

HOUSE AMENDMENT NO.\_\_\_\_  
TO  
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Offered By

AMEND House Amendment No.\_\_\_\_ to Senate Bill No. 757, Page 1, Line 4, by deleting said line and inserting in lieu thereof the following:

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

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

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

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

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

(5) "Record", document, book, paper, photograph, map, sound recording or other material, regardless of physical form or characteristics, made or received pursuant to law or in connection with the transaction of official business. Library and museum material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference, and stocks of publications and of processed documents are not included within the definition of records as used in sections 109.200 to [~~109.310~~] 109.320, and are hereinafter designated as "nonrecord" materials;

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

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

109.320. 1. The remedies provided in this section against agencies shall be in addition to those provided in any other provision of law. Any aggrieved person, the attorney general, or the prosecuting attorney may seek judicial enforcement of the requirements of section 109.260, 109.265, and 109.270. Suits to enforce such sections shall be brought in the circuit court for the county in which the agency 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 section 109.260, 109.265, or 109.270, the custodian of any material that is the subject matter of such civil action shall not transfer custody, alter, destroy, or otherwise dispose of the material, notwithstanding the assertion that the material is not a record or that the material is closed or confidential under any provision of law, until the court makes a ruling about the status of such material.

2. If a party seeking judicial enforcement of section 109.260, 109.265, or 109.270 demonstrates to the court that the agency in question is subject to the requirements of this chapter

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1 and has destroyed or failed to retain any material at issue, the burden of persuasion shall be on the  
 2 agency to demonstrate compliance with the requirements of this chapter.

3 3. Upon a finding by a preponderance of the evidence that an agency or a member of an  
 4 agency has knowingly violated section 109.260, 109.265, or 109.270, the agency or the member  
 5 shall be subject to a civil penalty in an amount not less than five hundred dollars but not more than  
 6 ten thousand dollars. If the court finds that there is a knowing violation of section 109.260,  
 7 109.265, or 109.270, the court shall order such agency or member to pay all costs and reasonable  
 8 attorney's fees to any party successfully establishing a violation. The court shall determine the  
 9 amount of the penalty by considering the size of the jurisdiction, the seriousness of the offense, and  
 10 whether the agency or member has previously violated any provisions of this chapter or chapter  
 11 610.

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

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

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

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

27 115.961. 1. The secretary of state shall establish by rule a program that will accept"; and  
 28

29 Further amend said amendment and page, Line 21, by inserting immediately after said line the  
 30 following:

31  
 32 "610.027. 1. The remedies provided by this section against public governmental bodies  
 33 shall be in addition to those provided by any other provision of law. Any aggrieved person,  
 34 taxpayer to, or citizen of, this state, or the attorney general or prosecuting attorney, may seek  
 35 judicial enforcement of the requirements of sections 610.010 to 610.026. Suits to enforce sections  
 36 610.010 to 610.026 shall be brought in the circuit court for the county in which the public  
 37 governmental body has its principal place of business. Upon service of a summons, petition,  
 38 complaint, counterclaim, or cross-claim in a civil action brought to enforce the provisions of  
 39 sections 610.010 to 610.026, the custodian of the public record that is the subject matter of such  
 40 civil action shall not transfer custody, alter, destroy, or otherwise dispose of the public record sought  
 41 to be inspected and examined, notwithstanding the applicability of an exemption pursuant to section  
 42 610.021 or the assertion that the requested record is not a public record until the court directs  
 43 otherwise.

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

48 3. Upon a finding by a preponderance of the evidence that a public governmental body or a

1 member of a public governmental body has knowingly violated sections 610.010 to 610.026, the  
 2 public governmental body or the member shall be subject to a civil penalty in an amount [~~up to one~~  
 3 ~~thousand dollars~~] not less than five hundred dollars but not more than ten thousand dollars. If the  
 4 court finds that there is a knowing violation of sections 610.010 to 610.026, the court may order the  
 5 payment by such body or member of all costs and reasonable attorney fees to any party successfully  
 6 establishing a violation. The court shall determine the amount of the penalty by taking into account  
 7 the size of the jurisdiction, the seriousness of the offense, and whether the public governmental  
 8 body or member of a public governmental body has violated sections 610.010 to 610.026  
 9 previously.

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

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

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

40 610.031. 1. If the attorney general concludes that any person may have engaged in any act,  
 41 conduct, or practice that violates any provision of chapter 109 or this chapter, the attorney general  
 42 may apply for an order issued by a judge of the circuit court of Cole County to serve a civil  
 43 investigative demand on any person who the attorney general believes may have information or  
 44 evidence relevant to the suspected violation. A judge shall issue the order to serve the civil  
 45 investigative demand if the judge finds that probable cause exists that a violation of chapter 109 or  
 46 this chapter has occurred. Once a judge has issued an order to serve a civil investigative demand,  
 47 the demand issued under this section may seek any information and documents that could be  
 48 obtained by means of a subpoena duces tecum issued by a court of this state. A civil investigative

1 demand issued under this section may also require answers to written interrogatories that would be  
 2 permitted by the Missouri supreme court rules.

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

4 (1) State the statute or statutes that the attorney general believes may have been violated;

5 (2) Describe the class or classes of information and evidence to be produced with sufficient  
 6 specificity so as to fairly indicate the material demanded;

7 (3) Prescribe a return date, which shall be at least thirty days, by which the information and  
 8 evidence is to be produced;

9 (4) Identify the members of the attorney general's staff to whom the information and  
 10 evidence requested is to be produced; and

11 (5) Provide notice to the recipient of the demand of the recipient's ability to file a petition in  
 12 the circuit court of Cole County to extend the return date for good cause or to quash or modify any  
 13 portion of the demand.

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

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

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

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

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

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

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

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

44 7. No information, documentary material, or physical evidence requested pursuant to a civil  
 45 investigative demand issued under this section shall, unless otherwise ordered by a court for good  
 46 cause shown, be produced for or the contents thereof be disclosed to, any person other than the  
 47 authorized employee of the attorney general without the consent of the person who produced such  
 48 information, documentary material or physical evidence; provided, that under such reasonable terms

1 and conditions as the attorney general shall prescribe, such information, documentary material or  
2 physical evidence shall be made available for inspection and copying by the person who produced  
3 such information, documentary material or physical evidence, or any duly authorized representative  
4 of such person. The attorney general, or any attorney designated by him or her, may use the  
5 information, documentary material, or physical evidence in the enforcement of chapter 109 or this  
6 chapter, by presentation before any court or by disclosure to law enforcement agencies of this state.

7 610.033. 1. There is created within the office of the attorney general a transparency  
8 division. No assistant attorney general while assigned to the transparency division shall participate  
9 in the prosecution or defense of any civil claim on behalf of the state, any agency of the state, or any  
10 officer of the state, except the prosecution of an action alleging a violation of any provision of  
11 chapter 109 or this chapter.

12 2. To the extent that any action brought by the attorney general or by an assistant attorney  
13 general in the transparency division creates an actual or potential conflict of interest under the  
14 Missouri rules of professional conduct 4-1.7 or 4-1.9, the state, all agencies of the state, and all  
15 officers of the state in their official capacity shall be deemed to have waived such actual or potential  
16 conflicts under such sections of the Missouri rules of professional conduct, provided that no  
17 attorney other than the attorney general and assistant attorneys general assigned to the transparency  
18 division shall participate in the prosecution of such action."; and

19  
20 Further amend said bill by amending the title, enacting clause, and intersectional references  
21 accordingly.  
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23 THIS AMENDMENT AMENDS 4675S01.20H.