

SECOND REGULAR SESSION

# HOUSE BILL NO. 870

## 92ND GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES HARRIS (23) (Sponsor), BRINGER, ZWEIFEL, SCHOEMEHL, GRAHAM, FRASER, SAGER, WHORTON, CARNAHAN, WALSH, YOUNG, HENKE, BURNETT, WALKER, VOGT, YAEGER, STEVENSON, DOUGHERTY, SUTHERLAND, SALVA AND JOHNSON (90) (Co-sponsors).

Pre-filed December 16, 2003, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

3226L.011

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### AN ACT

To repeal sections 610.010, 610.020, 610.023, and 610.026, RSMo, and to enact in lieu thereof four new sections relating to electronic public meetings and records.

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

Section A. Sections 610.010, 610.020, 610.023, and 610.026, RSMo, are repealed and  
2 four new sections enacted in lieu thereof, to be known as sections 610.010, 610.020, 610.023,  
3 and 610.026, to read as follows:

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

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

14 or board of curators or any other governing body of any institution of higher education, including  
15 a community college, which is supported in whole or in part from state funds;

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

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

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

25 (e) Any committee appointed by or at the direction of any of the entities and which is  
26 authorized to report to any of the above-named entities, any advisory committee appointed by  
27 or at the direction of any of the named entities for the specific purpose of recommending, directly  
28 to the public governmental body's governing board or its chief administrative officer, policy or  
29 policy revisions or expenditures of public funds including, but not limited to, entities created to  
30 advise bi-state taxing districts regarding the expenditure of public funds, or any policy advisory  
31 body, policy advisory committee or policy advisory group appointed by a president, chancellor  
32 or chief executive officer of any college or university system or individual institution at the  
33 direction of the governing body of such institution which is supported in whole or in part with  
34 state funds for the specific purpose of recommending directly to the public governmental body's  
35 governing board or the president, chancellor or chief executive officer policy, policy revisions  
36 or expenditures of public funds provided, however, the staff of the college or university  
37 president, chancellor or chief executive officer shall not constitute such a policy advisory  
38 committee. The custodian of the records of any public governmental body shall maintain a list  
39 of the policy advisory committees described in this subdivision; and

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

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

47 b. Performs a public function as evidenced by a statutorily based capacity to confer or  
48 otherwise advance, through approval, recommendation or other means, the allocation or issuance  
49 of tax credits, tax abatement, public debt, tax-exempt debt, rights of eminent domain, or the

50 contracting of leaseback agreements on structures whose annualized payments commit public  
51 tax revenues; or any association that directly accepts the appropriation of money from a public  
52 governmental body, but only to the extent that a meeting, record, or vote relates to such  
53 appropriation;

54 (5) "Public meeting", any meeting of a public governmental body subject to sections  
55 610.010 to 610.030 at which any public business is discussed, decided, or public policy  
56 formulated, whether [corporeal or] **such meeting is conducted in person or** by means of  
57 communication equipment **including, but not limited to, conference call, video conference,**  
58 **internet chat, or internet message board.** The term "public meeting" shall not include an  
59 informal gathering of members of a public governmental body for ministerial or social purposes  
60 when there is no intent to avoid the purposes of this chapter, but the term shall include a public  
61 vote of all or a majority of the members of a public governmental body, by electronic  
62 communication or any other means, conducted in lieu of holding a public meeting with the  
63 members of the public governmental body gathered at one location in order to conduct public  
64 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;

77 (7) "Public vote", any vote, **whether conducted in person, by telephone, or by any**  
78 **other electronic means,** cast at any public meeting of any public governmental body; **provided,**  
79 **however, that no public governmental body may conduct a vote at a public meeting unless**  
80 **the question voted upon is put to that body's members at the same time and the public is**  
81 **allowed access to such vote.**

610.020. 1. All public governmental bodies shall give notice of the time, date, and place  
2 of each meeting, and its tentative agenda, in a manner reasonably calculated to advise the public  
3 of the matters to be considered **and, if the meeting will be conducted by telephone or other**  
4 **electronic means, the notice of the meeting shall identify the mode by which the meeting**

5 **will be conducted and the designated location where the public may observe and attend the**  
6 **meeting.** Reasonable notice shall include making available copies of the notice to any  
7 representative of the news media who requests notice of meetings of a particular public  
8 governmental body concurrent with the notice being made available to the members of the  
9 particular governmental body and posting the notice on a bulletin board or other prominent place  
10 which is easily accessible to the public and clearly designated for that purpose at the principal  
11 office of the body holding the meeting, or if no such office exists, at the building in which the  
12 meeting is to be held. **If a public body plans to meet by Internet chat, Internet message**  
13 **board, or other computer link, it shall post a notice of the meeting on its web site in**  
14 **addition to its principal office and shall notify the public how to access that meeting.**

15 2. Notice conforming with all of the requirements of subsection 1 of this section shall  
16 be given at least twenty-four hours, exclusive of weekends and holidays when the facility is  
17 closed, prior to the commencement of any meeting of a governmental body unless for good cause  
18 such notice is impossible or impractical, in which case as much notice as is reasonably possible  
19 shall be given. Each meeting shall be held at a place reasonably accessible to the public and of  
20 sufficient size to accommodate the anticipated attendance by members of the public, and at a  
21 time reasonably convenient to the public, unless for good cause such a place or time is  
22 impossible or impractical. [At any public meeting conducted by telephone or other electronic  
23 means, the public shall be allowed to observe and attend the public meeting at a designated  
24 location identified in the notice of the meeting.] Every reasonable effort shall be made to grant  
25 special access to the meeting to handicapped or disabled individuals. **For any meeting held by**  
26 **Internet chat, Internet message board, or other computer link, the governmental body shall**  
27 **ensure that reasonable access is granted to those members of the public that do not have**  
28 **access to a home computer.**

29 3. **A public body shall allow any person to record, by audiotape, videotape, or other**  
30 **electronic means, a public meeting. A public body may establish guidelines regarding the**  
31 **manner in which such recording is conducted so as to minimize disruption to the meeting.**

32 [3.] 4. When it is necessary to hold a meeting on less than twenty-four hours' notice, or  
33 at a place that is not reasonably accessible to the public, or at a time that is not reasonably  
34 convenient to the public, the nature of the good cause justifying that departure from the normal  
35 requirements shall be stated in the minutes.

36 [4.] 5. A formally constituted subunit of a parent governmental body may conduct a  
37 meeting without notice as required by this section during a lawful meeting of the parent  
38 governmental body, a recess in that meeting, or immediately following that meeting, if the  
39 meeting of the subunit is publicly announced at the parent meeting and the subject of the meeting  
40 reasonably coincides with the subjects discussed or acted upon by the parent governmental body.

41 [5.] 6. If another provision of law requires a manner of giving specific notice of a  
42 meeting, hearing or an intent to take action by a governmental body, compliance with that section  
43 shall constitute compliance with the notice requirements of this section.

44 [6.] 7. A journal or minutes of open meetings shall be taken and retained by the public  
45 governmental body, including, but not limited to, a record of any votes taken at such meeting.  
46 The minutes shall include the date, time, place, members present, members absent and a record  
47 of any votes taken. When a roll call vote is taken, the minutes shall attribute each "yea" and  
48 "nay" vote or abstinence if not voting to the name of the individual member of the public  
49 governmental body.

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

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

11 3. **Any member of a public governmental body who transmits any message relating**  
12 **to public business, in writing or by electronic means, to one or more members of that body**  
13 **so that, when counting the sender, a majority of the body's members are copied, shall also**  
14 **transmit that message to the custodian of records concurrently and in the same format.**  
15 **Any such message received by the custodian shall be a public record subject to the**  
16 **exceptions of section 610.021.**

17 4. Each request for access to a public record shall be acted upon as soon as possible, but  
18 in no event later than the end of the third business day following the date the request is received  
19 by the custodian of records of a public governmental body. **If a request for records is**  
20 **submitted by e-mail or another electronic format, the public body may provide the**  
21 **requested records in the same format.** If access to the public record is not granted  
22 immediately, the custodian shall give a detailed explanation of the cause for further delay and  
23 the place and earliest time and date that the record will be available for inspection. This period  
24 for document production may exceed three days for reasonable cause.

25 [4.] 5. If a request for access is denied, the custodian shall provide, upon request, a  
26 written statement of the grounds for such denial. Such statement shall cite the specific provision  
27 of law under which access is denied and shall be furnished to the requester no later than the end

28 of the third business day following the date that the request for the statement is received.

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

3 (1) Fees for copying public records shall not exceed the actual cost of document search  
4 and duplication. Upon request, the governmental body shall certify in writing that the actual cost  
5 of document search and duplication is fair, reasonable and does not exceed the actual cost  
6 incurred by the public governmental body. [Documents] **Records** may be furnished without  
7 charge or at a reduced charge when the public governmental body determines that waiver or  
8 reduction of the fee is in the public interest because it is likely to contribute significantly to  
9 public understanding of the operations or activities of the public governmental body and is not  
10 primarily in the commercial interest of the requester;

11 (2) Fees for providing access to public records maintained **in any electronic format**  
12 **including** on [computer facilities] **computers**, recording tapes or discs, videotapes or films,  
13 pictures, slides, graphics, illustrations or similar audio or visual items or devices, shall include  
14 only the cost of copies, **if applicable**, staff time required for making copies and programming,  
15 if necessary, and the disk or tape used for the duplication.

16 2. Payment of such copying fees may be requested prior to the making of copies.

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

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

24 5. The term "tax, license or fees" as used in section 22 of article X of the Constitution  
25 of the state of Missouri does not include copying charges and related fees that do not exceed the  
26 level necessary to pay or to continue to pay the costs for providing a service, program, or activity  
27 which was in existence on November 4, 1980, or which was approved by a vote of the people  
28 subsequent to November 4, 1980.