

SECOND REGULAR SESSION

HOUSE BILL NO. 2476

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE CURTIS.

5794H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 610.010, 610.026 and 610.027, RSMo, and to enact in lieu thereof three new sections relating to the sunshine law, with penalty provisions.

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

Section A. Sections 610.010, 610.026, and 610.027, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 610.010, 610.026, and 610.027, to read as follows: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) **"Principal officer", the highest officer or responsible party of a public governmental body including, but not limited to:**

(a) The chair of 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 including, but not limited to, the administrative entity known as "The Curators of the University of Missouri" as established by section 172.020;

(b) The chair or appointee with the highest supervisory authority on any advisory committee or commission appointed by the governor by executive order;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 (c) The director or person with the highest supervisory authority of any department
17 or division of the state, of any political subdivision of the state, of any county or of any
18 municipal government, school district or special purpose district including, but not limited
19 to, sewer districts, water districts, and other subdistricts of any political subdivision;

20 (d) The chair or highest ranking member of any other legislative or administrative
21 governmental deliberative body under the direction of three or more elected or appointed
22 members having rulemaking or quasi-judicial power;

23 (e) The chair or highest ranking member of any committee appointed by or at the
24 direction of any of the entities and which is authorized to report to any of the above-named
25 entities, any advisory committee appointed by or at the direction of any of the named
26 entities for the specific purpose of recommending, directly to the public governmental
27 body's governing board or its chief administrative officer, policy or policy revisions or
28 expenditures of public funds including, but not limited to, entities created to advise bi-state
29 taxing districts regarding the expenditure of public funds, or any policy advisory body,
30 policy advisory committee, or policy advisory group appointed by a president, chancellor,
31 or chief executive officer of any college or university system or individual institution at the
32 direction of the governing body of such institution which is supported in whole or in part
33 with state funds for the specific purpose of recommending directly to the public
34 governmental body's governing board or the president, chancellor, or chief executive
35 officer policy, policy revisions or expenditures of public funds provided, however, the staff
36 of the college or university president, chancellor, or chief executive officer shall not
37 constitute such a policy advisory committee. The custodian of the records of any public
38 governmental body shall maintain a list of the policy advisory committees described in this
39 subdivision;

40 (f) The chair or person with the highest supervisory authority over any
41 quasi-public governmental body. The term "quasi-public governmental body" means any
42 person, corporation, or partnership organized or authorized to do business in this state
43 under the provisions of chapter 352, 353, or 355, or unincorporated association which
44 either:

45 a. Has as its primary purpose to enter into contracts with public governmental
46 bodies or to engage primarily in activities carried out pursuant to an agreement or
47 agreements with public governmental bodies; or

48 b. Performs a public function as evidenced by a statutorily based capacity to confer
49 or otherwise advance, through approval, recommendation or other means, the allocation
50 or issuance of tax credits, tax abatement, public debt, tax-exempt debt, rights of eminent
51 domain, or the contracting of leaseback agreements on structures whose annualized

52 **payments commit public tax revenues; or any association that directly accepts the**
53 **appropriation of moneys from a public governmental body but only to the extent that a**
54 **meeting, record, or vote relates to such appropriation;**

55 **(g) The chair or ranking member of any bi-state development agency established**
56 **pursuant to section 70.370; and**

57 **(h) The person with the highest supervisory authority in possession of the records**
58 **of any of the entities in paragraphs (a) to (g) of this subdivision;**

59 (4) "Public business", all matters which relate in any way to the performance of the
60 public governmental body's functions or the conduct of its business;

61 ~~(4)~~ (5) "Public governmental body", any legislative, administrative or governmental
62 entity created by the Constitution or statutes of this state, by order or ordinance of any political
63 subdivision or district, judicial entities when operating in an administrative capacity, or by
64 executive order, including:

65 (a) Any body, agency, board, bureau, council, commission, committee, board of regents
66 or board of curators or any other governing body of any institution of higher education, including
67 a community college, which is supported in whole or in part from state funds, including but not
68 limited to the administrative entity known as "The Curators of the University of Missouri" as
69 established by section 172.020;

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

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

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

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

88 state funds for the specific purpose of recommending directly to the public governmental body's
89 governing board or the president, chancellor or chief executive officer policy, policy revisions
90 or expenditures of public funds provided, however, the staff of the college or university
91 president, chancellor or chief executive officer shall not constitute such a policy advisory
92 committee. The custodian of the records of any public governmental body shall maintain a list
93 of the policy advisory committees described in this subdivision;

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

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

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

108 (g) Any bi-state development agency established pursuant to section 70.370;

109 ~~[(5)]~~ (6) "Public meeting", any meeting of a public governmental body subject to
110 sections 610.010 to 610.030 at which any public business is discussed, decided, or public policy
111 formulated, whether such meeting is conducted in person or by means of communication
112 equipment, including, but not limited to, conference call, video conference, internet chat, or
113 internet message board. The term "public meeting" shall not include an informal gathering of
114 members of a public governmental body for ministerial or social purposes when there is no intent
115 to avoid the purposes of this chapter, but the term shall include a public vote of all or a majority
116 of the members of a public governmental body, by electronic communication or any other means,
117 conducted in lieu of holding a public meeting with the members of the public governmental body
118 gathered at one location in order to conduct public business;

119 ~~[(6)]~~ (7) "Public record", any record, whether written or electronically stored, retained
120 by or of any public governmental body including any report, survey, memorandum, or other
121 document or study prepared for the public governmental body by a consultant or other
122 professional service paid for in whole or in part by public funds, including records created or
123 maintained by private contractors under an agreement with a public governmental body or on

124 behalf of a public governmental body; provided, however, that personally identifiable student
125 records maintained by public educational institutions shall be open for inspection by the parents,
126 guardian or other custodian of students under the age of eighteen years and by the parents,
127 guardian or other custodian and the student if the student is over the age of eighteen years. The
128 term "public record" shall not include any internal memorandum or letter received or prepared
129 by or on behalf of a member of a public governmental body consisting of advice, opinions and
130 recommendations in connection with the deliberative decision-making process of said body,
131 unless such records are retained by the public governmental body or presented at a public
132 meeting. Any document or study prepared for a public governmental body by a consultant or
133 other professional service as described in this subdivision shall be retained by the public
134 governmental body in the same manner as any other public record;

135 ~~[(7)]~~ (8) "Public vote", any vote, whether conducted in person, by telephone, or by any
136 other electronic means, cast at any public meeting of any public governmental body.

610.026. 1. Except as otherwise provided by law, each public governmental body shall
2 provide access to and, upon request, furnish copies of public records **within twenty-one days**
3 subject to the following:

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

17 (2) Fees for providing access to public records maintained on computer facilities,
18 recording tapes or disks, videotapes or films, pictures, maps, slides, graphics, illustrations or
19 similar audio or visual items or devices, and for paper copies larger than nine by fourteen inches
20 shall include only the cost of copies, staff time, which shall not exceed the average hourly rate
21 of pay for staff of the public governmental body required for making copies and programming,
22 if necessary, and the cost of the disk, tape, or other medium used for the duplication. Fees for
23 maps, blueprints, or plats that require special expertise to duplicate may include the actual rate

24 of compensation for the trained personnel required to duplicate such maps, blueprints, or plats.
25 If programming is required beyond the customary and usual level to comply with a request for
26 records or information, the fees for compliance may include the actual costs of such
27 programming.

28 2. Payment of such copying fees may be requested prior to the making of copies. **The**
29 **twenty-one day time limit to respond to requests shall not begin tolling until such copying**
30 **fees are paid.**

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

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

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

43 **6. (1) If a request for public records is not completed within twenty-one days of**
44 **such request or within twenty-one days of payment of a copying fee, the public**
45 **governmental body and its principal officer shall be jointly and severally liable for a civil**
46 **penalty under subsection 6 of section 610.027.**

47 **(2) If a public governmental body is unable to complete the request within twenty-**
48 **one days of such request or within twenty-one days of payment of a copying fee, such**
49 **public government body may have additional time to complete the request. In order to**
50 **receive such an extension, the principal officer of the public governmental body shall write**
51 **a letter to the requestor, before the initial twenty-one days have expired, explaining in**
52 **detail why the request cannot be completed within the twenty-one day period and**
53 **specifying a date by which the request will be completed.**

54 **(3) If the request is not completed by the date specified in the letter written under**
55 **subdivision (2) of this subsection, the public governmental body and principal officer shall**
56 **be jointly and severally liable for civil penalty under subsection 6 of section 610.027.**

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. Upon service of a summons,
7 petition, complaint, counterclaim, or cross-claim in a civil action brought to enforce the
8 provisions of sections 610.010 to 610.026, the custodian of the public record that is the subject
9 matter of such civil action shall not transfer custody, alter, destroy, or otherwise dispose of the
10 public record sought to be inspected and examined, notwithstanding the applicability of an
11 exemption pursuant to section 610.021 or the assertion that the requested record is not a public
12 record until the court directs otherwise.

13 2. Once a party seeking judicial enforcement of sections 610.010 to 610.026
14 demonstrates to the court that the body in question is subject to the requirements of sections
15 610.010 to 610.026 and has held a closed meeting, record or vote, the burden of persuasion shall
16 be on the body and its members to demonstrate compliance with the requirements of sections
17 610.010 to 610.026.

18 3. Upon a finding by a preponderance of the evidence that a public governmental body
19 or a member of a public governmental body has knowingly violated sections 610.010 to 610.026,
20 **except as provided in subsection 6 of this section**, the public governmental body or the
21 member shall be subject to a civil penalty in an amount up to one thousand dollars. If the court
22 finds that there is a knowing violation of sections 610.010 to 610.026, the court may order the
23 payment by such body or member of all costs and reasonable attorney fees to any party
24 successfully establishing a violation. The court shall determine the amount of the penalty by
25 taking into account the size of the jurisdiction, the seriousness of the offense, and whether the
26 public governmental body or member of a public governmental body has violated sections
27 610.010 to 610.026 previously.

28 4. Upon a finding by a preponderance of the evidence that a public governmental body
29 or a member of a public governmental body has purposely violated sections 610.010 to 610.026,
30 **except as provided in subsection 6 of this section**, the public governmental body or the
31 member shall be subject to a civil penalty in an amount up to five thousand dollars. If the court
32 finds that there was a purposeful violation of sections 610.010 to 610.026, then the court shall
33 order the payment by such body or member of all costs and reasonable attorney fees to any party
34 successfully establishing such a violation. The court shall determine the amount of the penalty
35 by taking into account the size of the jurisdiction, the seriousness of the offense, and whether the
36 public governmental body or member of a public governmental body has violated sections
37 610.010 to 610.026 previously.

38 5. Upon a finding by a preponderance of the evidence that a public governmental body
39 has violated any provision of sections 610.010 to 610.026, a court shall void any action taken in

40 violation of sections 610.010 to 610.026, if the court finds under the facts of the particular case
41 that the public interest in the enforcement of the policy of sections 610.010 to 610.026 outweighs
42 the public interest in sustaining the validity of the action taken in the closed meeting, record or
43 vote. Suit for enforcement shall be brought within one year from which the violation is
44 ascertainable and in no event shall it be brought later than two years after the violation. This
45 subsection shall not apply to an action taken regarding the issuance of bonds or other evidence
46 of indebtedness of a public governmental body if a public hearing, election or public sale has
47 been held regarding the bonds or evidence of indebtedness.

48 **6. Upon a finding by a preponderance of the evidence that a public governmental**
49 **body or its principal officer has violated, either knowingly or purposely, the provisions of**
50 **section 610.026, the public governmental body and its principal officer shall be subject to**
51 **a civil penalty of one hundred thousand dollars for failing to complete the request within**
52 **twenty-one days or a civil penalty of two hundred fifty thousand dollars for failing to**
53 **complete a request by the date stated in the letter required by subdivision (2) of subsection**
54 **6 of section 610.026.**

55 **7.** A public governmental body which is in doubt about the legality of closing a particular
56 meeting, record or vote may bring suit at the expense of that public governmental body in the
57 circuit court of the county of the public governmental body's principal place of business to
58 ascertain the propriety of any such action, or seek a formal opinion of the attorney general or an
59 attorney for the governmental body.

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