

House _____ Amendment NO. _____

Offered By _____

1 AMEND House Committee Substitute for Senate Bill No. 743, Page 1, Section A, Line 2, by
2 inserting after all of said section and line the following:

3 "109.210. As used in sections 109.200 to ~~[109.310]~~ 109.320 the following words and terms
4 have the meanings indicated, unless the context clearly requires otherwise:

5 (1) "Agency", any department, office, commission, board or other unit of state government
6 or any political or administrative subdivisions created for any purpose under the authorities of or by
7 the state of Missouri;

8 (2) "Boards", the local records board;

9 (3) "Commission", the state records commission;

10 (4) "Local record", any record not a state record;

11 (5) "Record", document, book, paper, photograph, map, sound recording or other material,
12 regardless of physical form or characteristics, made or received pursuant to law or in connection
13 with the transaction of official business. Library and museum material made or acquired and
14 preserved solely for reference or exhibition purposes, extra copies of documents preserved only for
15 convenience of reference, and stocks of publications and of processed documents are not included
16 within the definition of records as used in sections 109.200 to 109.310, and are hereinafter
17 designated as "nonrecord" materials;

18 (6) "Secretary", the secretary of state;

19 (7) "State record", any record designated or treated as a state record under state law.

20 109.320. 1. The remedies provided in this section against agencies shall be in addition to
21 those provided in any other provision of law. Any aggrieved person, the attorney general, or the
22 prosecuting attorney may seek judicial enforcement of the requirements of sections 109.260,
23 109.265, and 109.270. Suits to enforce such sections shall be brought in the circuit court for the
24 county in which the agency has its principal place of business. Upon service of a summons,
25 petition, complaint, counterclaim, or cross-claim in a civil action brought to enforce the provisions
26 of sections 109.260, 109.265, or 109.270, the custodian of any material that is the subject matter of
27 such civil action shall not transfer custody, alter, destroy, or otherwise dispose of the material,
28 notwithstanding the assertion that the material is not a record or that the material is closed or
29 confidential under any provision of law, until the court makes a ruling about the status of such
30 material.

31 2. If a party seeking judicial enforcement of sections 109.260, 109.265, or 109.270
32 demonstrates to the court that the agency in question is subject to the requirements of chapter 109
33 and has destroyed or failed to retain any material at issue, the burden of persuasion shall be on the
34 agency to demonstrate compliance with the requirements of chapter 109.

35 3. Upon a finding by a preponderance of the evidence that an agency or a member of an
36 agency has knowingly violated section 109.260, 109.265, or 109.270, the agency or the member

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1 shall be subject to a civil penalty in an amount not less than five hundred dollars but not more than
 2 ten thousand dollars. If the court finds that there is a knowing violation of section 109.260,
 3 109.265, or 109.270, the court shall order such agency or member to pay all costs and reasonable
 4 attorney's fees to any party successfully establishing a violation. The court shall determine the
 5 amount of the penalty by considering the size of the jurisdiction, the seriousness of the offense, and
 6 whether the agency or member has previously violated any provisions of chapter 109 or chapter
 7 610. Any person who knowingly violates section 109.260, 109.265, or 109.270 shall be guilty of a
 8 class B misdemeanor.

9 4. Upon a finding by a preponderance of the evidence that an agency or member of any
 10 agency has violated section 109.260, 109.265, or 109.270 but that such violation was not committed
 11 knowingly, the court may impose a civil penalty in an amount not more than one thousand dollars.
 12 The court may order such agency or member to pay all costs and reasonable attorney's fees to any
 13 party successfully establishing a violation. The court shall determine the amount of the penalty by
 14 considering the size of the jurisdiction, the seriousness of the offense, the degree of culpability and
 15 fault on the part of the agency or member, and whether the agency or member has previously
 16 violated any provisions of chapter 109 or chapter 610.

17 5. Any suit brought under this section shall be brought within one year after the violation is
 18 discovered.

19 6. The circuit courts of this state shall have jurisdiction and authority to issue injunctions to
 20 enforce the provisions of sections 109.260, 109.265, and 109.270.

21 7. An agency that is in doubt about destroying or disposing of material may seek a formal
 22 opinion from the attorney general. Any agency relying in good faith on such an opinion shall not be
 23 deemed to have violated subsections 3 and 4 of this section."; and

24
 25 Further amend said bill, Page 2, Section 163.018, Line 39, by inserting immediately after all of said
 26 section and line the following:

27
 28 "610.027. 1. The remedies provided by this section against public governmental bodies
 29 shall be in addition to those provided by any other provision of law. Any aggrieved person,
 30 taxpayer to, or citizen of, this state, or the attorney general or prosecuting attorney, may seek
 31 judicial enforcement of the requirements of sections 610.010 to 610.026. Suits to enforce sections
 32 610.010 to 610.026 shall be brought in the circuit court for the county in which the public
 33 governmental body has its principal place of business. Upon service of a summons, petition,
 34 complaint, counterclaim, or cross-claim in a civil action brought to enforce the provisions of
 35 sections 610.010 to 610.026, the custodian of the public record that is the subject matter of such
 36 civil action shall not transfer custody, alter, destroy, or otherwise dispose of the public record sought
 37 to be inspected and examined, notwithstanding the applicability of an exemption pursuant to section
 38 610.021 or the assertion that the requested record is not a public record until the court directs
 39 otherwise.

40 2. Once a party seeking judicial enforcement of sections 610.010 to 610.026 demonstrates
 41 to the court that the body in question is subject to the requirements of sections 610.010 to 610.026
 42 and has held a closed meeting, record or vote, the burden of persuasion shall be on the body and its
 43 members to demonstrate compliance with the requirements of sections 610.010 to 610.026.

44 3. Upon a finding by a preponderance of the evidence that a public governmental body or a
 45 member of a public governmental body has knowingly violated sections 610.010 to 610.026, the
 46 public governmental body or the member shall be subject to a civil penalty in an amount ~~[up to one~~
 47 ~~thousand dollars]~~ not less than five hundred dollars but not more than ten thousand dollars. If the
 48 court finds that there is a knowing violation of sections 610.010 to 610.026, the court ~~[may]~~ shall

1 order the payment by such body or member of all costs and reasonable attorney fees to any party
 2 successfully establishing a violation. The court shall determine the amount of the penalty by taking
 3 into account the size of the jurisdiction, the seriousness of the offense, and whether the public
 4 governmental body or member of a public governmental body has violated sections 610.010 to
 5 610.026 previously. A person who knowingly violates sections 610.010 to 610.026 commits a class
 6 B misdemeanor.

7 4. Upon a finding by a preponderance of the evidence that a public governmental body or a
 8 member of a public governmental body has ~~[purposely]~~ violated sections 610.010 to 610.026~~], the~~
 9 ~~public governmental body or the member shall be subject to a civil penalty in an amount up to five~~
 10 ~~thousand dollars. If the court finds that there was a purposeful violation of sections 610.010 to~~
 11 ~~610.026, then the court shall order the payment by such body or member of all costs and reasonable~~
 12 ~~attorney fees to any party successfully establishing such a violation. The court shall determine the~~
 13 ~~amount of the penalty by taking into account the size of the jurisdiction, the seriousness of the~~
 14 ~~offense, and whether the public governmental body or member of a public governmental body has~~
 15 ~~violated sections 610.010 to 610.026 previously]~~ but the violation was not committed knowingly,
 16 the court may impose a penalty of not more than one thousand dollars and may order the payment
 17 by such body or member of all costs and reasonable attorney's fees to any party successfully
 18 establishing a violation. The court shall determine the amount of the penalty by taking into account
 19 the size of the jurisdiction, the seriousness of the offense, the degree of culpability and fault on the
 20 part of the public governmental body or member, and whether the public governmental body or
 21 member has previously violated sections 610.010 to 610.026.

22 5. Upon a finding by a preponderance of the evidence that a public governmental body has
 23 violated any provision of sections 610.010 to 610.026, a court shall void any action taken in
 24 violation of sections 610.010 to 610.026, if the court finds under the facts of the particular case that
 25 the public interest in the enforcement of the policy of sections 610.010 to 610.026 outweighs the
 26 public interest in sustaining the validity of the action taken in the closed meeting, record or vote.
 27 Suit for enforcement shall be brought within one year from which the violation is ascertainable and
 28 in no event shall it be brought later than two years after the violation. This subsection shall not
 29 apply to an action taken regarding the issuance of bonds or other evidence of indebtedness of a
 30 public governmental body if a public hearing, election or public sale has been held regarding the
 31 bonds or evidence of indebtedness.

32 6. A public governmental body which is in doubt about the legality of closing a particular
 33 meeting, record or vote may bring suit at the expense of that public governmental body in the circuit
 34 court of the county of the public governmental body's principal place of business to ascertain the
 35 propriety of any such action, or seek a formal opinion of the attorney general or an attorney for the
 36 governmental body.

37 7. There is created within the office of the attorney general a transparency division. No
 38 assistant attorney general while assigned to the transparency division shall participate in the
 39 prosecution or defense of any civil claim on behalf of the state, any agency of the state, or any
 40 officer of the state, except the prosecution of an action alleging a violation of any provision of
 41 chapter 109 or chapter 610.

42 8. To the extent that any action brought by the attorney general or by an assistant attorney
 43 general in the transparency division creates an actual or potential conflict of interest under the
 44 Missouri rules of professional conduct 4-1.7 or 4-1.9, the state, all agencies or the state, and all
 45 officers of the state in their official capacity shall be deemed to have waived such actual or potential
 46 conflicts under such sections of the Missouri rules of professional conduct, provided that no
 47 attorney other than the attorney general and assistant attorneys general assigned to the transparency
 48 division shall participate in the prosecution of such action.

610.031. 1. If the attorney general concludes that any person may have engaged in any act, conduct, or practice that violates any provision of chapter 109 or chapter 610, the attorney general may serve a civil investigative demand on any person whom the attorney general believes may have information or evidence relevant to the suspected violation. A civil investigative demand issued under this section may seek any information and documents that could be obtained by means of a subpoena duces tecum issued by a court of this state. A civil investigative demand issued under this section may also require answers to written interrogatories that would be permitted by the Missouri supreme court rules.

2. A civil investigative demand issued under this section shall:

- (1) State the statute or statutes that the attorney general believes may have been violated;
- (2) Describe the class or classes of information and evidence to be produced with sufficient specificity so as to fairly indicate the material demanded;
- (3) Prescribe a return date by which the information and evidence is to be produced; and
- (4) Identify the members of the attorney general's staff to whom the information and evidence requested is to be produced.

3. Service of a civil investigative demand issued under this section may be made by:

- (1) Delivering a duly executed copy thereof to the person to be served, or to a partner or any officer or agent authorized by appointment or by law to receive service of process on behalf of such person;

- (2) Delivering a duly executed copy thereof to the principal place of business or the residence in this state of the person to be served;

- (3) Mailing by registered or certified mail a duly executed copy thereof addressed to the person to be served, at the person's principal place of business or residence in this state, or if such person has no place of business or residence in this state, to his or her principal office, place of business, or his or her residence; or

- (4) Mailing by registered or certified mail a duly executed copy thereof, requesting a return receipt signed by the addressee only, to the last known place of business, residence, or abode within or without this state of such person.

4. At any time prior to the return date specified in a civil investigative demand issued under this section or within twenty days after the civil investigative demand is served, whichever is earlier, the recipient of the civil investigative demand may file a petition in the circuit court of Cole County seeking to extend the return date for good cause or to quash or modify any portion of the civil investigative demand. A civil investigative demand issued under this section shall only be quashed or modified on the same basis as a subpoena duces tecum issued by a court of this state.

5. If any person fails to comply with any portion of a civil investigative demand served under this section, the attorney general may file a petition for an order to enforce the civil investigative demand. The attorney general may file such petition in the circuit court of Cole County or in any circuit court where such person has his or her principal place of business or residence. Any person who refuses to comply with an order enforcing a civil investigative demand shall be found in contempt.

6. Any person who, with the intent to avoid, evade, or prevent compliance with a civil investigative demand issued under this section, removes, conceals, withholds, destroys, alters, or falsifies any information or evidence responsive to a civil investigative demand served under this section commits a class A misdemeanor. The attorney general shall have concurrent jurisdiction to enforce the provisions of this subsection."; and

Further amend said bill by amending the title, enacting clause, and intersectional references accordingly.