

SECOND REGULAR SESSION

# SENATE BILL NO. 1048

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR ROWDEN.

Read 1st time February 27, 2018, and ordered printed.

ADRIANE D. CROUSE, Secretary.

6529S.011

## AN ACT

To repeal sections 109.210 and 610.027, RSMo, and to enact in lieu thereof three new sections relating to records maintained by public bodies, with penalty provisions.

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

Section A. Sections 109.210 and 610.027, RSMo, are repealed and three  
2 new sections enacted in lieu thereof, to be known as sections 109.210, 109.315,  
3 and 610.027, to read as follows:

109.210. As used in sections 109.200 to [109.310] **109.315** the following  
2 words and terms have the meanings indicated, unless the context clearly requires  
3 otherwise:

- 4 (1) "Agency", any department, office, commission, board or other unit of  
5 state government or any political or administrative subdivisions created for any  
6 purpose under the authorities of or by the state of Missouri;
- 7 (2) "Boards", the local records board;
- 8 (3) "Commission", the state records commission;
- 9 (4) "Local record", any record not a state record;
- 10 (5) "Record", document, book, paper, photograph, map, sound recording or  
11 other material, regardless of physical form or characteristics, made or received  
12 pursuant to law or in connection with the transaction of official business. Library  
13 and museum material made or acquired and preserved solely for reference or  
14 exhibition purposes, extra copies of documents preserved only for convenience of  
15 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  
17 hereinafter designated as "nonrecord" materials;

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

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

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

**109.315. 1. The remedies provided by this section against  
2 agencies shall be in addition to those provided by any other provision  
3 of law. Any aggrieved person, the attorney general, or the prosecuting  
4 attorney may seek judicial enforcement of the requirements of sections  
5 109.260, 109.265, and 109.270. Suits to enforce sections 109.260, 109.265,  
6 and 109.270 shall be brought in the circuit court for the county in  
7 which the agency has its principal place of business. Upon service of  
8 a summons, petition, complaint, counterclaim, or cross-claim in a civil  
9 action brought to enforce the provisions of sections 109.260, 109.265, or  
10 109.270, the custodian of any material that is the subject matter of such  
11 civil action shall not transfer custody, alter, destroy, or otherwise  
12 dispose of the material until the court directs otherwise,  
13 notwithstanding the assertion that the material is not a record or that  
14 the material is closed or confidential pursuant to any provision of law.**

**15 2. Once a party seeking judicial enforcement of sections 109.260,  
16 109.265, or 109.270 demonstrates to the court that the agency in  
17 question is subject to the requirements of chapter 109 and has  
18 destroyed or failed to retain any material at issue, the burden of  
19 persuasion shall be on the agency to demonstrate compliance with the  
20 requirements of chapter 109.**

**21 3. Upon a finding by a preponderance of the evidence that an  
22 agency or a member of an agency has knowingly violated sections  
23 109.260, 109.265, or 109.270, the agency or the member shall be subject  
24 to a civil penalty in an amount up to one thousand dollars. If the court  
25 finds that there is a knowing violation of sections 109.260, 109.265, or  
26 109.270, the court may order the payment by such agency or member of  
27 all costs and reasonable attorney fees to any party successfully  
28 establishing a violation. The court shall determine the amount of the  
29 penalty by taking into account the size of the jurisdiction, the  
30 seriousness of the offense, and whether agency or member of an agency  
31 has violated any provisions of chapter 109 or chapter 610 previously.**

**32 4. Upon a finding by a preponderance of the evidence that an  
33 agency or a member of an agency has purposely violated sections  
34 109.260, 109.265, or 109.270, the agency or the member shall be subject**

35 to a civil penalty in an amount up to five thousand dollars. If the court  
36 finds that there was a purposeful violation of sections 109.260, 109.265,  
37 or 109.270, then the court shall order the payment by such agency or  
38 member of all costs and reasonable attorney fees to any party  
39 successfully establishing such a violation. The court shall determine  
40 the amount of the penalty by taking into account the size of the  
41 jurisdiction, the seriousness of the offense, and whether the agency or  
42 member of an agency has violated any provision of chapter 109 or  
43 chapter 610 previously.

44 5. Any suit for enforcement pursuant to this section shall be  
45 brought within one year from which the violation is ascertainable and  
46 in no event shall it be brought later than two years after the violation.

47 6. The circuit courts of this state shall have jurisdiction and  
48 authority to issue injunctions to enforce the provisions of sections  
49 109.260, 109.265, and 109.270.

50 7. An agency that is in doubt about the legality of destroying or  
51 disposing of any material may seek a formal opinion of the attorney  
52 general. Any agency relying in good faith on such an opinion of the  
53 attorney general shall not be deemed to have committed a knowing or  
54 purposeful violation pursuant to subsections 3 and 4 of this section.

55 8. The attorney general shall have all powers provided by  
56 sections 407.040 to 407.090 in connection with investigations of alleged  
57 or suspected violations of chapter 109, as if violations of chapter 109  
58 are unlawful acts proscribed by chapter 407, provided that if the  
59 attorney general exercises such powers, the provisions of section  
60 407.070 shall also be applicable; and the attorney general may exercise  
61 all of the powers provided by subsections 1 and 2 of section 570.410 in  
62 connection with investigations of alleged or suspected violations of  
63 chapter 610, as if violations of chapter 109 involve "public assistance"  
64 as defined by section 578.375.

610.027. 1. The remedies provided by this section against public  
2 governmental bodies shall be in addition to those provided by any other provision  
3 of law. Any aggrieved person, taxpayer to, or citizen of, this state, or the attorney  
4 general or prosecuting attorney, may seek judicial enforcement of the  
5 requirements of sections 610.010 to 610.026. Suits to enforce sections 610.010 to  
6 610.026 shall be brought in the circuit court for the county in which the public  
7 governmental body has its principal place of business. Upon service of a

8 summons, petition, complaint, counterclaim, or cross-claim in a civil action  
9 brought to enforce the provisions of sections 610.010 to 610.026, the custodian of  
10 the public record that is the subject matter of such civil action shall not transfer  
11 custody, alter, destroy, or otherwise dispose of the public record sought to be  
12 inspected and examined, notwithstanding the applicability of an exemption  
13 pursuant to section 610.021 or the assertion that the requested record is not a  
14 public record until the court directs otherwise.

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

20         3. Upon a finding by a preponderance of the evidence that a public  
21 governmental body or a member of a public governmental body has knowingly  
22 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 thousand dollars. If the  
24 court finds that there is a knowing violation of sections 610.010 to 610.026, the  
25 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  
27 determine the amount of the penalty by taking into account the size of the  
28 jurisdiction, the seriousness of the offense, and whether the public governmental  
29 body or member of a public governmental body has violated sections 610.010 to  
30 610.026 previously.

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

42         5. Upon a finding by a preponderance of the evidence that a public  
43 governmental body has violated any provision of sections 610.010 to 610.026, a

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

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

60       **7. The attorney general shall have all powers provided by**  
61 **sections 407.040 to 407.090 in connection with investigations of alleged**  
62 **or suspected violations of chapter 610, as if violations of chapter 610**  
63 **are unlawful acts proscribed by chapter 407, provided that if the**  
64 **attorney general exercises such powers, the provisions of section**  
65 **407.070 shall also be applicable; and the attorney general may exercise**  
66 **all of the powers provided by subsections 1 and 2 of section 570.410 in**  
67 **connection with investigations of alleged or suspected violations of**  
68 **chapter 610, as if violations of chapter 610 involve "public assistance"**  
69 **as defined by section 578.375.**

70       **8. There is hereby created within the office of the attorney**  
71 **general a transparency division. No assistant attorney general**  
72 **assigned to the transparency division shall participate in the**  
73 **prosecution or defense of any civil claim on behalf of the state, any**  
74 **agency of the state, or any officer of the state, except that an assistant**  
75 **attorney general assigned to the transparency division may participate**  
76 **in the prosecution of any action alleging a violation of any provision of**  
77 **chapter 109 or chapter 610.**

78       **9. To the extent that any action brought by the attorney general**  
79 **or by an assistant attorney general assigned to the transparency**

80 **division creates an actual or potential conflict of interest under the**  
81 **Missouri Rules of Professional Conduct 4-1.7 or 4-1.9, the state, all**  
82 **agencies of the state, and all officers of the state in their official**  
83 **capacity shall be deemed to have waived such actual or potential**  
84 **conflicts pursuant to Missouri Rules of Professional Conduct 4-1.7(b)**  
85 **and 4-1.9(b), provided that no attorney other than the attorney general**  
86 **and assistant attorneys general assigned to the transparency division**  
87 **may participate in the prosecution of such action.**

Unofficial ✓

Bill

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