

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 5735-01  
Bill No.: HB 2725  
Subject: Sunshine Law  
Type: Original  
Date: March 12, 2020

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Bill Summary: This proposal modifies provisions for the sunshine law.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
General Revenue *	\$0 or Unknown	\$0 or Unknown	\$0 or Unknown
<b>Total Estimated Net Effect on General Revenue*</b>	<b>\$0 or Unknown</b>	<b>\$0 or Unknown</b>	<b>\$0 or Unknown</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

Numbers within parentheses: ( ) indicate costs or losses.

This fiscal note contains 7 pages.

\* If *Elad Gross v. Michael Parson*, 18AC-CC00422, holds § 610 does not allow entities to charge fees for legal review, this bill would increase revenues to state and local governments.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b>			
<b>FUND AFFECTED</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>
<b>Total Estimated Net Effect on FTE</b>	<b>0</b>	<b>0</b>	<b>0</b>

Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any of the three fiscal years after implementation of the act.

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>
<b>Local Government*</b>	<b>\$0 or (Unknown) to Unknown</b>	<b>\$0 or (Unknown) to Unknown</b>	<b>\$0 or (Unknown) to Unknown</b>

## FISCAL ANALYSIS

### ASSUMPTION

Officials at the **Administrative Hearing Commission, Capitol Police, Department of Commerce and Insurance, Department of Agriculture, Department of Higher Education and Workforce Development, Department of Elementary and Secondary Education, Department of Health and Senior Services, Department of Industrial and Labor Relations, Department of Natural Resources, Department of Public Safety, Department of Transportation, Missouri Consolidated Healthcare Program, Missouri Ethics Commission, Missouri Gaming Commission, Missouri Lottery, Missouri National Guard, Missouri State Employees' Retirement System, Missouri Senate, Missouri State Public Defender, Missouri Veterans Commission, MoDot & Patrol Employees' Retirement System, Office of Administration, Office of Prosecution Services, Office of State Courts Administrator, State Emergency Management Agency, State Tax Commission, State Treasurer's Office, Wellsville-Middletown School District** assume this bill has no fiscal impact.

Officials at the **Department of Corrections** assume this bill may have an operational impact on the department by reducing the amount of staff time spent on researching, gathering, and copying said records. However, the actual impact is difficult to determine as it is unknown how many record requests will be received.

Officials at the **Joint Committee on Administrative Rules** say the legislation is not anticipated to cause a fiscal impact to the Joint Committee on Administrative Rules beyond its current appropriation.

Officials at the **Office of the Attorney General** assume that any additional litigation costs arising from this proposal can be absorbed with existing personnel and resources, however, the AGO may seek additional appropriations if there is a significant increase in complaints.

Officials at the **Office of the Secretary of State** say many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The Secretary of State's office is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this fiscal note to Secretary of State's office for Administrative Rules is less than \$5,000. The Secretary of State's office recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, we also recognize that many such bills may be passed by the General Assembly in a given year and that collectively the costs

ASSUMPTION (continued)

may be in excess of what our office can sustain with our core budget. Therefore, we reserve the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the governor.

Officials at the **El Dorado Springs R-2 School District** assume for local school districts, the fiscal impact of this change is in time and resources that will be spent on records retention and fulfilling records requests. A dollar is indeterminable because the cost will fluctuate over time.

**§ 610.026.1 - legal review fees**

Officials at the **City of O'Fallon** assume this bill will have a fiscal impact to the City. If passed we can charge attorney fees to look over records that may or may not be considered closed and be able to re-coup our expenses for legal review. We estimate this would generate around \$1,000 to \$3,000 per year.

**Oversight** notes *Elad Gross v. Michael Parson*, 18AC-CC00422 will likely resolve whether § 610 currently allows government agencies to charge fees for legal review. If the law currently allows such fees, this language will have no fiscal impact. If the law currently does not allow legal review fees, this language may raise local and state income. Accordingly, Oversight will show a \$0 or Unknown income to state and local entities.

**§ 610.025.02 - encryption and deletion**

Officials at the **City of Kansas City** operates an ambulance service. Such ambulance service is subject to the provisions of the Health Insurance Portability and Accountability Act (HIPAA) in the same manner as a hospital or doctor's office. HIPAA is a federal law protecting patient health information. While HIPAA doesn't specifically require that transmittal and communications involving protected health information be encrypted, it is recommended and the requirements of HIPAA make it inevitable. Therefore, the above provision should be amended to include an exception allowing encryption to comply with HIPAA. Absent such exception the above provision has a negative fiscal impact on Kansas City because violations of HIPAA can involve large fines.

**Oversight** notes there are four tiers of HIPAA violations, with an annual penalty limit for reasonable cause violations of \$114,102. Because **Oversight** cannot estimate the number of HIPAA violations that may occur by barring ambulance providers from encryption, the note will show a \$0 or (Unknown) cost to local governments.

<u>FISCAL IMPACT - State Government</u>	FY 2021 (10 Mo.)	FY 2022	FY 2023
<b>GENERAL REVENUE</b>			
<u>Income</u> - §610.026.1 - Attorney review fees depending on 18AC-CC00422 outcome	<u>\$0 or Unknown</u>	<u>\$0 or Unknown</u>	<u>\$0 or Unknown</u>
<b>GENERAL REVENUE</b>	<b><u>\$0 or Unknown</u></b>	<b><u>\$0 or Unknown</u></b>	<b><u>\$0 or Unknown</u></b>

<u>FISCAL IMPACT - Local Government</u>	FY 2021 (10 Mo.)	FY 2022	FY 2023
<b>LOCAL GOVERNMENTS</b>			
<u>Cost</u> - §610.025.2 - Penalties for likely HIPAA violations for ambulance operators	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
<u>Income</u> - §610.026.1- Attorney review fees depending on 18AC-CC00422 outcome	<u>\$0 or Unknown</u>	<u>\$0 or Unknown</u>	<u>\$0 or Unknown</u>
<b>NET DIRECT EFFECT ON LOCAL GOVERNMENTS</b>	<b>\$0 or (Unknown) to <u>Unknown</u></b>	<b>\$0 or (Unknown) to <u>Unknown</u></b>	<b>\$0 or (Unknown) to <u>Unknown</u></b>

FISCAL IMPACT - Small Business

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

FISCAL DESCRIPTION

This bill modifies provisions relating to the Sunshine Law.

Currently, certain specified documents consisting of advice, opinions and recommendations in connection with the deliberative decision-making process of a governmental body are not considered public records unless they are retained by the body or presented at a public meeting. This bill adds internal communications and drafts to the list of documents and removes the requirement that the body not retain the documents.

### FISCAL DESCRIPTION (continued)

The bill also allows records or meetings to be closed if they relate to individually identifiable information such as telephone numbers, email and physical addresses, driver's license numbers, or tax information; records of any correspondence between a member or employee of a public governmental body and a constituent's request for information or assistance. For this purpose a constituent does not include a lobbyist or lobbyist principal.

This bill allows any public governmental body to deny a request for continuous or repeated access to certain records and require that each request be made separately.

Currently, when a public record contains material that is public and material that is exempt the exempt and public material is separated and the public material made available. This bill specifies that the public governmental body must inform the person requesting the records that there are materials exempt from disclosure and allows the materials exempt from disclosure to be redacted or closed.

The bill prohibits any member or employee of a public governmental body from using any software or application that encrypts or automatically deletes any communication to conduct any official business except, when a software or application is recommended by a law enforcement agency to protect the safety or security of members or employees of the public governmental body.

Currently, anyone requesting information may be charged for the actual cost of time to research the request. This bill adds the time to review the information, including a legal review.

A public governmental body may request payment prior to the production of records as long as the requester is given at least 30 days to remit the payment. If the requester does not remit the payment within the given time frame the request may be considered closed.

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

Administrative Hearing Commission  
Capitol Police  
City of O'Fallon  
City of Kansas City

SOURCES OF INFORMATION (continued)

Department of Commerce and Insurance  
Department of Corrections  
Department of Agriculture  
Department of Higher Education and Workforce Development  
Department of Elementary and Secondary Education  
Department of Health and Senior Services  
Department of Industrial and Labor Relations  
Department of Natural Resources  
Department of Public Safety  
Department of Transportation  
El Dorado Springs R-2 Schools  
Joint Committee on Administrative Rules  
Missouri Consolidated Healthcare Program  
Missouri Ethics Commission  
Missouri Gaming Commission  
Missouri Lottery  
Missouri National Guard  
Missouri State Employees' Retirement System  
Missouri Senate  
Missouri State Public Defender  
Missouri Veterans Commission  
MoDOT & Patrol Employees' Retirement System  
Office of Administration  
Office of the Attorney General  
Office of Prosecution Services  
Office of the Secretary of State  
Office of State Courts Administrator  
State Emergency Management Agency  
State Tax Commission  
State Treasurer's Office  
Wellsville-Middletown School District



Julie Morff  
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March 12, 2020



Ross Strope  
Assistant Director  
March 12, 2020