

House Bill 1993 would add to Missouri's Sunshine Law

By the time this column appears in print, Sunshine Week will be over for this year. Thanks for the many ways newspapers in the state recognize this event and for reminding your readers that the Sunshine Law is important in ensuring good government.

During that week, House Bill 1993, which amends Missouri's Sunshine Law, was scheduled for a hearing before a committee of the Missouri legislature. That bill proposes a number of changes. It would allow the public to request notice of meetings of a particular public body – at present, only the news media has that right. It prohibits discussions of items not on the posted agenda.

The bill includes language that specifies no action can be taken by a public body in any meeting without a vote, by roll call or voice vote. Too often we find bodies decide to take an action without there being any vote – decisions are made “by consensus” or by referring a matter to an individual without the missing step of a vote showing that there was a decision that this was the action to be taken. Also, the bill limits persons who can be included in a closed meeting to those providing information needed by the public governmental body in its discussion.

Perhaps the most important language included in this bill is language clarifying that it is the responsibility of the public governmental body to separate open records from closed records and that the public body can only charge for time spent in searching for the records and duplicating the records.

Far too often, public bodies are stymieing requesters of records by telling them that the public body has to have its law firm review the records to ensure closed records are not made available, and telling the requester that it must pay for the cost of those attorney fees. It is not unusual for a request involving such costs to run five-figures, or more.

I went to Jefferson City that night

in order to testify in support of House Bill 1993. Unfortunately, the hearing on that bill was scheduled behind a hearing on Senate Bill 572, which would eliminate jail time as a penalty for municipal court violations, and cap fines at \$200. There were literally dozens of public officials there that night to testify in opposition to that bill.

The hearing went on and on and in the end the hearing on House Bill 1993 was postponed until the end of the month. But what was interesting to me was to hear one of the state legislators, Representative Gina Mitten, comment to a witness that she had filed a sunshine law request for information relating to the number of cases in municipal court. I am assuming that her request was properly for court administrative information governed by the Sunshine Law and not for court records, which are governed by Supreme Court Rules instead.

But assuming it was for administrative information, I couldn't help but wonder what she would have thought if her request had received a response that it would require payment of Ten Thousand Dollars in attorneys fees. It was literally the first time I'd ever hear a state legislator talk of making a Sunshine Law request for records.

I think it is true that most public governmental bodies try to be helpful in responding to requests from the media for public records. I think the reality is that requests from citizens for records are treated a little less favorably. At the same time, I realize reporters get very good at knowing how

to make a Sunshine Law request in a way that facilitates getting the information they need. But I also am a firm believer that public bodies have abdicated their duty to segregate open from closed records. They simply wait until a request comes in and then they

make a decision whether a record is open or closed. It is cheaper to not pay for attorney assistance until a request comes in for the record, and then attempt to make the citizen wanting the record pay for that separation which is, by statute, imposed upon the public body. Section 610.024 specifically says “If a public record contains materials which is not exempt from disclosure as well as material which is exempt from disclosure, the public governmental body shall separate the exempt and non-exempt material and

make the nonexempt material available for examination and copying.”

It does not say that you and I are required to pay for that task. House Bill 1993 is an effort to put in print what should already be clear in the law. Getting this bill passed is going to take support of all of you – in editorials and in coverage of this issue. Let's stretch Sunshine Week out a few more weeks and pull this bill through the Missouri legislature this session.

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