

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 6167-02
Bill No.: HCS for HB 1970
Subject: Sunshine Law; Meetings and Records
Type: Original
Date: April 27, 2012

Bill Summary: This proposal relates to sunset dates for exceptions to the public records law.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2013	FY 2014	FY 2015
Total Estimated Net Effect on General Revenue Fund	\$0	\$0	\$0

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

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 7 pages.

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

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2013	FY 2014	FY 2015
Total Estimated Net Effect on FTE	0	0	0

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).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2013	FY 2014	FY 2015
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

In response to a previous version of this proposal, officials from the **Attorney General's Office** assumed that any potential costs arising from this proposal can be absorbed with existing resources.

Officials from the **Department of Corrections (DOC)** assume the proposal would have significant legal impact on their department.

§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.

§610.022.3: Specifies that only members of a public governmental body, its attorney and staff assistants, and any other person necessary to provide information may be permitted in a closed meeting. This seems unnecessary and likely to ruffle feathers – a public governmental body (PGB) will just label all attendees of the closed meeting as “necessary to provide information” in order to comply with this subsection.

§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.

ASSUMPTION (continued)

§610.027: Places additional burdens on PGBs:

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, the fiscal impact to the DOC is unknown in each fiscal year.

Oversight assumes the DOC will be able to implement the changes in the proposal with existing resources.

Officials from the **Department of Revenue, Missouri Gaming Commission, Office of the State Courts Administrator, Department of Mental Health, Department of Higher Education, Department of Economic Development, Joint Committee on Administrative Rules, Department of Labor and Industrial Relations, Department of Agriculture, Office of Administration, Missouri Ethics Commission, Office of Prosecution Services, Office of the State Auditor, Office of the State Treasurer, State Tax Commission, Joint Committee on Public Employee Retirement, Missouri Lottery Commission, Missouri Senate, Office of Administration - Budget and Planning, Office of the Governor, Department of Public Safety (Division of Fire Safety, Missouri Highway Patrol and Missouri Veterans Commission)** and the **Missouri Consolidated Health Care Plan** each assume the proposal would not fiscally impact their respective agencies.

ASSUMPTION (continued)

Officials from the **Department of Natural Resources** does not anticipate any significant fiscal impact due to the proposed changes in the bill. There could be a need to revise current internal processes and procedures related to the proposal.

Officials from the **Department of Insurance, Financial Institutions and Professional Registration (DIFP)** state they believe they could 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.

Officials from the **Department of Social Services (DOS)** state the bill would have a minimal impact upon their Division of Legal Services (DLS) and the department in that the only change that would dramatically affect the department would be the change proposed to §610.027.3 RSMo. 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 knowingly violated the Sunshine Law, the public governmental body or the member shall be subject to a civil penalty has been amended to no longer require 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 before. By making this change, the language only implies, instead of directing stating, that the judge can exercise his/her discretion in assessing the penalty thus paving the way for the argument that the judge no longer has that discretion and must impose the maximum penalty of \$1,000.

Officials from the **Department of Elementary and Secondary Education** state there is no anticipated state cost to the foundation formula associated with this proposal. 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 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.

ASSUMPTION (continued)

In response to a previous version of this proposal, officials from the **Boone County Sheriff's Office, Springfield Police Department, and the Jefferson City Police Department** each assumed the proposal would not fiscally impact their respective agencies.

<u>FISCAL IMPACT - State Government</u>	FY 2013 (10 Mo.)	FY 2014	FY 2015
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

<u>FISCAL IMPACT - Local Government</u>	FY 2013 (10 Mo.)	FY 2014	FY 2015
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

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

FISCAL DESCRIPTION

The proposed legislation appears to have no fiscal impact.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

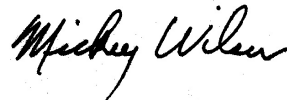
SOURCES OF INFORMATION

Attorney General's Office
Department of Public Safety
Office of the State Courts Administrator
Office of Administration
Department of Corrections

RS:LR:OD

SOURCES OF INFORMATION (continued)

Department of Revenue
Department of Mental Health
Missouri Gaming Commission
Department of Higher Education
Department of Economic Development
Joint Committee on Administrative Rules
Department of Labor and Industrial Relations
Department of Agriculture
Missouri Ethics Commission
Office of Prosecution Services
Office of the State Auditor
Office of the State Treasurer
State Tax Commission
Joint Committee on Public Employee Retirement
Missouri Lottery Commission
Missouri Senate
Office of the Governor
Department of Natural Resources
Department of Social Services
Department of Insurance, Financial Institutions and Professional Registration
Department of Elementary and Secondary Education
Boone County Sheriff's Office
Springfield Police Department
Jefferson City Police Department



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