

FIRST REGULAR SESSION

HOUSE BILL NO. 394

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE FALKNER.

1283H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 610.010, 610.021, 610.023, 610.024, and 610.026, RSMo, and to enact in lieu thereof five new sections relating to the sunshine law.

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

Section A. Sections 610.010, 610.021, 610.023, 610.024, and 610.026, RSMo, are
2 repealed and five new sections enacted in lieu thereof, to be known as sections 610.010,
3 610.021, 610.023, 610.024, and 610.026, to read as follows:

610.010. As used in this chapter, unless the context otherwise indicates, the following
2 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]~~ **the deliberations of at**
9 **least the number of individual public governmental body members required to take**
10 **action on behalf of the public governmental body where such deliberations determine or**
11 **result in the joint conduct or disposition of official public governmental body business;**

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

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 (a) Any body, agency, board, bureau, council, commission, committee, board of
17 regents or board of curators or any other governing body of any institution of higher
18 education, including a community college, which is supported in whole or in part from state
19 funds, including but not limited to the administrative entity known as "The Curators of the
20 University of Missouri" as established by section 172.020;

21 (b) Any advisory committee or commission appointed by the governor by executive
22 order;

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

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

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

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

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

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

60 (g) Any bi-state development agency established pursuant to section 70.370;

61 (5) "Public meeting", any meeting of a public governmental body subject to sections
62 610.010 to 610.030 at which any public business is discussed, decided, or public policy
63 formulated, whether such meeting is conducted in person or by means of communication
64 equipment, including, but not limited to, conference call, video conference, internet chat, or
65 internet message board. The term "public meeting" shall not include an informal gathering of
66 members of a public governmental body for ministerial or social purposes when there is no
67 intent to avoid the purposes of this chapter **or any meeting of a group of members of a**
68 **public governmental body who are not acting on behalf of the entire public**
69 **governmental body or when a public governmental body is an individually elected or**
70 **appointed official who is meeting with members of his or her staff in the ordinary course**
71 **of business**, but the term shall include a public vote of all or a majority of the members of a
72 public governmental body **or a group of members of a public governmental body voting**
73 **to advance an item to a vote of another group of members or the entire public**
74 **governmental body**, by electronic communication or any other means, conducted in lieu of
75 holding a public meeting with the members of the public governmental body gathered at one
76 location in order to conduct public business;

77 (6) "Public record", any record, whether written or electronically stored, retained by
78 or of any public governmental body including any report, survey, memorandum, or other
79 document or study prepared for the public governmental body by a consultant or other
80 professional service paid for in whole or in part by public funds, including records created or
81 maintained by private contractors under an agreement with a public governmental body or on
82 behalf of a public governmental body; provided, however, that personally identifiable student
83 records maintained by a public ~~educational institutions~~ **governmental body** shall be open
84 for inspection **only** by the parents, guardian or other custodian of students under the age of
85 eighteen years and by the parents, guardian or other custodian and the student if the student is
86 over the age of eighteen years. The term "public record" shall not include any internal
87 memorandum or letter received or prepared by or on behalf of a member of a public
88 governmental body consisting of advice, opinions and recommendations in connection with
89 the deliberative decision-making process of said body, unless such records are ~~retained by~~

90 ~~the public governmental body or]~~ presented at a public meeting. Any document or study
91 prepared for a public governmental body by a consultant or other professional service as
92 described in this subdivision shall be retained by the public governmental body in the same
93 manner as any other public record. **The term "public record" shall not include transitory**
94 **records;**

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

97 (8) **"Transitory record", includes draft versions of final documents, non-**
98 **decision-making materials, materials that are not required to sustain administrative or**
99 **operational function of the agency, materials that are recorded for only the time**
100 **required for completion of the action, or materials that do not have substantial**
101 **administrative or operational value.**

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

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

24 (3) Hiring, firing, disciplining or promoting of particular employees by a public
25 governmental body when personal information about the employee is discussed or recorded.

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

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

35 (5) Nonjudicial mental or physical health proceedings involving identifiable persons,
36 including **all records or portions of records relating to** medical, psychiatric, psychological,
37 or alcoholism or drug dependency diagnosis or treatment;

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

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

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

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

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

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

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

70 (18) **(a) Security measures, global positioning system (GPS) data, and**
71 **investigative or surveillance techniques of any public agency responsible for law**
72 **enforcement or public safety that, if disclosed, has the potential to endanger individual**
73 **or public safety or health;**

74 **(b)** Operational guidelines, policies and specific response plans developed, adopted,
75 or maintained by any public agency responsible for law enforcement, public safety, first
76 response, or public health for use in responding to or preventing any critical incident which is
77 or appears to ~~[be terrorist in nature and which has the potential to]~~ endanger individual or
78 public safety or health. Financial records related to the procurement of or expenditures
79 relating to operational guidelines, policies or plans purchased with public funds shall be open.
80 When seeking to close information pursuant to this exception, the public governmental body
81 shall affirmatively state in writing that disclosure would impair the public governmental
82 body's ability to protect the security or safety of persons or real property, and shall in the same
83 writing state that the public interest in nondisclosure outweighs the public interest in
84 disclosure of the records;

85 (19) Existing or proposed security systems, **security protocols**, and structural plans
86 of real property owned or leased by a public governmental body, and information that is
87 voluntarily submitted by a nonpublic entity owning or operating an infrastructure to any
88 public governmental body for use by that body to devise plans for protection of that
89 infrastructure, the public disclosure of which would threaten public safety:

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

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

97 (c) Records that are voluntarily submitted by a nonpublic entity shall be reviewed by
98 the receiving agency within ninety days of submission to determine if retention of the

99 document is necessary in furtherance of a state security interest. If retention is not necessary,
100 the documents shall be returned to the nonpublic governmental body or destroyed;

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

103 (21) Records that identify the configuration of components or the operation of a
104 computer, computer system, computer network, or telecommunications network, and would
105 allow unauthorized access to or unlawful disruption of a computer, computer system,
106 computer network, or telecommunications network of a public governmental body. This
107 exception shall not be used to limit or deny access to otherwise public records in a file,
108 document, data file or database containing public records. Records related to the procurement
109 of or expenditures relating to such computer, computer system, computer network, or
110 telecommunications network, including the amount of moneys paid by, or on behalf of, a
111 public governmental body for such computer, computer system, computer network, or
112 telecommunications network shall be open;

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

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

125 (24) Records relating to foster home or kinship placements of children in foster care
126 under section 210.498; ~~and~~

127 (25) Individually identifiable customer usage and billing records for customers of a
128 municipally owned utility, unless the records are requested by the customer or authorized for
129 release by the customer, except that a municipally owned utility shall make available to the
130 public the customer's name, billing address, location of service, and dates of service provided
131 for any commercial service account;

132 **(26) Email addresses and telephone numbers submitted to a public**
133 **governmental body by individuals or entities for the sole purpose of receiving**
134 **electronic or other communications limited to newsletters, notifications, advisories,**
135 **alerts, and periodic reports;**

136 **(27) Any record retained by a public governmental body that is related to a**
137 **constituent of the public governmental body, a dignitary, or a foreign leader. The**
138 **provisions of this subdivision shall authorize the closure of any health or mental health**
139 **record of a constituent in its entirety and shall authorize the redaction of any portion of**
140 **a record that may be used to individually identify a constituent of the public**
141 **governmental body. As used in this subdivision, "constituent" shall mean any person**
142 **who is a resident within the boundaries of the public governmental body, any person**
143 **who owns real property within the boundaries of the public governmental body, or any**
144 **person who owns an interest in a business entity operating within the boundaries of the**
145 **public governmental body. The term "constituent" shall not include a person who is**
146 **registered as a lobbyist or a lobbyist principal, as such terms are defined in section**
147 **105.470, or a public official, regardless of whether such person otherwise meets the**
148 **definition of "constituent". As used in this subdivision, the term "public official" shall**
149 **mean any statewide elected official or any person holding elective office of any political**
150 **subdivision as well as an employee of such elected official when such employee is acting**
151 **in an official capacity. Nothing in this subdivision shall authorize the closure of a record**
152 **that has been offered in a public meeting of the public governmental body, or any**
153 **committee thereof;**

154 **(28) Inter-agency or intra-agency memoranda or letters that would not be**
155 **available by state or federal law to a party other than an agency in litigation with the**
156 **agency, provided that the deliberative process privilege shall not apply to records**
157 **created twenty-five years or more before the date on which the records were requested**
158 **and shall not apply to any record to or from a person who is registered as a lobbyist or a**
159 **lobbyist principal, as such terms are defined in section 105.470; and**

160 **(29) Any record retained in the office of a member of the general assembly, an**
161 **employee of either house of the general assembly, or an employee of a caucus of either**
162 **the majority or minority party of either house that contains information regarding**
163 **proposed legislation or the legislative process; however, nothing in this subdivision shall**
164 **allow the closure of a record that has been offered in a public meeting of a house of the**
165 **general assembly, or any committee thereof, nor any record addressed to or from, in**
166 **whole or in part, a lobbyist or a lobbyist principal, as such terms are defined in section**
167 **105.470.**

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

6 the 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,
12 but in no event later than the end of the ~~third~~ **fifth** business day following the date the
13 request is received by the custodian of records of a public governmental body. If records are
14 requested in a certain format, the public body shall provide the records in the requested
15 format, if such format is available. If access to the public record is not granted immediately,
16 the custodian shall give a detailed explanation of the cause for further delay and the place and
17 earliest time and date that the record will be available for inspection. **Access to and the**
18 **production of the records may be conditioned upon receipt of payment under section**
19 **610.026.** This period for document production may exceed ~~three~~ **five** days for reasonable
20 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
23 law under which access is denied and shall be furnished to the requester no later than the end
24 of the ~~third~~ **fifth** business day following the date that the request for the statement is
25 received.

610.024. 1. If a public record contains material which is not exempt from disclosure
2 as well as material which is exempt from disclosure, the public governmental body shall
3 separate the exempt and nonexempt material and make the nonexempt material available for
4 examination and copying. **If a single record or document contains both open and closed**
5 **records, the public governmental body shall make a redacted version of such record or**
6 **document available in order to protect the information that would otherwise make the**
7 **record or document a closed record.**

8 2. When designing a public record, a public governmental body shall, to the extent
9 practicable, facilitate a separation of exempt from nonexempt information. If the separation
10 is readily apparent to a person requesting to inspect or receive copies of the form, the public
11 governmental body shall generally describe the material exempted unless that description
12 would reveal the contents of the exempt information and thus defeat the purpose of the
13 exemption.

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

4 (1) Fees for copying public records, except those records restricted under section
5 32.091, shall not exceed ten cents per page for a paper copy not larger than nine by fourteen
6 inches, with the hourly fee for duplicating time not to exceed the average hourly rate of pay
7 for clerical staff of the public governmental body. Research time required for fulfilling
8 records requests may be charged at the actual cost of research time. Based on the scope of the
9 request, the public governmental body shall produce the copies using employees of the body
10 that result in the lowest amount of charges for search, research, **redaction**, and duplication
11 time. Prior to producing copies of the requested records, the person requesting the records
12 may request the public governmental body to provide an estimate of the cost to the person
13 requesting the records. Documents may be furnished without charge or at a reduced charge
14 when the public governmental body determines that waiver or reduction of the fee is in the
15 public interest because it is likely to contribute significantly to public understanding of the
16 operations or activities of the public governmental body and is not primarily in the
17 commercial interest of the requester;

18 (2) Fees for providing access to public records maintained on computer facilities,
19 recording tapes or disks, videotapes or films, pictures, maps, slides, graphics, illustrations or
20 similar audio or visual items or devices, and for paper copies larger than nine by fourteen
21 inches shall include only the cost of copies, staff time, which shall not exceed the average
22 hourly rate of pay for staff of the public governmental body required for making copies and
23 programming, if necessary, and the cost of the disk, tape, or other medium used for the
24 duplication. Fees for maps, blueprints, or plats that require special expertise to duplicate may
25 include the actual rate of compensation for the trained personnel required to duplicate such
26 maps, blueprints, or plats. If programming is required beyond the customary and usual level
27 to comply with a request for records or information, the fees for compliance may include the
28 actual costs of such programming.

29 2. (1) Payment of [~~such copying~~] fees may be requested prior to [~~the making of~~
30 ~~copies~~] **fulfilling the request.**

31 (2) **A request for public records to a public governmental body shall be**
32 **considered withdrawn if the requester fails to remit all fees within thirty days of a**
33 **request for payment of the fees by the public governmental body prior to fulfilling the**
34 **request. The public governmental body shall include notice to the requester that if the**
35 **requester fails to remit payment of the fees within thirty days, the request for public**
36 **records shall be considered withdrawn. If the public governmental body responds to a**
37 **request for public records in order to seek a clarification of the request and no response**
38 **to the request for clarification is received by the public governmental body within thirty**
39 **days of sending the request for clarification, such request for public records shall be**
40 **considered withdrawn. The request for clarification by the public governmental body**

41 **shall include notice to the requester that if the requester fails to respond within thirty**
42 **days, the request shall be considered withdrawn. If the same or a substantially similar**
43 **request for public records is made within six months after the expiration of the thirty-**
44 **day period and no fee was remitted for such request or no response was received to the**
45 **request for clarification, the public governmental body may request payment of the**
46 **same fees made for the original request that has expired in addition to any allowable**
47 **fees necessary to fulfill the subsequent request. The provisions of this subdivision shall**
48 **not apply if a lawsuit has been filed against the public governmental body with regard to**
49 **the records that are the subject of the request under this subdivision.**

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

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

57 5. The term "tax, license or fees" as used in Section 22 of Article X of the
58 Constitution of the State of Missouri does not include copying charges and related fees that do
59 not exceed the level necessary to pay or to continue to pay the costs for providing a service,
60 program, or activity which was in existence on November 4, 1980, or which was approved by
61 a vote of the people subsequent to November 4, 1980.

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