

SECOND REGULAR SESSION

SENATE BILL NO. 858

90TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR MAXWELL.

Read 1st time January 18, 2000, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

3809S.03I

AN ACT

To repeal sections 610.021 and 610.027, RSMo Supp. 1999, relating to the sunshine law, and to enact in lieu thereof two new sections relating to the same subject.

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

Section A. Sections 610.021 and 610.027, RSMo Supp. 1999, are repealed and two new sections enacted in lieu thereof, to be known as sections 610.021 and 610.027, to read as follows:

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

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

institution of such a legal action. **Any vote taken on any question deemed closed under this subdivision shall be by roll call and must be made public in accordance with other records as provided in this subdivision.** 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 within seventy-two hours after execution of the lease, purchase or sale of the real estate. **Any vote taken on any question deemed closed under this subdivision shall be by roll call and must be made public in accordance with other records as provided in this subdivision;**

(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 must 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. **Any vote taken on any question deemed closed under this subdivision shall be by roll call and must be made public in accordance with other records as provided in this subdivision.** 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 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;

(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 hot lines 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; and

(18) In preparation for and implementation of electric restructuring, a municipal electric utility may close that portion of its financial records and business plans which contains information regarding the name of the suppliers of services to said utility and the cost of such services, and the records and business plans concerning the municipal electric utility's future marketing and service expansion areas. However, this exception shall not be construed to limit access to other records of a municipal electric utility, including but not limited to the names and addresses of its business and residential customers, its financial reports, including but not limited to its budget, annual reports and other financial statements prepared in the course of business, and other records maintained in the course of doing business as a municipal electric utility. This exception shall become null and void if the state of Missouri fails to implement by December 31, 2001, electric restructuring through the adoption of statutes permitting the same in this state.

610.027. 1. The remedies provided by this section against public governmental bodies shall be in addition to those provided by any other provision of law. Any aggrieved person, taxpayer to, or citizen of, this state, or the attorney general or prosecuting attorney, may seek judicial enforcement of the requirements of sections 610.010 to 610.026. Suits to enforce sections 610.010 to 610.026 shall be brought in the circuit court for the county in which the public governmental body has its principal place of business.

2. Once a party seeking judicial enforcement of sections 610.010 to 610.026 demonstrates to the court that the body in question is subject to the requirements of sections 610.010 to 610.026 and has held a closed meeting, record or vote, the burden of persuasion shall be on the body and its members to demonstrate compliance with the requirements of sections 610.010 to 610.026.

3. Upon a finding by a preponderance of the evidence that a public governmental body or a member of a public governmental body has [purposely] violated sections 610.010 to 610.027, the public governmental body or the member shall be subject to a civil [fine] **penalty** in the amount [of not more than] **ranging from** five hundred dollars [and] **to twenty-five thousand dollars. If the court finds that there was a knowing violation of sections 610.010 to 610.027**, the court may order the payment by such body or member of all costs and reasonable attorney fees to any party successfully establishing a violation of sections 610.010 to 610.026. **The court shall determine the amount of the penalty by taking into account the size of the jurisdiction, the seriousness of the offense, and whether the public governmental body or member of a public governmental body has violated sections 610.010 to 610.027 previously.**

4. **There shall be a presumption of a knowing violation of section 610.010 to 610.027 where the public governmental body receives a request in writing which references the sunshine law or any of sections 610.010 to 610.027.**

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

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

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