

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 953
94TH GENERAL ASSEMBLY

Reported from the Committee on Judiciary May 5, 2008 with recommendation that House Committee Substitute for Senate Bill No. 953 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(21)(f).

D. ADAM CRUMBLISS, Chief Clerk

4303L.03C

AN ACT

To repeal sections 610.021 and 610.022, RSMo, and to enact in lieu thereof two new sections relating to authorization to close certain records and meetings.

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

Section A. Sections 610.021 and 610.022, RSMo, are repealed and two new sections
2 enacted in lieu thereof, to be known as sections 610.021 and 610.022, to read as follows:

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;

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.

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. Legal work product shall be considered a closed
18 record. **As used in this subdivision, "cause of action" means evidence that a lawsuit has**
19 **been filed, although not yet served, or communication from a party to the body stating that**
20 **litigation shall be filed unless certain demands are met;**

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 upon execution of the lease,
25 purchase or sale of the real estate;

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

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

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

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

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

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

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

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

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

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

69 (18) Operational guidelines and policies developed, adopted, or maintained by any public
70 agency responsible for law enforcement, public safety, first response, or public health for use in
71 responding to or preventing any critical incident which is or appears to be terrorist in nature and
72 which has the potential to endanger individual or public safety or health. Nothing in this
73 exception shall be deemed to close information regarding expenditures, purchases, or contracts
74 made by an agency in implementing these guidelines or policies. When seeking to close
75 information pursuant to this exception, the agency shall affirmatively state in writing that
76 disclosure would impair its ability to protect the safety or health of persons, and shall in the same
77 writing state that the public interest in nondisclosure outweighs the public interest in disclosure
78 of the records. This exception shall sunset on December 31, [2008] **2012**;

79 (19) Existing or proposed security systems and structural plans of real property owned
80 or leased by a public governmental body, and information that is voluntarily submitted by a
81 nonpublic entity owning or operating an infrastructure to any public governmental body for use
82 by that body to devise plans for protection of that infrastructure, the public disclosure of which
83 would threaten public safety;

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

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

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

95 (d) This exception shall sunset on December 31, [2008] **2012**;

96 (20) Records that identify the configuration of components or the operation of a
97 computer, computer system, computer network, or telecommunications network, and would
98 allow unauthorized access to or unlawful disruption of a computer, computer system, computer
99 network, or telecommunications network of a public governmental body. This exception shall
100 not be used to limit or deny access to otherwise public records in a file, document, data file or
101 database containing public records. Records related to the procurement of or expenditures
102 relating to such computer, computer system, computer network, or telecommunications network,
103 including the amount of moneys paid by, or on behalf of, a public governmental body for such
104 computer, computer system, computer network, or telecommunications network shall be open;
105 and

106 (21) Credit card numbers, personal identification numbers, digital certificates, physical
107 and virtual keys, access codes or authorization codes that are used to protect the security of
108 electronic transactions between a public governmental body and a person or entity doing business
109 with a public governmental body. Nothing in this section shall be deemed to close the record
110 of a person or entity using a credit card held in the name of a public governmental body or any
111 record of a transaction made by a person using a credit card or other method of payment for
112 which reimbursement is made by a public governmental body.

610.022. 1. Except as set forth in subsection 2 of this section, no meeting or vote may
2 be closed without an affirmative public vote of the majority of a quorum of the public
3 governmental body. The vote of each member of the public governmental body on the question
4 of closing a public meeting or vote and the specific reason for closing that public meeting or vote
5 by reference to a specific section of this chapter shall be announced publicly at an open meeting
6 of the governmental body and entered into the minutes.

7 2. A public governmental body proposing to hold a closed meeting or vote shall give
8 notice of the time, date and place of such closed meeting or vote and the reason for holding it by
9 reference to the specific exception allowed pursuant to the provisions of section 610.021. Such

10 notice shall comply with the procedures set forth in section 610.020 for notice of a public
11 meeting.

12 3. Any meeting or vote closed pursuant to section 610.021 shall be closed only to the
13 extent necessary for the specific reason announced to justify the closed meeting or vote. **Only**
14 **members of a public governmental body, their attorney and staff assistants, and any other**
15 **person necessary to provide information needed by the public governmental body in**
16 **regard to the matter being discussed shall be permitted in a closed meeting.** Public
17 governmental bodies shall not discuss any business in a closed meeting, record or vote which
18 does not directly relate to the specific reason announced to justify the closed meeting or vote.
19 Public governmental bodies holding a closed meeting shall close only an existing portion of the
20 meeting facility necessary to house the members of the public governmental body in the closed
21 session, allowing members of the public to remain to attend any subsequent open session held
22 by the public governmental body following the closed session.

23 4. Nothing in sections 610.010 to 610.028 shall be construed as to require a public
24 governmental body to hold a closed meeting, record or vote to discuss or act upon any matter.

25 5. Public records shall be presumed to be open unless otherwise exempt pursuant to the
26 provisions of this chapter.

27 6. In the event any member of a public governmental body makes a motion to close a
28 meeting, or a record, or a vote from the public and any other member believes that such motion,
29 if passed, would cause a meeting, record or vote to be closed from the public in violation of any
30 provision in this chapter, such latter member shall state his or her objection to the motion at or
31 before the time the vote is taken on the motion. The public governmental body shall enter in the
32 minutes of the public governmental body any objection made pursuant to this subsection. Any
33 member making such an objection shall be allowed to fully participate in any meeting, record
34 or vote that is closed from the public over the member's objection. In the event the objecting
35 member also voted in opposition to the motion to close the meeting, record or vote at issue, the
36 objection and vote of the member as entered in the minutes shall be an absolute defense to any
37 claim filed against the objecting member pursuant to section 610.027.

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