

House _____ Amendment NO. _____

Offered By

1 AMEND House Bill No. 2359, Page 3, Section 37.1090, Line 22, by inserting after all of said
2 section and line the following:

3
4 "109.210. As used in sections 109.200 to 109.310 the following words and terms have the
5 meanings indicated, unless the context clearly requires otherwise:

6 (1) "Agency", any department, office, commission, board or other unit of state government
7 or any political or administrative subdivisions created for any purpose under the authorities of or by
8 the state of Missouri;

9 (2) "Boards", the local records board;

10 (3) "Commission", the state records commission;

11 (4) "Local record", any record not a state record;

12 (5) "Record", document, book, paper, photograph, map, sound recording or other material,
13 regardless of physical form or characteristics, made or received pursuant to law or in connection
14 with the transaction of official business. Library and museum material made or acquired and
15 preserved solely for reference or exhibition purposes, extra copies of documents preserved only for
16 convenience ~~[of]~~ or reference, transitory records, and stocks of publications and of processed
17 documents are not included within the definition of records as used in sections 109.200 to 109.310,
18 and are hereinafter designated as "nonrecord" materials;

19 (6) "Secretary", the secretary of state;

20 (7) "State record", any record designated or treated as a state record under state law;

21 (8) "Transitory record", includes draft versions of final documents, materials unrelated to
22 decision making, materials that are not required to sustain administrative or operational function of
23 the agency, materials that are only recorded for the time required to complete the action, or materials
24 that do not have substantial administrative or operational value.

25 109.260. 1. ~~[No record]~~ Records shall be destroyed or otherwise disposed of by any agency
26 ~~[unless it is determined by the commission or board that the record has no further administrative,~~
27 ~~legal, fiscal, research or historical value]~~ in accordance with the record schedules approved by the
28 commission or board.

29 2. Nonrecord materials or materials not included within the definition of records as
30 contained in sections 109.200 to 109.310 may, if not otherwise prohibited by law, be destroyed at

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1 any time by the agency in possession of such materials [~~with approval of the commission or board~~].
 2 The director of the records management and archives service may formulate advisory procedures
 3 and interpretation to guide in the disposition of nonrecord materials.

4 610.010. As used in this chapter, unless the context otherwise indicates, the following terms
 5 mean:

6 (1) "Closed meeting", "closed record", or "closed vote", any meeting, record or vote closed
 7 to the public;

8 (2) "Copying", if requested by a member of the public, copies provided as detailed in
 9 section 610.026, if duplication equipment is available;

10 (3) "Public business", [~~all matters which relate in any way to the performance of the public~~
 11 ~~governmental body's functions or the conduct of its business~~] the deliberations of a quorum of
 12 members of a public governmental body when such deliberations determine or result in the joint
 13 conduct or disposition of public governmental body business;

14 (4) "Public governmental body", any legislative, administrative, [~~or~~] governmental entity, or
 15 elected or appointed position created by the Constitution or statutes of this state, by order or
 16 ordinance of any political subdivision or district, judicial entities when operating in an
 17 administrative capacity, or by executive order, including:

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

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

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

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

1 funds provided, however, the staff of the college or university president, chancellor or chief
2 executive officer shall not constitute such a policy advisory committee. The custodian of the
3 records of any public governmental body shall maintain a list of the policy advisory committees
4 described in this subdivision;

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

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

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

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

18 (5) "Public meeting", any meeting of a public governmental body subject to sections
19 610.010 to 610.030 at which any public business is discussed, decided, or public policy formulated,
20 whether such meeting is conducted in person or by means of communication equipment, including,
21 but not limited to, conference call, video conference, internet chat, or internet message board. The
22 term "public meeting" shall not include an informal gathering of members of a public governmental
23 body for ministerial or social purposes when there is no intent to avoid the purposes of this chapter,
24 any meeting of a group of members of a public governmental body who are not acting on behalf of
25 the entire public governmental body, or when a public governmental body is an elected or appointed
26 official meeting with his or her staff in the ordinary course of business, but the term shall include a
27 public vote of all or a majority of the members of a public governmental body or a group of
28 members of a public governmental body voting to advance an item to a vote of another group of
29 members of a public governmental body or the entire public governmental body, by electronic
30 communication or any other means, conducted in lieu of holding a public meeting with the members
31 of the public governmental body gathered at one location in order to conduct public business;

32 (6) "Public record", any record, whether written or electronically stored, retained by or of
33 any public governmental body ~~[including]~~ made or received under the law or in connection with the
34 transaction of official business and subject to a record retention schedule of the public governmental
35 body under chapter 109. This may include any report, survey, memorandum, or other document or
36 study prepared for the public governmental body by a consultant or other professional service paid
37 for in whole or in part by public funds, including records created or maintained by private
38 contractors under an agreement with a public governmental body or on behalf of a public
39 governmental body; provided, however, that personally identifiable student records maintained by

1 public educational institutions shall be open for inspection by the parents, guardian or other
2 custodian of students under the age of eighteen years and by the parents, guardian or other custodian
3 and the student if the student is over the age of eighteen years. ~~[The term "public record" shall not
4 include any internal memorandum or letter received or prepared by or on behalf of a member of a
5 public governmental body consisting of advice, opinions and recommendations in connection with
6 the deliberative decision-making process of said body, unless such records are retained by the public
7 governmental body or presented at a public meeting.]~~ Any document or study prepared for a public
8 governmental body by a consultant or other professional service as described in this subdivision
9 shall be retained by the public governmental body in the same manner as any other public record.
10 The term "public record" shall not include transitory records as defined in section 109.210;

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

13 610.011. 1. It is the public policy of this state that meetings, records, votes, actions, and
14 deliberations of public governmental bodies be open to the public unless otherwise provided by law.
15 Sections 610.010 to 610.200 shall be liberally construed and their exceptions strictly construed to
16 promote this public policy.

17 2. Except as otherwise provided by law, all public meetings of public governmental bodies
18 shall be open to the public as set forth in section 610.020, all public records of public governmental
19 bodies shall be open to the public for inspection and copying as set forth in sections 610.023 to
20 610.026, and all public votes of public governmental bodies shall be recorded as set forth in section
21 610.015.

22 3. Notwithstanding the provisions of subsections 1 and 2 of this section, the courts of this
23 state shall liberally construe this chapter only to resolve an ambiguity when the plain and ordinary
24 meaning of the words cannot be imputed by the court.

25 610.021. Except to the extent disclosure is otherwise required by law, a public governmental
26 body is authorized to close meetings, records and votes, to the extent they relate to the following:

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

1 legal action. Legal work product shall be considered a closed record;

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

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

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

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

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

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

27 (8) Welfare cases of identifiable individuals;

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

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

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

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

36 (13) Individually identifiable personnel records, performance ratings or records pertaining to
37 employees or applicants for employment, except that this exemption shall not apply to the names,
38 positions, salaries and lengths of service of officers and employees of public agencies once they are
39 employed as such, and the names of private sources donating or contributing money to the salary of

1 a chancellor or president at all public colleges and universities in the state of Missouri and the
2 amount of money contributed by the source;

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

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

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

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

11 (18) Operational guidelines, policies and specific response plans developed, adopted, or
12 maintained by any public agency responsible for law enforcement, public safety, first response, or
13 public health for use in responding to or preventing any critical incident which is or appears to be
14 terrorist in nature and which has the potential to endanger individual or public safety or health.

15 Financial records related to the procurement of or expenditures relating to operational guidelines,
16 policies or plans purchased with public funds shall be open. When seeking to close information
17 pursuant to this exception, the public governmental body shall affirmatively state in writing that
18 disclosure would impair the public governmental body's ability to protect the security or safety of
19 persons or real property, and shall in the same writing state that the public interest in nondisclosure
20 outweighs the public interest in disclosure of the records;

21 (19) Existing or proposed security systems, security protocols, and structural plans of real
22 property owned or leased by a public governmental body including, but not limited to, evacuation
23 and lockdown procedures for the buildings on such real property, and information that is voluntarily
24 submitted by a nonpublic entity owning or operating an infrastructure to any public governmental
25 body for use by that body to devise plans for protection of that infrastructure including, but not
26 limited to, software or surveillance companies that secure access to such buildings, the public
27 disclosure of which would threaten public safety:

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

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

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

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

1 (21) Records that identify the configuration of components or the operation of a computer,
2 computer system, computer network, or telecommunications network, and would allow
3 unauthorized access to or unlawful disruption of a computer, computer system, computer network,
4 or telecommunications network of a public governmental body. This exception shall not be used to
5 limit or deny access to otherwise public records in a file, document, data file or database containing
6 public records. Records related to the procurement of or expenditures relating to such computer,
7 computer system, computer network, or telecommunications network, including the amount of
8 moneys paid by, or on behalf of, a public governmental body for such computer, computer system,
9 computer network, or telecommunications network shall be open;

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

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

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

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

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

31 (27) Records containing any residential address, personal phone number, or personal email
32 address of any employee, customer, or constituent of the public governmental body, or applicant for
33 employment or appointment made to the public governmental body. Public governmental bodies
34 may close records containing business or personal addresses, telephone numbers, or email addresses
35 of elected or appointed officials, dignitaries, foreign leaders, or other individuals if the public
36 governmental body determines that disclosure would impair the public governmental body's ability
37 to protect the security or safety of persons or real property and shall affirmatively state in writing
38 that nondisclosure outweighs the public interest in disclosure of the records; and

39 (28) Inter-agency or intra-agency memorandums or letters that would not be available by

1 state or federal law to a party other than an agency in litigation with the agency, provided that the
2 deliberative process privilege shall not apply to records created twenty-five years or more before the
3 date on which the records were requested.

4 610.023. 1. Each public governmental body is to appoint a custodian who is to be
5 responsible for the maintenance of that body's records. The identity and location of a public
6 governmental body's custodian is to be made available upon request.

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

14 3. Each request for access to a public record shall be acted upon as soon as possible, but in
15 no event later than the end of the ~~[third]~~ fifth business day following the date the request is received
16 by the custodian of records of a public governmental body, unless published notice is provided at
17 least seventy-two hours prior to the request for records that the public governmental body will be
18 closed for an extended period outside of normal hours of operation. If records are requested in a
19 certain format, the public body shall provide the records in the requested format, if such format is
20 available. If access to the public record is not granted immediately, the custodian shall give a
21 detailed explanation of the cause for further delay and the place and earliest time and date that the
22 record will be available for inspection and may condition both the earliest possible date the records
23 will be available and production of the records upon receipt of payment under section 610.026. This
24 period for document production may exceed three days for reasonable cause.

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

29 5. If the custodian requests payment of a fee under section 610.026 prior to providing the
30 earliest possible date the records will be available or prior to making the records available for
31 inspection, the public governmental body may consider the request fulfilled if:

32 (1) Payment is not received on or before the date requested by the public governmental
33 body; or

34 (2) The requester fails to respond within thirty days to the public governmental body's
35 request for payment or request for additional information to fulfill the records request.

36 The public governmental body shall notify the requester in writing that failure to pay the fee or
37 respond within thirty days will result in closure of the request under this section.

38 610.024. 1. If a public record contains material which is not exempt from disclosure as well

1 as material which is exempt from disclosure, the public governmental body shall separate the
2 exempt and nonexempt material and make the nonexempt material available for examination and
3 copying. When a single record or document contains both open and closed records, the public
4 governmental body shall make a redacted version of such record or document available in order to
5 protect the information that would otherwise make the record or document a closed record. Time
6 required to separate exempt and nonexempt material from a public record or make any redaction
7 may constitute research time and staff time for which a fee can be collected under section 610.026.

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 is
10 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 would
12 reveal the contents of the exempt information and thus defeat the purpose of the exemption.

13 610.026. 1. Except as otherwise provided by law, each public governmental body shall
14 provide access to and, upon request, furnish copies of public records subject to the following:

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

28 (2) Fees for providing access to public records maintained on computer facilities, recording
29 tapes or disks, videotapes or films, pictures, maps, slides, graphics, illustrations or similar audio or
30 visual items or devices, and for paper copies larger than nine by fourteen inches shall include only
31 the cost of copies, staff time, which shall not exceed the average hourly rate of pay for staff of the
32 public governmental body required for making copies and programming~~[- if necessary,]~~ and the cost
33 of the disk, tape, or other medium used for the duplication. If an attorney was used to research or
34 review the records, the fee may include the hourly rate of the lowest paid staff attorney of the public
35 governmental body able to fulfill the request or the hourly rate of the attorney hired by the public
36 governmental body to research or review the records. Fees for maps, blueprints, or plats that require
37 special expertise to duplicate may include the actual rate of compensation for the trained personnel
38 required to duplicate such maps, blueprints, or plats. If programming is required beyond the
39 customary and usual level to comply with a request for records or information, the fees for

1 compliance may include the actual costs of such programming.

2 (3) Research time required for fulfilling records requests may be charged at the actual cost
3 of research time and the fee may include the hourly rate of pay of the lowest paid staff attorney of
4 the public governmental body able to fulfill the request or attorney hired by the public governmental
5 body to perform research or review records to fulfill record requests made under this chapter. The
6 fee charged for research time shall include all costs incurred by the public governmental body to
7 respond to a request made under this chapter including, but not limited to, all activities taken by the
8 public governmental body to process, produce, or provide access to requested records and the time
9 required to separate exempt and nonexempt information from a public record and make any
10 redactions. The public governmental body shall produce the copies or provide access to records
11 using employees of the body or individuals hired by the body that result in the lowest amount of
12 charges for search, research, and duplication time.

13 2. Prior to producing copies of the requested records, the public governmental body shall
14 provide an estimate of the cost to the person requesting the records. Documents may be furnished
15 without charge or at a reduced charge when the public governmental body determines that waiver or
16 reduction of the fee is in the public interest because it is likely to contribute significantly to public
17 understanding of the operations or activities of the public governmental body and is not primarily in
18 the commercial interest of the requester. Payment of such [~~copying~~] fees [~~may~~] shall be requested
19 and received prior to the public governmental body providing the earliest possible date the records
20 will be available and prior to the making of copies or providing access to the public records.

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

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

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

33
34 Further amend said bill by amending the title, enacting clause, and intersectional references
35 accordingly.