

SENATE BILL NO. 174

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR KOENIG.

0774S.01H

KRISTINA MARTIN, Secretary

AN ACT

To repeal sections 610.010, 610.021, 610.023, 610.024, and 610.026, RSMo, and to enact in lieu thereof five new sections relating to public records and meetings.

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

Section A. Sections 610.010, 610.021, 610.023, 610.024, and 610.026, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 610.010, 610.021, 610.023, 610.024, and 610.026, to read as follows:

610.010. As used in this chapter, unless the context otherwise indicates, the following terms mean:

(1) "Closed meeting", "closed record", or "closed vote", any meeting, record or vote closed to the public;

(2) "Copying", if requested by a member of the public, copies provided as detailed in section 610.026, if duplication equipment is available;

(3) "Public business", **[all matters which relate in any way to the performance of the public governmental body's functions or the conduct of its business] the deliberations of at least the number of individual public governmental body members required to take action on behalf of the public governmental body where such deliberations determine or result in the joint conduct or disposition of official public governmental body business;**

(4) "Public governmental body", any legislative, administrative or governmental entity created by the

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

18 Constitution or statutes of this state, by order or
19 ordinance of any political subdivision or district, judicial
20 entities when operating in an administrative capacity, or by
21 executive order, including:

22 (a) Any body, agency, board, bureau, council,
23 commission, committee, board of regents or board of curators
24 or any other governing body of any institution of higher
25 education, including a community college, which is supported
26 in whole or in part from state funds, including but not
27 limited to the administrative entity known as "The Curators
28 of the University of Missouri" as established by section
29 172.020;

30 (b) Any advisory committee or commission appointed by
31 the governor by executive order;

32 (c) Any department or division of the state, of any
33 political subdivision of the state, of any county or of any
34 municipal government, school district or special purpose
35 district including but not limited to sewer districts, water
36 districts, and other subdistricts of any political
37 subdivision;

38 (d) Any other legislative or administrative
39 governmental deliberative body under the direction of three
40 or more elected or appointed members having rulemaking or
41 quasi-judicial power;

42 (e) Any committee appointed by or at the direction of
43 any of the entities and which is authorized to report to any
44 of the above-named entities, any advisory committee
45 appointed by or at the direction of any of the named
46 entities for the specific purpose of recommending, directly
47 to the public governmental body's governing board or its
48 chief administrative officer, policy or policy revisions or
49 expenditures of public funds including, but not limited to,

50 entities created to advise bi-state taxing districts
51 regarding the expenditure of public funds, or any policy
52 advisory body, policy advisory committee or policy advisory
53 group appointed by a president, chancellor or chief
54 executive officer of any college or university system or
55 individual institution at the direction of the governing
56 body of such institution which is supported in whole or in
57 part with state funds for the specific purpose of
58 recommending directly to the public governmental body's
59 governing board or the president, chancellor or chief
60 executive officer policy, policy revisions or expenditures
61 of public funds provided, however, the staff of the college
62 or university president, chancellor or chief executive
63 officer shall not constitute such a policy advisory
64 committee. The custodian of the records of any public
65 governmental body shall maintain a list of the policy
66 advisory committees described in this subdivision;

67 (f) Any quasi-public governmental body. The term
68 "quasi-public governmental body" means any person,
69 corporation or partnership organized or authorized to do
70 business in this state pursuant to the provisions of chapter
71 352, 353, or 355, or unincorporated association which either:

72 a. Has as its primary purpose to enter into contracts
73 with public governmental bodies, or to engage primarily in
74 activities carried out pursuant to an agreement or
75 agreements with public governmental bodies; or

76 b. Performs a public function as evidenced by a
77 statutorily based capacity to confer or otherwise advance,
78 through approval, recommendation or other means, the
79 allocation or issuance of tax credits, tax abatement, public
80 debt, tax-exempt debt, rights of eminent domain, or the
81 contracting of leaseback agreements on structures whose

82 annualized payments commit public tax revenues; or any
83 association that directly accepts the appropriation of money
84 from a public governmental body, but only to the extent that
85 a meeting, record, or vote relates to such appropriation; and

86 (g) Any bi-state development agency established
87 pursuant to section 70.370;

88 (5) "Public meeting", any meeting of a public
89 governmental body subject to sections 610.010 to 610.030 at
90 which any public business is discussed, decided, or public
91 policy formulated, whether such meeting is conducted in
92 person or by means of communication equipment, including,
93 but not limited to, conference call, video conference,
94 internet chat, or internet message board. The term "public
95 meeting" shall not include an informal gathering of members
96 of a public governmental body for ministerial or social
97 purposes when there is no intent to avoid the purposes of
98 this chapter **or any meeting of a group of members of a**
99 **public governmental body who are not acting on behalf of the**
100 **entire public governmental body or when a public**
101 **governmental body is an individually elected or appointed**
102 **official who is meeting with members of his or her staff in**
103 **the ordinary course of business**, but the term shall include
104 a public vote of all or a majority of the members of a
105 public governmental body **or a group of members of a public**
106 **governmental body voting to advance an item to a vote of**
107 **another group of members or the entire public governmental**
108 **body**, by electronic communication or any other means,
109 conducted in lieu of holding a public meeting with the
110 members of the public governmental body gathered at one
111 location in order to conduct public business;

112 (6) "Public record", any record, whether written or
113 electronically stored, retained by or of any public

114 governmental body including any report, survey, memorandum,
115 or other document or study prepared for the public
116 governmental body by a consultant or other professional
117 service paid for in whole or in part by public funds,
118 including records created or maintained by private
119 contractors under an agreement with a public governmental
120 body or on behalf of a public governmental body; provided,
121 however, that personally identifiable student records
122 maintained by a public [educational institutions]
123 **governmental body** shall be open for inspection **only** by the
124 parents, guardian or other custodian of students under the
125 age of eighteen years and by the parents, guardian or other
126 custodian and the student if the student is over the age of
127 eighteen years. The term "public record" shall not include
128 any internal memorandum or letter received or prepared by or
129 on behalf of a member of a public governmental body
130 consisting of advice, opinions and recommendations in
131 connection with the deliberative decision-making process of
132 said body, unless such records are [retained by the public
133 governmental body or] presented at a public meeting. Any
134 document or study prepared for a public governmental body by
135 a consultant or other professional service as described in
136 this subdivision shall be retained by the public
137 governmental body in the same manner as any other public
138 record. **The term "public record" shall not include**
139 **transitory records;**

140 (7) "Public vote", any vote, whether conducted in
141 person, by telephone, or by any other electronic means, cast
142 at any public meeting of any public governmental body;

143 (8) "Transitory record", includes draft versions of
144 final documents, non-decision making materials, materials
145 that are not required to sustain administrative or

146 **operational function of the agency, materials that are only**
147 **recorded for the time required for completion of the action,**
148 **or materials that do not have substantial administrative or**
149 **operational value.**

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 **all records or**
56 **portions of records relating to** medical, psychiatric,
57 psychological, or alcoholism or drug dependency diagnosis or
58 treatment;

59 (6) Scholastic probation, expulsion, or graduation of
60 identifiable individuals, including records of individual

61 test or examination scores; however, personally identifiable
62 student records maintained by public educational
63 institutions shall be open for inspection by the parents,
64 guardian or other custodian of students under the age of
65 eighteen years and by the parents, guardian or other
66 custodian and the student if the student is over the age of
67 eighteen years;

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

71 (8) Welfare cases of identifiable individuals;

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

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

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

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

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

93 state of Missouri and the amount of money contributed by the
94 source;

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

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

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

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

107 (18) **(a) Security measures, global positioning system**
108 **(GPS) data, and investigative or surveillance techniques of**
109 **any public agency responsible for law enforcement or public**
110 **safety which, if disclosed, has the potential to endanger**
111 **individual or public safety or health.**

112 **(b)** Operational guidelines, policies and specific
113 response plans developed, adopted, or maintained by any
114 public agency responsible for law enforcement, public
115 safety, first response, or public health for use in
116 responding to or preventing any critical incident which is
117 or appears to **[be terrorist in nature and which has the**
118 **potential to]** endanger individual or public safety or
119 health. Financial records related to the procurement of or
120 expenditures relating to operational guidelines, policies or
121 plans purchased with public funds shall be open. When
122 seeking to close information pursuant to this exception, the
123 public governmental body shall affirmatively state in
124 writing that disclosure would impair the public governmental

125 body's ability to protect the security or safety of persons
126 or real property, and shall in the same writing state that
127 the public interest in nondisclosure outweighs the public
128 interest in disclosure of the records;

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

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

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

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

154 (20) The portion of a record that identifies security
155 systems or access codes or authorization codes for security
156 systems of real property;

157 (21) Records that identify the configuration of
158 components or the operation of a computer, computer system,
159 computer network, or telecommunications network, and would
160 allow unauthorized access to or unlawful disruption of a
161 computer, computer system, computer network, or
162 telecommunications network of a public governmental body.
163 This exception shall not be used to limit or deny access to
164 otherwise public records in a file, document, data file or
165 database containing public records. Records related to the
166 procurement of or expenditures relating to such computer,
167 computer system, computer network, or telecommunications
168 network, including the amount of moneys paid by, or on
169 behalf of, a public governmental body for such computer,
170 computer system, computer network, or telecommunications
171 network shall be open;

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

183 (23) Records submitted by an individual, corporation,
184 or other business entity to a public institution of higher
185 education in connection with a proposal to license
186 intellectual property or perform sponsored research and
187 which contains sales projections or other business plan

188 information the disclosure of which may endanger the
189 competitiveness of a business;

190 (24) Records relating to foster home or kinship
191 placements of children in foster care under section 210.498;
192 [and]

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

201 (26) **Email addresses and telephone numbers submitted**
202 **to a public governmental body by individuals or entities for**
203 **the sole purpose of receiving electronic or other**
204 **communications limited to newsletters, notifications,**
205 **advisories, alerts, and periodic reports;**

206 (27) **Any record retained by a public governmental body**
207 **that is related to a constituent of the public governmental**
208 **body, a dignitary, or a foreign leader. The provisions of**
209 **this subdivision shall authorize the closure of any health**
210 **or mental health record of a constituent in its entirety and**
211 **shall authorize the redaction of any portion of a record**
212 **that may be used to individually identify a constituent of**
213 **the public governmental body. As used in this subdivision,**
214 **"constituent" shall mean any person who is a resident within**
215 **the boundaries of the public governmental body, any person**
216 **who owns real property within the boundaries of the public**
217 **governmental body, or any person who owns an interest in a**
218 **business entity operating within the boundaries of the**
219 **public governmental body. The term "constituent" shall not**

220 include a person who is registered as a lobbyist or a
221 lobbyist principal, as such terms are defined in section
222 105.470, or a public official, regardless of whether such
223 person otherwise meets the definition of "constituent". As
224 used in this subdivision, the term "public official" shall
225 mean any statewide elected official or any person holding
226 elective office of any political subdivision as well as an
227 employee of such elected official when such employee is
228 acting in an official capacity. Nothing in this subdivision
229 shall authorize the closure of a record that has been
230 offered in a public meeting of the public governmental body,
231 or any committee thereof;

232 (28) Inter-agency or intra-agency memoranda or letters
233 that would not be available by state or federal law to a
234 party other than an agency in litigation with the agency,
235 provided that the deliberative process privilege shall not
236 apply to records created twenty-five years or more before
237 the date on which the records were requested and shall not
238 apply to any record to or from a person who is registered as
239 a lobbyist or a lobbyist principal, as such terms are
240 defined in section 105.470; and

241 (29) Any record retained in the office of a member of
242 the general assembly, an employee of either house of the
243 general assembly, or an employee of a caucus of either the
244 majority or minority party of either house that contains
245 information regarding proposed legislation or the
246 legislative process; however, nothing in this subdivision
247 shall allow the closure of a record that has been offered in
248 a public meeting of a house of the general assembly, or any
249 committee thereof, nor any record addressed to, or from, in
250 whole or in part, a lobbyist or a lobbyist principal, as
251 such terms are defined in section 105.470.

610.023. 1. Each public governmental body is to
2 appoint a custodian who is to be responsible for the
3 maintenance of that body's records. The identity and
4 location of a public governmental body's custodian is to be
5 made available upon request.

6 2. Each public governmental body shall make available
7 for inspection and copying by the public of that body's
8 public records. No person shall remove original public
9 records from the office of a public governmental body or its
10 custodian without written permission of the designated
11 custodian. No public governmental body shall, after August
12 28, 1998, grant to any person or entity, whether by
13 contract, license or otherwise, the exclusive right to
14 access and disseminate any public record unless the granting
15 of such right is necessary to facilitate coordination with,
16 or uniformity among, industry regulators having similar
17 authority.

18 3. Each request for access to a public record shall be
19 acted upon as soon as possible, but in no event later than
20 the end of the [third] **fifth** business day following the date
21 the request is received by the custodian of records of a
22 public governmental body. If records are requested in a
23 certain format, the public body shall provide the records in
24 the requested format, if such format is available. If
25 access to the public record is not granted immediately, the
26 custodian shall give a detailed explanation of the cause for
27 further delay and the place and earliest time and date that
28 the record will be available for inspection. **Access to and**
29 **the production of the records may be conditioned upon**
30 **receipt of payment pursuant to section 610.026.** This period
31 for document production may exceed [three] **five** days for
32 reasonable cause.

33 4. If a request for access is denied, the custodian
34 shall provide, upon request, a written statement of the
35 grounds for such denial. Such statement shall cite the
36 specific provision of law under which access is denied and
37 shall be furnished to the requester no later than the end of
38 the [third] **fifth** business day following the date that the
39 request for the statement is received.

 610.024. 1. If a public record contains material
2 which is not exempt from disclosure as well as material
3 which is exempt from disclosure, the public governmental
4 body shall separate the exempt and nonexempt material and
5 make the nonexempt material available for examination and
6 copying. **Where a single record or document contains both**
7 **open and closed records, the public governmental body shall**
8 **make a redacted version of such record or document available**
9 **in order to protect the information that would otherwise**
10 **make the record or document a closed record.**

11 2. When designing a public record, a public
12 governmental body shall, to the extent practicable,
13 facilitate a separation of exempt from nonexempt
14 information. If the separation is readily apparent to a
15 person requesting to inspect or receive copies of the form,
16 the public governmental body shall generally describe the
17 material exempted unless that description would reveal the
18 contents of the exempt information and thus defeat the
19 purpose of the exemption.

 610.026. 1. Except as otherwise provided by law, each
2 public governmental body shall provide access to and, upon
3 request, furnish copies of public records subject to the
4 following:

5 (1) Fees for copying public records, except those
6 records restricted under section 32.091, shall not exceed

7 ten cents per page for a paper copy not larger than nine by
8 fourteen inches, with the hourly fee for duplicating time
9 not to exceed the average hourly rate of pay for clerical
10 staff of the public governmental body. Research time
11 required for fulfilling records requests may be charged at
12 the actual cost of research time. Based on the scope of the
13 request, the public governmental body shall produce the
14 copies using employees of the body that result in the lowest
15 amount of charges for search, research, **redaction**, and
16 duplication time. Prior to producing copies of the
17 requested records, the person requesting the records may
18 request the public governmental body to provide an estimate
19 of the cost to the person requesting the records. Documents
20 may be furnished without charge or at a reduced charge when
21 the public governmental body determines that waiver or
22 reduction of the fee is in the public interest because it is
23 likely to contribute significantly to public understanding
24 of the operations or activities of the public governmental
25 body and is not primarily in the commercial interest of the
26 requester;

27 (2) Fees for providing access to public records
28 maintained on computer facilities, recording tapes or disks,
29 videotapes or films, pictures, maps, slides, graphics,
30 illustrations or similar audio or visual items or devices,
31 and for paper copies larger than nine by fourteen inches
32 shall include only the cost of copies, staff time, which
33 shall not exceed the average hourly rate of pay for staff of
34 the public governmental body required for making copies and
35 programming, if necessary, and the cost of the disk, tape,
36 or other medium used for the duplication. Fees for maps,
37 blueprints, or plats that require special expertise to
38 duplicate may include the actual rate of compensation for

39 the trained personnel required to duplicate such maps,
40 blueprints, or plats. If programming is required beyond the
41 customary and usual level to comply with a request for
42 records or information, the fees for compliance may include
43 the actual costs of such programming.

44 2. (1) Payment of [such copying] fees may be
45 requested prior to [the making of copies] **fulfilling the**
46 **request.**

47 (2) A request for public records to a public
48 governmental body shall be considered withdrawn if the
49 requester fails to remit all fees within thirty days of a
50 request for payment of the fees by the public governmental
51 body, prior to fulfilling the request. The public
52 governmental body shall include notice to the requester that
53 if the requester fails to remit payment of the fees within
54 thirty days, then the request for public records shall be
55 considered withdrawn. If the public governmental body
56 responds to a request for public records in order to seek a
57 clarification of the request and no response to the request
58 for clarification is received by the public governmental
59 body within thirty days of sending the request for
60 clarification, then such request for public records shall be
61 considered withdrawn. The request for clarification by the
62 public governmental body shall include notice to the
63 requester that if the requester fails to respond within
64 thirty days, then the request shall be considered
65 withdrawn. If the same or a substantially similar request
66 for public records is made within six months after the
67 expiration of the thirty day period and no fee was remitted
68 for such request or no response was received to the request
69 for clarification, then the public governmental body may
70 request payment of the same fees made for the original

71 request that has expired in addition to any allowable fees
72 necessary to fulfill the subsequent request. The provisions
73 of this subdivision shall not apply if a lawsuit has been
74 filed against the public governmental body with regard to
75 the records that are the subject of the request under this
76 subdivision.

77 3. Except as otherwise provided by law, each public
78 governmental body of the state shall remit all moneys
79 received by or for it from fees charged pursuant to this
80 section to the director of revenue for deposit to the
81 general revenue fund of the state.

82 4. Except as otherwise provided by law, each public
83 governmental body of a political subdivision of the state
84 shall remit all moneys received by it or for it from fees
85 charged pursuant to sections 610.010 to 610.028 to the
86 appropriate fiscal officer of such political subdivision for
87 deposit to the governmental body's accounts.

88 5. The term "tax, license or fees" as used in Section
89 22 of Article X of the Constitution of the State of Missouri
90 does not include copying charges and related fees that do
91 not exceed the level necessary to pay or to continue to pay
92 the costs for providing a service, program, or activity
93 which was in existence on November 4, 1980, or which was
94 approved by a vote of the people subsequent to November 4,
95 1980.

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