

FIRST REGULAR SESSION

HOUSE BILL NO. 424

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE CORNEJO.

0745H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 610.020, 610.021, 610.022, 610.025, 610.027, and 610.029, RSMo, and to enact in lieu thereof six new sections relating to the Missouri sunshine law.

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

Section A. Sections 610.020, 610.021, 610.022, 610.025, 610.027, and 610.029, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 610.020, 610.021, 610.022, 610.025, 610.027, and 610.029, to read as follows:

610.020. 1. All public governmental bodies shall give notice of the time, date, and place of each meeting, and its tentative agenda, in a manner reasonably calculated to advise the public of the matters to be considered, and if the meeting will be conducted by telephone or other electronic means, the notice of the meeting shall identify the mode by which the meeting will be conducted and the designated location where the public may observe and attend the meeting. If a public body plans to meet by internet chat, internet message board, or other computer link, it shall post a notice of the meeting on its website in addition to its principal office and shall notify the public how to access that meeting. Reasonable notice shall include making available copies of the notice to any **member of the public or** representative of the news media who requests notice of meetings of a particular public governmental body concurrent with the notice being made available to the members of the particular governmental body and posting the notice on a bulletin board or other prominent place which is easily accessible to the public and clearly designated for that purpose at the principal office of the body holding the meeting, or if no such office exists, at the building in which the meeting is to be held.

2. Notice conforming with all of the requirements of subsection 1 of this section shall be given at least twenty-four hours, exclusive of weekends and holidays when the facility is

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

17 closed, prior to the commencement of any meeting of a governmental body unless for good cause
18 such notice is impossible or impractical, in which case as much notice as is reasonably possible
19 shall be given. Each meeting shall be held at a place reasonably accessible to the public and of
20 sufficient size to accommodate the anticipated attendance by members of the public, and at a
21 time reasonably convenient to the public, unless for good cause such a place or time is
22 impossible or impractical. Every reasonable effort shall be made to grant special access to the
23 meeting to handicapped or disabled individuals.

24 3. A public body shall allow for the recording by audiotape, videotape, or other
25 electronic means of any open meeting. A public body may establish guidelines regarding the
26 manner in which such recording is conducted so as to minimize disruption to the meeting. No
27 audio recording of any meeting, record, or vote closed pursuant to the provisions of section
28 610.021 shall be permitted without permission of the public body; any person who violates this
29 provision shall be guilty of a class C misdemeanor.

30 4. When it is necessary **for a public governmental body** to hold a meeting on less than
31 twenty-four hours' notice, or at a place that is not reasonably accessible to the public, or at a time
32 that is not reasonably convenient to the public, the nature of the good cause justifying that
33 departure from the normal requirements shall be stated in the minutes.

34 5. A formally constituted subunit of a parent governmental body may conduct a meeting
35 without notice as required by this section during a lawful meeting of the parent governmental
36 body, a recess in that meeting, or immediately following that meeting, if the meeting of the
37 subunit is publicly announced at the parent meeting and the subject of the meeting reasonably
38 coincides with the subjects discussed or acted upon by the parent governmental body.

39 6. If another provision of law requires a manner of giving specific notice of a meeting,
40 hearing or an intent to take action by a governmental body, compliance with that section shall
41 constitute compliance with the notice requirements of this section.

42 7. A journal or minutes of open and closed meetings shall be taken and retained by the
43 public governmental body, including, but not limited to, a record of any votes taken at such
44 meeting. The minutes shall include, **but not be limited to**, the date, time, place, members
45 present, members absent and a record of any votes taken. When a roll call vote is taken, the
46 minutes shall attribute each "yea" and "nay" vote or abstinence if not voting to the name of the
47 individual member of the public governmental body. **No action shall be taken by a public
48 governmental body without a vote, either by roll call or by voice votes, under statutory
49 requirements.**

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 involving identifiable persons,
35 including medical, psychiatric, psychological, or alcoholism or drug dependency diagnosis or
36 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;

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

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

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

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

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

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

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

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

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

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

75 security or safety of persons or real property, and shall in the same writing state that the public
76 interest in nondisclosure outweighs the public interest in disclosure of the records;

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

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

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

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

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

95 (21) Records that identify the configuration of components or the operation of a
96 computer, computer system, computer network, or telecommunications network, and would
97 allow unauthorized access to or unlawful disruption of a computer, computer system, computer
98 network, or telecommunications network of a public governmental body. This exception shall
99 not be used to limit or deny access to otherwise public records in a file, document, data file or
100 database containing public records. Records related to the procurement of or expenditures

101 relating to such computer, computer system, computer network, or telecommunications network,
102 including the amount of moneys paid by, or on behalf of, a public governmental body for such
103 computer, computer system, computer network, or telecommunications network shall be open;

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

111 (23) Records submitted by an individual, corporation, or other business entity to a public
112 institution of higher education in connection with a proposal to license intellectual property or
113 perform sponsored research and which contains sales projections or other business plan
114 information the disclosure of which may endanger the competitiveness of a business, **except the**
115 **name of the individual, corporation, or other business entity and the amount of any public**
116 **funding provided to such individual, corporation, or other business entity by the public**
117 **institution of higher education shall be deemed as records open for public inspection.**

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

7 2. A public governmental body proposing to hold a closed meeting or vote shall give
8 notice of the time, date and place of such closed meeting or vote and the reason for holding it by
9 reference to the specific exception allowed pursuant to the provisions of section 610.021. Such
10 notice shall comply with the procedures set forth in section 610.020 for notice of a public
11 meeting.

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

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

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

27 6. In the event any member of a public governmental body makes a motion to close a
28 meeting, or a record, or a vote from the public and any other member believes that such motion,
29 if passed, would cause a meeting, record or vote to be closed from the public in violation of any

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

610.025. Any member of a public governmental body who transmits any message
2 relating to public business by electronic means, **including by a mobile communication device,**
3 shall also concurrently transmit that message to either the member's public office computer or
4 the custodian of records in the same format. The provisions of this section shall only apply to
5 messages sent to two or more members of that body so that, when counting the sender, a majority
6 of the body's members are copied. Any such message received by the custodian or at the
7 member's office computer shall be a public record subject to the exceptions of section 610.021.
8 **As used in this section, "mobile communication device" includes, but is not limited to, any**
9 **cellular telephone or other mobile electronic device able to send electronic mail or other**
10 **electronic data transmission.**

610.027. 1. The remedies provided by this section against public governmental bodies
2 shall be in addition to those provided by any other provision of law. Any aggrieved person,
3 taxpayer to, or citizen of, this state, or the attorney general or prosecuting attorney, may seek
4 judicial enforcement of the requirements of sections 610.010 to 610.026. Suits to enforce
5 sections 610.010 to 610.026 shall be brought in the circuit court for the county in which the
6 public governmental body has its principal place of business. Upon service of a summons,
7 petition, complaint, counterclaim, or cross-claim in a civil action brought to enforce the
8 provisions of sections 610.010 to 610.026, the custodian of the public record that is the subject
9 matter of such civil action shall not transfer custody, alter, destroy, or otherwise dispose of the
10 public record sought to be inspected and examined, notwithstanding the applicability of an
11 exemption pursuant to section 610.021 or the assertion that the requested record is not a public
12 record until the court directs otherwise.

13 2. ~~[Once a party seeking judicial enforcement of sections 610.010 to 610.026~~
14 ~~demonstrates to the court that the body in question is subject to the requirements of sections~~
15 ~~610.010 to 610.026 and has held a closed meeting, record or vote, the burden of persuasion shall~~
16 ~~be on the body and its members to demonstrate compliance with the requirements of sections~~
17 ~~610.010 to 610.026.] **In any legal proceeding, there shall be a presumption that a meeting,**~~
18 **record, or vote is open to the public. The burden shall be on a public governmental body**

19 **or a member of a public governmental body to prove that such meeting, record, or vote**
20 **shall be closed to the public.**

21 3. Upon a finding by a preponderance of the evidence that a public governmental body
22 or a member of a public governmental body has knowingly violated sections 610.010 to 610.026,
23 the public governmental body or the member shall be subject to a civil penalty in an amount up
24 to one thousand dollars. If the court finds that there is a knowing violation of sections 610.010
25 to 610.026, the court may order the payment by such body or member of all costs and reasonable
26 attorney fees to any party successfully establishing a violation. The court shall determine the
27 amount of the penalty by taking into account the size of the jurisdiction, the seriousness of the
28 offense, and whether the public governmental body or member of a public governmental body
29 has violated sections 610.010 to 610.026 previously.

30 4. Upon a finding by a preponderance of the evidence that a public governmental body
31 or a member of a public governmental body has purposely violated sections 610.010 to 610.026,
32 the public governmental body or the member shall be subject to a civil penalty in an amount up
33 to five thousand dollars. If the court finds that there was a purposeful violation of sections
34 610.010 to 610.026, then the court shall order the payment by such body or member of all costs
35 and reasonable attorney fees to any party successfully establishing such a violation. The court
36 shall determine the amount of the penalty by taking into account the size of the jurisdiction, the
37 seriousness of the offense, and whether the public governmental body or member of a public
38 governmental body has violated sections 610.010 to 610.026 previously.

39 5. Upon a finding by a preponderance of the evidence that a public governmental body
40 has violated any provision of sections 610.010 to 610.026, a court shall void any action taken in
41 violation of sections 610.010 to 610.026, if the court finds under the facts of the particular case
42 that the public interest in the enforcement of the policy of sections 610.010 to 610.026 outweighs
43 the public interest in sustaining the validity of the action taken in the ~~closed~~ meeting, record
44 or vote. Suit for enforcement shall be brought within one year from which the violation is
45 ascertainable and in no event shall it be brought later than two years after the violation. This
46 subsection shall not apply to an action taken regarding the issuance of bonds or other evidence
47 of indebtedness of a public governmental body if a public hearing, election or public sale has
48 been held regarding the bonds or evidence of indebtedness.

49 6. A public governmental body which is in doubt about the legality of closing a particular
50 meeting, record or vote may bring suit at the expense of that public governmental body in the
51 circuit court of the county of the public governmental body's principal place of business to
52 ascertain the propriety of any such action, or seek a formal opinion of the attorney general or an
53 attorney for the governmental body.

610.029. 1. A public governmental body keeping its records in an electronic format is
2 strongly encouraged to provide access to its public records to members of the public in an
3 electronic format. A public governmental body ~~[is strongly encouraged to]~~ **that maintains its**
4 **records in an electronic format shall** make information available in ~~[usable electronic formats~~
5 ~~to the greatest extent feasible]~~ **a format easily accessed and managed by programs commonly**
6 **available to the public.** A public governmental body shall not enter into a contract for the
7 creation or maintenance of a public records database if that contract impairs the ability of the
8 public to inspect or copy the public records of that agency, including public records that are
9 online or stored in an electronic record-keeping system used by the agency. Such contract shall
10 not allow any impediment that as a practical matter makes it more difficult for the public to
11 inspect or copy the records than to inspect or copy the public governmental body's records. For
12 purposes of this section, a usable electronic format shall allow, at a minimum, viewing and
13 printing of records. However, if the public governmental body keeps a record on a system
14 capable of allowing the copying of electronic documents into other electronic documents, the
15 public governmental body shall provide data to the public in such electronic format, if requested.
16 The activities authorized pursuant to this section shall not take priority over the primary
17 responsibilities of a public governmental body. For purposes of this section the term "electronic
18 services" means online access or access via other electronic means to an electronic file or
19 database. ~~[This subsection shall not apply to contracts initially entered into before August 28,~~
20 ~~2004.]~~

21 2. Public governmental bodies shall include in a contract for electronic services
22 provisions that:

23 (1) Protect the security and integrity of the information system of the public
24 governmental body and of information systems that are shared by public governmental bodies;
25 and

26 (2) Limit the liability of the public governmental body providing the services.

27 3. Each public governmental body may consult with the information technology services
28 division of the office of administration to develop the electronic services offered by the public
29 governmental body to the public pursuant to this section.

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