

SECOND REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
CONFERENCE COMMITTEE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1548
92ND GENERAL ASSEMBLY

4700S.04T

2004

AN ACT

To repeal sections 105.055, 386.135, and 610.028, RSMo, and to enact in lieu thereof four new sections relating to state employees.

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

Section A. Sections 105.055, 386.135, and 610.028, RSMo, are repealed and four new
2 sections enacted in lieu thereof, to be known as sections 105.055, 105.935, 386.135, and
3 610.028, to read as follows:

105.055. 1. No supervisor or appointing authority of any state agency shall prohibit any
2 employee of the agency from discussing the operations of the agency, either specifically or
3 generally, with any member of the legislature [or the], state auditor, **attorney general, or any**
4 **state official or body charged with investigating such alleged misconduct.**

5 2. No supervisor or appointing authority of any state agency shall:

6 (1) Prohibit a state employee from or take any disciplinary action whatsoever against a
7 state employee for the disclosure of any alleged prohibited activity under investigation or any
8 related activity, or for the disclosure of information which the employee reasonably believes
9 evidences:

10 (a) A violation of any law, rule or regulation; or

11 (b) Mismanagement, a gross waste of funds or abuse of authority, or a substantial and
12 specific danger to public health or safety, if the disclosure is not specifically prohibited by law;
13 or

14 (2) Require any such employee to give notice to the supervisor or appointing authority
15 prior to making any such report.

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law. Matter in boldface type in the above law is proposed language.

16 3. This section shall not be construed as:

17 (1) Prohibiting a supervisor or appointing authority from requiring that an employee
18 inform the supervisor or appointing authority as to legislative requests for information to the
19 agency or the substance of testimony made, or to be made, by the employee to legislators on
20 behalf of the employee to legislators on behalf of the agency;

21 (2) Permitting an employee to leave the employee's assigned work areas during normal
22 work hours without following applicable rules and regulations and policies pertaining to leaves,
23 unless the employee is requested by a legislator or legislative committee to appear before a
24 legislative committee;

25 (3) Authorizing an employee to represent the employee's personal opinions as the
26 opinions of a state agency; or

27 (4) Restricting or precluding disciplinary action taken against a state employee if: the
28 employee knew that the information was false; the information is closed or is confidential under
29 the provisions of the open meetings law or any other law; or the disclosure relates to the
30 employee's own violations, mismanagement, gross waste of funds, abuse of authority or
31 endangerment of the public health or safety.

32 4. As used in this section, "disciplinary action" means any dismissal, demotion, transfer,
33 reassignment, suspension, reprimand, warning of possible dismissal or withholding of work,
34 whether or not the withholding of work has affected or will affect the employee's compensation.

35 5. Any employee may file an administrative appeal whenever the employee alleges that
36 disciplinary action was taken against the employee in violation of this section. The appeal shall
37 be filed with the state personnel advisory board; provided that the appeal shall be filed with the
38 appropriate agency review board or body of nonmerit agency employers which have established
39 appeal procedures substantially similar to those provided for merit employees in subsection 5 of
40 section 36.390, RSMo. The appeal shall be filed within thirty days of the alleged disciplinary
41 action. Procedures governing the appeal shall be in accordance with chapter 36, RSMo. If the
42 board or appropriate review body finds that disciplinary action taken was unreasonable, the board
43 or appropriate review body shall modify or reverse the agency's action and order such relief for
44 the employee as the board considers appropriate. If the board finds a violation of this section,
45 it may review and recommend to the appointing authority that the violator be suspended on leave
46 without pay for not more than thirty days or, in cases of willful or repeated violations, may
47 review and recommend to the appointing authority that the violator forfeit the violator's position
48 as a state officer or employee and disqualify the violator for appointment to or employment as
49 a state officer or employee for a period of not more than two years. The decision of the board
50 or appropriate review body in such cases may be appealed by any party pursuant to law.

51 6. Each state agency shall prominently post a copy of this section in locations where it

52 can reasonably be expected to come to the attention of all employees of the agency.

53 **7. (1) In addition to the remedies in subsection 6 of this section, a person who**
54 **alleges a violation of this section may bring a civil action for damages within ninety days**
55 **after the occurrence of the alleged violation.**

56 **(2) A civil action commenced pursuant to this subsection may be brought in the**
57 **circuit court for the county where the alleged violation occurred, the county where the**
58 **complainant resides, or the county where the person against whom the civil complaint is**
59 **filed resides.**

60 **(3) An employee must show by clear and convincing evidence that he or she or a**
61 **person acting on his or her behalf has reported or was about to report, verbally or in**
62 **writing, a prohibited activity or a suspected prohibited activity.**

63 **(4) A court, in rendering a judgment in an action brought pursuant to this section,**
64 **shall order, as the court considers appropriate, actual damages, and may also award the**
65 **complainant all or a portion of the costs of litigation, including reasonable attorney fees.**

105.935. 1. Any state employee who has accrued any overtime hours may choose
2 **to use those hours as compensatory leave time provided that the leave time is available and**
3 **agreed upon by both the state employee and his or her supervisor.**

4 **2. A state employee who is a nonexempt employee pursuant to the provisions of the**
5 **Fair Labor Standards Act shall be eligible for payment of overtime in accordance with**
6 **subsection 4 of this section. A nonexempt state employee who works on a designated state**
7 **holiday shall be granted equal compensatory time off duty or shall receive, at his or her**
8 **choice, the employee's straight time hourly rate in cash payment. A nonexempt state**
9 **employee shall be paid in cash for overtime unless the employee requests compensatory**
10 **time off at the applicable overtime rate. As used in this section, the term "state employee"**
11 **means any person who is employed by the state and earns a salary or wage in a position**
12 **normally requiring the actual performance by him or her of duties on behalf of the state,**
13 **but shall not include any employee who is exempt under the provisions of the Fair Labor**
14 **Standards Act or any employee of the general assembly.**

15 **3. Beginning on January 1, 2006, and annually thereafter each department shall**
16 **pay all nonexempt state employees in full for any overtime hours accrued during the**
17 **previous calendar year which have not already been paid or used in the form of**
18 **compensatory leave time. All nonexempt state employees shall have the option of retaining**
19 **up to a total of eighty compensatory time hours.**

20 **4. The provisions of subsection 2 of this section shall only apply to nonexempt state**
21 **employees who are otherwise eligible for compensatory time under the Fair Labor**
22 **Standards Act, excluding employees of the general assembly. Any nonexempt state**

23 **employee requesting cash payment for overtime worked shall notify such employee's**
24 **department in writing of such decision and state the number of hours, no less than twenty,**
25 **for which payment is desired. The department shall pay the employee within the calendar**
26 **quarter following the quarter in which a valid request is made. Nothing in this section**
27 **shall be construed as creating a new compensatory benefit for state employees.**

28 **5. Each department shall, by November first of each year, notify the commissioner**
29 **of administration, the house budget committee chair, and the senate appropriations**
30 **committee chair of the amount of overtime paid in the previous fiscal year and an estimate**
31 **of overtime to be paid in the current fiscal year. The fiscal year estimate for overtime pay**
32 **to be paid by each department shall be designated as a separate line item in the**
33 **appropriations bill for that department. The provisions of this subsection shall become**
34 **effective July 1, 2005.**

35 **6. Each state department shall report quarterly to the house of representatives**
36 **budget committee chair, the senate appropriations committee chair, and the commissioner**
37 **of administration the cumulative number of accrued overtime hours for department**
38 **employees, the dollar equivalent of such overtime hours, the number of authorized full-**
39 **time equivalent positions and vacant positions, the amount of funds for any vacant**
40 **positions which will be used to pay overtime compensation for employees with full-time**
41 **equivalent positions, and the current balance in the department's personal service fund.**

386.135. 1. The commission shall have an independent technical advisory staff of up
2 to six full-time employees. The advisory staff shall have expertise in accounting, economics,
3 finance, engineering/utility operations, law, or public policy.

4 2. In addition, each commissioner shall also have the authority to retain one personal
5 advisor, who shall be deemed a member of the technical advisory staff. The personal advisors
6 will serve at the pleasure of the individual commissioner whom they serve and shall possess
7 expertise in one or more of the following fields: accounting, economics, finance,
8 engineering/utility operations, law, or public policy.

9 3. The commission shall only hire technical advisory staff pursuant to subsections 1 and
10 2 of this section if there is a corresponding elimination in comparable staff positions for
11 commission staff to offset the hiring of such technical advisory staff on a cost-neutral basis.
12 Such technical advisory staff shall be hired on or before July 1, 2005.

13 4. It shall be the duty of the technical advisory staff to render advice and assistance to
14 the commissioners and the commission's [hearing officers] **administrative law judges** on
15 technical matters within their respective areas of expertise that may arise during the course of
16 proceedings before the commission.

17 5. The technical advisory staff shall also update the commission and the commission's

18 [hearing officers] **administrative law judges** periodically on developments and trends in public
19 utility regulation, including updates comparing the use, nature, and effect of various regulatory
20 practices and procedures as employed by the commission and public utility commissions in other
21 jurisdictions.

22 6. Each member of the technical advisory staff shall be subject to any applicable ex parte
23 or conflict of interest requirements in the same manner and to the same degree as any
24 commissioner, provided that neither any person regulated by, appearing before, or employed by
25 the commission shall be permitted to offer such member a different appointment or position
26 during that member's tenure on the technical advisory staff.

27 7. No employee of a company or corporation regulated by the public service commission,
28 no employee of the office of public counsel or the public counsel, and no staff members of either
29 the utility operations division or utility services division who were an employee or staff member
30 on, during the two years immediately preceding, or anytime after August 28, 2003, may be a
31 member of the commission's technical advisory staff for two years following the termination of
32 their employment with the corporation, office of public counsel or commission staff member.

33 8. The technical advisory staff shall never be a party to any case before the commission.

610.028. 1. Any public governmental body may provide for the legal defense of any
2 member charged with a violation of sections 610.010 to 610.030.

3 2. Each public governmental body shall provide a reasonable written policy in
4 compliance with sections 610.010 to 610.030, open to public inspection, regarding the release
5 of information on any meeting, record or vote and any member or employee of the public
6 governmental body who complies with the written policy is not guilty of a violation of the
7 provisions of sections 610.010 to 610.030 or subject to civil liability for any act arising out of
8 his adherence to the written policy of the agency.

9 3. No person who in good faith reports a violation of the provisions of sections 610.010
10 to 610.030 is civilly liable for making such report, nor, if such person is an officer or employee
11 of a public governmental body, may such person be demoted, fired, suspended, or otherwise
12 disciplined for making such report.