

SECOND REGULAR SESSION

SENATE BILL NO. 843

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHAEFER.

Read 1st time February 6, 2014, and ordered printed.

TERRY L. SPIELER, Secretary.

4866S.011

AN ACT

To repeal sections 610.010, 610.020, 610.021, 610.022, 610.023, 610.024, 610.026, and 610.027, RSMo, and to enact in lieu thereof eight new sections relating to public records and meetings, with existing penalty provisions.

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

Section A. Sections 610.010, 610.020, 610.021, 610.022, 610.023, 610.024, 2 610.026, and 610.027, RSMo, are repealed and eight new sections enacted in lieu 3 thereof, to be known as sections 610.010, 610.020, 610.021, 610.022, 610.023, 4 610.024, 610.026, and 610.027, to read as follows:

610.010. As used in this chapter, unless the context otherwise indicates, 2 the following terms mean:

3 (1) "Closed meeting", "closed record", or "closed vote", any meeting, record 4 or vote closed to the public;

5 (2) "Copying", if requested by a member of the public, copies provided as 6 detailed in section 610.026, if duplication equipment is available;

7 (3) **"Ministerial", an act that the law directs be performed upon** 8 **a given set of facts, independent of what the public governmental body** 9 **or its member may think of the propriety or impropriety of doing the** 10 **act in a particular case, which does not require the exercise of reason** 11 **in determining how or whether the act should be performed;**

12 (4) "Public business", all matters which relate in any way to the 13 performance of the public governmental body's functions or the conduct of its 14 business;

15 [(4)] (5) "Public governmental body", any legislative, administrative or 16 governmental entity created by the constitution or statutes of this state, by order

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

17 or ordinance of any political subdivision or district, judicial entities when
18 operating in an administrative capacity, or by executive order, including:

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

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

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

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

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

52 (f) Any quasi-public governmental body. The term "quasi-public

53 governmental body" means any person, corporation or partnership organized or
54 authorized to do business in this state pursuant to the provisions of chapter 352,
55 353, or 355, or unincorporated association which either:

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

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

67 (g) Any bi-state development agency established pursuant to section
68 70.370;

69 [(5)] (6) "Public meeting", any meeting of a public governmental body
70 subject to sections 610.010 to 610.030 at which any public business is discussed,
71 decided, or public policy formulated, whether such meeting is conducted in person
72 or by means of communication equipment, including, but not limited to,
73 conference call, video conference, internet chat, or internet message board. The
74 term "public meeting" shall not include an informal gathering of members of a
75 public governmental body for ministerial or social purposes when there is no
76 intent to avoid the purposes of this chapter, but the term shall include a public
77 vote of all or a majority of the members of a public governmental body, by
78 electronic communication or any other means, conducted in lieu of holding a
79 public meeting with the members of the public governmental body gathered at
80 one location in order to conduct public business;

81 [(6)] (7) "Public record", any record, whether written or electronically
82 stored, retained by or of any public governmental body including any report,
83 survey, memorandum, or other document or study prepared for the public
84 governmental body by a consultant or other professional service paid for in whole
85 or in part by public funds, including records created or maintained by private
86 contractors under an agreement with a public governmental body or on behalf of
87 a public governmental body; provided, however, that personally identifiable
88 student records maintained by public educational institutions shall be open for

89 inspection by the parents, guardian or other custodian of students under the age
90 of eighteen years and by the parents, guardian or other custodian and the student
91 if the student is over the age of eighteen years. The term "public record" shall
92 not include any internal memorandum or letter received or prepared by or on
93 behalf of a member of a public governmental body consisting of advice, opinions
94 and recommendations in connection with the deliberative decision-making process
95 of said body, unless such records are retained by the public governmental body
96 or presented at a public meeting. Any document or study prepared for a public
97 governmental body by a consultant or other professional service as described in
98 this subdivision shall be retained by the public governmental body in the same
99 manner as any other public record;

100 [(7)] (8) "Public vote", any vote, whether conducted in person, by
101 telephone, or by any other electronic means, cast at any public meeting of any
102 public governmental body.

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

18 2. Notice conforming with all of the requirements of subsection 1 of this
19 section shall be given at least twenty-four hours, exclusive of weekends and
20 holidays when the facility is closed, prior to the commencement of any meeting
21 of a governmental body unless for good cause such notice is impossible or
22 impractical, in which case as much notice as is reasonably possible shall be

23 given. Each meeting shall be held at a place reasonably accessible to the public
24 and of sufficient size to accommodate the anticipated attendance by members of
25 the public, and at a time reasonably convenient to the public, unless for good
26 cause such a place or time is impossible or impractical. Every reasonable effort
27 shall be made to grant special access to the meeting to handicapped or disabled
28 individuals.

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

36 4. When it is necessary to hold a meeting on less than twenty-four hours'
37 notice, or at a place that is not reasonably accessible to the public, or at a time
38 that is not reasonably convenient to the public, the nature of the good cause
39 justifying that departure from the normal requirements shall be stated in the
40 minutes.

41 5. A formally constituted subunit of a parent governmental body may
42 conduct a meeting without notice as required by this section during a lawful
43 meeting of the parent governmental body, a recess in that meeting, or
44 immediately following that meeting, if the meeting of the subunit is publicly
45 announced at the parent meeting and the subject of the meeting reasonably
46 coincides with the subjects discussed or acted upon by the parent governmental
47 body.

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

52 7. A journal or minutes of open and closed meetings shall be taken and
53 retained by the public governmental body, including, but not limited to, a record
54 of any votes taken at such meeting. The minutes shall include, **but not be**
55 **limited to**, the date, time, place, members present, members absent and a record
56 of any votes taken. When a roll call vote is taken, the minutes shall attribute
57 each "yea" and "nay" vote or abstinence if not voting to the name of the individual
58 member of the public governmental body. **Minutes shall contain a list of the**

59 **subjects discussed during any closed meeting, but nothing in this**
60 **subsection shall require the disclosure of records or votes that are**
61 **properly closed under section 610.021.**

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

4 (1) Legal actions, causes of action or litigation involving a public
5 governmental body and any confidential or privileged communications between
6 a public governmental body or its representatives and its attorneys. However,
7 any minutes, vote or settlement agreement relating to legal actions, causes of
8 action or litigation involving a public governmental body or any agent or entity
9 representing its interests or acting on its behalf or with its authority, including
10 any insurance company acting on behalf of a public government body as its
11 insured, shall be [made public] **publicly disclosed in an open meeting** upon
12 final disposition of the matter voted upon or upon the signing by the parties of
13 the settlement agreement, unless, prior to final disposition, the settlement
14 agreement is ordered closed by a court after a written finding that the adverse
15 impact to a plaintiff or plaintiffs to the action clearly outweighs the public policy
16 considerations of section 610.011, however, the amount of any moneys paid by, or
17 on behalf of, the public governmental body shall be disclosed; provided, however,
18 in matters involving the exercise of the power of eminent domain, the vote shall
19 be [announced or become public] **publicly disclosed in an open meeting**
20 immediately following the action on the motion to authorize institution of such
21 a legal action. Legal work product shall be considered a closed record. **When**
22 **public disclosure in an open meeting is prescribed, such disclosure**
23 **shall be oral or in writing, or both, and shall occur at the next**
24 **scheduled open meeting of the public body, or at the resumption of a**
25 **recessed or subsequent open meeting, whatever is applicable soonest**
26 **to the timelines for disclosure as prescribed in this section;**

27 (2) Leasing, purchase or sale of real estate by a public governmental body
28 where public knowledge of the transaction might adversely affect the legal
29 consideration therefor. However, any minutes, vote or public record approving
30 a contract relating to the leasing, purchase or sale of real estate by a public
31 governmental body shall be made public upon execution of the lease, purchase or
32 sale of the real estate, **or if no contract is executed, shall be made public**
33 **forty-five days after the last negotiations between the parties;**

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

45 (4) [The state militia or national guard or any part thereof]
46 **Deliberations and votes by the board of trustees of the Missouri**
47 **petroleum storage tank insurance fund concerning denial of an**
48 **application to participate in a state insurance trust fund or denial of**
49 **a claim for reimbursement from said fund, provided that the**
50 **disposition of the matter, including the amount of any moneys paid**
51 **from the fund, shall be disclosed as required by this section;**

52 (5) Nonjudicial mental or physical health proceedings involving
53 identifiable persons, including medical, psychiatric, psychological, or alcoholism
54 or drug dependency diagnosis or treatment;

55 (6) Scholastic probation, expulsion, or graduation of identifiable
56 individuals, including records of individual test or examination scores; however,
57 personally identifiable student records maintained by public educational
58 institutions shall be open for inspection by the parents, guardian or other
59 custodian of students under the age of eighteen years and by the parents,
60 guardian or other custodian and the student if the student is over the age of
61 eighteen years;

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

64 (8) Welfare cases of identifiable individuals;

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

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

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

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

76 (13) Individually identifiable personnel records, performance ratings or
77 records pertaining to employees or applicants for employment, except that this
78 exemption shall not apply to the names, positions, salaries and lengths of service
79 of officers and employees of public agencies once they are employed as such, and
80 the names of private sources donating or contributing money to the salary of a
81 chancellor or president at all public colleges and universities in the state of
82 Missouri and the amount of money contributed by the source **and records of**
83 **former employment, including dates and locations of service and all**
84 **records relating to performance evaluations for all employees of public**
85 **school districts and charter schools as established by chapter 160. The**
86 **provisions of this subdivision regarding closing the names of applicants**
87 **for employment shall not apply to the finalists for any top**
88 **administrative position at a public governmental body, with the term**
89 **"finalists" defined as being the five most qualified applicants as**
90 **determined by the recommending or selecting authority. If fewer than**
91 **five applicants apply for such position, then all applicants shall be**
92 **considered "finalists" as that term is defined in this subdivision. The**
93 **identities and qualifications of the finalists shall be made available for**
94 **public inspection at least five business days prior to a final decision by**
95 **the public governmental body;**

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

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

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

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

105 (18) Operational guidelines, policies and specific response plans

106 developed, adopted, or maintained by any public agency responsible for law
107 enforcement, public safety, first response, or public health for use in responding
108 to or preventing any critical incident which is or appears to be terrorist in nature
109 and which has the potential to endanger individual or public safety or
110 health. Financial records related to the procurement of or expenditures relating
111 to operational guidelines, policies or plans purchased with public funds shall be
112 open. When seeking to close information pursuant to this exception, the public
113 governmental body shall affirmatively state in writing that disclosure would
114 impair the public governmental body's ability to protect the security or safety of
115 persons or real property, and shall in the same writing state that the public
116 interest in nondisclosure outweighs the public interest in disclosure of the
117 records;

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

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

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

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

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

139 (21) Records that identify the configuration of components or the
140 operation of a computer, computer system, computer network, or
141 telecommunications network, and would allow unauthorized access to or unlawful

142 disruption of a computer, computer system, computer network, or
143 telecommunications network of a public governmental body. This exception shall
144 not be used to limit or deny access to otherwise public records in a file, document,
145 data file or database containing public records. Records related to the
146 procurement of or expenditures relating to such computer, computer system,
147 computer network, or telecommunications network, including the amount of
148 moneys paid by, or on behalf of, a public governmental body for such computer,
149 computer system, computer network, or telecommunications network shall be
150 open;

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

160 (23) Records submitted by an individual, corporation, or other business
161 entity to a public institution of higher education in connection with a proposal to
162 license intellectual property or perform sponsored research and which contains
163 sales projections or other business plan information the disclosure of which may
164 endanger the competitiveness of a business.

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

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

13 3. Any meeting or vote closed pursuant to section 610.021 shall be closed

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

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

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

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

610.023. 1. Each public governmental body is to appoint a custodian who
2 is to be responsible for the maintenance of that body's records. The identity and
3 location of a public governmental body's custodian is to be made available upon
4 request. **Each custodian of a public governmental body is encouraged**
5 **to create and maintain an index of all public records maintained by**
6 **that body.**

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

16 3. Each request for access to a public record shall be acted upon as soon
17 as possible, but in no event later than the end of the third business day following
18 the date the request is received by the custodian of records of a public
19 governmental body. If records are requested in a certain format, the public body
20 shall provide the records in the requested format, if such format is available. If
21 access to the public record is not granted immediately, the custodian shall give
22 a detailed explanation of the cause for further delay and the place and earliest
23 time and date that the record will be available for inspection. This period for
24 document production may exceed three days for reasonable cause.

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

610.024. 1. If a public record contains material which is not exempt from
2 disclosure as well as material which is exempt from disclosure, the public
3 governmental body shall, **at its expense**, separate the exempt and nonexempt
4 material and make the nonexempt material available for examination and
5 copying.

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

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

3 public records subject to the following:

4 (1) Fees for copying public records, except those records restricted under
5 section 32.091, shall not exceed ten cents per page for a paper copy not larger
6 than nine by fourteen inches, with the hourly fee for duplicating time not to
7 exceed the average hourly rate of pay for clerical staff of the public governmental
8 body. Research time required for fulfilling records requests may be charged at
9 the actual cost of research time. **Research time shall include only the time**
10 **reasonably spent in locating the subject records for purposes of**
11 **responding to the request, and in no event shall it include time spent**
12 **in reviewing the records to determine whether such records are closed**
13 **or open records or whether portions of such records are exempt from**
14 **disclosure and subject to separation as set forth in section**
15 **610.024.** Based on the scope of the request, the public governmental body shall
16 produce the copies using employees of the body that result in the lowest amount
17 of charges for search, research, and duplication time. Prior to producing copies
18 of the requested records, the person requesting the records may request the
19 public governmental body to provide an estimate of the cost to the person
20 requesting the records. Documents may be furnished without charge or at a
21 reduced charge when the public governmental body determines that waiver or
22 reduction of the fee is in the public interest because it is likely to contribute
23 significantly to public understanding of the operations or activities of the public
24 governmental body and is not primarily in the commercial interest of the
25 requester;

26 (2) Fees for providing access to public records maintained on computer
27 facilities, recording tapes or disks, videotapes or films, pictures, maps, slides,
28 graphics, illustrations or similar audio or visual items or devices, and for paper
29 copies larger than nine by fourteen inches shall include only the cost of copies,
30 staff time, which shall not exceed the average hourly rate of pay for staff of the
31 public governmental body required for making copies and programming, if
32 necessary, and the cost of the disk, tape, or other medium used for the
33 duplication. **In no event shall such fees include charges for time spent**
34 **in reviewing the records to determine whether such records are closed**
35 **or open records or whether portions of such records are exempt from**
36 **disclosure and subject to separation as set forth in section 610.024.** Fees
37 for maps, blueprints, or plats that require special expertise to duplicate may
38 include the actual rate of compensation for the trained personnel required to

39 duplicate such maps, blueprints, or plats. If programming is required beyond the
40 customary and usual level to comply with a request for records or information,
41 the fees for compliance may include the actual costs of such programming.

42 2. Payment of such copying fees may be requested prior to the making of
43 copies.

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

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

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

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

15 2. [Once a party seeking judicial enforcement of sections 610.010 to
16 610.026 demonstrates to the court that the body in question is subject to the

17 requirements of sections 610.010 to 610.026 and has held a closed meeting, record
18 or vote, the burden of persuasion shall be on the body and its members to
19 demonstrate compliance with the requirements of sections 610.010 to 610.026.]
20 **In any legal proceeding, there shall be a presumption that a meeting,**
21 **record, or vote is open to the public. The burden shall be on a public**
22 **governmental body or a member thereof to prove that such meeting,**
23 **record, or vote may be closed to the public.**

24 3. Upon a finding by a preponderance of the evidence that a public
25 governmental body or a member of a public governmental body has [knowingly]
26 violated sections 610.010 to 610.026, the public governmental body or the member
27 shall be subject to a civil penalty in an amount [up to one thousand] **of one**
28 **hundred** dollars. If the court finds that there is a [knowing] violation of sections
29 610.010 to 610.026, the court [may] **shall** order the payment by such body or
30 **may order the payment by such** member of all costs and reasonable attorney
31 fees to any party successfully establishing a violation. [The court shall determine
32 the amount of the penalty by taking into account the size of the jurisdiction, the
33 seriousness of the offense, and whether the public governmental body or member
34 of a public governmental body has violated sections 610.010 to 610.026
35 previously.] **In making this determination of reasonable attorney fees,**
36 **the court shall take into account the size of the jurisdiction and its**
37 **annual operating budget and other sources of revenue.**

38 4. Upon a finding by a preponderance of the evidence that a public
39 governmental body or a member of a public governmental body has purposely
40 violated sections 610.010 to 610.026, the public governmental body or the member
41 shall be subject to a civil penalty in an amount up to five thousand dollars. If the
42 court finds that there was a purposeful violation of sections 610.010 to 610.026,
43 then the court shall order the payment by such body or member of all costs and
44 reasonable attorney fees to any party successfully establishing such a
45 violation. The court shall determine the amount of the penalty by taking into
46 account the size of the jurisdiction, the seriousness of the offense, and whether
47 the public governmental body or member of a public governmental body has
48 violated sections 610.010 to 610.026 previously.

49 5. Upon a finding by a preponderance of the evidence that a public
50 governmental body has violated any provision of sections 610.010 to 610.026, a
51 court shall void any action taken in violation of sections 610.010 to 610.026, if the
52 court finds under the facts of the particular case that the public interest in the

53 enforcement of the policy of sections 610.010 to 610.026 outweighs the public
54 interest in sustaining the validity of the action taken in the [closed] meeting,
55 record or vote. Suit for enforcement shall be brought within one year from which
56 the violation is ascertainable and in no event shall it be brought later than two
57 years after the violation. This subsection shall not apply to an action taken
58 regarding the issuance of bonds or other evidence of indebtedness of a public
59 governmental body if a public hearing, election or public sale has been held
60 regarding the bonds or evidence of indebtedness.

61 6. A public governmental body which is in doubt about the legality of
62 closing a particular meeting, record or vote may bring suit at the expense of that
63 public governmental body in the circuit court of the county of the public
64 governmental body's principal place of business to ascertain the propriety of any
65 such action, or seek a formal opinion of the attorney general or an attorney for
66 the governmental body. **The public governmental body may only delay**
67 **release of the record for a reasonable time while waiting for an opinion**
68 **from an attorney pursuant to this subsection. A "reasonable time" shall**
69 **be defined as a period no longer than forty-five days from the date that**
70 **the request for a formal opinion is made.**

✓

Copy