

SENATE COMMITTEE SUBSTITUTE

FOR

SENATE BILL NO. 174

AN ACT

To repeal sections 610.010, 610.021, 610.023, 610.024, and 610.026, RSMo, and to enact in lieu thereof five new sections relating to public records and meetings.

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

Section A. Sections 610.010, 610.021, 610.023, 610.024, and 610.026, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 610.010, 610.021, 610.023, 610.024, and 610.026, to read as follows:

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

(1) "Closed meeting", "closed record", or "closed vote", any meeting, record or vote closed to the public. If more than one hundred twenty five years have passed since the closure of a record by a public governmental body, then such record shall no longer be considered a closed record;

(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] the deliberations of at least the number of individual public governmental body members required to take action on behalf of the public governmental body where such deliberations determine or result in the joint conduct or disposition of official public governmental body 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 limited to the administrative entity known as "The Curators of the University of Missouri" as established by section 172.020;

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

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

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

(e) Any committee appointed by or at the direction of any of the entities and which is authorized to report to any of the above-named entities, any advisory committee appointed by or at the direction of any of the named entities for the specific purpose of recommending, directly to the public governmental body's governing board or its chief administrative officer, policy or policy revisions or expenditures of public funds including, but not limited to, entities created to advise bi-state taxing districts

regarding the expenditure of public funds, or any policy advisory body, policy advisory committee or policy advisory group appointed by a president, chancellor or chief executive officer of any college or university system or individual institution at the direction of the governing body of such institution which is supported in whole or in part with state funds for the specific purpose of recommending directly to the public governmental body's governing board or the president, chancellor or chief executive officer policy, policy revisions or expenditures of public funds provided, however, the staff of the college or university president, chancellor or chief executive officer shall not constitute such a policy advisory committee. The custodian of the records of any public governmental body shall maintain a list of the policy advisory committees described in this subdivision;

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

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

b. Performs a public function as evidenced by a statutorily based capacity to confer or otherwise advance, through approval, recommendation or other means, the allocation or issuance of tax credits, tax abatement, public debt, tax-exempt debt, rights of eminent domain, or the contracting of leaseback agreements on structures whose annualized payments commit public tax revenues; or any association that directly accepts the appropriation of money

from a public governmental body, but only to the extent that a meeting, record, or vote relates to such appropriation; and

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

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

(6) "Public record", any record, whether written or electronically stored, retained by or of any public governmental body including any report, survey, memorandum, or other document or study prepared for the public governmental body by a consultant or other professional

service paid for in whole or in part by public funds, including records created or maintained by private contractors under an agreement with a public governmental body or on behalf of a public governmental body; provided, however, that personally identifiable student records maintained by public educational institutions shall be open for inspection only by the parents, legal guardian or other custodian of students under the age of eighteen years and by the parents, guardian or other custodian and the student if the student is over the age of eighteen years. The term "public record" shall not include any internal memorandum or letter received or prepared by or on behalf of a member of a public governmental body consisting of advice, opinions and recommendations in connection with the deliberative decision-making process of said body, unless such records are [retained by the public governmental body or] presented at a public meeting. Any document or study prepared for a public governmental body by a consultant or other professional service as described in this subdivision shall be retained by the public governmental body in the same manner as any other public record;

(7) "Public vote", any vote, whether conducted in person, by telephone, or by any other 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 governmental body is authorized to close meetings, records and votes, to the extent they relate to the following:

(1) Legal actions, causes of action or litigation involving a public governmental body and any confidential or privileged communications between a public governmental body or its representatives and its attorneys. However, any minutes, vote or settlement agreement relating to legal

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

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

(3) Hiring, firing, disciplining or promoting of particular employees by a public governmental body when personal information about the employee is discussed or recorded. However, any vote on a final decision, when taken by a public governmental body, to hire, fire, promote or discipline an employee of a public governmental body shall

be made available with a record of how each member voted to the public within seventy-two hours of the close of the meeting where such action occurs; provided, however, that any employee so affected shall be entitled to prompt notice of such decision during the seventy-two-hour period before such decision is made available to the public. As used in this subdivision, the term "personal information" means information relating to the performance or merit of individual employees;

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

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

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

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

(8) Welfare cases of identifiable individuals;

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

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

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

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

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

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

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

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

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

(18) (a) Security measures, global positioning system (GPS) data, and investigative or surveillance techniques of any public agency responsible for law enforcement or public safety which, if disclosed, has the potential to endanger individual or public safety or health.

(b) Any information or data provided to a tip line for the purpose of safety or security at an educational institution that, if disclosed, has the potential to endanger the health or safety of an individual or the public.

(c) Any information contained in any suspicious activity report provided to law enforcement that, if disclosed, has the potential to endanger the health or safety of an individual or the public.

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

(19) Existing or proposed security systems, security protocols and structural plans of real property owned or leased by a public governmental body, and information that

is voluntarily submitted by a nonpublic entity owning or operating an infrastructure to any public governmental body for use by that body to devise plans for protection of that infrastructure, the public disclosure of which would threaten public safety:

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

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

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

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

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

database containing public records. Records related to the procurement of or expenditures relating to such computer, computer system, computer network, or telecommunications network, including the amount of moneys paid by, or on behalf of, a public governmental body for such computer, computer system, computer network, or telecommunications network shall be open;

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

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

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

(25) Individually identifiable customer usage and billing records for customers of a municipally owned utility, unless the records are requested by the customer or authorized for release by the customer, except that a municipally owned utility shall make available to the public

the customer's name, billing address, location of service, and dates of service provided for any commercial service account;

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

(27) Any portion of a record that may be used to individually identify a constituent of the public governmental body. As used in this subdivision, "constituent" shall mean any person who is a resident within the boundaries of the public governmental body, any person who owns real property within the boundaries of the public governmental body, or any person who owns an interest in a business entity operating within the boundaries of the public governmental body. The term "constituent" shall not include a person who is registered as a lobbyist or a lobbyist principal, as such terms are defined in section 105.470, or a public official, regardless of whether such person otherwise meets the definition of "constituent". As used in this subdivision, the term "public official" shall mean any statewide elected official or any person holding elective office of any political subdivision as well as an employee of such elected official when such employee is acting in an official capacity. Nothing in this subdivision shall authorize the closure of a record that has been offered in a public meeting of the public governmental body, or any committee thereof;

(28) Any portion of a record that contains individually identifiable information of any person who registers for a recreational or social activity or event

sponsored by a public governmental body, if such public governmental body is a political subdivision; and

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

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

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

3. Each request for access to a public record shall be acted upon as soon as possible, but in no event later than the end of the **[third]** fourth business day following the

date the request is received by the custodian of records of a public governmental body. If the requested records are posted on the public governmental body's website or are otherwise publicly available, providing an electronic link or other electronic access to the records satisfies the request as long as the records may be downloaded, duplicated or printed. The information requested shall also be reasonably easy to access from the link provided. If records are requested in a certain format, the public body shall provide the records in the requested format, if such format is available. If access to the public record is not granted immediately, the custodian shall give a detailed explanation of the cause for further delay and the place and earliest time and date that the record will be available for inspection. Access to and the production of the records may be conditioned upon receipt of payment pursuant to section 610.026. This period for document production may exceed **[three]** four days for reasonable cause.

4. If a request for access is denied, the custodian shall provide, upon request, a written statement of the grounds for such denial. Such statement shall cite the specific provision of law under which access is denied and shall be furnished to the requester no later than the end of the **[third]** fourth business day 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 disclosure as well as material which is exempt from disclosure, the public governmental body shall separate the exempt and nonexempt material and make the nonexempt material available for examination and copying. Where a single record or document contains both open and closed records, the public governmental body shall make a redacted version of such record or document available

in order to protect the information that would otherwise make the record or document a closed record.

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

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

(1) Fees for copying public records, except those records restricted under section 32.091, shall not exceed ten cents per page for a paper copy not larger than nine by fourteen inches, with the hourly fee for duplicating time not to exceed the average hourly rate of pay for clerical staff of the public governmental body. Research time required for fulfilling records requests may be charged at the actual cost of research time. Based on the scope of the request, the public governmental body shall produce the copies using employees of the body that result in the lowest amount of charges for search, research, redaction, and duplication time. Any charge for redaction shall not include time needed for separation of records containing redacted materials and other records that are responsive to the request. Prior to producing copies of the requested records, the person requesting the records may request the public governmental body to provide an estimate of the cost to the person requesting the records. Documents may be

furnished without charge or at a reduced charge when the public governmental body determines that waiver or reduction of the fee is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the public governmental body and is not primarily in the commercial interest of the requester;

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

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

(2) A request for public records to a public governmental body shall be considered withdrawn if the requester fails to remit all fees within sixty days, or within one hundred twenty days if the requested fees are greater than one thousand dollars, of a request for payment of the fees by the public governmental body, prior to fulfilling the request. The public governmental body shall

include notice to the requester that if the requester fails to remit payment of the fees within sixty days, or within one hundred twenty days if the requested fees are greater than one thousand dollars, then the request for public records shall be considered withdrawn. If the public governmental body responds to a request for public records in order to seek a clarification of the request and no response to the request for clarification is received by the public governmental body within sixty days, or within one hundred twenty days if the requested fees are greater than one thousand dollars, of sending the request for clarification, then such request for public records shall be considered withdrawn. The request for clarification by the public governmental body shall include notice to the requester that if the requester fails to respond within sixty days, or within one hundred twenty days if the requested fees are greater than one thousand dollars, then the request shall be considered withdrawn. If the same or a substantially similar request for public records is made within six months after the expiration of the sixty-day period, or within one hundred twenty days if the requested fees are greater than one thousand dollars, and no fee was remitted for such request or no response was received to the request for clarification, then the public governmental body may request payment of the same fees made for the original request that has expired in addition to any allowable fees necessary to fulfill the subsequent request. Any request for records to a public governmental body that is pending on August 28, 2023, shall be considered withdrawn if the requester fails to remit all fees by January 1, 2024. The provisions of this subdivision shall not apply if a lawsuit has been filed against the public governmental body with

regard to the records that are the subject of the request under this subdivision.

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

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

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