

Below are four articles about the Sunshine Law published this week, which is National Sunshine Week. Coincidentally, a bill to amend Missouri's Sunshine Law is being considered in the legislature.

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## Legislation will improve Sunshine Law

By Henry J. Waters III

*(Columbia Daily Tribune)* - Perhaps the most enduring canard regarding public governance is that good people won't serve in office unless surrounded in secrecy; its dichotomous cousin asserts officials can only do business openly behind closed doors.

By now we know the natural tendency of public officials doing public business to avoid publicity. If you notice a hopeless tangle of the "p" word in the above sentence, you get the picture.

For years governments have built open meetings and records laws, and for just as many years operating officials have resisted. You can see a current version of this struggle in the list of groups — including organizations for cities, counties and other local government agencies — opposing a new law sponsored by Sen. Kurt Schaefer that would make long-needed improvements in Missouri's Sunshine Law.

The enforcement mechanism is one of the primary faults in the current Missouri statute. After proclaiming openness as the basic requirement, the law is routinely ignored because enforcement depends on lawsuits brought by private parties against the government to prove officeholder offenders "purposefully" or "knowingly" broke the law.

Schaefer's new version would retain larger fines for "purposeful" violations but would allow small-fine application of the law without having to prove "knowing" violations.

The executive director of the St. Louis Municipal League raised the usual complaint: It's wrong to penalize volunteers on school boards and other public agencies for accidentally violating the law. But to follow this reasoning is to say any citizen can be excused from following any law out of ignorance, and the appertaining agency will typically be seen as the primary offender.

The lowered fine for easier prosecution is a step forward, but the best move would be for prosecutors at state and local levels to assume responsibility. They wouldn't even have to file lawsuits to make a huge difference if, upon receiving and examining a complaint, they would summon the alleged public official offender for an explanation of the penalties involved if the offense is not acknowledged and corrected. If routinely followed, this tactic would quickly bring the desired result.

Newspapers and other media often openly accuse public officials of secrecy, but officials just as routinely ignore these charges. They might say they don't "know" they are violating the law, but one thing they surely do "know" is they can do so with almost certain impunity.

Schaefer's law should be passed. Let us commend Schaefer for doing the right thing and urge his colleagues to agree.

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## The next step toward more sunshine

(St. Joseph News-Press) - The well-intentioned Missouri Sunshine Law stumbles when it specifies penalties for violators but is unable to deliver on that promise. For this reason, we continue to advocate for an update of the law — lesser penalties, but greater certainty.

We also go a step further in reminding that the public risks losing the protections afforded by this 40-year-old model of good government whenever its provisions are taken for granted or presumed to be of little consequence.

The law states clearly: “It is the public policy of this state that meetings, records, votes, actions, and deliberations of public governmental bodies be open to the public unless otherwise provided by law.”

There it is, a post-Watergate statement of public intent. As Attorney General Chris Koster has noted, the law explains when a meeting, record or vote may be closed, “while stressing these exceptions are to be strictly interpreted to promote the public policy of openness.”

And yet, these many years later, proponents of the public’s right to know routinely are disappointed with many public officials and agencies in Missouri. As an example, the state auditor’s office found Sunshine Law violations in up to 20 percent of its audits of public entities over the past three years.

Advocates expect officials to know what the law says and comply with it. The officials, all too frequently, violate one or more provisions and then contend the occurrence was inadvertent, unintentional and, as a result, not subject to penalty.

Senate Bill 843 would change this. Currently, a “knowing” violation of the Sunshine Law can bring a civil penalty of \$1,000. The proposal would remove the “knowing” requirement and lessen the fine to \$100, but the individual or agency in violation could be compelled to pay court costs and reasonable attorney fees.

A judge would be empowered to limit the fees assessed to smaller governmental units found to have committed a violation.

The magic here is in focusing less on the explanation of “why” and more on the fact the public was denied access. Someone must be held accountable, and we think the greater likelihood of this will make a difference in improving compliance.

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## Open government laws may expand

by Chris Blank/The Associated Press

(JEFFERSON CITY) -- Running afoul of Missouri's open government laws could carry a smaller financial penalty but no longer require proof the law knowingly was broken under legislation before a Senate committee.

Officials or agencies now can be required to pay up to \$5,000 for a purposeful violation and up to \$1,000 for a "knowing" violation. The Senate legislation would reduce the amount of the lesser penalty to \$100 and allow it to be applied when the government did not knowingly break Missouri's requirements for open meetings and public records. The larger penalty would remain for purposeful violations.

Supporters say the legislation would make enforcement of the Sunshine Law similar to that of other statutes.

"If you get a traffic ticket, there is a penalty that you pay," said Jean Maneke, an attorney for the Missouri Press Association. "It's a small penalty compared to what the law is today, but it's enough to get your attention and cause you to start paying attention to these kinds of laws."

Maneke said officials promise to uphold state law but that the Sunshine Law is one "they don't seem very concerned about knowing what the law says, and it's frankly not that hard to understand."

The Missouri auditor's office identified Sunshine Law violations in 15 percent of its audits last year. Auditor Tom Schweich reported violations in about 20 percent of reviews completed by his office in 2012 and 2011.

The proposed changes to the Sunshine Law prompted concerns from organizations for cities, counties and other local government agencies. They questioned levying penalties against people who can be volunteers and who accidentally violate the Sunshine Law while serving their communities.

Tim Fischesser, executive director of the St. Louis County Municipal League, said the legislation could have a "chilling effect" on the willingness of people to serve on boards and commissions.

"This puts a big target on common citizens just trying to serve their community," he said.

The Missouri Sunshine Law, first passed in 1973, has been updated several times.

The law requires government boards to provide notice 24 hours before a meeting. Officials must reference a specific exemption to close meetings to the public. To provide records requested under the law, agencies can charge up to 10 cents per page, the average hourly wage of clerical staff for making copies and the actual cost of research time. Officials must respond to a request within three days, though it does not mean documents have to be provided that quickly.

The law presumes meetings and documents are open, though there are numerous exceptions that allow -- but do not require -- government agencies to close them. Exemptions address issues such as communication with agencies' attorneys, school expulsions, software codes for electronic data processing and operational policies for responding to terrorism.

Missouri lawmakers in 2004 approved legislation that included increasing penalties for Sunshine Law violations from \$500 to their current level.

Sen. Kurt Schaefer is sponsoring the Sunshine Law legislation, which is similar to a bill he filed last year. Schaefer, R-Columbia, is running for attorney general in 2016, and that office is responsible for enforcing the Sunshine Law.

Schaefer's legislation also would bar government agencies from charging for time spent reviewing whether requested documents are exempt from disclosure. It would require that the courts order the government to pay attorney fees when a complaint about a Sunshine Law violation is sustained. Attorney fees currently must be paid for purposeful violations and are an option for knowing violations.

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## Let the Sunshine in: Getting ahold of Open Records In Missouri

by Bill Greenblatt/UPI

*(St.LouisPublicRadio)* -- Sunday was the start of "Sunshine Week," a time to celebrate the idea of open government and open records. But in Missouri, you might want to hold off on popping the champagne.

Missouri's sunshine law, which allows the public to ask government officials for things like emails, documents and other records, doesn't have much teeth.

"The lack of any way to enforce it," Jean Maneke, a First Amendment attorney said, when asked what the law's biggest shortcoming was. "I say that even though the law does have enforcement provisions in it, but it is a very difficult law to enforce."

Maneke has served as a consulting attorney for the Missouri Press Association since 1992. She also consults lawmakers when they propose changes to the sunshine law.

The law was passed originally in the 1970s and revamped in the 1990s. In addition to the records requirements, it also limits when meetings can be closed to the public.

Maneke says the law does a poor job of encouraging agencies to be transparent. The law can impose fines on agencies that don't follow the sunshine law, but that can be problematic. A fine might be a good incentive for a small agency, but may not motivate a large one.

She says she's not sure how to make enforcing the law easier, but that higher fines might not be the answer.

"Higher fines just cause courts to be a little more reticent to impose them," Maneke said. "I'm beginning to think the way to enforce the law is to lower the fines so that it's just enough to get someone's attention."

Missouri's law says that the government has three days to produce records after a request is made -- unless there's a good reason they can't. But in practice, the government often disregards the timeline.

Members of the press whose open records requests are disregarded have a few options.

"It depends on how much money they have available to them," Maneke said. If an outlet hires an attorney, "sometimes that gets a little bit higher attention level."

The other option is to go public.

As a Missouri state senator in the 1980s, and then as Missouri attorney general, Nixon played a major role in developing -- and enforcing -- Missouri's sunshine law.

In 2007, Nixon appointed a special investigative team to look into allegations that then-Gov. Matt Blunt, a Republican, had allowed his staff to destroy internal emails in violation of the state's open records laws, which required that office communications be archived for at least three

years. Blunt and his staff also acknowledged using private email accounts for some office business.

Blunt denied any wrongdoing but did fire then-chief of staff Ed Martin.

Martin, now the state's Republican Party chairman, had been accused of firing a lawyer in the governor's office over the open-records issue. The lawyer, Scott Eckersley, had contended that communications were being improperly destroyed. Eckersley then sued Martin and others. In the settlement, reached when Nixon became governor, no one acknowledged wrongdoing, but Eckersley did receive \$500,000.

Nixon then announced he was putting in place procedures to make sure that emails and internal communications were handled properly.

### **Sunshine in the legislature**

The Missouri legislature has faced criticism for how it handles open records requests as well. The state legislature says that individual lawmakers aren't subject to the sunshine law. It's something state Auditor Tom Schweich, a Republican, has reprimanded them for in past audits. Schweich recently received a Sunshine Hero award for supporting open government.

A bill sponsored by Rep. John Mayfield, D-Kansas City, would clarify that lawmakers are, in fact, subject to the sunshine law. State Sen. Kurt Schaefer, a Republican, has proposed subtle changes to the sunshine law.

Currently, complaints that officials violated sunshine law have to prove that they did so knowingly. Schaefer's bill would change that. Maneke said she's worked with him on the bill.

"[Open government] is just the foundation of basic good government," Maneke said. "We were founded on an important belief that the public needs to know what's going on in government. It prevents corruption."



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