date: February 19, 2010

Bill Summary: The proposal changes the laws regarding the Open Meetings and Records Law, commonly known as the Sunshine Law.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
General Revenue	(Unknown)	(Unknown)	(Unknown)
Total Estimated Net Effect on General Revenue Fund	(Unknown)	(Unknown)	(Unknown)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
Various State Funds	(Unknown)	(Unknown)	(Unknown)
Total Estimated Net Effect on <u>Other</u> State Funds	(Unknown)	(Unknown)	(Unknown)

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 12 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
Total Estimated Net Effect on FTE	0	0	0

Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).

Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
Local Government	(Unknown)	(Unknown)	(Unknown)

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Agriculture, Coordinating Board for Higher Education, Office of Administration – Administrative Hearing Commission, – Division of Budget and Planning, Department of Insurance, Financial Institutions, and Professional Registration, Department of Mental Health, Department of Natural Resources, Department of Labor and Industrial Relations, Department of Revenue, Department of Social Services, Department of Public Safety – Missouri Gaming Commission, – State Emergency Management Agency, – Missouri Veterans Commission, – Division of Alcohol and Tobacco Control, – Capitol Police, – Division of Fire Safety, Office of the Governor, Department of Conservation, Missouri Ethics Commission, Missouri House of Representatives, State Auditor’s Office, Office of the State Public Defender, Office of the State Treasurer, Missouri Tax Commission, Parkway School District, Special School District of St. Louis County, Lincoln University, Linn State Technical College, Metropolitan Community College of Kansas City, Missouri Southern State University, Missouri State University, Missouri Western State University, and Cass County** assume the proposal would have no fiscal impact on their agencies.

Officials from the **Office of State Courts Administrator** assume the proposed legislation would have no fiscal impact on the courts.

Department of **Public Safety – Director’s Office** assume any potential costs arising from this proposal can be absorbed within existing resources.

Officials from the **Office of Prosecution Services** assume the proposal would have no measurable fiscal impact the Office of Prosecution Services or county prosecutors.

Officials from the **Office of Administration – Information Technology Services Division (ITSD)** assume costs could be incurred by ITSD depending on the type of request that is made for information. ITSD assumes the impact is unknown because there is no way to determine the type of requests that will be made.

Officials from the **Department of Economic Development** assume, depending on the extent of work involved in preparing the data for public use, any costs that would be incurred would be charged at the current hourly billing rate as determined by Office of Administration – Information Technology Services Division staff.

ASSUMPTION (continued)

Officials from the **Department of Elementary and Secondary Education (DESE)** submitted a fiscal estimate provided by Office of Administration – Information Technology Services Division (OA–ITSD) in reference to Sections 610.023 and 610.029:

To provide data access to the general public, the estimated one time cost is approximately \$562,500. Ongoing costs are estimated at \$93,500 which includes an additional 1-FTE at an annual salary of \$45,000 to maintain the system as well as to provide enhancements as new data collections systems are put online or existing systems are changed.

There are currently over 20 data collection processes that are automated at DESE. Most of this data is available for the general public to view currently through the Public Applications area of the web application system or through various spreadsheets and reports available on the DESE public web site. These collections cover several different business areas and result in the primary outputs of payments and reports. The processes to provide these to the general public in a different yet easy to use format would require new hardware and software.

Officials from the **Department of Transportation (MoDOT)** state the proposal changes the penalty for knowing state sunshine law violations from up to \$1,000 to a set \$1,000. It changes purposeful state sunshine law violation penalties from up to \$5,000 to up to \$8,000. Sections 610.040.7 and 610.045.8 state that a certificate of training is admissible “as evidence in a criminal proceeding under this chapter.” MoDOT assumes the proposal would result in increased costs of an Unknown amount.

Officials from the **Department of Corrections (DOC)** assume there is an Unknown cost for DOC if this proposal is passed. DOC assumes OA–ITSD will be addressing this issue on behalf of all the state agencies, and defers to their expertise in this matter however it does appear to DOC that the potential exists for changes to computer programs in order to make them easily accessed and available to the public. Staff may be required in order to monitor public-accessible data regarding confidential offender information. Additional training and recording/transcribing equipment may be necessary, but these requirements and resulting costs are unknown.

Officials from the **Department of Health and Senior Services (DHSS)** assume Sections 610.023 and 610.029 would fiscally impact their department:

ASSUMPTION (continued)

DHSS assumes there may be public records stored in various programs that are not easily accessed and manipulated by programs commonly available to the public, and may not be easily transferable to a different format. If there were requests made for this information, ITSD would have to make modifications to the programs in order to make it easily accessible. Due to the nature of the very large databases currently storing DHSS data, it would be very difficult to make this information available to the public in a commonly available program because of the size and complexity of the data files. Most commonly available products will not be equipped to handle the amount of information from these large data systems.

DHSS does not currently store all of its records electronically; therefore, to be able to satisfy the requirement to make any of its public information available in electronic format would require extra assistance to scan records and possibly could take a long period of time. There would be costs associated with this process both in equipment, software, and personnel to transfer the records. In addition, since the law currently requires DHSS to redact the closed portion and make the rest available, almost every record that DHSS has would be affected, as much of the data gathered by DHSS is available to the public in statistical aggregate form or if personal identifiers are removed.

It is unknown at this time how many requests would be made for the information, or what data may be requested. DHSS estimates the fiscal impact to be unknown.

Section 610.027.4 will also have a fiscal impact on DHSS:

The proposed changes in this section could result in increased penalty payments if DHSS were found in violation. DHSS is unable to determine how often this would occur and considers this to be an unknown impact.

Officials from the **Department of Public Safety – Missouri State Highway Patrol (MSHP)** assume this legislation would require data conversion for the MSHP, and would primarily affect two areas:

The MSHP's Information Systems Division states that although files can be searched individually, there is no easily available means to search for a particular string of characters across multiple systems and platforms. The only current capability to do this is the e-mail archive. This allows searching of multiple e-mails for individual character strings. No similar capability exists for any other document repository maintained by the MSHP.

ASSUMPTION (continued)

To treat a search globally, across multiple platforms and files, would create an almost intractable problem, resulting in substantial costs. Furthermore, no method is known to easily redact data which is a requirement for release of much law enforcement data.

Similarly, the documents on the AS/400 would have to be converted before public access could be easily achieved.

The MSHP's Traffic Arrest System/DWI Tracking System (TAS/DWITS) maintains arrests and court disposition records in an electronic format. The TAS/DWITS would have to be reprogrammed to allow a "public" userid and password to gain access to electronic records in the TAS/DWITS. Consultants would have to reprogram the system to allow only "open" arrest records to be accessible to the public when querying the systems. It would take approximately 100 hours for contracted computer consultants to develop the "public view" to TAS/DWITS records at a rate of \$82 per hour (100 hours x \$82 = \$8,200).

A full implementation of this law as currently understood could rise to several hundred thousand dollars which is why the MSHP assumes an unknown impact of greater than \$100,000 on this proposed legislation.

Officials from **Missouri Consolidated Health Care Plan** assume the provisions in Sections 610.023.3 and 610.029.1, RSMo, could result in an unknown fiscal impact to their agency.

Officials from the **Office of the Secretary of State (SOS)** assume many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this proposal for Administrative Rules is less than \$2,500. The SOS recognizes this is a small amount and does not expect additional funding would be required to meet these costs. However, SOS also recognizes that many such bills may be passed in a given year and that collectively the costs may be in excess of what the SOS can sustain with their core budget. Any additional required funding would be handled through the budget process.

Officials from **Truman State University** are unable to determine the fiscal impact on their agency.

ASSUMPTION (continued)

Officials from the **City of Centralia** assume the fiscal impact for Section 610.023.3, RSMo, is not predictable. It will depend on a court's interpretation of "accessed and manipulated" as it relates to the proprietary programs such as utility billing, or obsolete program (such as Word Perfect DOS). Officials assume tracking, training, and certificates of course completion for all affected officials and members should be about four hours per year at \$29.65 per hour, for a total of \$118.60 per year.

Officials from the **City of Kansas City (CKC)** assume this legislation will have a negative fiscal impact on CKC because under this legislation, CKC will have to maintain all its records in an electronic database that is easily accessible.

Officials from St. Louis County assume the proposal would result in increased costs of approximately \$4,000 if certificates are provided to each employee completing the course. (\$5 per certificate x approximately 800 elected officials, appointees, and board and commission members = \$4,000).

Oversight assumes state agencies and political subdivisions could experience a fiscal impact due to the provisions in section 610.023.3, which state, "Data-processing programs used by public governmental bodies shall allow for copying of data in a format that is easily accessed and manipulated by programs commonly available to the public," and the provisions in section 610.029.1. For fiscal note purposes, Oversight has reflected this fiscal impact as (Unknown) to the general revenue fund, various state funds, and to political subdivisions.

Officials from the Office of the Attorney General, Missouri Lottery, Missouri Lieutenant Governor, Missouri Senate, Various Missouri Public School Districts, Various Missouri Public Colleges and Universities, Various Missouri Cities, and Various Missouri Counties did not respond to Oversight's request for fiscal impact.

<u>FISCAL IMPACT - State Government</u>	FY 2011 (10 Mo.)	FY 2012	FY 2013
GENERAL REVENUE FUND			
<u>Costs – Various state agencies</u> Information technology costs (610.023 and 610.029)	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
VARIOUS STATE FUNDS			
<u>Costs – Various state agencies</u> Information technology costs (610.023 and 610.029)	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT ON VARIOUS STATE FUNDS	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
 <u>FISCAL IMPACT - Local Government</u>	 FY 2011 (10 Mo.)	 FY 2012	 FY 2013
POLITICAL SUBDIVISIONS			
<u>Costs – Various political subdivisions</u> Information technology costs (610.023 and 610.029)	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT ON POLITICAL SUBDIVISIONS	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>

FISCAL IMPACT - Small Business

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

FISCAL DESCRIPTION

The proposed legislation changes the laws regarding the Open Meetings and Records Law, commonly known as the Sunshine Law. In its main provisions, the bill:

1. Requires all records of the Missouri Ethics Commission to be open records except for any investigative reports prepared by commission employees regarding complaints until a decision is rendered and any reports of complaints that the commission dismisses. On the motion of any party, the commission, upon good cause shown, will close any record to be introduced at a hearing;
2. Requires the minutes to reflect a summary of the discussions that occurred at a closed meeting but not the disclosure of records or votes that are properly closed under Section 610.021, RSMo;
3. Specifies that only members of a public governmental body, their attorneys and staff assistants, and any necessary witnesses will be permitted in any closed meeting of the governmental body;
4. Specifies the criteria for the litigation exception to the open record disclosure. An actual lawsuit, a threat of a lawsuit, or a substantial likelihood of litigation must exist in order to close information regarding a cause of action;
5. Requires information to be made available in an electronic format if a public body keeps records in an electronic format. Data must be available for copying in a format easily accessible to the public if it is stored in a data-processing program. Certain hospitals will not be compelled to violate their licensing agreements involving proprietary data-processing systems for financial or patient medical record information;
6. Increases the maximum penalty for a purposeful violation of Sections 610.010 – 610.026 from up to \$5,000 to up to \$8,000 and the penalty for a knowingly violation from up to \$1,000 to \$1,000;
7. Allows courts to use the penalty of voiding a public body's actions when evaluating actions in violation of Sections 610.010 – 610.026 that occur at any meeting not only at closed meetings;

FISCAL DESCRIPTION (continued)

8. Requires the governing body of any city, county, town, or village or any entity created by these political subdivisions to hold a public meeting and to allow public comment five business days prior to voting on an issue involving fee or tax increases, eminent domain, zoning, transportation development districts, capital improvement districts, commercial improvement districts, or tax increment financing;
9. Specifies that in any legal proceeding, there will be a presumption that a meeting, record, or vote is open to the public. The burden to prove that it should be closed is on the public governmental body; and
10. Requires any elected or appointed official, or their designated public information coordinator, who is a member of a public governmental body subject to the Sunshine Law to complete a course of training regarding the responsibilities of the body and its members on the Open Meetings Law by the Office of the Attorney General at no cost. The course must be taken by the individual within 90 days of taking the oath of office or assuming his or her responsibilities. Individuals holding office prior to January 1, 2010, must complete the training by January 1, 2011.

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

SOURCES OF INFORMATION

Department of Agriculture
Coordinating Board for Higher Education
Office of Administration

- Administrative Hearing Commission
- Division of Budget and Planning
- Information Technology Services Division

Office of State Courts Administrator
Department of Economic Development
Department of Elementary and Secondary Education
Department of Transportation
Department of Insurance, Financial Institutions, and Professional Registration
Department of Mental Health
Department of Natural Resources
Department of Corrections

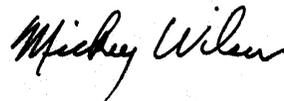
SOURCES OF INFORMATION (continued)

Department of Health and Senior Services
Department of Labor and Industrial Relations
Department of Revenue
Department of Social Services
Department of Public Safety
 – Missouri State Highway Patrol
 – Director’s Office
 – Missouri Gaming Commission
 – State Emergency Management Agency
 – Missouri Veterans Commission
 – Division of Alcohol and Tobacco Control
 – Capitol Police
 – Division of Fire Safety
Office of the Governor
Missouri Consolidated Health Care Plan
Department of Conservation
Missouri Ethics Commission
Missouri House of Representatives
Office of Prosecution Services
State Auditor’s Office
Office of the Secretary of State
Office of the State Public Defender
Office of the State Treasurer
Missouri Tax Commission
Parkway School District
Special School District of St. Louis County
Lincoln University
Linn State Technical College
Metropolitan Community College of Kansas City
Missouri Southern State University
Missouri State University
Missouri Western State University
Truman State University
City of Centralia
City of Kansas City
Cass County
St. Louis County

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NOT RESPONDING

Office of the Attorney General, Missouri Lottery, Missouri Lieutenant Governor, Missouri Senate, Various Missouri Public School Districts, Various Missouri Public Colleges and Universities, Various Missouri Cities, and Various Missouri Counties

A handwritten signature in black ink that reads "Mickey Wilson". The signature is written in a cursive, flowing style.

Mickey Wilson, CPA
Director
February 19, 2010