

FIRST REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 362

101ST GENERAL ASSEMBLY

1254H.02P

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 610.021 and 610.023, RSMo, and to enact in lieu thereof two new sections relating to the sunshine law.

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

Section A. Sections 610.021 and 610.023, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 610.021 and 610.023, to read as follows:

610.021. Except to the extent disclosure is otherwise required by law, a public governmental body is authorized to close meetings, records and votes, to the extent they relate to the following:

(1) Legal actions, causes of action or litigation involving a public governmental body and any confidential or privileged communications between a public governmental body or its representatives and its attorneys. However, any minutes, vote or settlement agreement relating to legal actions, causes of action or litigation involving a public governmental body or any agent or entity representing its interests or acting on its behalf or with its authority, including any insurance company acting on behalf of a public government body as its insured, shall be made public upon final disposition of the matter voted upon or upon the signing by the parties of the settlement agreement, unless, prior to final disposition, the settlement agreement is ordered closed by a court after a written finding that the adverse impact to a plaintiff or plaintiffs to the action clearly outweighs the public policy considerations of section 610.011, however, the amount of any moneys paid by, or on behalf of, the public governmental body shall be disclosed; provided, however, in matters involving the exercise of the power of eminent domain, the vote shall be announced or become public immediately following the action on the motion to

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.

17 authorize institution of such a legal action. Legal work product shall be considered a closed record;

18 (2) Leasing, purchase or sale of real estate by a public governmental body where public
19 knowledge of the transaction might adversely affect the legal consideration therefor. However,
20 any minutes, vote or public record approving a contract relating to the leasing, purchase or sale
21 of real estate by a public governmental body shall be made public upon execution of the lease,
22 purchase or sale of the real estate;

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

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

33 (5) Nonjudicial mental or physical health proceedings involving identifiable persons,
34 including medical, psychiatric, psychological, or alcoholism or drug dependency diagnosis or
35 treatment;

36 (6) Scholastic probation, expulsion, or graduation of identifiable individuals, including
37 records of individual test or examination scores; however, personally identifiable student records
38 maintained by public educational institutions shall be open for inspection by the parents,
39 guardian or other custodian of students under the age of eighteen years and by the parents,
40 guardian or other custodian and the student if the student is over the age of eighteen years;

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

43 (8) Welfare cases of identifiable individuals;

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

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

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

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

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

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

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

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

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

66 (18) Operational guidelines, policies and specific response plans developed, adopted, or
67 maintained by any public agency responsible for law enforcement, public safety, first response,
68 or public health for use in responding to or preventing any critical incident which is or appears
69 to be terrorist in nature and which has the potential to endanger individual or public safety or
70 health. Financial records related to the procurement of or expenditures relating to operational
71 guidelines, policies or plans purchased with public funds shall be open. When seeking to close
72 information pursuant to this exception, the public governmental body shall affirmatively state
73 in writing that disclosure would impair the public governmental body's ability to protect the
74 security or safety of persons or real property, and shall in the same writing state that the public
75 interest in nondisclosure outweighs the public interest in disclosure of the records;

76 (19) Existing or proposed security systems **or procedures** and structural plans of real
77 property owned or leased by a public governmental body **including, but not limited to,**
78 **evacuation and lockdown procedures for the buildings on such real property,** and
79 information that is voluntarily submitted by a nonpublic entity owning or operating an
80 infrastructure to any public governmental body for use by that body to devise plans for protection
81 of that infrastructure **including, but not limited to, software or surveillance companies that**
82 **secure access to such buildings,** the public disclosure of which would threaten public safety:

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

85 (b) When seeking to close information pursuant to this exception, the public
86 governmental body shall affirmatively state in writing that disclosure would impair the public
87 governmental body's ability to protect the security or safety of persons or real property, and shall

88 in the same writing state that the public interest in nondisclosure outweighs the public interest
89 in disclosure of the records;

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

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

96 (21) 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 (22) Credit card numbers, personal identification numbers, digital certificates, physical
106 and virtual keys, access codes or authorization codes that are used to protect the security of
107 electronic transactions between a public governmental body and a person or entity doing business
108 with a public governmental body. Nothing in this section shall be deemed to close the record
109 of a person or entity using a credit card held in the name of a public governmental body or any
110 record of a transaction made by a person using a credit card or other method of payment for
111 which reimbursement is made by a public governmental body;

112 (23) Records submitted by an individual, corporation, or other business entity to a public
113 institution of higher education in connection with a proposal to license intellectual property or
114 perform sponsored research and which contains sales projections or other business plan
115 information the disclosure of which may endanger the competitiveness of a business; ~~and~~

116 (24) Records relating to foster home or kinship placements of children in foster care
117 under section 210.498;

118 **(25) Email addresses and telephone numbers submitted to a public governmental**
119 **body by individuals or entities for the sole purpose of receiving electronic or other**
120 **communications limited to newsletters, notifications, advisories, alerts, and periodic**
121 **reports; and**

122 **(26) Individually identifiable customer usage and billing records for customers of**
123 **a municipally owned utility unless the records are requested by the customer or authorized**

124 **for release by the customer, except that a municipally owned utility shall make available**
125 **to the public the customer's name, billing address, location of service, and dates of service**
126 **provided for any commercial service account.**

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. Each request for access to a public record shall be acted upon as soon as possible, but
12 in no event later than the end of the third business day following the date the request is received
13 by the custodian of records of a public governmental body, **unless published notice is provided**
14 **at least seventy-two hours prior to the request for records that the public governmental**
15 **body will be closed for an extended period outside of normal hours of operation.** If records
16 are requested in a certain format, the public body shall provide the records in the requested
17 format, if such format is available. If access to the public record is not granted immediately, the
18 custodian shall give a detailed explanation of the cause for further delay and the place and
19 earliest time and date that the record will be available for inspection. This period for document
20 production may exceed three days for reasonable cause.

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

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