

FIRST REGULAR SESSION

[P E R F E C T E D]

SENATE BILL NO. 139

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR KEHOE.

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

Read 2nd time January 31, 2013, and referred to the Committee on the Judiciary and Civil and Criminal Jurisprudence.

Reported from the Committee February 6, 2013, with recommendation that the bill do pass.

Taken up for Perfection February 12, 2013. Bill declared Perfected and Ordered Printed, as amended.

TERRY L. SPIELER, Secretary.

0787S.01P

AN ACT

To repeal sections 610.010, 610.015, 610.020, 610.021, 610.022, 610.023, and 610.027, RSMo, and to enact in lieu thereof seven new sections relating to public records and meetings, with an emergency clause.

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

Section A. Section 610.010, 610.015, 610.020, 610.021, 610.022, 610.023, and 610.027, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as sections 610.010, 610.015, 610.020, 610.021, 610.022, 610.023, and 610.027, to read as follows: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;

(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;

(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:

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

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;

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, 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;

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

76 (6) "Public record", any record, whether written or electronically stored,
77 retained by or of any public governmental body including any report, survey,
78 memorandum, or other document or study prepared for the public governmental
79 body by a consultant or other professional service paid for in whole or in part by
80 public funds, including records created or maintained by private contractors
81 under an agreement with a public governmental body or on behalf of a public
82 governmental body; provided, however, that personally identifiable student
83 records maintained by public educational institutions shall be open for inspection
84 by the parents, guardian or other custodian of students under the age of eighteen
85 years and by the parents, guardian or other custodian and the student if the

86 student is over the age of eighteen years. The term "public record" shall not
87 include any internal memorandum or letter received or prepared by or on behalf
88 of a member of a public governmental body consisting of advice, opinions and
89 recommendations in connection with the deliberative decision-making process of
90 said body, unless such records are retained by the public governmental body or
91 presented at a public meeting. Any document or study prepared for a public
92 governmental body by a consultant or other professional service as described in
93 this subdivision shall be retained by the public governmental body in the same
94 manner as any other public record. **Any lease, sublease, rental agreement,**
95 **or similar instrument entered into by any public governmental body,**
96 **or any other agreement for the rental, construction, or renovation of**
97 **said facility shall be a public record;**

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

610.015. Except as provided in section 610.021, rules authorized pursuant
2 to article III of the Missouri Constitution and as otherwise provided by law, all
3 votes shall be recorded, and if a roll call is taken, as to attribute each "yea" and
4 "nay" vote, or abstinence if not voting, to the name of the individual member of
5 the public governmental body. Any votes taken during a closed meeting shall be
6 taken by roll call. All public meetings shall be open to the public and public votes
7 and public records shall be open to the public for inspection and duplication. All
8 votes taken by roll call in meetings of a public governmental body consisting of
9 members who are all elected, except for the Missouri general assembly and any
10 committee established by a public governmental body, shall be cast by members
11 of the public governmental body who are physically present and in attendance at
12 the meeting **or who are participating via videoconferencing.** When it is
13 necessary to take votes by roll call in a meeting of the public governmental body,
14 due to an emergency of the public body, with a quorum of the members of the
15 public body physically present and in attendance and less than a quorum of the
16 members of the public governmental body participating via telephone, facsimile,
17 Internet, or any other voice or electronic means, the nature of the emergency of
18 the public body justifying that departure from the normal requirements shall be
19 stated in the minutes. Where such emergency exists, the votes taken shall be
20 regarded as if all members were physically present and in attendance at the
21 meeting.

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

2. Notice conforming with all of the requirements of subsection 1 of this section shall be given at least ~~[twenty-four]~~ **forty-eight** hours, **or twenty-four hours for the general assembly and any committee thereof**, exclusive of weekends and holidays when the facility is closed, prior to the commencement of any meeting of a governmental body unless for good cause such notice is impossible or impractical, in which case as much notice as is reasonably possible shall be given. Each meeting shall be held at a place reasonably accessible to the public and of sufficient size to accommodate the anticipated attendance by members of the public, and at a time reasonably convenient to the public, unless for good cause such a place or time is impossible or impractical. Every reasonable effort shall be made to grant special access to the meeting to handicapped or disabled individuals.

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

37 4. When it is necessary **for such governmental bodies** to hold a
38 meeting on less than [twenty-four] **forty-eight** hours' notice, **or twenty-four**
39 **hours' notice for the general assembly and any committee thereof**, or at
40 a place that is not reasonably accessible to the public, or at a time that is not
41 reasonably convenient to the public, the nature of the good cause justifying that
42 departure from the normal requirements shall be stated in the minutes.

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

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

54 7. A journal or minutes of open and closed meetings shall be taken and
55 retained by the public governmental body, including, but not limited to, a record
56 of any votes taken at such meeting. The minutes shall include, **but not be**
57 **limited to**, the date, time, place, members present, members absent, and a
58 record of any votes taken. When a roll call vote is taken, the minutes shall
59 attribute each "yea" and "nay" vote or abstinence if not voting to the name of the
60 individual member of the public governmental body. **Minutes shall contain a**
61 **list of the subjects discussed during any closed meeting, but nothing in**
62 **this subsection shall require the disclosure of records or votes that are**
63 **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 done orally 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 time lines for disclosure as prescribed in this section. Where the**
27 **public governmental body shall close meetings, records, and votes due**
28 **to a "cause of action" as provided in this subdivision, the body shall**
29 **have received evidence that a lawsuit has been filed, although not yet**
30 **served, or shall have actual correspondence from a party stating that**
31 **litigation shall be filed under certain circumstances stated in said**
32 **correspondence;**

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

39 (3) Hiring, firing, disciplining or promoting of particular employees by a
40 public governmental body when personal information about the employee is
41 discussed or recorded. However, any vote on a final decision, when taken by a
42 public governmental body, to hire, fire, promote or discipline an employee of a
43 public governmental body shall be made available with a record of how each
44 member voted to the public within seventy-two hours of the close of the meeting
45 where such action occurs; provided, however, that any employee so affected shall

46 be entitled to prompt notice of such decision during the seventy-two-hour period
47 before such decision is made available to the public. As used in this subdivision,
48 the term "personal information" means information relating to the performance
49 or merit of individual employees;

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

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

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

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

63 (8) Welfare cases of identifiable individuals;

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

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

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

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

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

- 82 (14) Records which are protected from disclosure by law;
- 83 (15) Meetings and public records relating to scientific and technological
84 innovations in which the owner has a proprietary interest;
- 85 (16) Records relating to municipal hotlines established for the reporting
86 of abuse and wrongdoing;
- 87 (17) Confidential or privileged communications between a public
88 governmental body and its auditor, including all auditor work product; however,
89 all final audit reports issued by the auditor are to be considered open records
90 pursuant to this chapter;
- 91 (18) Operational guidelines and policies developed, adopted, or maintained
92 by any public agency responsible for law enforcement, public safety, first
93 response, or public health for use in responding to or preventing any critical
94 incident which is or appears to be terrorist in nature and which has the potential
95 to endanger individual or public safety or health. Nothing in this exception shall
96 be deemed to close information regarding expenditures, purchases, or contracts
97 made by an agency in implementing these guidelines or policies. When seeking
98 to close information pursuant to this exception, the agency shall affirmatively
99 state in writing that disclosure would impair its ability to protect the safety or
100 health of persons, and shall in the same writing state that the public interest in
101 nondisclosure outweighs the public interest in disclosure of the records. This
102 exception shall sunset on December 31, [2012] **2017**;
- 103 (19) Existing or proposed security systems and structural plans of real
104 property owned or leased by a public governmental body, and information that is
105 voluntarily submitted by a nonpublic entity owning or operating an infrastructure
106 to any public governmental body for use by that body to devise plans for
107 protection of that infrastructure, the public disclosure of which would threaten
108 public safety:
- 109 (a) Records related to the procurement of or expenditures relating to
110 security systems purchased with public funds shall be open;
- 111 (b) When seeking to close information pursuant to this exception, the
112 public governmental body shall affirmatively state in writing that disclosure
113 would impair the public governmental body's ability to protect the security or
114 safety of persons or real property, and shall in the same writing state that the
115 public interest in nondisclosure outweighs the public interest in disclosure of the
116 records;
- 117 (c) Records that are voluntarily submitted by a nonpublic entity shall be

118 reviewed by the receiving agency within ninety days of submission to determine
119 if retention of the document is necessary in furtherance of a state security
120 interest. If retention is not necessary, the documents shall be returned to the
121 nonpublic governmental body or destroyed;

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

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

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

144 (22) Records submitted by an individual, corporation, or other business
145 entity to a public institution of higher education in connection with a proposal to
146 license intellectual property or perform sponsored research and which contains
147 sales projections or other business plan information the disclosure of which may
148 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 in regard to the matter being discussed shall**
21 **be permitted in a closed meeting.** Public governmental bodies holding a
22 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 its**
6 **public governmental 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.

610.027. 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 of a public governmental body to**
23 **prove that such meeting, 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, annual**
37 **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.

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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