

HCS SCS SB 1020, 889 & 869 -- OPEN RECORDS LAW

SPONSOR: Steelman (Goodman)

COMMITTEE ACTION: Voted "do pass" by the Special Committee on General Laws by a vote of 9 to 0.

This substitute makes changes to the Open Records Law. In its main provisions, the substitute:

(1) Includes the curators of the University of Missouri and the Bi-state Development Agency in the definition of "public governmental body." The substitute clarifies that public meetings include meetings held through conference calls, video conferences, and similar methods and that public votes include votes made by telephone and other electronic means. The definition of "public record" is changed to include documents prepared by consultants, and the exception pertaining to internal memos and advisory communications is repealed;

(2) Restricts roll call votes under certain circumstances to those who are physically present. An exception is made for roll call votes in a committee;

(3) Requires that the notice of meetings held by telephone or other electronic means identify the mode by which the meeting is held and provide information on public access. The substitute also requires public bodies to permit taping and other electronic means of recording of their meeting and permits these bodies to establish guidelines for the recording;

(4) Requires that a journal or minutes of closed meetings be taken and retained by public governmental bodies;

(5) Authorizes public governmental bodies to close meetings, records, and votes relating to operational guidelines and policies adopted and maintained by public agencies responsible for the health and safety for responding to or preventing terrorist incidents, when the agencies state in writing that disclosure would impair the agencies' protection duties and public interest in nondisclosure outweighs public interest in disclosure. Information regarding expenditures and contracts made by agencies in implementing these policies is not exempt. Voluntarily submitted information from nonpublic entities concerning infrastructure may be excluded and must be reviewed and returned or destroyed within 90 days if the information is not kept. Both of these exceptions sunset on December 31, 2008;

(6) Requires that the amount and source of private donations toward the salary of a chancellor or president of public higher

education institutions be disclosed;

(7) Requires that all final audit reports by the auditor of a public governmental body be considered open public records;

(8) Allows a member of a public governmental body to record an objection in the minutes to closing a meeting or vote. The objecting member then may stay for the meeting or vote, and the recorded objection will be an absolute defense to any claim pursuant to Section 610.027, RSMo, providing for actions against public governmental bodies and their members and the imposition of monetary penalties;

(9) Changes the fee for furnishing copies of most public records from the actual cost of the document search and duplication to 10 cents per page for paper copies up to legal size and, under some circumstances, the hourly rate of pay for clerical staff;

(10) Prohibits the custodian of public records that are the subject of a civil action from transferring custody, altering, destroying, or otherwise disposing of the records;

(11) Changes the civil fine of up to \$500 and order of payment of the successful party's costs and reasonable attorney fees to a civil penalty of \$1,000 to \$5,000 and payment of court costs upon a finding of a purposeful violation of the law by a public governmental body or its members or a law enforcement agency;

(12) Requires a court, upon a finding of a knowing violation of the law by a public governmental body or its members or a law enforcement agency, to impose a civil penalty of \$25 to \$250 and permits the award of court costs;

(13) Provides that, in determining the amount of the penalty for a violation of the law by a public governmental body or its members or a law enforcement agency, the court must consider the size of the jurisdiction, the seriousness of the offense, and whether the public governmental body or its members has previously violated the laws;

(14) Requires a public governmental body, when developing an electronic record-keeping system, to do so in a common format that is not an impediment to public access and to provide information in the format requested when it is possible to do so; and

(15) Deletes the provision prohibiting law enforcement agencies from releasing accident or incident reports for 60 days to any person who is not an interested party.

The substitute has a sunset date of December 31, 2008, for Section 610.021(18) and (19), which excludes from the Open Records Law, law enforcement or public safety agencies' operational guidelines and policies for responding to or preventing terrorist activities and certain information relating to security systems and infrastructure.

FISCAL NOTE: Estimated Cost on General Revenue Fund of Unknown in FY 2005, FY 2006, and FY 2007. Unknown losses could exceed \$100,000 in any given fiscal year. Estimated Effect on Other State Funds of a cost of More than \$8,625 to an income of Unknown in FY 2005, a cost of More than \$10,335 to an income of Unknown in FY 2006, and a cost of More than \$10,867 to an income of Unknown in FY 2007.

PROPOSERS: Supporters say that loopholes exist in the present Sunshine Law that need to be addressed. Some loopholes relate to terrorism, and some relate to practices that have come to light over the years showing a lack of understanding of the law or a disregard for it, and some relate to uneven implementation.

Testifying for the bill were Senator Steelman; Missouri Press Association; Office of the Attorney General; and Missouri Broadcasters Association.

OPPOSERS: Those who oppose the bill say that several provisions will have a chilling effect upon persons contemplating filing for public office in political subdivisions.

Testifying against the bill were Missouri Municipal League; Missouri School Boards Association; and Municipal League of St. Louis County.

Becky DeNeve, Senior Legislative Analyst