

FIRST REGULAR SESSION
[PERFECTED]
HOUSE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
**HOUSE BILLS NOS. 237, 270,
403 & 442**
91ST GENERAL ASSEMBLY

Taken up for Perfection March 6, 2001.

House Substitute for House Committee Substitute for House Bills Nos. 237, 270, 403 & 442 ordered Perfected and printed, as amended.

TED WEDEL, Chief Clerk

0670L.03P

AN ACT

To repeal sections 610.010, 610.015, 610.021 and 610.027, RSMo 2000, relating to the sunshine law, and to enact in lieu thereof six new sections relating to the same subject.

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

Section A. Sections 610.010, 610.015, 610.021 and 610.027, RSMo 2000, are repealed
2 and six new sections enacted in lieu thereof, to be known as sections 197.150, 197.160, 610.010,
3 610.015, 610.021 and 610.027, to read as follows:

197.150. 1. As used in this section, the following terms mean:

- 2 **(1) "Health carrier", the same as such term is defined in section 376.1350, RSMo;**
3 **(2) "Payment methodologies", how the units of service to be used as a basis for**
4 **making payments are defined and the method of determining the specific payment amount**
5 **per unit of service;**
6 **(3) "Public hospital", a hospital organized pursuant to section 81.190 or 82.240,**
7 **RSMo, sections 96.150 to 96.228, RSMo, sections 205.160 to 205.379, RSMo, or sections**
8 **206.010 to 206.160, RSMo;**
9 **(4) "Public record", the same as such term is defined in subdivision (6) of section**

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

10 **610.010, RSMo;**

11 **(5) "Related organization", an entity created by or affiliated with a public hospital,**
12 **regardless of the degree of common control or governance with such hospital;**

13 **(6) "Self-insured health plan", an employee health benefit plan established by an**
14 **employer or an employee organization, or both, for which the insurance laws of this state**
15 **are preempted pursuant to the federal Employment Retirement Income Security Act of**
16 **1974, as amended.**

17 **2. Notwithstanding the provisions of chapter 610, RSMo, to the contrary, the**
18 **governing body of a public hospital or a related organization of such hospital, or both, may**
19 **close portions of records and meetings of the entity that it manages or controls if such**
20 **portions of records and meetings pertain to:**

21 **(1) The payment amounts and payment methodologies of its contract proposals to**
22 **and contracts with a health carrier or a self-insured health plan. Information concerning**
23 **the parties involved and the duration of such a contract shall be a public record;**

24 **(2) Discussion and analysis of:**

25 **(a) Developing a new health service or a new facility;**

26 **(b) Expanding or revising an existing health service or facility; or**

27 **(c) Entering into a shared service arrangement or other affiliate agreement;**

28 **(3) The amount of compensation that will be or is being paid to a physician under**
29 **the public hospital's or a related organization's contract proposals to and contracts with**
30 **a physician. While the compensation amounts of such a contract proposal or contract may**
31 **be closed, such compensation amounts shall be included in the public hospital's or related**
32 **organization's overall financial statements and such statements shall be a public record;**

33 **(4) The records closed pursuant to this subsection shall be disclosed to the state**
34 **auditor pursuant to section 29.230, RSMo, or pursuant to lawful subpoena or request by**
35 **only departments of the state of Missouri pursuant to an investigation.**

36 **3. The disclosure of records and meetings of a public hospital, other than those**
37 **records and meetings which may be closed pursuant to this section, shall be governed by**
38 **chapter 610, RSMo. This section shall not be construed to prohibit a public hospital from**
39 **claiming the benefit of any other exemption to chapter 610, RSMo, pursuant to section**
40 **610.021, RSMo.**

197.160. The meetings and records of a public hospital as defined in subdivision (3)
2 **of subsection 1 of section 197.150 shall not be construed to be a public record or a public**
3 **meeting as defined in subdivisions (5) and (6) of section 610.010, RSMo, if:**

4 **(1) The public hospital does not receive money from a tax levy imposed by the city,**
5 **county or hospital district that established the hospital; and**

6 **(2) The public hospital waives its right to claim sovereign or governmental tort**
7 **immunity protection available pursuant to sections 537.600 to 537.615, RSMo.**

 610.010. As used in sections 610.010 to 610.030 and sections 610.100 to 610.150, unless
2 the context otherwise indicates, the following terms mean:

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

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

7 (3) "Public business", all matters which relate in any way to the performance of the
8 public governmental body's functions or the conduct of its business;

9 (4) "Public governmental body", any legislative, administrative or governmental entity
10 created by the constitution or statutes of this state, by order or ordinance of any political
11 subdivision or district, judicial entities when operating in an administrative capacity, or by
12 executive order, including:

13 (a) Any body, agency, board, bureau, council, commission, committee, board of regents
14 or board of curators or any other governing body of any institution of higher education, including
15 a community college, **and including, but not limited to, the University of Missouri**, which is
16 supported in whole or in part from state funds;

17 (b) Any advisory committee or commission appointed by the governor by executive
18 order;

19 (c) Any department or division of the state, of any political subdivision of the state, of
20 any county or of any municipal government, school district or special purpose district including
21 but not limited to sewer districts, water districts, and other subdistricts of any political
22 subdivision;

23 (d) Any other legislative or administrative governmental deliberative body under the
24 direction of three or more elected or appointed members having rulemaking or quasi-judicial
25 power;

26 (e) Any committee appointed by or at the direction of any of the entities and which is
27 authorized to report to any of the above-named entities, any advisory committee appointed by
28 or at the direction of any of the named entities for the specific purpose of recommending, directly
29 to the public governmental body's governing board or its chief administrative officer, policy or
30 policy revisions or expenditures of public funds including, but not limited to, entities created to
31 advise bi-state taxing districts regarding the expenditure of public funds, or any policy advisory
32 body, policy advisory committee or policy advisory group appointed by a president, chancellor
33 or chief executive officer of any college or university system or individual institution at the
34 direction of the governing body of such institution which is supported in whole or in part with

35 state funds, **including, but not limited to, the University of Missouri**, for the specific purpose
36 of recommending directly to the public governmental body's governing board or the president,
37 chancellor or chief executive officer policy, policy revisions or expenditures of public funds
38 provided, however, the staff of the college or university president, chancellor or chief executive
39 officer shall not constitute such a policy advisory committee. The custodian of the records of
40 any public governmental body shall maintain a list of the policy advisory committees described
41 in this subdivision; and

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

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

49 b. Performs a public function as evidenced by a statutorily based capacity to confer or
50 otherwise advance, through approval, recommendation or other means, the allocation or issuance
51 of tax credits, tax abatement, public debt, tax-exempt debt, rights of eminent domain, or the
52 contracting of leaseback agreements on structures whose annualized payments commit public
53 tax revenues; or any association that directly accepts the appropriation of money from a public
54 governmental body, but only to the extent that a meeting, record, or vote relates to such
55 appropriation;

56 (5) "Public meeting", any meeting of a public governmental body subject to sections
57 610.010 to 610.030 at which any public business is discussed, decided, or public policy
58 formulated, whether corporeal or by means of communication equipment. The term "public
59 meeting" shall not include an informal gathering of members of a public governmental body for
60 ministerial or social purposes when there is no intent to avoid the purposes of this chapter, but
61 the term shall include a public vote of all or a majority of the members of a public governmental
62 body, by electronic communication or any other means, conducted in lieu of holding a public
63 meeting with the members of the public governmental body gathered at one location in order to
64 conduct public business;

65 (6) "Public record", any record, whether written or electronically stored, retained by or
66 of any public governmental body including any report, survey, memorandum, or other document
67 or study prepared and presented to the public governmental body by a consultant or other
68 professional service paid for in whole or in part by public funds; provided, however, that
69 personally identifiable student records maintained by public educational institutions shall be
70 open for inspection by the parents, guardian or other custodian of students under the age of

71 eighteen years and by the parents, guardian or other custodian and the student if the student is
72 over the age of eighteen years. The term "public record" shall not include any internal
73 memorandum or letter received or prepared by or on behalf of a member of a public
74 governmental body consisting of advice, opinions and recommendations in connection with the
75 deliberative decision-making process of said body, unless such records are retained by the public
76 governmental body or presented at a public meeting;

(7) "Public vote", any vote cast at any public meeting of any public governmental body.

610.015. Except as provided in section 610.021, rules authorized pursuant to article III
2 of the Missouri Constitution and as otherwise provided by law, all votes shall be recorded, and
3 [if a roll call is taken, as to attribute] **attributed as to** each "yea" and "nay" vote, or abstinence
4 if not voting, to the name of the individual member of the public governmental body. Any votes
5 taken during a closed **or open** meeting shall be taken by roll call, **except votes on procedural**
6 **or ministerial matters**. All public meetings shall be open to the public and public votes and
7 public records shall be open to the public for inspection and duplication.

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 its
6 representatives and its attorneys. However, any minutes, vote or settlement agreement relating
7 to legal actions, causes of action or litigation involving a public governmental body or any agent
8 or entity representing its interests or acting on its behalf or with its authority, including any
9 insurance company acting on behalf of a public government body as its insured, shall be made
10 public upon final disposition of the matter voted upon or upon the signing by the parties of the
11 settlement agreement, unless, prior to final disposition, the settlement agreement is ordered
12 closed by a court after a written finding that the adverse impact to a plaintiff or plaintiffs to the
13 action clearly outweighs the public policy considerations of section 610.011, however, the
14 amount of any moneys paid by, or on behalf of, the public governmental body shall be disclosed;
15 provided, however, in matters involving the exercise of the power of eminent domain, the vote
16 shall be announced or become public immediately following the action on the motion to
17 authorize institution of such a legal action. **Any vote taken on any question deemed closed**
18 **pursuant to this subdivision shall be by roll call and shall be made public in accordance**
19 **with other closed records as provided in this subdivision.** Legal work product shall be
20 considered a closed record;

21 (2) Leasing, purchase or sale of real estate by a public governmental body where public
22 knowledge of the transaction might adversely affect the legal consideration therefor. However,

23 any minutes, vote or public record approving a contract relating to the leasing, purchase or sale
24 of real estate by a public governmental body shall be made public within seventy-two hours after
25 execution of the lease, purchase or sale of the real estate. **Any vote taken on any question**
26 **deemed closed pursuant to this subdivision shall be by roll call and shall be made public**
27 **in accordance with other closed records as provided in this subdivision;**

28 (3) Hiring, firing, disciplining or promoting of particular employees by a public
29 governmental body when personal information about the employee is discussed or recorded.
30 However, any vote on a final decision, when taken by a public governmental body, to hire, fire,
31 promote or discipline an employee of a public governmental body must be made available with
32 a record of how each member voted to the public within seventy-two hours of the close of the
33 meeting where such action occurs; provided, however, that any employee so affected shall be
34 entitled to prompt notice of such decision during the seventy-two-hour period before such
35 decision is made available to the public. **Any vote taken on any question deemed closed**
36 **pursuant to this subdivision shall be by roll call and shall be made public in accordance**
37 **with other closed records as provided in this subdivision.** As used in this subdivision, the
38 term "personal information" means information relating to the performance or merit of individual
39 employees;

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

41 (5) Nonjudicial mental or physical health proceedings involving identifiable persons,
42 including medical, psychiatric, psychological, or alcoholism or drug dependency diagnosis or
43 treatment;

44 (6) Scholastic probation, expulsion, or graduation of identifiable individuals, including
45 records of individual test or examination scores; however, personally identifiable student records
46 maintained by public educational institutions shall be open for inspection by the parents,
47 guardian or other custodian of students under the age of eighteen years and by the parents,
48 guardian or other custodian and the student if the student is over the age of eighteen years **and**
49 **financially dependent upon his or her parents for tax purposes;**

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

52 (8) Welfare cases of identifiable individuals;

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

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

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

58 (12) Sealed bids and related documents, until the bids are opened; and sealed proposals

59 and related documents or any documents related to a negotiated contract until a contract is
60 executed, or all proposals are rejected;

61 (13) Individually identifiable personnel records, performance ratings or records
62 pertaining to employees or applicants for employment, except that this exemption shall not apply
63 to the names, positions, salaries and lengths of service of officers and employees of public
64 agencies once they are employed as such;

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

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

68 (16) Records relating to municipal hot lines established for the reporting of abuse and
69 wrongdoing;

70 (17) Confidential or privileged communications between a public governmental body
71 and its auditor, including all auditor work product, **but this exception shall not include any**
72 **completed audit for any public entity or state-supported college or university;** and

73 (18) In preparation for and implementation of electric restructuring, a municipal electric
74 utility may close that portion of its financial records and business plans which contains
75 information regarding the name of the suppliers of services to said utility and the cost of such
76 services, and the records and business plans concerning the municipal electric utility's future
77 marketing and service expansion areas. However, this exception shall not be construed to limit
78 access to other records of a municipal electric utility, including but not limited to the names and
79 addresses of its business and residential customers, its financial reports, including but not limited
80 to its budget, annual reports and other financial statements prepared in the course of business,
81 and other records maintained in the course of doing business as a municipal electric utility. This
82 exception shall become null and void if the [state of Missouri fails to implement by December
83 31, 2001, electric restructuring through the adoption of statutes permitting the same in this state]
84 **Missouri general assembly fails to enact, on or before December 31, 2003, legislation**
85 **authorizing electric utility restructuring.**

610.027. 1. The remedies provided by this section against public governmental bodies
2 shall be in addition to those provided by any other provision of law. Any aggrieved person,
3 taxpayer to, or citizen of, this state, or the attorney general or prosecuting attorney, may seek
4 judicial enforcement of the requirements of sections 610.010 to 610.026. Suits to enforce
5 sections 610.010 to 610.026 shall be brought in the circuit court for the county in which the
6 public governmental body has its principal place of business.

7 2. Once a party seeking judicial enforcement of sections 610.010 to 610.026
8 demonstrates to the court that the body in question is subject to the requirements of sections
9 610.010 to 610.026 and has held a closed meeting, record or vote, the burden of persuasion shall

10 be on the body and its members to demonstrate compliance with the requirements of sections
11 610.010 to 610.026.

12 3. Upon a finding by a preponderance of the evidence that a public governmental body
13 or a member of a public governmental body has [purposely] **knowingly** violated sections
14 610.010 to 610.027, the public governmental body or the member shall be subject to a civil [fine]
15 **penalty** in the amount of not more than [five hundred dollars and] **two thousand five hundred**
16 **dollars, but in no event shall such civil penalty be more than five percent of the total**
17 **annual budget of the public body. If the court finds that there was a knowing violation of**
18 **sections 610.010 to 610.027, the court may order the payment by such body or member of all**
19 **costs and reasonable attorney fees to any party successfully establishing a violation of sections**
20 **610.010 to 610.026. The court shall determine the amount of the penalty by taking into**
21 **account the size of the jurisdiction, the seriousness of the offense, and whether the public**
22 **governmental body or member of a public governmental body has violated sections 610.010**
23 **to 610.027 previously; in order to take into account previous violations when imposing a**
24 **fine upon a member of a public governmental body said member must have been found to**
25 **have previously violated sections 610.010 to 610.027.**

26 4. Upon a finding by a preponderance of the evidence that a public governmental body
27 has violated any provision of sections 610.010 to 610.026, a court shall void any action taken in
28 violation of sections 610.010 to 610.026, if the court finds under the facts of the particular case
29 that the public interest in the enforcement of the policy of sections 610.010 to 610.026 outweighs
30 the public interest in sustaining the validity of the action taken in the closed meeting, record or
31 vote. Suit for enforcement must be brought within one year from which the violation is
32 ascertainable and in no event shall it be brought later than two years after the violation. This
33 subsection shall not apply to an action taken regarding the issuance of bonds or other evidence
34 of indebtedness of a public governmental body if a public hearing, election or public sale has
35 been held regarding the bonds or evidence of indebtedness.

36 5. A public governmental body which is in doubt about the legality of closing a particular
37 meeting, record or vote may bring suit at the expense of that public governmental body in the
38 circuit court of the county of the public governmental body's principal place of business to
39 ascertain the propriety of any such action, or seek a formal opinion of the attorney general or an
40 attorney for the governmental body.