

SENATE BILL NO. 645

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR FITZWATER.

2454S.01I

KRISTINA MARTIN, Secretary

AN ACT

To repeal sections 29.235, 52.150, 374.250, and 610.021, RSMo, and to enact in lieu thereof five new sections relating to the powers of the state auditor.

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

Section A. Sections 29.235, 52.150, 374.250, and 610.021, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 29.225, 29.235, 52.150, 374.250, and 610.021, to read as follows:

29.225. 1. For purposes of this section, the term "improper governmental activity" includes official misconduct, fraud, misappropriation, mismanagement, waste of resources, or a violation of state or federal law, rule, or regulation.

2. The auditor, or his or her authorized representatives, may audit all or part of any political subdivision or other governmental entity:

(1) If, after an investigation under section 29.221 of the political subdivision or governmental entity, or its officers or employees, the auditor believes an improper governmental activity has occurred; or

(2) When requested by a prosecuting attorney, circuit attorney, or law enforcement agency as part of an investigation of an improper governmental activity.

29.235. 1. The auditor and the auditor's authorized agents are authorized to:

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

3 (1) Examine all books, accounts, records, reports,
4 vouchers of any state agency or entity subject to audit,
5 insofar as they are necessary to conduct an audit under this
6 chapter, provided that the auditor complies with state and
7 federal financial privacy requirements prior to accessing
8 financial records including provisions presented in chapter
9 408 and provided that the auditor or other public entity
10 reimburses the reasonable documentation and production costs
11 relating to compliance with examination by the auditor or
12 auditor's authorized agents that pertain to:

13 (a) Amounts received under a grant or contract from
14 the federal government or the state or its political
15 subdivisions;

16 (b) Amounts received, disbursed, or otherwise handled
17 on behalf of the federal government or the state;

18 (2) Examine and inspect all property, equipment, and
19 facilities in the possession of any state agency, political
20 subdivision, or quasi-governmental entity that were
21 furnished or otherwise provided through grant, contract, or
22 any other type of funding by the state of Missouri or the
23 federal government; and

24 (3) Review state tax returns, except such review shall
25 be limited to matters of official business, and the
26 auditor's report shall not violate the confidentiality
27 provisions of tax laws. Notwithstanding confidentiality
28 provisions of tax laws to the contrary, the auditor may use
29 or disclose information related to overdue tax debts in
30 support of the auditor's statutory mission.

31 2. All contracts or agreements entered into as a
32 result of the award of a grant by state agencies or
33 political subdivisions shall include, as a necessary part, a

34 clause describing the auditor's access as provided under
35 this section.

36 3. The auditor may obtain the services of certified
37 public accountants, qualified management consultants, or
38 other professional persons and experts as the auditor deems
39 necessary or desirable to carry out the duties and functions
40 assigned under this chapter. Unless otherwise authorized by
41 law, no state agency shall enter into any contract for
42 auditing services without consultation with, and the prior
43 written approval of, the auditor.

44 4. (1) Insofar as necessary to conduct an audit under
45 this chapter **or an investigation under section 29.221**, the
46 auditor or the auditor's authorized representatives shall
47 have the power to subpoena witnesses, to take testimony
48 under oath, to cause the deposition of witnesses residing
49 within or without the state to be taken in a manner
50 prescribed by law, and to assemble records and documents, by
51 subpoena or otherwise. The subpoena power granted by this
52 section shall be exercised only at the specific written
53 direction of the auditor or the auditor's chief deputy.

54 (2) If any person refuses to comply with a subpoena,
55 the auditor shall seek to enforce the subpoena before a
56 court of competent jurisdiction to require the attendance
57 and testimony of witnesses and the production of books,
58 papers, correspondence, memoranda, contracts, agreements,
59 and other records. Such court may issue an order requiring
60 such person to appear before the auditor or officers
61 designated by the auditor to produce records or to give
62 testimony relating to the matter under investigation or in
63 question. Any failure to comply with such order of the
64 court may be punished by such court as contempt.

65 **5. Testimony and records obtained through the**
66 **authority to subpoena under this section shall be subject to**
67 **the same confidentiality and disclosure provisions as**
68 **provided under section 29.200 for audit workpapers and**
69 **related supportive material.**

 52.150. 1. The person appointed to fill a vacancy in
2 the office of collector shall execute a bond and collect and
3 pay over the taxes in the manner required of the collector
4 subject to the provisions of subsections 2, 3, 4 and 6 of
5 this section, and his acts shall be as binding and effectual
6 as acts of the regularly elected collector. He may obtain
7 judgment and sell delinquent lands and lots in the manner in
8 which the collector is authorized to act.

9 2. [The person appointed to fill a vacancy in the
10 office of collector shall within five days after assuming
11 the duties of the office notify the state auditor of the
12 need for an audit of the office.] The state auditor shall
13 [within twenty days of receipt of the notice commence]
14 **conduct** an audit of the collector's office **if the county**
15 **governing body passes an order or resolution requesting the**
16 **audit within thirty days of the appointment of the new**
17 **collector.**

18 3. **If requested to conduct an audit by the county**
19 **governing body under subsection 2 of this section,** the state
20 auditor shall:

21 (1) Determine the financial condition of the accounts
22 of the office of the collector;

23 (2) Determine the proper compensation that should have
24 been paid to the replaced collector in the past three years
25 and the compensation actually paid during such period; and

26 (3) File a report of his finding with the county
27 governing body and the person appointed to fill the vacancy
28 in the office of the collector.

29 4. The county governing body shall notwithstanding any
30 other provision of law to the contrary:

31 (1) Accept the report of the state auditor; and

32 (2) If necessary order the newly appointed collector
33 to withhold and pay any funds owing to the county and the
34 past collector or his estate from current tax revenue; or

35 (3) Direct the prosecuting attorney to file suit
36 against the past collector or his estate or against his bond
37 to recover any overpayment.

38 5. The prosecuting attorney shall represent the
39 county, the county governing body and the newly appointed
40 collector without additional compensation in any civil
41 action arising as a result of this section.

42 6. Any moneys recovered pursuant to this section due
43 the county or any political subdivision within the county
44 shall be paid in the year of recovery as if the funds were
45 collected in the current year.

46 7. The county governing body shall pay to the state
47 auditor from county general revenue the costs of the audit
48 conducted pursuant to subsections 2 and 3 of this section.

374.250. 1. The director shall take proper vouchers
2 for all payments made by the department and shall take
3 receipts from the director of revenue for all moneys the
4 department pays to the director of revenue.

5 2. At the close of each state fiscal year, the state
6 auditor shall audit, adjust and settle all receipts and
7 disbursements in the insurance dedicated fund and the
8 insurance examiners' fund, and [taxes certified or collected
9 under sections 148.310 to 148.461 or sections 384.011 to

10 384.071] and the results shall be reported as part of the
11 annual audit of the state's financial statements.

610.021. Except to the extent disclosure is otherwise
2 required by law, a public governmental body is authorized to
3 close meetings, records and votes, to the extent they relate
4 to the following:

5 (1) Legal actions, causes of action or litigation
6 involving a public governmental body and any confidential or
7 privileged communications between a public governmental body
8 or its representatives and its attorneys. However, any
9 minutes, vote or settlement agreement relating to legal
10 actions, causes of action or litigation involving a public
11 governmental body or any agent or entity representing its
12 interests or acting on its behalf or with its authority,
13 including any insurance company acting on behalf of a public
14 government body as its insured, shall be made public upon
15 final disposition of the matter voted upon or upon the
16 signing by the parties of the settlement agreement, unless,
17 prior to final disposition, the settlement agreement is
18 ordered closed by a court after a written finding that the
19 adverse impact to a plaintiff or plaintiffs to the action
20 clearly outweighs the public policy considerations of
21 section 610.011, however, the amount of any moneys paid by,
22 or on behalf of, the public governmental body shall be
23 disclosed; provided, however, in matters involving the
24 exercise of the power of eminent domain, the vote shall be
25 announced or become public immediately following the action
26 on the motion to authorize institution of such a legal
27 action. Legal work product shall be considered a closed
28 record;

29 (2) Leasing, purchase or sale of real estate by a
30 public governmental body where public knowledge of the

31 transaction might adversely affect the legal consideration
32 therefor. However, any minutes, vote or public record
33 approving a contract relating to the leasing, purchase or
34 sale of real estate by a public governmental body shall be
35 made public upon execution of the lease, purchase or sale of
36 the real estate;

37 (3) Hiring, firing, disciplining or promoting of
38 particular employees by a public governmental body when
39 personal information about the employee is discussed or
40 recorded. However, any vote on a final decision, when taken
41 by a public governmental body, to hire, fire, promote or
42 discipline an employee of a public governmental body shall
43 be made available with a record of how each member voted to
44 the public within seventy-two hours of the close of the
45 meeting where such action occurs; provided, however, that
46 any employee so affected shall be entitled to prompt notice
47 of such decision during the seventy-two-hour period before
48 such decision is made available to the public. As used in
49 this subdivision, the term "personal information" means
50 information relating to the performance or merit of
51 individual employees;

52 (4) The state militia or national guard or any part
53 thereof;

54 (5) Nonjudicial mental or physical health proceedings
55 involving identifiable persons, including medical,
56 psychiatric, psychological, or alcoholism or drug dependency
57 diagnosis or treatment;

58 (6) Scholastic probation, expulsion, or graduation of
59 identifiable individuals, including records of individual
60 test or examination scores; however, personally identifiable
61 student records maintained by public educational
62 institutions shall be open for inspection by the parents,

63 guardian or other custodian of students under the age of
64 eighteen years and by the parents, guardian or other
65 custodian and the student if the student is over the age of
66 eighteen years;

67 (7) Testing and examination materials, before the test
68 or examination is given or, if it is to be given again,
69 before so given again;

70 (8) Welfare cases of identifiable individuals;

71 (9) Preparation, including any discussions or work
72 product, on behalf of a public governmental body or its
73 representatives for negotiations with employee groups;

74 (10) Software codes for electronic data processing and
75 documentation thereof;

76 (11) Specifications for competitive bidding, until
77 either the specifications are officially approved by the
78 public governmental body or the specifications are published
79 for bid;

80 (12) Sealed bids and related documents, until the bids
81 are opened; and sealed proposals and related documents or
82 any documents related to a negotiated contract until a
83 contract is executed, or all proposals are rejected;

84 (13) Individually identifiable personnel records,
85 performance ratings or records pertaining to employees or
86 applicants for employment, except that this exemption shall
87 not apply to the names, positions, salaries and lengths of
88 service of officers and employees of public agencies once
89 they are employed as such, and the names of private sources
90 donating or contributing money to the salary of a chancellor
91 or president at all public colleges and universities in the
92 state of Missouri and the amount of money contributed by the
93 source;

94 (14) Records which are protected from disclosure by
95 law;

96 (15) Meetings and public records relating to
97 scientific and technological innovations in which the owner
98 has a proprietary interest;

99 (16) Records relating to municipal hotlines
100 established for the reporting of abuse and wrongdoing, **and**
101 **records relating to reports of allegations of improper**
102 **governmental activities under section 29.221;**

103 (17) Confidential or privileged communications between
104 a public governmental body and its auditor, including all
105 auditor work product; however, all final audit reports
106 issued by the auditor are to be considered open records
107 pursuant to this chapter;

108 (18) Operational guidelines, policies and specific
109 response plans developed, adopted, or maintained by any
110 public agency responsible for law enforcement, public
111 safety, first response, or public health for use in
112 responding to or preventing any critical incident which is
113 or appears to be terrorist in nature and which has the
114 potential to endanger individual or public safety or
115 health. Financial records related to the procurement of or
116 expenditures relating to operational guidelines, policies or
117 plans purchased with public funds shall be open. When
118 seeking to close information pursuant to this exception, the
119 public governmental body shall affirmatively state in
120 writing that disclosure would impair the public governmental
121 body's ability to protect the security or safety of persons
122 or real property, and shall in the same writing state that
123 the public interest in nondisclosure outweighs the public
124 interest in disclosure of the records;

125 (19) Existing or proposed security systems and
126 structural plans of real property owned or leased by a
127 public governmental body, and information that is
128 voluntarily submitted by a nonpublic entity owning or
129 operating an infrastructure to any public governmental body
130 for use by that body to devise plans for protection of that
131 infrastructure, the public disclosure of which would
132 threaten public safety:

133 (a) Records related to the procurement of or
134 expenditures relating to security systems purchased with
135 public funds shall be open;

136 (b) When seeking to close information pursuant to this
137 exception, the public governmental body shall affirmatively
138 state in writing that disclosure would impair the public
139 governmental body's ability to protect the security or
140 safety of persons or real property, and shall in the same
141 writing state that the public interest in nondisclosure
142 outweighs the public interest in disclosure of the records;

143 (c) Records that are voluntarily submitted by a
144 nonpublic entity shall be reviewed by the receiving agency
145 within ninety days of submission to determine if retention
146 of the document is necessary in furtherance of a state
147 security interest. If retention is not necessary, the
148 documents shall be returned to the nonpublic governmental
149 body or destroyed;

150 (20) The portion of a record that identifies security
151 systems or access codes or authorization codes for security
152 systems of real property;

153 (21) Records that identify the configuration of
154 components or the operation of a computer, computer system,
155 computer network, or telecommunications network, and would
156 allow unauthorized access to or unlawful disruption of a

157 computer, computer system, computer network, or
158 telecommunications network of a public governmental body.
159 This exception shall not be used to limit or deny access to
160 otherwise public records in a file, document, data file or
161 database containing public records. Records related to the
162 procurement of or expenditures relating to such computer,
163 computer system, computer network, or telecommunications
164 network, including the amount of moneys paid by, or on
165 behalf of, a public governmental body for such computer,
166 computer system, computer network, or telecommunications
167 network shall be open;

168 (22) Credit card numbers, personal identification
169 numbers, digital certificates, physical and virtual keys,
170 access codes or authorization codes that are used to protect
171 the security of electronic transactions between a public
172 governmental body and a person or entity doing business with
173 a public governmental body. Nothing in this section shall
174 be deemed to close the record of a person or entity using a
175 credit card held in the name of a public governmental body
176 or any record of a transaction made by a person using a
177 credit card or other method of payment for which
178 reimbursement is made by a public governmental body;

179 (23) Records submitted by an individual, corporation,
180 or other business entity to a public institution of higher
181 education in connection with a proposal to license
182 intellectual property or perform sponsored research and
183 which contains sales projections or other business plan
184 information the disclosure of which may endanger the
185 competitiveness of a business;

186 (24) Records relating to foster home or kinship
187 placements of children in foster care under section 210.498;
188 and

189 (25) Individually identifiable customer usage and
190 billing records for customers of a municipally owned
191 utility, unless the records are requested by the customer or
192 authorized for release by the customer, except that a
193 municipally owned utility shall make available to the public
194 the customer's name, billing address, location of service,
195 and dates of service provided for any commercial service
196 account.

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