

FIRST REGULAR SESSION

HOUSE BILL NO. 391

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE COOPER (120).

Read 1st time January 31, 2005 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

1317L.011

AN ACT

To repeal sections 610.010, 610.023, and 610.027, RSMo, and to enact in lieu thereof three new sections relating to public records.

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

Section A. Sections 610.010, 610.023, and 610.027, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 610.010, 610.023, and 610.027, to read as follows: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;

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

(a) Any body, agency, board, bureau, council, commission, committee, board of regents or board of curators or any other governing body of any institution of higher education, including a community college, which is supported in whole or in part from state funds, including but not

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 limited to the administrative entity known as "The Curators of the University of Missouri" as
17 established by section 172.020, RSMo;

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

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

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

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

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; and

56 (g) Any bi-state development agency established pursuant to section 70.370, RSMo;

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

67 (6) "Public record", any record, whether written or electronically stored, retained by or
68 of any public governmental body including any report, survey, memorandum, or other document
69 or study prepared for the public governmental body by a consultant or other professional service
70 paid for in whole or in part by public funds, including records created or maintained by private
71 contractors under an agreement with a public governmental body or on behalf of a public
72 governmental body; provided, however, that personally identifiable student records maintained
73 by public educational institutions shall be open for inspection by the parents, guardian or other
74 custodian of students under the age of eighteen years and by the parents, guardian or other
75 custodian and the student if the student is over the age of eighteen years. The term "public
76 record" shall not include any internal memorandum or letter received or prepared by or on behalf
77 of a member of a public governmental body consisting of advice, opinions and recommendations
78 in connection with the deliberative decision-making process of said body, unless such records
79 are retained by the public governmental body or presented at a public meeting. Any document
80 or study prepared for a public governmental body by a consultant or other professional service
81 as described in this subdivision shall be retained by the public governmental body in the same
82 manner as any other public record;

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

85 (8) "**Vexatious request**", any request for documents which is frivolous, repetitive,
86 or unreasonable and made for the primary purpose of harassing a public governmental
87 body or any member of a public governmental body.

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

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

3. Each request for access to a public record shall be acted upon as soon as possible, but in no event later than the end of the third business day following the date the request is received by the custodian of records of a public governmental body. If records are requested in a certain format, the public body shall provide the records in the requested format, if such format is available. If access to the public record is not granted immediately, the custodian shall give a detailed explanation of the cause for further delay and the place and earliest time and date that the record will be available for inspection. This period for document production may exceed three days for reasonable cause.

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

5. A public governmental body may refuse any vexatious request for documents.

610.027. 1. The remedies provided by this section against public governmental bodies shall be in addition to those provided by any other provision of law. Any aggrieved person, taxpayer to, or citizen of, this state, or the attorney general or prosecuting attorney, may seek judicial enforcement of the requirements of sections 610.010 to 610.026. Suits to enforce sections 610.010 to 610.026 shall be brought in the circuit court for the county in which the public governmental body has its principal place of business. Upon service of a summons, petition, complaint, counterclaim, or cross-claim in a civil action brought to enforce the provisions of sections 610.010 to 610.026, the custodian of the public record that is the subject matter of such civil action shall not transfer custody, alter, destroy, or otherwise dispose of the public record sought to be inspected and examined, notwithstanding the applicability of an exemption pursuant to section 610.021 or the assertion that the requested record is not a public record until the court directs otherwise.

2. Once a party seeking judicial enforcement of sections 610.010 to 610.026

14 demonstrates to the court that the body in question is subject to the requirements of sections
15 610.010 to 610.026 and has held a closed meeting, record or vote, the burden of persuasion shall
16 be on the body and its members to demonstrate compliance with the requirements of sections
17 610.010 to 610.026.

18 3. Upon a finding by a preponderance of the evidence that a public governmental body
19 or a member of a public governmental body has knowingly violated sections 610.010 to 610.026,
20 the public governmental body or the member shall be subject to a civil penalty in an amount up
21 to one thousand dollars. If the court finds that there is a knowing violation of sections 610.010
22 to 610.026, the court may order the payment by such body or member of all costs and reasonable
23 attorney fees to any party successfully establishing a violation. The court shall determine the
24 amount of the penalty by taking into account the size of the jurisdiction, the seriousness of the
25 offense, and whether the public governmental body or member of a public governmental body
26 has violated sections 610.010 to 610.026 previously.

27 4. Upon a finding by a preponderance of the evidence that a public governmental body
28 or a member of a public governmental body has purposely violated sections 610.010 to 610.026,
29 the public governmental body or the member shall be subject to a civil penalty in an amount up
30 to five thousand dollars. If the court finds that there was a purposeful violation of sections
31 610.010 to 610.026, then the court shall order the payment by such body or member of all costs
32 and reasonable attorney fees to any party successfully establishing such a violation. The court
33 shall determine the amount of the penalty by taking into account the size of the jurisdiction, the
34 seriousness of the offense, and whether the public governmental body or member of a public
35 governmental body has violated sections 610.010 to 610.026 previously.

36 5. Upon a finding by a preponderance of the evidence that a public governmental body
37 has violated any provision of sections 610.010 to 610.026, a court shall void any action taken in
38 violation of sections 610.010 to 610.026, if the court finds under the facts of the particular case
39 that the public interest in the enforcement of the policy of sections 610.010 to 610.026 outweighs
40 the public interest in sustaining the validity of the action taken in the closed meeting, record or
41 vote. Suit for enforcement shall be brought within one year from which the violation is
42 ascertainable and in no event shall it be brought later than two years after the violation. This
43 subsection shall not apply to an action taken regarding the issuance of bonds or other evidence
44 of indebtedness of a public governmental body if a public hearing, election or public sale has
45 been held regarding the bonds or evidence of indebtedness.

46 6. A public governmental body which is in doubt about the legality of closing a particular
47 meeting, record or vote may bring suit at the expense of that public governmental body in the
48 circuit court of the county of the public governmental body's principal place of business to
49 ascertain the propriety of any such action, or seek a formal opinion of the attorney general or an

50 attorney for the governmental body.

51 **7. Upon a finding by a preponderance of the evidence that a public governmental**
52 **body has not violated any provision of sections 610.010 to 610.026 and that the plaintiff's**
53 **request for documents was vexatious, the court may award costs and reasonable attorney**
54 **fees to the prevailing party.**