

SECOND REGULAR SESSION

# SENATE BILL NO. 968

94TH GENERAL ASSEMBLY

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INTRODUCED BY SENATOR SHIELDS.

Read 1st time January 16, 2008, and ordered printed.

TERRY L. SPIELER, Secretary.

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## AN ACT

To repeal sections 610.010 and 610.021, RSMo, and to enact in lieu thereof two new sections relating to meetings held by nonpartisan judicial commissions.

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

Section A. Sections 610.010 and 610.021, RSMo, are repealed and two new  
2 sections enacted in lieu thereof, to be known as sections 610.010 and 610.021, to  
3 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) "Public business", all matters which relate in any way to the  
8 performance of the public governmental body's functions or the conduct of its  
9 business;

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

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

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

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

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

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

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

47 (f) Any quasi-public governmental body. The term "quasi-public  
48 governmental body" means any person, corporation or partnership organized or  
49 authorized to do business in this state pursuant to the provisions of chapter 352,  
50 353, or 355, RSMo, or unincorporated association which either:

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

54 b. Performs a public function as evidenced by a statutorily based capacity  
55 to confer or otherwise advance, through approval, recommendation or other

56 means, the allocation or issuance of tax credits, tax abatement, public debt,  
57 tax-exempt debt, rights of eminent domain, or the contracting of leaseback  
58 agreements on structures whose annualized payments commit public tax  
59 revenues; or any association that directly accepts the appropriation of money from  
60 a public governmental body, but only to the extent that a meeting, record, or vote  
61 relates to such appropriation; [and]

62 (g) Any bi-state development agency established pursuant to section  
63 70.370, RSMo; **and**

64 **(h) Any nonpartisan judicial commission established under**  
65 **sections 25(a) to 25(g) of article V of the Missouri Constitution;**

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

78 (6) "Public record", any record, whether written or electronically stored,  
79 retained by or of any public governmental body including any report, survey,  
80 memorandum, or other document or study prepared for the public governmental  
81 body by a consultant or other professional service paid for in whole or in part by  
82 public funds, including records created or maintained by private contractors  
83 under an agreement with a public governmental body or on behalf of a public  
84 governmental body; provided, however, that personally identifiable student  
85 records maintained by public educational institutions shall be open for inspection  
86 by the parents, guardian or other custodian of students under the age of eighteen  
87 years and by the parents, guardian or other custodian and the student if the  
88 student is over the age of eighteen years. The term "public record" shall not  
89 include any internal memorandum or letter received or prepared by or on behalf  
90 of a member of a public governmental body consisting of advice, opinions and  
91 recommendations in connection with the deliberative decision-making process of

92 said body, unless such records are retained by the public governmental body or  
93 presented at a public meeting. Any document or study prepared for a public  
94 governmental body by a consultant or other professional service as described in  
95 this subdivision shall be retained by the public governmental body in the same  
96 manner as any other public record;

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

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 upon final disposition of the matter voted upon or  
12 upon the signing by the parties of the settlement agreement, unless, prior to final  
13 disposition, the settlement agreement is ordered closed by a court after a written  
14 finding that the adverse impact to a plaintiff or plaintiffs to the action clearly  
15 outweighs the public policy considerations of section 610.011, however, the  
16 amount of any moneys paid by, or on behalf of, the public governmental body  
17 shall be disclosed; provided, however, in matters involving the exercise of the  
18 power of eminent domain, the vote shall be announced or become public  
19 immediately following the action on the motion to authorize institution of such  
20 a legal action. Legal work product shall be considered a closed record;

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

27 (3) Hiring, firing, disciplining or promoting of particular employees by a  
28 public governmental body when personal information about the employee is

29 discussed or recorded. However, any vote on a final decision, when taken by a  
30 public governmental body, to hire, fire, promote or discipline an employee of a  
31 public governmental body shall be made available with a record of how each  
32 member voted to the public within seventy-two hours of the close of the meeting  
33 where such action occurs; provided, however, that any employee so affected shall  
34 be entitled to prompt notice of such decision during the seventy-two-hour period  
35 before such decision is made available to the public. As used in this subdivision,  
36 the term "personal information" means information relating to the performance  
37 or merit of individual employees. **Notwithstanding supreme court rule 10**  
38 **or any other law or rule, the provisions of this subdivision shall not**  
39 **apply to the process of selection of judges by any nonpartisan judicial**  
40 **commission established under sections 25(a) to 25(g) of article V of the**  
41 **Missouri Constitution;**

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

43 (5) Nonjudicial mental or physical health proceedings involving  
44 identifiable persons, including medical, psychiatric, psychological, or alcoholism  
45 or drug dependency diagnosis or treatment;

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

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

55 (8) Welfare cases of identifiable individuals;

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

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

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

64 (12) Sealed bids and related documents, until the bids are opened; and

65 sealed proposals and related documents or any documents related to a negotiated  
66 contract until a contract is executed, or all proposals are rejected;

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

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

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

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

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

83 (18) Operational guidelines and policies developed, adopted, or maintained  
84 by any public agency responsible for law enforcement, public safety, first  
85 response, or public health for use in responding to or preventing any critical  
86 incident which is or appears to be terrorist in nature and which has the potential  
87 to endanger individual or public safety or health. Nothing in this exception shall  
88 be deemed to close information regarding expenditures, purchases, or contracts  
89 made by an agency in implementing these guidelines or policies. When seeking  
90 to close information pursuant to this exception, the agency shall affirmatively  
91 state in writing that disclosure would impair its ability to protect the safety or  
92 health of persons, and shall in the same writing state that the public interest in  
93 nondisclosure outweighs the public interest in disclosure of the records. This  
94 exception shall sunset on December 31, 2008;

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

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

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

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

114 (d) This exception shall sunset on December 31, 2008;

115 (20) Records that identify the configuration of components or the  
116 operation of a computer, computer system, computer network, or  
117 telecommunications network, and would allow unauthorized access to or unlawful  
118 disruption of a computer, computer system, computer network, or  
119 telecommunications network of a public governmental body. This exception shall  
120 not be used to limit or deny access to otherwise public records in a file, document,  
121 data file or database containing public records. Records related to the  
122 procurement of or expenditures relating to such computer, computer system,  
123 computer network, or telecommunications network, including the amount of  
124 moneys paid by, or on behalf of, a public governmental body for such computer,  
125 computer system, computer network, or telecommunications network shall be  
126 open; and

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