

SECOND REGULAR SESSION

[PERFECTED]

# HOUSE BILL NO. 2111

## 102ND GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE CHRISTOFANELLI.

4503H.01P

DANA RADEMAN MILLER, Chief Clerk

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### AN ACT

To repeal sections 29.005, 29.235, 374.250, and 610.021, RSMo, and to enact in lieu thereof five new sections relating to powers of the state auditor.

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

Section A. Sections 29.005, 29.235, 374.250, and 610.021, RSMo, are repealed and  
2 five new sections enacted in lieu thereof, to be known as sections 29.005, 29.225, 29.235,  
3 374.250, and 610.021, to read as follows:

29.005. As used in this chapter, the following terms mean:

- 2 (1) "Accounting system", the total structure of records and procedures which  
3 discover, record, classify, and report information on the financial position and operating  
4 results of a governmental unit or any of its funds, balanced account groups, and  
5 organizational components;
- 6 (2) "Audit", an independent, objective assessment of the stewardship, performance, or  
7 cost of government policies, programs, or operations, depending upon the type and scope of  
8 the audit. All audits shall conform to the standards established by the comptroller general of  
9 the United States for audits of government entities, organizations, programs, activities, and  
10 functions as presented in the publication Government Auditing Standards;
- 11 (3) "Federal agency", any department, agency, or instrumentality of the federal  
12 government and any federally owned or controlled corporation;
- 13 (4) "Financial audits", audits providing an independent assessment of whether an  
14 entity's reported financial information is presented fairly in accordance with recognized  
15 criteria. Financial audits shall consist of the following:

EXPLANATION — Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 (a) Financial statement audits that shall:

17 a. Provide or disclaim an opinion about whether an entity's financial statements are  
18 presented fairly in all material respects in conformity with accounting principles generally  
19 accepted in the United States or with another applicable financial reporting framework; or

20 b. Report on internal control deficiencies and on compliance with provisions of laws,  
21 regulations, contracts, and grant agreements, as those controls and provisions relate to  
22 financial transactions, systems, and processes; or

23 (b) Other financial audits of various scopes which may include, but not be limited to:

24 a. Reporting on specified elements, accounts, or items of a financial statement; and

25 b. Auditing compliance with requirements related to federal award expenditures and  
26 other governmental financial assistance in conjunction with a financial statement audit;

27 (5) **"Improper governmental activity", includes official misconduct, fraud,**  
28 **misappropriation, mismanagement, waste of resources, or a violation of state or federal**  
29 **law, rule, or regulation;**

30 (6) "Internal control", the plans, policies, methods, and procedures used to meet an  
31 entity's or organization's mission, goals, and objectives. Internal control shall include the  
32 processes and procedures for planning, organizing, directing, and controlling operations, as  
33 well as management's system for measuring, reporting, and monitoring performance;

34 ~~[(6)]~~ (7) "Performance audits", audits that provide findings or conclusions based on  
35 an evaluation of sufficient, appropriate evidence against identified criteria. Performance audit  
36 objectives shall include, but not be limited to, the following:

37 (a) Effectiveness and results. This objective may measure the extent to which an  
38 entity, organization, activity, program, or function is achieving its goals and objectives;

39 (b) Economy and efficiency. This objective shall assess the costs and resources used  
40 to achieve results of an entity, organization, activity, program, or function;

41 (c) Internal control. This objective shall assess one or more components of an entity's  
42 internal control system, which is designed to provide reasonable assurance of achieving  
43 effective and efficient operations, reliable financial and performance reporting, or compliance  
44 with applicable legal requirements; and

45 (d) Compliance. This objective shall assess compliance with criteria established by  
46 provisions of laws, regulations, contracts, and grant agreements or by other requirements that  
47 could affect the acquisition, protection, use, and disposition of an entity's resources and the  
48 quantity, quality, timeliness, and cost of services the entity produces and delivers;

49 ~~[(7)]~~ (8) "State agency", any department, institution, board, commission, committee,  
50 division, bureau, officer, or official which shall include any institution of higher education,  
51 mental or specialty hospital, community college, or circuit court and divisions of the circuit  
52 court.

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

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

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

8 2. The costs for all audits initiated under this section shall be paid out of the state  
9 auditor's budget.

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

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

9 (a) Amounts received under a grant or contract from the federal government or the  
10 state or its political subdivisions;

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

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

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

21 2. All contracts or agreements entered into as a result of the award of a grant by state  
22 agencies or political subdivisions shall include, as a necessary part, a clause describing the  
23 auditor's access as provided under this section.

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

29           4. (1) Insofar as necessary to conduct an audit under this chapter **or an investigation**  
30 **under section 29.221**, the auditor or the auditor's authorized representatives shall have the  
31 power to subpoena witnesses, to take testimony under oath, to cause the deposition of  
32 witnesses residing within or without the state to be taken in a manner prescribed by law, and  
33 to assemble records and documents, by subpoena or otherwise. The subpoena power granted  
34 by this section shall be exercised only at the specific written direction of the auditor or the  
35 auditor's chief deputy.

36           (2) If any person refuses to comply with a subpoena, the auditor shall seek to enforce  
37 the subpoena before a court of competent jurisdiction to require the attendance and testimony  
38 of witnesses and the production of books, papers, correspondence, memoranda, contracts,  
39 agreements, and other records. Such court may issue an order requiring such person to appear  
40 before the auditor or officers designated by the auditor to produce records or to give  
41 testimony relating to the matter under investigation or in question. Any failure to comply  
42 with such order of the court may be punished by such court as contempt.

43           **5. Testimony and records obtained through the authority to subpoena under this**  
44 **section shall be subject to the same confidentiality and disclosure provisions provided**  
45 **under section 29.200 for audit workpapers and related supportive material.**

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

4           2. At the close of each state fiscal year, the state auditor shall audit, adjust and settle  
5 all receipts and disbursements in the insurance dedicated fund and the insurance examiners'  
6 fund, ~~and taxes certified or collected under sections 148.310 to 148.461 or sections 384.011~~  
7 ~~to 384.071]~~ **and the results shall be reported as part of the annual audit of the state's**  
8 **financial statements.**

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

4           (1) Legal actions, causes of action or litigation involving a public governmental body  
5 and any confidential or privileged communications between a public governmental body or  
6 its representatives and its attorneys. However, any minutes, vote or settlement agreement  
7 relating to legal actions, causes of action or litigation involving a public governmental body  
8 or any agent or entity representing its interests or acting on its behalf or with its authority,  
9 including any insurance company acting on behalf of a public government body as its insured,  
10 shall be made public upon final disposition of the matter voted upon or upon the signing by  
11 the parties of the settlement agreement, unless, prior to final disposition, the settlement  
12 agreement is ordered closed by a court after a written finding that the adverse impact to a

13 plaintiff or plaintiffs to the action clearly outweighs the public policy considerations of  
14 section 610.011, however, the amount of any moneys paid by, or on behalf of, the public  
15 governmental body shall be disclosed; provided, however, in matters involving the exercise of  
16 the power of eminent domain, the vote shall be announced or become public immediately  
17 following the action on the motion to authorize institution of such a legal action. Legal work  
18 product shall be considered a closed record;

19 (2) Leasing, purchase or sale of real estate by a public governmental body where  
20 public knowledge of the transaction might adversely affect the legal consideration therefor.  
21 However, any minutes, vote or public record approving a contract relating to the leasing,  
22 purchase or sale of real estate by a public governmental body shall be made public upon  
23 execution of the lease, purchase or sale of the real estate;

24 (3) Hiring, firing, disciplining or promoting of particular employees by a public  
25 governmental body when personal information about the employee is discussed or recorded.  
26 However, any vote on a final decision, when taken by a public governmental body, to hire,  
27 fire, promote or discipline an employee of a public governmental body shall be made  
28 available with a record of how each member voted to the public within seventy-two hours of  
29 the close of the meeting where such action occurs; provided, however, that any employee so  
30 affected shall be entitled to prompt notice of such decision during the seventy-two-hour  
31 period before such decision is made available to the public. As used in this subdivision, the  
32 term "personal information" means information relating to the performance or merit of  
33 individual employees;

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

35 (5) Nonjudicial mental or physical health proceedings involving identifiable persons,  
36 including medical, psychiatric, psychological, or alcoholism or drug dependency diagnosis or  
37 treatment;

38 (6) Scholastic probation, expulsion, or graduation of identifiable individuals,  
39 including records of individual test or examination scores; however, personally identifiable  
40 student records maintained by public educational institutions shall be open for inspection by  
41 the parents, guardian or other custodian of students under the age of eighteen years and by the  
42 parents, guardian or other custodian and the student if the student is over the age of eighteen  
43 years;

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

46 (8) Welfare cases of identifiable individuals;

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

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

50 (11) Specifications for competitive bidding, until either the specifications are  
51 officially approved by the public governmental body or the specifications are published for  
52 bid;

53 (12) Sealed bids and related documents, until the bids are opened; and sealed  
54 proposals and related documents or any documents related to a negotiated contract until a  
55 contract is executed, or all proposals are rejected;

56 (13) Individually identifiable personnel records, performance ratings or records  
57 pertaining to employees or applicants for employment, except that this exemption shall not  
58 apply to the names, positions, salaries and lengths of service of officers and employees of  
59 public agencies once they are employed as such, and the names of private sources donating or  
60 contributing money to the salary of a chancellor or president at all public colleges and  
61 universities in the state of Missouri and the amount of money contributed by the source;

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

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

65 (16) Records relating to municipal hotlines established for the reporting of abuse and  
66 wrongdoing;

67 (17) **Records relating to reports of allegations of improper governmental**  
68 **activities under section 29.221;**

69 (18) Confidential or privileged communications between a public governmental body  
70 and its auditor, including all auditor work product; however, all final audit reports issued by  
71 the auditor are to be considered open records pursuant to this chapter;

72 ~~[(18)]~~ (19) (a) Security measures, global positioning system (GPS) data,  
73 investigative information, or investigative or surveillance techniques of any public agency  
74 responsible for law enforcement or public safety that, if disclosed, has the potential to  
75 endanger the health or safety of an individual or the public.

76 (b) Any information or data provided to a tip line for the purpose of safety or security  
77 at an educational institution that, if disclosed, has the potential to endanger the health or  
78 safety of an individual or the public.

79 (c) Any information contained in any suspicious activity report provided to law  
80 enforcement that, if disclosed, has the potential to endanger the health or safety of an  
81 individual or the public.

82 (d) Operational guidelines, policies and specific response plans developed, adopted,  
83 or maintained by any public agency responsible for law enforcement, public safety, first  
84 response, or public health for use in responding to or preventing any critical incident which  
85 has the potential to endanger individual or public safety or health. Financial records related to  
86 the procurement of or expenditures relating to operational guidelines, policies or plans

87 purchased with public funds shall be open. When seeking to close information pursuant to  
88 this exception, the public governmental body shall affirmatively state in writing that  
89 disclosure would impair the public governmental body's ability to protect the security or  
90 safety of persons or real property, and shall in the same writing state that the public interest in  
91 nondisclosure outweighs the public interest in disclosure of the records;

92 ~~[(19)]~~ **(20)** Existing or proposed security systems and structural plans of real property  
93 owned or leased by a public governmental body, and information that is voluntarily submitted  
94 by a nonpublic entity owning or operating an infrastructure to any public governmental body  
95 for use by that body to devise plans for protection of that infrastructure, the public disclosure  
96 of which would threaten public safety:

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

99 (b) When seeking to close information pursuant to this exception, the public  
100 governmental body shall affirmatively state in writing that disclosure would impair the public  
101 governmental body's ability to protect the security or safety of persons or real property, and  
102 shall in the same writing state that the public interest in nondisclosure outweighs the public  
103 interest in disclosure of the records;

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

108 ~~[(20)]~~ **(21)** The portion of a record that identifies security systems or access codes or  
109 authorization codes for security systems of real property;

110 ~~[(21)]~~ **(22)** Records that identify the configuration of components or the operation of  
111 a computer, computer system, computer network, or telecommunications network, and would  
112 allow unauthorized access to or unlawful disruption of a computer, computer system,  
113 computer network, or telecommunications network of a public governmental body. This  
114 exception shall not be used to limit or deny access to otherwise public records in a file,  
115 document, data file or database containing public records. Records related to the procurement  
116 of or expenditures relating to such computer, computer system, computer network, or  
117 telecommunications network, including the amount of moneys paid by, or on behalf of, a  
118 public governmental body for such computer, computer system, computer network, or  
119 telecommunications network shall be open;

120 ~~[(22)]~~ **(23)** Credit card numbers, personal identification numbers, digital certificates,  
121 physical and virtual keys, access codes or authorization codes that are used to protect the  
122 security of electronic transactions between a public governmental body and a person or entity  
123 doing business with a public governmental body. Nothing in this section shall be deemed to

124 close the record of a person or entity using a credit card held in the name of a public  
125 governmental body or any record of a transaction made by a person using a credit card or  
126 other method of payment for which reimbursement is made by a public governmental body;

127       ~~[(23)]~~ **(24)** Records submitted by an individual, corporation, or other business entity  
128 to a public institution of higher education in connection with a proposal to license intellectual  
129 property or perform sponsored research and which contains sales projections or other  
130 business plan information the disclosure of which may endanger the competitiveness of a  
131 business;

132       ~~[(24)]~~ **(25)** Records relating to foster home or kinship placements of children in foster  
133 care under section 210.498; and

134       ~~[(25)]~~ **(26)** Individually identifiable customer usage and billing records for customers  
135 of a municipally owned utility, unless the records are requested by the customer or authorized  
136 for release by the customer, except that a municipally owned utility shall make available to  
137 the public the customer's name, billing address, location of service, and dates of service  
138 provided for any commercial service account.

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