

SECOND REGULAR SESSION

HOUSE BILL NO. 2177

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES HARRIS (23) (Sponsor), ROORDA,
PAGE AND DARROUGH (Co-sponsors).

Read 1st time February 18, 2008 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

4415L.02I

AN ACT

To repeal sections 23.140, 610.025, and 610.027, RSMo, and to enact in lieu thereof three new sections relating to the Missouri sunshine law.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 23.140, 610.025, and 610.027, RSMo, are repealed and three new
2 sections enacted in lieu thereof, to be known as sections 23.140, 610.025, and 610.027, to read
3 as follows:

23.140. 1. Legislation, with the exception of appropriation bills, introduced into either
2 house of the general assembly shall, before being acted upon, be submitted to the oversight
3 division of the committee on legislative research for the preparation of a fiscal note. The staff
4 of the oversight division shall prepare a fiscal note, examining the items contained in subsection
5 2 and such additional items as may be provided either by joint rule of the house and senate or by
6 resolution adopted by the committee or the oversight subcommittee.

7 2. The fiscal note shall state:

8 (1) The cost of the proposed legislation to the state for the next two fiscal years;

9 (2) Whether or not the proposed legislation will establish a program or agency that will
10 duplicate an existing program or agency;

11 (3) Whether or not there is a federal mandate for the program or agency;

12 (4) Whether or not the proposed program or agency will have significant direct fiscal
13 impact upon any political subdivision of the state;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

- 14 (5) Whether or not any new physical facilities will be required; [and]
15 (6) Whether or not the proposed legislation will have an economic impact on small
16 businesses. For the purpose of this subdivision "small business" means a corporation,
17 partnership, sole proprietorship or other business entity, including its affiliates, that:
18 (a) Is independently owned and operated; and
19 (b) Employs fifty or fewer full-time employees; **and**
20 **(7) Whether or not the proposed legislation will impact the open government**
21 **provisions provided in chapter 610, RSMo.**

22 3. The fiscal note for a bill shall accompany the bill throughout its course of passage.
23 No member of the general assembly, lobbyist or persons other than oversight division staff
24 members shall participate in the preparation of any fiscal note unless the communication is in
25 writing, with a duplicate to be filed with the fiscal note or unless requested for information by
26 the fiscal analyst preparing the note. Violations of this provision shall be reported to the
27 chairman of the legislative research committee and subject the fiscal note and proposed bill to
28 subcommittee review. Once a fiscal note has been signed and approved by the director of the
29 oversight division, the note shall not be changed or revised without prior approval of the
30 chairman of the legislative research committee, except to reflect changes made in the bill it
31 accompanies, or to correct patent typographical, clerical or drafting errors that do not involve
32 changes of substance, nor shall substitution be made therefor. Appeals to revise, change or to
33 substitute a fiscal note shall be made in writing by a member of the general assembly to the
34 chairman of the legislative research committee and a hearing before the committee or
35 subcommittee shall be granted as soon as possible. Any member of the general assembly, upon
36 presentation of new or additional material, may, within three legislative days after the hearing
37 on the request to revise, change or substitute a fiscal note, request one rehearing before the full
38 committee to further consider the requested change. The subcommittee, if satisfied that new or
39 additional material has been presented, may recommend such rehearing to the full committee,
40 and the rehearing shall be held as soon as possible thereafter.

41 4. The director of the division, hereinafter provided for, or the director's designees, shall
42 seek information and advice from the affected department, division or agency of state
43 government and shall call upon the research staffs of the house of representatives and of the
44 senate, and upon the staffs of the house and senate appropriations committees for assistance in
45 carrying out fiscal notes and auditing functions and duties, during the interim, and each staff
46 shall supply such information or advice as it may possess in response to the inquiry. The state
47 auditor shall, upon request, cooperate and provide assistance in the conduct of audits and the
48 preparation of reports made in connection therewith.

610.025. 1. 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. The provisions of this section shall only apply to messages sent to two or more members of that body so that, when counting the sender, a majority of the body's members are copied. Any such message received by the custodian or at the member's office computer shall be a public record subject to the exceptions of section 610.021.

2. **Any public employee sending or receiving electronic mail (e-mail), including any e-mail sent or received from a mobile communication device, concerning public business shall forward such e-mail to the custodian of the public government body. As used in this subsection, "public employee" means the state of Missouri, or any officer, agency, department, bureau, division, board or commission of the state, or any other political subdivision of or within the state. As used in this subsection, "mobile communication device" includes, but is not limited to any cellular phone, palm pilot, blackberry, or other mobile electronic device able to send e-mail.**

610.027. 1. The remedies provided by this section against public governmental bodies shall be in addition to those provided by any other provision of law. Any aggrieved person, taxpayer to, or citizen of, this state, or the attorney general or prosecuting attorney, may seek judicial enforcement of the requirements of sections 610.010 to 610.026. Suits to enforce sections 610.010 to 610.026 shall be brought in the circuit court for the county in which the public governmental body has its principal place of business. Upon service of a summons, petition, complaint, counterclaim, or cross-claim in a civil action brought to enforce the provisions of sections 610.010 to 610.026, the custodian of the public record that is the subject matter of such civil action shall not transfer custody, alter, destroy, or otherwise dispose of the public record sought to be inspected and examined, notwithstanding the applicability of an exemption pursuant to section 610.021 or the assertion that the requested record is not a public record until the court directs otherwise.

2. [Once a party seeking judicial enforcement of sections 610.010 to 610.026 demonstrates to the court that the body in question is subject to the requirements of sections 610.010 to 610.026 and has held a closed meeting, record or vote, the burden of persuasion shall be on the body and its members to demonstrate compliance with the requirements of sections 610.010 to 610.026.] **In any legal proceeding there shall be a presumption that a document is open to the public. The attorney general shall determine that such public record document is subject to the provisions of sections 610.010 to 610.026.**

3. Upon a finding by a preponderance of the evidence that a public governmental body or a member of a public governmental body has knowingly, **purposely, negligently, or**

22 **recklessly** violated sections 610.010 to 610.026, the public governmental body or the member
23 shall be subject to a civil penalty in an amount up to [one] **five** thousand dollars. If the court
24 finds that there is a knowing, **purposeful, negligent, or reckless** violation of sections 610.010
25 to 610.026, the court may order the payment by such body or member of all costs and reasonable
26 attorney fees to any party successfully establishing a violation. The court shall determine the
27 amount of the penalty by taking into account the size of the jurisdiction, the seriousness of the
28 offense, [and] whether the public governmental body or member of a public governmental body
29 has violated sections 610.010 to 610.026 previously, **and whether the violation was a result**
30 **of knowing, purposeful, negligent, or reckless behavior.**

31 4. [Upon a finding by a preponderance of the evidence that a public governmental body
32 or a member of a public governmental body has purposely violated sections 610.010 to 610.026,
33 the public governmental body or the member shall be subject to a civil penalty in an amount up
34 to five thousand dollars. If the court finds that there was a purposeful violation of sections
35 610.010 to 610.026, then the court shall order the payment by such body or member of all costs
36 and reasonable attorney fees to any party successfully establishing such a violation. The court
37 shall determine the amount of the penalty by taking into account the size of the jurisdiction, the
38 seriousness of the offense, and whether the public governmental body or member of a public
39 governmental body has violated sections 610.010 to 610.026 previously.

40 5.] Upon a finding by a preponderance of the evidence that a public governmental body
41 has violated any provision of sections 610.010 to 610.026, a court shall void any action taken in
42 violation of sections 610.010 to 610.026, if the court finds under the facts of the particular case
43 that the public interest in the enforcement of the policy of sections 610.010 to 610.026 outweighs
44 the public interest in sustaining the validity of the action taken in the closed meeting, record or
45 vote. Suit for enforcement shall be brought within one year from which the violation is
46 ascertainable and in no event shall it be brought later than two years after the violation. This
47 subsection shall not apply to an action taken regarding the issuance of bonds or other evidence
48 of indebtedness of a public governmental body if a public hearing, election or public sale has
49 been held regarding the bonds or evidence of indebtedness.

50 [6.] 5. A public governmental body which is in doubt about the legality of closing a
51 particular meeting, record or vote may bring suit at the expense of that public governmental body
52 in the circuit court of the county of the public governmental body's principal place of business
53 to ascertain the propriety of any such action, or seek a formal opinion of the attorney general or
54 an attorney for the governmental body.

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