

FIRST REGULAR SESSION

# HOUSE BILL NO. 643

## 93RD GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES YOUNG (Sponsor), LeVOTA, HARRIS (23), MEINERS, VILLA, WRIGHT-JONES (63), JOHNSON (61), WAGNER, SWINGER, SELBY, BOWMAN, HUBBARD, HOSKINS, BURNETT, CHAPPELLE-NADAL, JOLLY, SKAGGS, FRASER, SHOEMYER, WILDBERGER, LAMPE, BLAND, LIESE, YAEGER, HARRIS (110), SCHOEMEHL, OXFORD, HENKE, WITTE, GOODMAN, MARSH, HUNTER, HUGHES, SCHNEIDER, ROARK, DUSENBERG AND BROWN (30) (Co-sponsors).

Read 1<sup>st</sup> time February 24, 2005 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

1646L.011

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### AN ACT

To repeal section 610.027, RSMo, and to enact in lieu thereof one new section relating to sunshine law violations.

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

Section A. Section 610.027, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 610.027, to read as follows:

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.

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.

13           2. Once a party seeking judicial enforcement of sections 610.010 to 610.026  
14 demonstrates to the court that the body in question is subject to the requirements of sections  
15 610.010 to 610.026 and has held a closed meeting, record or vote, the burden of persuasion shall  
16 be on the body and its members to demonstrate compliance with the requirements of sections  
17 610.010 to 610.026.

18           3. Upon a finding by a preponderance of the evidence that a public governmental body  
19 or a member of a public governmental body has [knowingly] **negligently** violated sections  
20 610.010 to 610.026, the public governmental body or the member shall be subject to a civil  
21 penalty in an amount up to one thousand dollars. If the court finds that there is a knowing  
22 violation of sections 610.010 to 610.026, the court may order the payment by such body or  
23 member of all costs and reasonable attorney fees to any party successfully establishing a  
24 violation. The court shall determine the amount of the penalty by taking into account the size  
25 of the jurisdiction, the seriousness of the offense, and whether the public governmental body or  
26 member of a public governmental body has violated sections 610.010 to 610.026 previously.

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

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

46           6. A public governmental body which is in doubt about the legality of closing a particular  
47 meeting, record or vote may bring suit at the expense of that public governmental body in the  
48 circuit court of the county of the public governmental body's principal place of business to

49 ascertain the propriety of any such action, or seek a formal opinion of the attorney general or an  
50 attorney for the governmental body.