

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
**HOUSE BILLS NOS. 237, 270,
403 & 442**
91ST GENERAL ASSEMBLY

Reported from the Committee on Civil and Administrative Law, February 22, 2001, with recommendation that the House Committee Substitute for House Bills Nos. 273, 270, 403 & 442 Do Pass.

TED WEDEL, Chief Clerk

0670L.02C

AN ACT

To repeal sections 610.015, 610.021 and 610.027, RSMo 2000, relating to the sunshine law, and to enact in lieu thereof five new sections relating to the same subject.

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

Section A. Sections 610.015, 610.021 and 610.027, RSMo 2000, are repealed and five
2 new sections enacted in lieu thereof, to be known as sections 197.150, 197.160, 610.015,
3 610.021 and 610.027, to read as follows:

197.150. 1. As used in this section, the following terms mean:

2 **(1) "Health carrier", the same as such term is defined in section 376.1350, RSMo;**

3 **(2) "Payment methodologies", how the units of service to be used as a basis for**
4 **making payments are defined and the method of determining the specific payment amount**
5 **per unit of service;**

6 **(3) "Public hospital", a hospital organized pursuant to section 81.190 or 82.240,**
7 **RSMo, sections 96.150 to 96.228, RSMo, sections 205.160 to 205.379, RSMo, or sections**
8 **206.010 to 206.160, RSMo;**

9 **(4) "Public record", the same as such term is defined in subdivision (6) of section**
10 **610.010, RSMo;**

11 **(5) "Related organization", an entity created by or affiliated with a public hospital,**
12 **regardless of the degree of common control or governance with such hospital;**

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

13 **(6) "Self-insured health plan", an employee health benefit plan established by an**
14 **employer or an employee organization, or both, for which the insurance laws of this state**
15 **are preempted pursuant to the federal Employment Retirement Income Security Act of**
16 **1974, as amended.**

17 **2. Notwithstanding the provisions of chapter 610, RSMo, to the contrary, the**
18 **governing body of a public hospital or a related organization of such hospital, or both, may**
19 **close portions of records and meetings of the entity that it manages or controls if such**
20 **portions of records and meetings pertain to:**

21 **(1) The payment amounts and payment methodologies of its contract proposals to**
22 **and contracts with a health carrier or a self-insured health plan. Information concerning**
23 **the parties involved and the duration of such a contract shall be a public record;**

24 **(2) Discussion and analysis of:**

25 **(a) Developing a new health service or a new facility;**

26 **(b) Expanding or revising an existing health service or facility; or**

27 **(c) Entering into a shared service arrangement or other affiliate agreement;**

28 **(3) The amount of compensation that will be or is being paid to a physician under**
29 **the public hospital's or a related organization's contract proposals to and contracts with**
30 **a physician. While the compensation amounts of such a contract proposal or contract may**
31 **be closed, such compensation amounts shall be included in the public hospital's or related**
32 **organization's overall financial statements and such statements shall be a public record;**

33 **(4) The records closed pursuant to this subsection shall be disclosed pursuant to**
34 **lawful subpoena or request by only departments of the state of Missouri pursuant to an**
35 **investigation.**

36 **3. The disclosure of records and meetings of a public hospital, other than those**
37 **records and meetings which may be closed pursuant to this section, shall be governed by**
38 **chapter 610, RSMo. This section shall not be construed to prohibit a public hospital from**
39 **claiming the benefit of any other exemption to chapter 610, RSMo, pursuant to section**
40 **610.021, RSMo.**

197.160. The meetings and records of a public hospital as defined in subdivision (3)
2 **of subsection 1 of section 197.150 shall not be construed to be a public record or a public**
3 **meeting as defined in subdivisions (5) and (6) of section 610.010, RSMo, if:**

4 **(1) The public hospital does not receive money from a tax levy imposed by the city,**
5 **county or hospital district that established the hospital; and**

6 **(2) The public hospital waives its right to claim sovereign or governmental tort**
7 **immunity protection available pursuant to sections 537.600 to 537.615, RSMo.**

 610.015. Except as provided in section 610.021, rules authorized pursuant to article III

2 of the Missouri Constitution and as otherwise provided by law, all votes shall be recorded, and
3 [if a roll call is taken, as to attribute] **attributed as to** each "yea" and "nay" vote, or abstinence
4 if not voting, to the name of the individual member of the public governmental body. Any votes
5 taken during a closed **or open** meeting shall be taken by roll call, **except votes on procedural**
6 **or ministerial matters**. All public meetings shall be open to the public and public votes and
7 public records shall be open to the public for inspection and duplication.

610.021. Except to the extent disclosure is otherwise required by law, a public
2 governmental body is authorized to close meetings, records and votes, to the extent they relate
3 to the following:

4 (1) Legal actions, causes of action or litigation involving a public governmental body
5 and any confidential or privileged communications between a public governmental body or its
6 representatives and its attorneys. However, any minutes, vote or settlement agreement relating
7 to legal actions, causes of action or litigation involving a public governmental body or any agent
8 or entity representing its interests or acting on its behalf or with its authority, including any
9 insurance company acting on behalf of a public government body as its insured, shall be made
10 public upon final disposition of the matter voted upon or upon the signing by the parties of the
11 settlement agreement, unless, prior to final disposition, the settlement agreement is ordered
12 closed by a court after a written finding that the adverse impact to a plaintiff or plaintiffs to the
13 action clearly outweighs the public policy considerations of section 610.011, however, the
14 amount of any moneys paid by, or on behalf of, the public governmental body shall be disclosed;
15 provided, however, in matters involving the exercise of the power of eminent domain, the vote
16 shall be announced or become public immediately following the action on the motion to
17 authorize institution of such a legal action. **Any vote taken on any question deemed closed**
18 **pursuant to this subdivision shall be by roll call and shall be made public in accordance**
19 **with other closed records as provided in this subdivision**. Legal work product shall be
20 considered a closed record;

21 (2) Leasing, purchase or sale of real estate by a public governmental body where public
22 knowledge of the transaction might adversely affect the legal consideration therefor. However,
23 any minutes, vote or public record approving a contract relating to the leasing, purchase or sale
24 of real estate by a public governmental body shall be made public within seventy-two hours after
25 execution of the lease, purchase or sale of the real estate. **Any vote taken on any question**
26 **deemed closed pursuant to this subdivision shall be by roll call and shall be made public**
27 **in accordance with other closed records as provided in this subdivision**;

28 (3) Hiring, firing, disciplining or promoting of particular employees by a public
29 governmental body when personal information about the employee is discussed or recorded.
30 However, any vote on a final decision, when taken by a public governmental body, to hire, fire,

31 promote or discipline an employee of a public governmental body must be made available with
32 a record of how each member voted to the public within seventy-two hours of the close of the
33 meeting where such action occurs; provided, however, that any employee so affected shall be
34 entitled to prompt notice of such decision during the seventy-two-hour period before such
35 decision is made available to the public. **Any vote taken on any question deemed closed**
36 **pursuant to this subdivision shall be by roll call and shall be made public in accordance**
37 **with other closed records as provided in this subdivision.** As used in this subdivision, the
38 term "personal information" means information relating to the performance or merit of individual
39 employees;

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

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

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

49 (7) Testing and examination materials, before the test or examination is given or, if it
50 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 a public
53 governmental body or its representatives for negotiations with employee groups;

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

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

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

60 (13) Individually identifiable personnel records, performance ratings or records
61 pertaining to employees or applicants for employment, except that this exemption shall not apply
62 to the names, positions, salaries and lengths of service of officers and employees of public
63 agencies once they are employed as such;

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

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

67 (16) Records relating to municipal hot lines established for the reporting of abuse and
68 wrongdoing;

69 (17) Confidential or privileged communications between a public governmental body
70 and its auditor, including all auditor work product; and

71 (18) In preparation for and implementation of electric restructuring, a municipal electric
72 utility may close that portion of its financial records and business plans which contains
73 information regarding the name of the suppliers of services to said utility and the cost of such
74 services, and the records and business plans concerning the municipal electric utility's future
75 marketing and service expansion areas. However, this exception shall not be construed to limit
76 access to other records of a municipal electric utility, including but not limited to the names and
77 addresses of its business and residential customers, its financial reports, including but not limited
78 to its budget, annual reports and other financial statements prepared in the course of business,
79 and other records maintained in the course of doing business as a municipal electric utility. This
80 exception shall become null and void if the [state of Missouri fails to implement by December
81 31, 2001, electric restructuring through the adoption of statutes permitting the same in this state]
82 **Missouri general assembly fails to enact, on or before December 31, 2003, legislation**
83 **authorizing electric utility restructuring.**

610.027. 1. The remedies provided by this section against public governmental bodies
2 shall be in addition to those provided by any other provision of law. Any aggrieved person,
3 taxpayer to, or citizen of, this state, or the attorney general or prosecuting attorney, may seek
4 judicial enforcement of the requirements of sections 610.010 to 610.026. Suits to enforce
5 sections 610.010 to 610.026 shall be brought in the circuit court for the county in which the
6 public governmental body has its principal place of business.

7 2. Once a party seeking judicial enforcement of sections 610.010 to 610.026
8 demonstrates to the court that the body in question is subject to the requirements of sections
9 610.010 to 610.026 and has held a closed meeting, record or vote, the burden of persuasion shall
10 be on the body and its members to demonstrate compliance with the requirements of sections
11 610.010 to 610.026.

12 3. Upon a finding by a preponderance of the evidence that a public governmental body
13 or a member of a public governmental body has [purposely] violated sections 610.010 to
14 610.027, the public governmental body or the member shall be subject to a civil [fine] **penalty**
15 in the amount of not more than [five hundred dollars and] **twenty-five thousand dollars, but**
16 **in no event shall such civil penalty be more than five percent of the total annual budget of**
17 **the public body. If the court finds that there was a knowing violation of sections 610.010**
18 **to 610.027,** the court may order the payment by such body or member of all costs and reasonable
19 attorney fees to any party successfully establishing a violation of sections 610.010 to 610.026.

20 **The court shall determine the amount of the penalty by taking into account the size of the**
21 **jurisdiction, the seriousness of the offense, and whether the public governmental body or**
22 **member of a public governmental body has violated sections 610.010 to 610.027 previously.**

23 4. Upon a finding by a preponderance of the evidence that a public governmental body
24 has violated any provision of sections 610.010 to 610.026, a court shall void any action taken in
25 violation of sections 610.010 to 610.026, if the court finds under the facts of the particular case
26 that the public interest in the enforcement of the policy of sections 610.010 to 610.026 outweighs
27 the public interest in sustaining the validity of the action taken in the closed meeting, record or
28 vote. Suit for enforcement must be brought within one year from which the violation is
29 ascertainable and in no event shall it be brought later than two years after the violation. This
30 subsection shall not apply to an action taken regarding the issuance of bonds or other evidence
31 of indebtedness of a public governmental body if a public hearing, election or public sale has
32 been held regarding the bonds or evidence of indebtedness.

33 5. A public governmental body which is in doubt about the legality of closing a particular
34 meeting, record or vote may bring suit at the expense of that public governmental body in the
35 circuit court of the county of the public governmental body's principal place of business to
36 ascertain the propriety of any such action, or seek a formal opinion of the attorney general or an
37 attorney for the governmental body.