

SECOND REGULAR SESSION

SENATE BILL NO. 944

89TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR McKENNA.

Read 1st time February 24, 1998, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

S2754.08I

AN ACT

To repeal sections 610.010, 610.015, 610.020, 610.022, 610.023, 610.026, 610.027, 610.029, 610.030, 610.105 and 610.125, RSMo 1994, and sections 610.021 and 610.100, RSMo Supp. 1997, relating to governmental bodies, and to enact in lieu thereof thirteen new sections relating to the same subject, with penalty provisions.

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

Section A. Sections 610.010, 610.015, 610.020, 610.022, 610.023, 610.026, 610.027, 610.029, 610.030, 610.105 and 610.125, RSMo 1994, and sections 610.021 and 610.100, RSMo Supp. 1997, are repealed and thirteen new sections enacted in lieu thereof, to be known as sections 610.010, 610.015, 610.020, 610.021, 610.022, 610.023, 610.026, 610.027, 610.029, 610.030, 610.100, 610.105 and 610.125, to read as follows:

610.010. As used in sections 610.010 to 610.030 and sections 610.100 to 610.150, 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, [photocopies] **copies** provided [at actual cost according to] **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

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

executive **or judicial** order, including:

(a) Any body, agency, board, bureau, council, commission, committee, board of regents or board of curators or any other governing body of any institution of higher education, including a community college, which is supported in whole or in part from state funds;

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

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

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

(e) Any committee appointed by or at the direction of any of the entities and which is authorized to report to any of the above named entities, **any advisory committee appointed for the specific purpose of recommending, directly to the public governmental body's governing board or its chief administrative officer, policy or policy revisions or expenditures of public funds including, but not limited to, entities created to advise bi-state taxing districts regarding the expenditure of public funds**, or any policy advisory body, policy advisory committee or policy advisory group appointed by a president, chancellor or [any other] **chief** executive officer of any college or university system or individual institution at the direction of the governing body of [said] **such** institution which is supported in whole or in part with state funds, **or appointed for the specific purpose of recommending directly to the public governmental body's governing board or the president, chancellor or chief executive officer policy, policy revisions or expenditures of funds**; and

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

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

(b) Performs a public function, as evidenced by a statutorily based capacity to confer or otherwise advance, through approval, recommendation or other means, the allocation or issuance of tax credits, tax abatement, public debt, tax exempt debt, rights of eminent domain, or the contracting of leaseback agreements on structures whose annualized payments commit public tax revenues; or any association that directly **or indirectly** accepts the appropriation of money from a public governmental body, but only to the extent that a meeting, record, or vote relates to such appropriation;

(5) "Public meeting", any meeting of a public governmental body subject to sections 610.010 to 610.030 at which any public business is discussed, decided, or public policy formulated, whether corporeal or by means of communication equipment. The term "public meeting" shall not include an informal gathering of members of a public governmental body for ministerial or social purposes when there is no intent to avoid the purposes of this chapter, **but the term shall include a vote of all or a majority of the members of a public governmental body, by electronic communication or any other means, conducted in lieu of holding a public meeting with the members of the public governmental body gathered at one location in order to conduct business;**

(6) "Public record", any record, whether written or electronically stored, retained by or of any public governmental body including any report, survey, memorandum, or other document or study prepared and presented to the public governmental body by a consultant or other professional service paid for in whole or in part by public funds; provided, however, that 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) "Public vote" or "**vote**", any vote cast at any **open or closed** public meeting of any public governmental body.

610.015. Except as provided in section 610.021, **rules authorized pursuant to article III of the Missouri constitution** and [except] as otherwise provided by law, all **public** votes, **except those of a purely procedural nature**, shall be [recorded, and if a roll call is taken,] **taken by roll call vote and recorded so** as to attribute each "yea" and "nay" vote, or abstinence if not voting, to the name of the individual member of the public governmental body[, and]. All public meetings shall be open to the public and public votes and public records shall be open to the public for inspection and duplication.

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 [apprise the public of that information] **advise the public of the matters to be considered**. Reasonable notice shall include making available copies of the notice to any 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 hours, 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. **At any public meeting conducted by telephone or other electronic means, the public shall be allowed to observe the activity at the time the meeting occurs.** Every reasonable effort shall be made to grant special access to the meeting to handicapped or disabled individuals.

3. When it is necessary to hold a meeting on less than twenty-four hours' notice, or at a place that is not reasonably accessible to the public, or at a time that is not reasonably convenient to the public, the nature of the good cause justifying that departure from the normal requirements shall be stated in the minutes.

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

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

6. A journal or minutes of open **and closed** meetings shall be taken and retained by the public governmental body, including, but not limited to, a record of any votes taken at such meeting. The minutes shall include the date, time, place, members present, members absent and a record of any votes taken. **[If] When** a roll call vote is taken, the minutes shall attribute each "yea" and "nay" vote or abstinence if not voting to the name of the individual member of the public governmental body.

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, **public vote** or **[vote] 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, **unless ordered closed by a court after a finding**

that a party or parties to the action would be adversely affected, be made public upon final disposition of the matter voted upon **or upon signing by the parties of the settlement agreement**; 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 institution of such a legal action. 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, **[or] public** 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 **[upon] within seventy-two hours after** execution of the lease, purchase or sale of the real estate;

(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 **public** 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 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. 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:

(a) Names, positions, salaries and lengths of service of officers and employees of public agencies once they are employed as such; **and**

(b) **Names and cities of residence of final applicants for employment as executive officers or administrators of public governmental bodies;**

(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.

610.022. 1. Except as set forth in subsection 2 of this section, no meeting or vote may be closed without an affirmative public vote of the majority of a quorum of the public governmental body. The vote of each member of the public governmental body on the question of closing a public meeting or vote and the specific reason for closing that public meeting or vote by reference to a specific section of this [act] **chapter** shall be announced publicly at an open meeting of the governmental body and entered into the minutes.

2. A public governmental body proposing to hold a closed meeting or vote shall give notice of the time, date and place of such closed meeting or vote and the reason for holding it by reference to the specific exception allowed [under] **pursuant to** the provisions of section 610.021. Such notice shall comply with the procedures set forth in section 610.020 for notice of a public meeting.

3. Any meeting or vote closed pursuant to section 610.021 shall be closed only to the extent necessary for the specific reason announced to justify the closed meeting or vote. Public governmental bodies shall not discuss any business in a closed meeting, record or vote which does not directly relate to the specific reason announced to justify the closed meeting or vote. **Public governmental bodies holding a closed meeting must close only that portion of the meeting facility necessary to house the members of the public governmental body in the closed session, allowing members of the public to remain to attend any subsequent open session held by the public governmental body following the closed session.**

4. Nothing in sections 610.010 to 610.028 shall be construed as to require a public governmental body to hold a closed meeting, record or vote to discuss or act upon any matter.

5. Public records shall be presumed to be open unless otherwise exempt [under] **pursuant to** the provisions of section 610.021.

610.023. 1. Each public governmental body is to appoint a custodian who is to be responsible for the maintenance of that body's records. The identity and location of a public governmental body's custodian is to be made available upon request.

2. Each public governmental body shall make available for inspection and copying by the public of that body's public records. No person shall remove original public records from the office of a public governmental body or its custodian without written permission of the designated custodian. **No public governmental body shall enter into a contract with, or otherwise obligate itself to, any person or entity if such contract or obligation significantly impairs the right of the public under this chapter to inspect or copy the public governmental body's public records.**

3. Each request for access to a public record shall be acted upon as soon as possible, but in no event later than the end of the third business day following the date the request is received by the custodian of records of a public governmental body. If access to the public record is not granted immediately, the custodian shall give a detailed explanation of the cause for further delay and the place and earliest time and date that the record will be available for inspection. This period for document production may exceed three days for reasonable cause.

4. If a request for access is denied, the custodian shall provide, upon request, a written statement of the grounds for such denial. Such statement shall cite the specific provision of law under which access is denied and shall be furnished to the requester no later than the end of the third business day following the date that the request for the statement is received.

610.026. 1. Each public governmental body [may prescribe reasonable fees for providing] **shall provide** access to or [furnishing] **furnish** copies of public records subject to the following:

(1) Fees for copying public records shall not exceed the actual cost of document search and duplication. Documents may be furnished without charge or at a reduced charge when the public governmental body determines that waiver or reduction of the fee is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the public governmental body and is not primarily in the commercial interest of the requester;

(2) Fees for providing access to public records maintained on computer facilities, recording tapes or discs, video tapes or films, pictures, slides, graphics, illustrations or similar audio or visual items or devices, shall include only the cost of copies [and], staff time required for making copies **and the disk or tape used for the duplication.**

2. Payment of such copying fees may be requested prior to the making of copies.

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

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

5. The term "tax, license or fees" as used in section 22 of article X of the Constitution of

the State of Missouri does not include copying charges and related fees that do not exceed the level necessary to pay or to continue to pay the costs for providing a service, program, or activity which was in existence on November 4, 1980, or which was approved by a vote of the people subsequent to November 4, 1980.

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 [may] shall** be subject to a civil fine in the amount of not more than five hundred dollars and 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.

4. 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 six months from which the violation is ascertainable and in no event shall it be brought later than one year 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. 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.

610.029. 1. A public governmental body **keeping its records in an electronic format is strongly encouraged to [may] provide [electronic services involving] access to its public**

records to members of the public **in a generic electronic format**. A public governmental body is **strongly** encouraged to make information available in usable electronic formats to the greatest extent feasible. The activities authorized [under] **pursuant to** this section may not take priority over the primary responsibilities of a public governmental body. For purposes of this section the term "electronic services" means on-line access or access via other electronic means to an electronic file or data base.

2. Public governmental bodies shall include in a contract for electronic services provisions that:

(1) Protect the security and integrity of the information system of the public governmental body and of information systems that are shared by public governmental bodies; and

(2) Limit the liability of the public governmental body providing the services.

3. Each public governmental body may consult with the division of data processing and telecommunications of the office of administration to develop the electronic services offered by the public governmental body to the public under this section.

610.030. The circuit courts of this state shall have the jurisdiction to issue injunctions to enforce the provisions of sections [610.100] **610.010** to 610.115.

610.100. 1. As used in sections 610.100 to 610.150, the following words and phrases shall mean:

(1) "Arrest", an actual restraint of the person of the defendant, or by his **or her** submission to the custody of the officer, under authority of a warrant or otherwise for a criminal violation which results in the issuance of a summons or the person being booked;

(2) "Arrest report", a record of a law enforcement agency of an arrest and of any detention or confinement incident thereto together with the charge therefor;

(3) "Inactive", an investigation in which no further action will be taken by a law enforcement agency or officer for any of the following reasons:

(a) A decision by the law enforcement agency not to pursue the case;

(b) Expiration of the time to file criminal charges pursuant to the applicable statute of limitations, or ten years after the commission of the offense; whichever date earliest occurs;

(c) Finality of the convictions of all persons convicted on the basis of the information contained in the investigative report, by exhaustion of or expiration of all rights of appeal of such persons;

(4) "Incident report", a record of a law enforcement agency [consisting] **which is required to consist** of the date, time, specific location, name of the victim and immediate facts and circumstances surrounding the initial report of a crime or incident, including any logs of reported crimes, accidents and complaints maintained by that agency;

(5) "Investigative report", a record, other than an arrest or incident report, prepared by personnel of a law enforcement agency, inquiring into a crime or suspected crime, either in

response to an incident report or in response to evidence developed by law enforcement officers in the course of their duties.

2. Each law enforcement agency of this state, of any county, and of any municipality, shall maintain records of all incidents reported to the agency, investigations and arrests made by such law enforcement agency. All incident reports and arrest reports shall be open records. Notwithstanding any other provision of law other than the provisions of subsections 4, 5 and 6 of this section or section 320.083, RSMo, investigative reports of all law enforcement agencies are closed records until the investigation becomes inactive. If any person is arrested and not charged with an offense against the law within thirty days of **[his] the person's** arrest, the arrest report shall thereafter be a closed record except that the disposition portion of the record may be accessed **[for purposes of exculpation]** and except as provided in section 610.120.

3. Except as provided in subsections 4, 5, 6 and 7 of this section, if any portion of a record or document of a law enforcement officer or agency, other than an arrest report, which would otherwise be open, contains information that is reasonably likely to pose a clear and present danger to the safety of any victim, witness, undercover officer, or other person; or jeopardize a criminal investigation, including records which would disclose the identity of a source wishing to remain confidential or a suspect not in custody; or which would disclose techniques, procedures or guidelines for law enforcement investigations or prosecutions, that portion of the record shall be closed and shall be redacted from any record made available pursuant to this chapter.

4. Any person, attorney for a person, or insurer of a person involved in any incident or whose property is involved in an incident, may obtain any records closed pursuant to this section or section 610.150 for purposes of investigation of any civil claim or defense, as provided by this subsection. Any individual, his **or her** attorney or insurer, involved in an incident or whose property is involved in an incident, upon written request, may obtain a complete unaltered and unedited incident report concerning the incident, and may obtain access to other records closed by a law enforcement agency pursuant to this section. Within thirty days of such request, the agency shall provide the requested material or file a motion pursuant to this subsection with the circuit court having jurisdiction over the law enforcement agency stating that the safety of the victim, witness or other individual cannot be reasonably ensured, or that a criminal investigation is likely to be jeopardized. If, based on such motion, the court finds for the law enforcement agency, the court shall either order the record closed or order such portion of the record that should be closed to be redacted from any record made available pursuant to this subsection.

5. Any person may bring an action pursuant to this **[subsection] section** in the circuit court having jurisdiction to authorize disclosure of the information contained in an investigative report of any law enforcement agency, which would otherwise be closed pursuant to this section. The court may order that all or part of the information contained in an investigative report be released to the person bringing the action. In making the determination as to whether

information contained in an investigative report shall be disclosed, the court shall consider whether the benefit to the person bringing the action or to the public outweighs any harm to the public, to the law enforcement agency or any of its officers, or to any person identified in the investigative report in regard to the need for law enforcement agencies to effectively investigate and prosecute criminal activity. The investigative report in question may be examined by the court in camera. The court may find that the party seeking disclosure of the investigative report shall bear the reasonable and necessary costs and attorneys' fees of both parties, unless the court finds that the decision of the law enforcement agency not to open the investigative report was substantially unjustified under all relevant circumstances, and in that event, the court may assess such reasonable and necessary costs and attorneys' fees to the law enforcement agency.

6. Any person may apply pursuant to this subsection to the circuit court having jurisdiction for an order requiring a law enforcement agency to open incident reports and arrest reports being unlawfully closed pursuant to this section. If the court finds by a preponderance of the evidence that the law enforcement officer or agency has purposely violated this section, the officer or agency shall be subject to a civil penalty in an amount not to exceed five hundred dollars, and the court shall order payment by such officer or agency of all costs and attorneys' fees, as provided by section 610.027.

7. The victim of an offense [under] **as provided in** chapter 566, RSMo, may request that his or her identity be kept confidential until a charge relating to [said] **such** incident is filed.

610.105. If the person arrested is charged but the case is subsequently nolle prossed, dismissed, or the accused is found not guilty or imposition of sentence is suspended in the court in which the action is prosecuted, official records pertaining to the case shall thereafter be closed records when such case is finally terminated except that the disposition portion of the record may be accessed [for purposes of exculpation] and except as provided in section 610.120.

610.125. 1. A person **subject to the order of the court in subsection 4 of section 610.123** who knowingly fails to expunge or obliterate, or releases arrest information which has been ordered expunged pursuant to section 610.123 [commits] **is guilty of** a class B misdemeanor.

2. A person **subject to the order of the court in subsection 4 of section 610.123** who, knowing the records have been ordered expunged, uses the arrest information for financial gain [commits] **is guilty of** a class D felony.

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