

SECOND REGULAR SESSION

HOUSE BILL NO. 2725

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE COLEMAN (97).

5735H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 610.010, 610.021, 610.023, 610.024, 610.025, and 610.026, RSMo, and to enact in lieu thereof six 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Section A. Sections 610.010, 610.021, 610.023, 610.024, 610.025, and 610.026, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 610.010, 610.021, 610.023, 610.024, 610.025, and 610.026, to read as follows:

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

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

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

(3) "Public business", all matters which relate in any way to the performance of the public governmental body's functions or the conduct of its business;

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

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

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

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

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

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

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

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

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

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

49 b. Performs a public function as evidenced by a statutorily based capacity to confer or
50 otherwise advance, through approval, recommendation or other means, the allocation or issuance
51 of tax credits, tax abatement, public debt, tax-exempt debt, rights of eminent domain, or the

52 contracting of leaseback agreements on structures whose annualized payments commit public
53 tax revenues; or any association that directly accepts the appropriation of money from a public
54 governmental body, but only to the extent that a meeting, record, or vote relates to such
55 appropriation; and

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

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

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

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

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;
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;

19 (2) Leasing, purchase or sale of real estate by a public governmental body where public
20 knowledge of the transaction might adversely affect the legal consideration therefor. However,
21 any minutes, vote or public record approving a contract relating to the leasing, purchase or sale
22 of real estate by a public governmental body shall be made public upon execution of the lease,
23 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, fire,
27 promote or discipline an employee of a public governmental body shall be made available with
28 a record of how each member voted to the public within seventy-two hours of the close of the
29 meeting where such action occurs; provided, however, that any employee so affected shall be
30 entitled to prompt notice of such decision during the seventy-two-hour period before such
31 decision is made available to the public. As used in this subdivision, the term "personal
32 information" means information relating to the performance or merit of individual employees;

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

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

37 (6) Scholastic probation, expulsion, or graduation of identifiable individuals, including
38 records of individual test or examination scores; however, personally identifiable student records
39 maintained by public educational institutions shall be open for inspection by the parents,

40 guardian or other custodian of students under the age of eighteen years and by the parents,
41 guardian or other custodian and the student if the student is over the age of eighteen years;

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

44 (8) ~~[Welfare cases of identifiable individuals]~~ **Individually identifiable information**
45 **including, but not limited to, telephone numbers, email addresses, physical addresses,**
46 **driver's license numbers, or tax information of individuals not otherwise required to be**
47 **made public;**

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

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

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

53 (12) Sealed bids and related documents, until the bids are opened; and sealed proposals
54 and related documents or any documents related to a negotiated contract until a contract is
55 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 apply
58 to the names, positions, salaries and lengths of service of officers and employees of public
59 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 in
64 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 the
69 auditor are to be considered open records pursuant to this chapter;

70 (18) Operational guidelines, policies and specific response plans developed, adopted, or
71 maintained by any public agency responsible for law enforcement, public safety, first response,
72 or public health for use in responding to or preventing any critical incident ~~[which is or appears~~
73 ~~to be terrorist in nature and]~~ which has the potential to endanger individual or public safety or
74 health. Financial records related to the procurement of or expenditures relating to operational
75 guidelines, policies or plans purchased with public funds shall be open. ~~[When seeking to close~~

76 information pursuant to this exception, the public governmental body shall affirmatively state
77 in writing that] **Information may be closed** if disclosure would impair the public governmental
78 body's ability to protect the security or safety of persons or real property[, and shall in the same
79 writing state that the public interest in nondisclosure outweighs the public interest in disclosure
80 of the records];

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

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

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

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

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

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

108 (22) Credit card numbers, personal identification numbers, digital certificates, physical
109 and virtual keys, access codes or authorization codes that are used to protect the security of
110 electronic transactions between a public governmental body and a person or entity doing business
111 with a public governmental body. Nothing in this section shall be deemed to close the record

112 of a person or entity using a credit card held in the name of a public governmental body or any
113 record of a transaction made by a person using a credit card or other method of payment for
114 which reimbursement is made by a public governmental body;

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

119 (24) Records relating to foster home or kinship placements of children in foster care
120 under section 210.498; **and**

121 **(25) Records of any correspondence, written or electronic, between a member or**
122 **employee of a public governmental body and a constituent pertaining to a constituent's**
123 **request for information or assistance. For the purposes of this subdivision, the term**
124 **"constituent" shall mean a Missouri resident other than a lobbyist or lobbyist principal.**

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. If records are requested in a certain
14 format, the public body shall provide the records in the requested format, if such format is
15 available. If access to the public record is not granted immediately, the custodian shall give a
16 detailed explanation of the cause for further delay and the place and earliest time and date that
17 the record will be available for inspection **or production**. This period for document production
18 may exceed three days for reasonable cause.

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

23 **5. Requests for continuous or repeated access to certain records or information may**
24 **be denied by the public governmental body. Each request for records or information shall**
25 **be considered a separate request and shall be considered closed upon the completion of the**
26 **request.**

610.024. 1. If a public record contains material which is not exempt from disclosure as
2 well as material which is exempt from disclosure, the public governmental body shall separate
3 the exempt and nonexempt material and make the nonexempt material available for examination
4 and copying. **The public governmental body shall inform the person requesting the records**
5 **of the existence of materials exempt from disclosure and shall disclose all nonexempt**
6 **material. All materials exempt from disclosure may be redacted or otherwise closed.**

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

610.025. 1. Any member of a public governmental body who transmits any message
2 relating to public business by electronic means shall also concurrently transmit that message to
3 either the member's public office computer or the custodian of records in the same format. The
4 provisions of this section shall only apply to messages sent to two or more members of that body
5 so that, when counting the sender, a majority of the body's members are copied. Any such
6 message received by the custodian or at the member's office computer shall be a public record
7 subject to the exceptions of section 610.021.

8 **2. No member or employee of a public governmental body shall utilize any software**
9 **or text messaging application designed to encrypt or automatically delete communications**
10 **to conduct any official business nor shall such software or application be installed on any**
11 **official computer or electronic device, unless such software or application is recommended**
12 **by a law enforcement agency in order to protect the safety or security of members or**
13 **employees of the public governmental body.**

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

3 (1) Fees for copying public records, except those records restricted under section 32.091,
4 shall not exceed ten cents per page for a paper copy not larger than nine by fourteen inches, with
5 the hourly fee for duplicating time not to exceed the average hourly rate of pay for clerical staff
6 of the public governmental body. Research **and review** time required for fulfilling records
7 requests, **including legal review**, may be charged at the actual cost of ~~research~~ **such** time.
8 Based on the scope of the request, the public governmental body shall produce the copies using

9 employees of the body that result in the lowest amount of charges for search, research, **review**,
10 and duplication time. Prior to producing copies of the requested records, the person requesting
11 the records may request the public governmental body to provide an estimate of the cost to the
12 person requesting the records. Documents may be furnished without charge or at a reduced
13 charge when the public governmental body determines that waiver or reduction of the fee is in
14 the public interest because it is likely to contribute significantly to public understanding of the
15 operations or activities of the public governmental body and is not primarily in the commercial
16 interest of the requester;

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

28 2. Payment [~~of such copying fees~~] **for producing such records** may be requested prior
29 to the [~~making of copies~~] **production of such records. A public governmental body may**
30 **impose a reasonable time period, no less than thirty days, for the requester to remit**
31 **payment. If the requester has not remitted payment within such time period, the public**
32 **governmental body may consider the request closed.**

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

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

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

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