

SECOND REGULAR SESSION
[P E R F E C T E D]
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 467
96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR MUNZLINGER.

Offered January 24, 2012.

Senate Substitute adopted, January 24, 2012.

Taken up for Perfection January 24, 2012. Bill declared Perfected and Ordered Printed, as amended.

TERRY L. SPIELER, Secretary.

4291S.04P

AN ACT

To repeal sections 37.850 and 536.087, RSMo, and to enact in lieu thereof three new sections relating to the transparency and accountability of public funds, with an emergency clause.

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

Section A. Sections 37.850 and 536.087, RSMo, are repealed and three
2 new sections enacted in lieu thereof, to be known as sections 33.087, 37.850, and
3 536.087, to read as follows:

33.087. 1. Every department and division of the state that
2 **receives any grant of federal funds of one million dollars or more shall**
3 **document and make the following information easily available to the**
4 **public on the Missouri accountability portal established in section**
5 **37.850:**

- 6 **(1) Any amount of funds it receives from the federal government;**
7 **(2) The name of the federal agency disbursing the funds;**
8 **(3) The purpose for which the funds are being received;**
9 **(4) The name of any state agency to which any portion of the**
10 **funds are transferred by the initial receiving department or division,**
11 **the amount transferred, and the purpose for which those funds are**
12 **transferred; and**
13 **(5) The information provided to the department or division**
14 **pursuant to subsection 2 of this section.**

15 **2. If a department or division receives a grant of federal funds**
16 **and transfers a portion of such funds to another department or**
17 **division, the department or division receiving the transferred funds**
18 **shall report to the department or division from which the funds were**
19 **transferred, an accounting of how the transferred funds were used and**
20 **any statistical impact that can be discerned as a result of such usage.**

21 **3. All information referred to in subsection 1 of this section shall**
22 **be updated within thirty days of any receipt or transferal of funds.**

23 **4. The office of administration shall promulgate rules to**
24 **implement the provisions of this section. Any rule or portion of a rule,**
25 **as that term is defined in section 536.010 that is created under the**
26 **authority delegated in this section shall become effective only if it**
27 **complies with and is subject to all of the provisions of chapter 536, and,**
28 **if applicable, section 536.028. This section and chapter 536 are**
29 **nonseverable and if any of the powers vested with the general assembly**
30 **pursuant to chapter 536, to review, to delay the effective date, or to**
31 **disapprove and annul a rule are subsequently held unconstitutional,**
32 **then the grant of rulemaking authority and any rule proposed or**
33 **adopted after August 28, 2012, shall be invalid and void.**

37.850. 1. The commissioner of administration shall maintain the
2 Missouri accountability portal established in executive order 07-24 as a free,
3 Internet-based tool allowing citizens to demand fiscal discipline and
4 responsibility.

5 **2. The Missouri accountability portal shall consist of an easy-to-search**
6 **database of financial transactions related to the purchase of goods and services**
7 **and the distribution of funds for state programs, and all bonds issued by any**
8 **public institution of higher education, political subdivisions of the state**
9 **or its designated authority, and any obligation issued pursuant to**
10 **section 99.820, and the revenue stream pledged to repay the bond or**
11 **obligation.**

12 **3. The Missouri accountability portal shall be updated each state business**
13 **day and maintained as the primary source of information about the activity of**
14 **Missouri's government.**

15 **4. The governor shall submit a daily report stating all amounts**
16 **withheld from the state's operating budget for the current fiscal year,**
17 **as authorized by article IV, section 27 of the Missouri Constitution**
18 **which shall be:**

- 19 **(1) Conspicuously posted on the accountability portal website;**
20 **(2) Searchable by the amounts withheld from each individual**
21 **fund; and**
22 **(3) Searchable by the total amount withheld from the operating**
23 **budget.**

24 **5. Every public institution of higher education and political**
25 **subdivision of the state shall supply information to the office of**
26 **administration documenting any bond issuance or obligation incurred**
27 **as described in subsection 2 of this section, within seven days of such**
28 **issuance. For all such bonds or obligations issued or incurred prior to**
29 **August 28, 2012, every public institution of higher education and**
30 **political subdivision shall have ninety days to supply such information**
31 **to the office of administration.**

536.087. 1. A party who prevails in an agency proceeding or civil action
2 arising therefrom, brought by or against the state, shall be awarded those
3 reasonable fees and expenses incurred by that party in the civil action or agency
4 proceeding, unless the court or agency finds that the position of the state was
5 substantially justified or that special circumstances make an award unjust.

6 2. In awarding reasonable fees and expenses under this section to a party
7 who prevails in any action for judicial review of an agency proceeding, the court
8 shall include in that award reasonable fees and expenses incurred during such
9 agency proceeding unless the court finds that during such agency proceeding the
10 position of the state was substantially justified, or that special circumstances
11 make an award unjust.

12 3. A party seeking an award of fees and other expenses shall, within
13 thirty days of a final disposition in an agency proceeding or final judgment in a
14 civil action, submit to the court, agency or commission which rendered the final
15 disposition or judgment an application which shows that the party is a prevailing
16 party and is eligible to receive an award under this section, and the amount
17 sought, including an itemized statement from any attorney or expert witness
18 representing or appearing in behalf of the party stating the actual time expended
19 and the rate at which fees and other expenses are computed. The party shall also
20 allege that the position of the state was not substantially justified. The fact that
21 the state has lost the agency proceeding or civil action creates no legal
22 presumption that its position was not substantially justified. Whether or not the
23 position of the state was substantially justified shall be determined on the basis

24 of the record (including the record with respect to the action or failure to act by
25 an agency upon which a civil action is based) which is made in the agency
26 proceeding or civil action for which fees and other expenses are sought, and on
27 the basis of the record of any hearing the court or agency deems appropriate to
28 determine whether an award of reasonable fees and expenses should be made,
29 provided that any such hearing shall be limited to consideration of matters which
30 affected the agency's decision leading to the position at issue in the fee
31 application.

32 4. A prevailing party in an agency proceeding shall submit an application
33 for fees and expenses to the administrative body before which the party prevailed.
34 A prevailing party in a civil action on appeal from an agency proceeding shall
35 submit an application for fees and expenses to the court. The filing of an
36 application shall not stay the time for appealing the merits of a case. When the
37 state appeals the underlying merits of an adversary proceeding, no decision on
38 the application for fees and other expenses in connection with that adversary
39 proceeding shall be made under this section until a final and unreviewable
40 decision is rendered by the court on the appeal or until the underlying merits of
41 the case have been finally determined pursuant to the appeal.

42 5. The court or agency may either reduce the amount to be awarded or
43 deny any award, to the extent that the prevailing party during the course of the
44 proceedings engaged in conduct which unduly and unreasonably protracted the
45 final resolution of the matter in controversy.

46 6. The decision of a court or an agency on the application for reasonable
47 fees and expenses shall be in writing, separate from the judgment or order of the
48 court or the administrative decision which determined the prevailing party, and
49 shall include written findings and conclusions and the reason or basis
50 therefor. The decision of a court or an agency on the application for fees and
51 other expenses shall be final, subject respectively to appeal or judicial review.

52 7. If a party or the state is dissatisfied with a determination of fees and
53 other expenses made in an agency proceeding, that party or the state may within
54 thirty days after the determination is made, seek judicial review of that
55 determination from the court having jurisdiction to review the merits of the
56 underlying decision of the agency adversary proceeding. If a party or the state
57 is dissatisfied with a determination of fees and other expenses made in a civil
58 action arising from an agency proceeding, that party or the state may, within the
59 time permitted by law, appeal that order or judgment to the appellate court

60 having jurisdiction to review the merits of that order or judgment. The reviewing
61 or appellate court's determination on any judicial review or appeal heard under
62 this subsection shall be based solely on the record made before the agency or
63 court below. The court may modify, reverse or reverse and remand the
64 determination of fees and other expenses if the court finds that the award or
65 failure to make an award of fees and other expenses, or the calculation of the
66 amount of the award, was arbitrary and capricious, was unreasonable, was
67 unsupported by competent and substantial evidence, or was made contrary to law
68 or in excess of the court's or agency's jurisdiction. Awards made pursuant to this
69 act shall be payable from amounts appropriated therefor. [The state agency
70 against which the award was made shall request an appropriation to pay the
71 award.] **No agency shall request, or be granted, an additional**
72 **appropriation of money in order to satisfy an award made under this**
73 **section. Within thirty days of the judgement awarding fees and other**
74 **expenses becoming final, including the exhaustion of any appeals, the**
75 **agency shall forward notification of the amount of awarded fees and**
76 **other expenses to the chair of the house budget committee and the**
77 **chair of the senate appropriations committee.**

Section B. Because it is necessary to document and track the transference
2 of public funds, section A of this act is deemed necessary for the immediate
3 preservation of the public health, welfare, peace and safety, and is hereby
4 declared to be an emergency act within the meaning of the constitution, and
5 section A of this act shall be in full force and effect upon its passage and
6 approval.

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