

SECOND REGULAR SESSION

# SENATE BILL NO. 613

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR EMERY.

Pre-filed December 1, 2019, and ordered printed.

ADRIANE D. CROUSE, Secretary.

3147S.011

## AN ACT

To repeal sections 610.021 and 610.026, RSMo, and to enact in lieu thereof two new sections relating to access to public records, with an emergency clause.

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

Section A. Sections 610.021 and 610.026, RSMo, are repealed and two new  
2 sections enacted in lieu thereof, to be known as sections 610.021 and 610.026, to  
3 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, policies and specific response plans  
80 developed, adopted, or maintained by any public agency responsible for law  
81 enforcement, public safety, first response, or public health for use in responding  
82 to or preventing any critical incident which is or appears to be terrorist in nature  
83 and which has the potential to endanger individual or public safety or  
84 health. Financial records related to the procurement of or expenditures relating  
85 to operational guidelines, policies or plans purchased with public funds shall be  
86 open. When seeking to close information pursuant to this exception, the public  
87 governmental body shall affirmatively state in writing that disclosure would  
88 impair the public governmental body's ability to protect the security or safety of  
89 persons or real property, and shall in the same writing state that the public  
90 interest in nondisclosure outweighs the public interest in disclosure of the

91 records;

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

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

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

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

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

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

125 (22) Credit card numbers, personal identification numbers, digital  
126 certificates, physical and virtual keys, access codes or authorization codes that

127 are used to protect the security of electronic transactions between a public  
128 governmental body and a person or entity doing business with a public  
129 governmental body. Nothing in this section shall be deemed to close the record  
130 of a person or entity using a credit card held in the name of a public  
131 governmental body or any record of a transaction made by a person using a credit  
132 card or other method of payment for which reimbursement is made by a public  
133 governmental body;

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

139 (24) Records relating to foster home or kinship placements of children in  
140 foster care under section 210.498;

141 **(25) Any record retained by the office of a member of the general**  
142 **assembly that is related to a constituent of the member. As used in this**  
143 **subdivision, "constituent" shall mean any person who is a resident of,**  
144 **or pays property taxes within, the legislative district of the**  
145 **member. The term "constituent" shall not include a person who is**  
146 **registered as a lobbyist or a lobbyist principal, as such terms are**  
147 **defined in section 105.470, regardless of whether such person otherwise**  
148 **meets the definition of "constituent". Nothing in this subdivision shall**  
149 **authorize the closure of a record that has been offered in a public**  
150 **meeting of a house of the general assembly, or any committee thereof;**  
151 **and**

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

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

3 public records subject to the following:

4 (1) Fees for copying public records, except those records restricted under  
5 section 32.091, shall not exceed ten cents per page for a paper copy not larger  
6 than nine by fourteen inches, with the hourly fee for duplicating time not to  
7 exceed the average hourly rate of pay for clerical staff of the public governmental  
8 body. Research time required for fulfilling records requests may be charged at  
9 the actual cost of research time. Based on the scope of the request, the public  
10 governmental body shall produce the copies using employees of the body that  
11 result in the lowest amount of charges for search, research, and duplication  
12 time. Prior to producing copies of the requested records, the person requesting  
13 the records may request the public governmental body to provide an estimate of  
14 the cost to the person requesting the records. Documents may be furnished  
15 without charge or at a reduced charge when the public governmental body  
16 determines that waiver or reduction of the fee is in the public interest because it  
17 is likely to contribute significantly to public understanding of the operations or  
18 activities of the public governmental body and is not primarily in the commercial  
19 interest of the requester;

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

33 **(3) A minimum fee of five dollars may be charged by the public**  
34 **governmental body for any request where there are allowable fees**  
35 **under this section of less than five dollars. Such five dollar fee shall be**  
36 **in place of any allowable fee of less than five dollars.**

37 2. Payment of such copying fees may be requested prior to the making of  
38 copies. **A request for public records shall be considered withdrawn if**

39 **the requester fails to remit all fees within thirty days of a request for**  
40 **payment of the fees by the public governmental body prior to the**  
41 **making of copies.**

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

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

51         5. The term "tax, license or fees" as used in Section 22 of Article X of the  
52 Constitution of the State of Missouri does not include copying charges and related  
53 fees that do not exceed the level necessary to pay or to continue to pay the costs  
54 for providing a service, program, or activity which was in existence on November  
55 4, 1980, or which was approved by a vote of the people subsequent to November  
56 4, 1980.

Section B. Because of the need to protect constituent communications to  
2 members of the general assembly and clarify the confidentiality of certain  
3 legislative records, section A of this act is deemed necessary for the immediate  
4 preservation of the public health, welfare, peace and safety, and is hereby  
5 declared to be an emergency act within the meaning of the constitution, and  
6 section A of this act shall be in full force and effect upon its passage and  
7 approval.

Bill  
Copy ✓