

FIRST REGULAR SESSION

SENATE BILL NO. 139

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR KEHOE.

Read 1st time January 15, 2013, and ordered printed.

TERRY L. SPIELER, Secretary.

0787S.01I

AN ACT

To repeal section 610.021, RSMo, and to enact in lieu thereof one new section relating to the closure of certain public records, meetings, and votes, with an emergency clause.

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

Section A. Section 610.021, RSMo, is repealed and one new section
2 enacted in lieu thereof, to be known as section 610.021, to read as follows:

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

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

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;

38 (4) The state militia or National Guard or any part thereof;

39 (5) Nonjudicial mental or physical health proceedings involving
40 identifiable persons, including medical, psychiatric, psychological, or alcoholism
41 or drug dependency diagnosis or treatment;

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

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

51 (8) Welfare cases of identifiable individuals;

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

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

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

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

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

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

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

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

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

79 (18) Operational guidelines and policies developed, adopted, or maintained
80 by any public agency responsible for law enforcement, public safety, first
81 response, or public health for use in responding to or preventing any critical
82 incident which is or appears to be terrorist in nature and which has the potential
83 to endanger individual or public safety or health. Nothing in this exception shall
84 be deemed to close information regarding expenditures, purchases, or contracts
85 made by an agency in implementing these guidelines or policies. When seeking
86 to close information pursuant to this exception, the agency shall affirmatively
87 state in writing that disclosure would impair its ability to protect the safety or
88 health of persons, and shall in the same writing state that the public interest in
89 nondisclosure outweighs the public interest in disclosure of the records. This
90 exception shall sunset on December 31, [2012] **2017**;

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

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

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

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

110 (d) This exception shall sunset on December 31, [2012] **2017**;

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

123 (21) Credit card numbers, personal identification numbers, digital
124 certificates, physical and virtual keys, access codes or authorization codes that
125 are used to protect the security of electronic transactions between a public
126 governmental body and a person or entity doing business with a public

127 governmental body. Nothing in this section shall be deemed to close the record
128 of a person or entity using a credit card held in the name of a public
129 governmental body or any record of a transaction made by a person using a credit
130 card or other method of payment for which reimbursement is made by a public
131 governmental body; and

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

Section B. Because of the need to protect sensitive public records relating
2 to public agency plans to prevent and respond to possible terrorist incidents and
3 to protect security system plans for certain critical public and private buildings
4 and facilities, the repeal and reenactment of section 610.021 of this act is deemed
5 necessary for the immediate preservation of the public health, welfare, peace and
6 safety, and is hereby declared to be an emergency act within the meaning of the
7 constitution, and the repeal and reenactment of section 610.021 of this act shall
8 be in full force and effect upon its passage and approval.

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