

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 5634-02  
Bill No.: SB 764  
Subject: State Attorney General; Public Records; Public Meetings  
Type: Original  
Date: April 16, 2012

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Bill Summary: This proposal modifies provisions regarding the Sunshine Law.

**FISCAL SUMMARY**

| <b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>       |   |   |   |
|---|---|---|---|
| FUND AFFECTED   | FY 2013                                   | FY 2014                                   | FY 2015                                   |
| General Revenue   | (Unknown - could exceed \$100,000)        | (Unknown - could exceed \$100,000)        | (Unknown - could exceed \$100,000)        |
| <b>Total Estimated Net Effect on General Revenue Fund</b> | <b>(Unknown - could exceed \$100,000)</b> | <b>(Unknown - could exceed \$100,000)</b> | <b>(Unknown - could exceed \$100,000)</b> |

| <b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>              |            |            |            |
|---|------------|------------|------------|
| FUND AFFECTED   | FY 2013    | FY 2014    | FY 2015    |
|   |            |            |            |
|   |            |            |            |
| <b>Total Estimated Net Effect on <u>Other</u> State Funds</b> | <b>\$0</b> | <b>\$0</b> | <b>\$0</b> |

Numbers within parentheses: ( ) indicate costs or losses.  
This fiscal note contains 17 pages.

| <b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>                  |                |                |                |
|---|----------------|----------------|----------------|
| <b>FUND AFFECTED</b>  | <b>FY 2013</b> | <b>FY 2014</b> | <b>FY 2015</b> |
|   |                |                |                |
|   |                |                |                |
| <b>Total Estimated Net Effect on <u>All</u> Federal Funds</b> | <b>\$0</b>     | <b>\$0</b>     | <b>\$0</b>     |

| <b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b> |                |                |                |
|---|----------------|----------------|----------------|
| <b>FUND AFFECTED</b>                                      | <b>FY 2013</b> | <b>FY 2014</b> | <b>FY 2015</b> |
|   |                |                |                |
|   |                |                |                |
| <b>Total Estimated Net Effect on FTE</b>                  | <b>0</b>       | <b>0</b>       | <b>0</b>       |

- 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).

| <b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b> |                  |                  |                  |
|--|------------------|------------------|------------------|
| <b>FUND AFFECTED</b>                       | <b>FY 2013</b>   | <b>FY 2014</b>   | <b>FY 2015</b>   |
| <b>Local Government</b>                    | <b>(Unknown)</b> | <b>(Unknown)</b> | <b>(Unknown)</b> |

## FISCAL ANALYSIS

### ASSUMPTION

Officials from the **Department of Mental Health (DMH)** state they conduct meetings and make records and other information made available to the public within compliance of the provision of the Missouri Sunshine Law. Some changes included in the proposal would cause the cost of data equipment and mobile communication devices to increase. These costs may be substantial and would be incurred by the Office of Administration. Other provisions in this bill may require the public governmental bodies to make payments of civil penalties for unknowing violations in Section 610.027, require the absorption of reviewing costs in Section 610.026, and incur legal costs in situations which raise a question on the legality of closing a meeting or vote in Section 610.027. The fiscal impact to the Department of Mental Health is an unknown cost.

Officials from the **Department of Health and Senior Services** state the proposed legislation would result in an unknown negative impact to their department.

Officials from the **Department of Public Safety - Missouri Highway Patrol** state the Information Communications Technology Division states that if the Patrol is 100% compliant with SB 764, storage and backup expansion will be required. Because the Patrol has no knowledge of how much additional email will be received or sent, it estimates this cost to be \$50,000.

Officials from the **Department of Social Services (DOS)** state the proposal would have a tremendous impact upon their Division of Legal Services and the department in that it would dramatically alter the department's current policies and procedures for processing requests for documents/information under the Sunshine Law.

First, the proposed amendment to §610.024 RSMo, which would specify that public governmental bodies must segregate information not subject to disclosure (e.g., remove or redact) from that information which is subject to disclosure at their own expense, will be tremendously expensive to the department. Most of the records maintained by the department pertain to social services programs such as financial assistance, medical assistance, and child welfare programs. These records necessarily routinely mix information subject to public disclosure, such as revenue expenditures, with highly sensitive information pertaining to individual clients concerning their health conditions, financial status, etc. Most, if not all, of this personal information is protected by state and/or federal law - many of which carry civil and criminal penalties for those who violate them. Therefore, every records request processed by the department must be carefully scrutinized to ensure only information subject to disclosure is being released. Depending upon the magnitude of the request, this task can, and often does, take

ASSUMPTION (continued)

several hours, if not days, to complete. If the department were required to do this task at its own expense, it would amount to the department essentially forfeiting the salaries of the employees involved in this task until such time as it is complete. Moreover, an additional consequence to this amendment would be to disincentivize those making document requests from tailoring their request by making their request less expensive. Experience has shown that those making requests under the Sunshine Law typically phrase their request as "any and all records pertaining to..." Currently, the department provides the requester with an estimate of the expense associated with processing their request and many, once they see the expense associated with their request, reconsider their request and submit a subsequent request which is much more focused on the information that they are truly seeking. This amendment would strip the department of that ability and would force it to simply fulfill the request and absorb the costs associated with doing so. Experience has also shown that many of the Sunshine Requests received by the department, if not tailored, will amount to hundreds, thousands or, on occasion, hundreds of thousands of dollars in expenses to fulfill. Considering the department regularly receives around 100 Sunshine Requests per year, the expenses associated with this proposed amendment would add up quickly. The same comments would also apply to the proposed amendment to §610.026 RSMo, which would provide that public governmental bodies may no longer charge those who request documents/information the reasonable costs associated with reviewing the records to determine whether such records are closed or open records or whether portions of such records are exempt from disclosure and subject to separation.

The proposed amendment to §610.025 RSMo, clarifying that the requirement that any member of a public governmental body who transmits any message relating to public business by electronic means shall also concurrently transmit that message to either the member's public office computer or the custodian of records in the same format also includes communications by a mobile communication device, is also problematic for the department. Generally speaking, the proposed bill will make complying with Sunshine Requests considerably more arduous and costly in that nearly all Sunshine Requests that we receive are phrased to request "any and all records" pertaining to their area of interest. Therefore, the proposed amendment will be invoked on almost every Sunshine Request that we receive. The proposed change will create a significant expansion of the documents and meetings which would be open to the public. Further, this section is amended to define the term "mobile communication device" to include, but not to be limited to, any cellular phone or other mobile electronic device able to send email or other electronic data transmission (emphasis added). Insofar as this amendment would seemingly apply to the use of a private cellular phone or other mobile device, it may cause the department to be in violation of state and/or federal privacy laws.

ASSUMPTION (continued)

Finally, the proposed amendment to §610.027.3 RSMo, the provision of the Sunshine Law which establishes the remedies against public governmental bodies for violations of the Sunshine Law would be very problematic to the department. As noted above, this provision would be amended to provide that, upon a finding by a preponderance of the evidence that a public governmental body or a member of a public governmental body has violated the Sunshine Law, the public governmental body or the member (e.g., the employee(s)) shall be subject to a civil penalty in an amount of one hundred dollars. This provision has been amended to no longer require that the violation be "knowingly." Thus, in other words, this provision would become one of strict liability - if you violate it, you will be fined regardless of your intent or knowledge in doing so. Further, this provision would also be amended to require the court, upon finding that a public governmental body has violated the Sunshine Law, to order the public governmental body or the individual employee to pay all costs and reasonable attorney fees to any party successfully establishing a violation. Again, this provision has been amended to no longer require that the violation be "knowingly," thus making it one of strict liability. Finally, this provision would be amended to eliminate the requirement that the court determine the amount of the penalty by taking into account the size of the jurisdiction, the seriousness of the offense, and whether the public governmental body or member of a public governmental body has violated the Sunshine Law previously. Again, this change simply reinforces the new strict liability nature of the amendment. These changes are problematic in that they leave no room for reasonable differences in interpretation of state and federal confidentiality laws which oftentimes seemingly contradict one another or leave many issues subject to individual interpretation. Under these changes, if a judge disagrees with the department's interpretation of an applicable law, no matter how reasonable it may be, the department and/or possibly the employee will be fined and required to pay the opposing side's litigation costs. Litigation cost can, and considering the average attorney in the State of Missouri charges approximately \$150.00 to \$250.00 per hour, often do amount to thousands of dollars. Aside from obviously encouraging parties to take the department to court over any dispute under the Sunshine Law, these changes also place the department and/or the employee in the untenable position of choosing whether to possibly violate applicable confidentiality laws, or the Sunshine Law. Considering most state and federal confidentiality law carry with them civil and criminal penalties for those who violate them, these changes to the Sunshine Law make either choice unattractive.

In summary, the Division of Legal Services for DOS expects an unknown negative fiscal impact greater than \$100,000 as a result of the proposal.

ASSUMPTION (continued)

Officials from the **Office of Administration (COA)** state;

- Section 610.020 requiring that concurrent notice of public meetings be routinely given to any member of the public would have a minimal negative fiscal impact - additional staff time for record-keeping and mailing of notices.
- Section 610.020 also provides that no action or discussion shall be undertaken on any item not appearing on the posted agenda. The prohibition on any discussion of any topic not on the tentative agenda could require scheduling additional meetings to discuss and dispose of matters that arise logically and routinely during the course of a meeting. This could result in additional travel costs and reimbursement for expenses.
- Section 610.023 encourages public bodies to create indexes of public records. A useable index of OA's public records could require significant expenditures of staff time and resources.
- Section 610.026 excludes reviewing the records to determine whether such records are closed or open records or whether portions of such records are exempt from disclosure from reimbursable research costs. In recent years, records requests have often required the review of large volumes of electronic data for both relevance to the request, and open vs. closed material. This provision would reduce the amount deposited to general revenue for research costs.

In summary, the Office of Administration assumes a negative unknown impact from the proposal.

Officials from the **Department of Labor and Industrial Relations (DOLIR)** state this bill allows a public body to close records because of "legal actions, causes of action or litigation." DOLIR frequently uses 610.021(1) to close records of ongoing investigations. The proposed change to allow the closure only where there is actual litigation, an actual lawsuit has been filed but not served or there is actual correspondence from a party stating that litigation shall be filed under certain circumstances would pose an administrative problem and result in an unknown fiscal impact.

Effective January 1, 2013, any new data-processing programs must "allow for copying data in a format that is easily accessed and manipulated by programs commonly available to the public." This will cause administrative problems and result in an unknown fiscal impact.

ASSUMPTION (continued)

610.026.1(1) restricts "research time," which DOLIR can charge for, to only include "time reasonably spent in locating the subject records for purposes of responding to the request." It cannot include "time spent in reviewing the records to determine whether such records are closed or open records or whether portions of such records are exempt from disclosure and subject to separation." This will result in an unknown fiscal impact to the Department.

Section 610.027.3 removes the requirement that the violation be "knowing" before there can be a penalty, but reduces the penalty to a maximum of \$100 (rather than \$1,000). This could have a fiscal impact on the Department.

Section 610.027.6 removes the option of seeking the opinion of the Attorney General or the governmental body's attorney about whether a document or meeting can be closed. Rather, the public body has to get a declaratory judgment from the circuit court, at its expense. This would result in a processing delay and result in an unknown impact.

In summary, DOLIR assumes a negative impact to their agency, of under \$100,000.

Officials from the **Department of Revenue (DOR)** state the proposed legislation has the potential to significantly increase the volume of sunshine requests that DOR would receive. In order to ensure sunshine requests can be reviewed by qualified personnel, an additional FTE legal counsel and one (1) FTE senior office support assistant (SOSA) would be required in Legal.

DOR's Division of Motor Vehicle and Driver Licensing assumes the impact of this proposal can be handled using existing resources. If the volume of becomes unmanageable, additional FTE will be required and will be requested through the appropriation process.

Officials from the **Department of Elementary and Secondary Education (DESE)** state the requirement (in Section 610.026) that "research time shall include only the time reasonably spent in locating the subject records for purposes of responding to the request, and in no event shall it include time spent in reviewing the records to determine whether such records are closed or open records or whether portions of such records are exempt from disclosure and subject to separation..." leaves the department with no means to recoup costs incurred. A voluminous record request could result in significant costs for the department.

Section 610.027 would make all violations subject to a penalty, not just the "knowing" ones. There is no anticipated state cost to the foundation formula associated with this section. To the extent fine revenues exceed 2004-2005 collections, any increase in this money distributed to school districts increases the deduction in the foundation formula the following year. Therefore

ASSUMPTION (continued)

the affected districts will see an equal decrease in the amount of funding received through the formula the following year; unless the affected districts are hold-harmless, in which case the districts will not see a decrease in the amount of funding received through the formula (any increase in fine money distributed to the hold-harmless districts will simply be additional money). An increase in the deduction (all other factors remaining constant) reduces the cost to the state of funding the formula.

Section 610.029's requirement that a public governmental body maintaining "its records in an electronic format shall make information available in a format easily accessed and managed by programs commonly available to the public" could require additional programming costs for the department. Those costs cannot be determined at this time.

In summary, DESE assumes an unknown amount of cost to their agency from the proposed legislation.

Officials from the **Department of Natural Resources** state the provisions of this proposal could have a fiscal impact to their department. Due to many unknown variables, the amount of the fiscal impact cannot be determined at this time.

Officials from the **Department of Corrections (DOC)** state this bill will have a significant legal impact on the department, as described below:

§610.010(4)(f): Expands the definition of "quasi-public governmental body" to include entities that act "on behalf of public governmental bodies and is funded wholly or partially by funds from state or local public governmental bodies." This modification could reach the DOC's medical services provider, Corizon, and/or other entities with which DOC contracts.

§610.010(6): Expands the definition of "public record" to include "any lease, sublease, rental agreement, or similar instrument entered into by any public governmental body (PGB) ..." This could open records maintained by DOC that are otherwise closed.

§610.020.1: Requires the DOC to make available copies of any notice of public meeting to members of the public, in addition to representative of the media; also strictly limits public meetings to those items on the posted agenda and responses to statements/questions made by members of the public in attendance. Subsection 2 increases the notice time from 24 hours to 48 hours (except for the general assembly). These changes may result in additional employee time/materials.

ASSUMPTION (continued)

§610.023.1: “Encourages” PGB custodians to maintain an index of all public records the PGB has; also provides that effective 1/1/2013, all PGBs acquiring new data-processing programs ensure that the programs allow for copying data in a format used by the public. This may affect DOC purchasing processes.

§610.024.1: Provides that a PGB must, at its expense, separate exempt records from non-exempt records. This will put a substantial burden on agencies, as oftentimes the review of what is closed/open is the bulk of the project.

§610.025: Specifies that messages transmitted by use of a “mobile communication device” are subject to the Sunshine Law. Depending on whether the DOC already considers such messages subject to the Sunshine Law based on the current language, this could exponentially expand the number of records subject to the law.

§610.026.1(1) and (2): Again states that the fees charged in responding to a Sunshine Law request may not include time spent in reviewing records to determine which are closed/open or exempt/non-exempt. This will put a substantial burden on agencies, as oftentimes the review of what is closed/open is the bulk of the project.

Subsection 2 creates a presumption in Sunshine Law compliance actions that all meetings, records, or votes, are open and places the burden on the PGB to prove that the meeting, record or vote may be closed. Current law requires the complainant to first demonstrate that the PGB has held a closed meeting, and then the burden of persuasion rests on the PGB to show compliance with the Sunshine Law. This modification completely relieves the complainant of making any initial showing, and rests the burden completely on the PGB.

Subsection 3 removes any culpability on the part of the PGB in a Sunshine Law violation. If it is shown by a preponderance of the evidence that a PGB or a member thereof has violated the law, the PGB/member is subject to a penalty of up to \$100. The required finding that the violation be “knowing” is removed, and the civil penalty is reduced from up to \$1,000 to \$100. Also removes the court’s discretion to compute and to order the civil penalty be paid.

Subsection 6 removes the PGB’s option to obtain an attorney general’s opinion or an opinion of its own attorney to clarify an issue of law. Per the changes, the only avenue available to the PGB is to bring suit at its expense.

In summary, fiscal impact is "Unknown" for the DOC per each year.

ASSUMPTION (continued)

Officials from the **Office of Administration - Budget and Planning** state the proposal could impact their division to the extent future sunshine requests will require use of division resources that can no longer be assessed to the requestor.

Officials from the **Missouri Gaming Commission** state the fiscal impact of this legislation is unknown. Although rare, the Missouri Gaming Commission has charged an entity or person for actual cost of search and record retrieval to include the effort involved in reviewing records for the purpose of determining what is and is not permissible to be made public. This legislation would eliminate the ability for MGC to charge the cost associated with redacting or removing certain materials from the eventual Sunshine Request response. Depending on the type of request and the voluminous materials involved this change in the law could be substantial

Officials from the **Missouri Department of Conservation** state the proposal would have an unknown (but less than \$100,000) negative fiscal impact on their agency annually. However, the amount may depend upon the determination of the new “commonly” used formats.

Officials from the **Department of Economic Development - General Counsel’s Office** assume the proposal would cost less than \$100,000 annually.

Officials from the **Missouri Housing Development Commission** assume an unknown impact.

Officials from the **Department of Insurance, Financial Institutions and Professional Registration (DIFP)** state the bill requires data collected by public governmental agencies be provided to the public in a manner that is easily accessed and manipulated by programs commonly available to public. In most cases this should not increase cost to this department; however, should requests for an uncommon program be requested, there could be additional cost to the department. Any additional cost not covered by current appropriations would be requested through the budget process.

DIFP believes it can absorb the additional workload that would result from creating and maintaining a simple index of department public records, e.g. by subject, within existing appropriations. However, should the workload be more than anticipated or should the index be required to be very detailed, DIFP would request additional appropriation and/or FTE through the budget process to cover the additional cost.

ASSUMPTION (continued)

Officials from the **Office of the Secretary of State, Department of Higher Education, Missouri Ethics Commission, State Tax Commission, Office of the State Courts Administrator, Department of Public Safety (Missouri National Guard, Capitol Police, Missouri Veterans Commission, Division of Alcohol and Tobacco Control, State Emergency Management Agency, and the Division of Fire Safety), Office of the State Public Defender, Office of the Governor, Missouri Consolidated Health Care Plan, Missouri House of Representatives, Administrative Hearing Commission, Missouri Lottery Commission, MPERS, Office of the State Auditor, Office of the State Treasurer, Joint Committee on Public Employee Retirement, Joint Committee on Administrative Rules, and the Missouri Senate** each assume the proposal would not fiscally impact their respective agencies.

Officials from the **City of Columbia** state the proposal would have the following fiscal impact:

Add staff time:

- Section 610.020.7 - minutes shall reflect a summary of discussion - amount of time depends on the specific public body, subject matter, duration of the meeting, length to transcribe and summarize - this work may be performed by a higher-level administrative assistant or professional staff member - City of Columbia employees provide staff support to 61 Council-appointed boards and commissions;
- Section 610.100.1(4) - incident reports will have to include home addresses of victims which, in certain cases, must be redacted before releasing to public

Limits recovery of costs to fulfill public records requests:

- Sections 610.024.1; 610.026.1 - cannot recover cost of separating closed from open records - this is less of a problem if the requestor specifies the information needed, and more of a problem when the request is extremely broad, such as, "all records held by [some official] over the last three years." This type of search includes both electronic and hard copy records and may take days. Assume we could not recover cost of time to redact victim address information.

Could add time and costs:

- Section 610.027.6 - repeals ability to clear up doubt about closed records/meetings/votes through opinions from AG or governmental body's attorney and forces the body to seek court action

ASSUMPTION (continued)

Potential for significant cost - more clarity needed:

- Section 610.023.1 - encouraged to create an index of all public records - while not a strict mandate, and while it could be helpful, indexing all of the City's records (likely numbering in the millions, including those that must be permanently retained) will require considerable work over time. The City has approximately 20 records custodians managing this resource. We have records inventories for the classes of records identified by the Secretary of State, but an index of each record is a vast assignment requiring staff time and technology.
- Sections 610.023.3 and 610.029.1 - formats "easily accessed and managed by programs commonly available to the public" - this gets at the heart of how organizations manage their business data and records - if the intent is to require that all public entities manage their data using one or several selected format options, this could limit their choice of software product vendors and possibly require hours of staff time to convert non-compliant data to new systems. Those involved with decisions and implementation for the City of Columbia would include high-level administrators; purchasing agents; IT programmers and system support staff; records custodians; and other professional and administrative staff who use and manage data on a daily basis.

Officials from the **City of Kirksville** state doubling the amount of time of a notice prior to a meeting places a large imposition on the City Clerk and others who are responsible for posting notices. We prepare the agendas on a Friday prior to a Monday Council meeting, and posting the notice during that preparation time works. Moving to 48 hours, the day before the agenda preparation, will require a separate notice.

Officials from the **Mexico School District** state they cannot determine the fiscal impact from the proposal at this time.

Officials from **Missouri Western State University** state there would be a small increase in their expenses. Also, there may be increased cost to acquire software necessary to comply with the new provision.

Officials from **Linn State Technical College, Metropolitan Community College, University of Central Missouri, Northwest Missouri State University, Missouri State University, Missouri Southern State University, and St. Louis County** each assume the proposal would not fiscally impact their respective agencies.

ASSUMPTION (continued)

Officials from the **Attorney General’s Office, Department of Agriculture, and Department of Transportation** did not respond to our request for fiscal impact.

With the numerous ‘unknown negative fiscal impact’ responses, **Oversight** will assume the proposal will result in both additional costs and reduced income to various state agencies and local political subdivisions. Oversight assumes this fiscal impact could touch various state funds. For simplicity, Oversight will reflect the fiscal impact to the state in the General Revenue Fund.

| <u>FISCAL IMPACT - State Government</u>                        | FY 2013<br>(10 Mo.)                              | FY 2014  | FY 2015  |
|--|--|--|--|
| <b>GENERAL REVENUE</b>   |  |  |  |
| <u>Cost</u> - to various state agencies                        |  |  |  |
| To comply with various parts of the proposal                   | (Unknown)  | (Unknown)  | (Unknown)  |
| <u>Loss</u> - to various state agencies                        |  |  |  |
| of recoverable fees from producing documents (Section 610.026) | <u>(Unknown)</u>                                 | <u>(Unknown)</u>                                 | <u>(Unknown)</u>                                 |
| <b>ESTIMATED NET EFFECT TO THE GENERAL REVENUE FUND</b>        | <b>(Unknown - could exceed <u>\$100,000</u>)</b> | <b>(Unknown - could exceed <u>\$100,000</u>)</b> | <b>(Unknown - could exceed <u>\$100,000</u>)</b> |

| <u>FISCAL IMPACT - Local Government</u>                        | FY 2013<br>(10 Mo.)     | FY 2014                 | FY 2015                 |
|--|-------------------------|-------------------------|-------------------------|
| <b>LOCAL POLITICAL SUBDIVISIONS</b>                            |                         |                         |                         |
| <u>Cost</u> - to various local political subdivisions:         |                         |                         |                         |
| To comply with various parts of the proposal                   | (Unknown)               | (Unknown)               | (Unknown)               |
| <br><u>Loss</u> - to various local political subdivisions      |                         |                         |                         |
| of recoverable fees from producing documents (Section 610.026) | (Unknown)               | (Unknown)               | (Unknown)               |
| <b>ESTIMATED NET EFFECT TO LOCAL POLITICAL SUBDIVISIONS</b>    | <b><u>(Unknown)</u></b> | <b><u>(Unknown)</u></b> | <b><u>(Unknown)</u></b> |

FISCAL IMPACT - Small Business

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

FISCAL DESCRIPTION

This proposal modifies provisions relating to Missouri's open records law, commonly known as the Sunshine Law.

The definition of a "public body" is modified to include quasi-public governmental bodies that act on behalf of a public body and are funded wholly or in part by a public body, as well as any Missouri high school athletic association that receives public funds. The definition of a "public record" is modified to include any lease, sublease, or similar rental instrument entered into by a public body, or any other agreement for the rental, construction, or renovation of a facility.

Currently, public bodies must provide notice of meetings to members of the news media who request such notices. This act requires the public body to also provide notice to any member of the public who requests it. The act provides that the public body cannot act on or discuss any item not appearing on the agenda, except for brief responses to the question from the public present at the meeting. Currently, a public body must provide 24 hours notice of a meeting. This

FISCAL DESCRIPTION (continued)

act changes the time to 48 hours, with the exception of the General Assembly which must continue to provide 24 hours notice. Minutes of meetings must reflect the closed meeting discussions, but shall not require the disclosure of properly closed records.

The act modifies provisions regarding bases for closing a meeting or record. Public disclosure in an open meeting is required for certain legal matters upon final disposition. Such disclosure shall be done orally or in writing and must occur at the next scheduled open meeting of the body, or at the resumption of a recessed open meeting. When a body closes a meeting or record relating to a "cause of action", the body must have received evidence that a lawsuit has been filed or shall have correspondence indicating a lawsuit shall be filed. Certain individually identifiable personnel records may currently be closed. The act exempts from this closure any records of former employment for employees of public schools and charter schools. Certain bases for closure relating to operational guidelines and security systems are set to expire on December 31, 2012. This act extends the sunset to December 31, 2016.

If a public body closes a meeting, only members of the body, their attorney and staff assistants, as well as any person necessary to provide information, shall be permitted in the meeting.

The custodian of records for a public body is encouraged to create and maintain an index of all public records maintained by the body. If records are requested in a particular format, the public body shall provide the records in such format, if the record is readily reproducible in that format. Effective January 1, 2013, all public bodies acquiring new data processing programs shall ensure that such programs allow for copying of data in an easily accessible format. If a public body is required to separate exempt and non-exempt material, it shall do so at the body's expense.

Currently, a member of public body that transmits any public business message by electronic means must transmit the message to the custodian of records. This act provides that a mobile communication device is considered an electronic means.

Currently, a public body can charge for research time in response to a request for records. This act provides that research time shall only include the time reasonably spent in locating the subject records, but shall not include time spent in reviewing the records to determine if the records are open or closed.

In actions against a public body for violations of the Sunshine Law, current law requires the person bringing the action to demonstrate that the body is subject to the Sunshine Law and held a closed meeting. Then the burden is on the body to demonstrate compliance with the Law. This act removes this language and provides that there is a presumption that a meeting, record, or vote

FISCAL DESCRIPTION (continued)

is open to the public. The burden is on the body to prove that such meeting, record, or vote may be closed. Currently, a knowing violation of the Sunshine Law subjects the body or member to a civil penalty of up to \$1,000. This act removes the "knowing" element and lessens the fine to \$100. For such violations, the court shall, rather than may, order the payment of costs and attorneys fees to the party establishing the violation. Also, this act removes the ability of a public body to seek the formal opinion of the Attorney General or an attorney for the public body when it is in doubt about the legality of closing a meeting.

The act modifies the definition of an "incident report" to provide that the report must include the home address of the victim. Such address may be redacted in certain crimes involving domestic violence, forcible rape, sexual assault or stalking. Any member of the media operating within the state of Missouri shall, upon request, obtain a complete unaltered and unedited incident report, with the exception of the home addresses of certain victims described in this paragraph. In actions seeking disclosure of an investigative report of a law enforcement agency, the court shall, rather than may, award costs and attorneys fees if it finds the decision of the law enforcement agency not to open the report was substantially unjustified.

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 Mental Health  
Department of Health and Senior Services  
Department of Public Safety  
Department of Social Services  
Office of Administration  
Department of Labor and Industrial Relations  
Department of Revenue  
Department of Elementary and Secondary Education  
Department of Natural Resources  
Department of Corrections  
Missouri Gaming Commission  
Missouri Department of Conservation  
Department of Economic Development  
Department of Insurance, Financial Institutions and Professional Registration  
Office of the Secretary of State  
Department of Higher Education

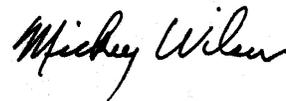
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SOURCES OF INFORMATION (continued)

Missouri Ethics Commission  
State Tax Commission  
Office of the State Courts Administrator  
Office of the State Public Defender  
Office of the Governor  
Missouri Consolidated Health Care Plan  
Missouri House of Representatives  
Administrative Hearing Commission  
Office of the State Auditor  
Office of the State Treasurer  
Joint Committee on Administrative Rules  
City of Columbia  
City of Kirksville  
Mexico School District  
Missouri Western State University  
Linn State Technical College  
Metropolitan Community College  
University of Central Missouri  
Northwest Missouri State University  
Missouri State University  
Missouri Southern State University  
St. Louis County

**Not Responding:**

Attorney General's Office  
Department of Agriculture  
Department of Transportation



Mickey Wilson, CPA  
Director  
April 16, 2012