SECOND REGULAR SESSION

HOUSE BILL NO. 1445

95TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES JONES (89) (Sponsor), KANDER, SCHAAF, NANCE, FUNDERBURK, GRILL, ROORDA, GRISAMORE, SMITH (150), FLANIGAN, FISCHER (107), KOENIG AND LAMPE (Co-sponsors).

3405L.01I D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 105.955, 105.961, 610.010, 610.020, 610.021, 610.022, 610.023, 610.027, 610.029, and 610.100, RSMo, and to enact in lieu thereof thirteen new sections relating to public records and meetings, with penalty provisions.

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

Section A. Sections 105.955, 105.961, 610.010, 610.020, 610.021, 610.022, 610.023, 610.027, 610.029, and 610.100, RSMo, are repealed and thirteen new sections enacted in lieu thereof, to be known as sections 105.955, 105.961, 610.010, 610.020, 610.021, 610.022, 610.023, 610.027, 610.029, 610.040, 610.045, 610.050, and 610.100, to read as follows:

105.955. 1. A bipartisan "Missouri Ethics Commission", composed of six members, is hereby established. The commission shall be assigned to the office of administration with supervision by the office of administration only for budgeting and reporting as provided by subdivisions (4) and (5) of subsection 6 of section 1 of the Reorganization Act of 1974. Supervision by the office of administration shall not extend to matters relating to policies, regulative functions or appeals from decisions of the commission, and the commissioner of administration, any employee of the office of administration, or the governor, either directly or indirectly, shall not participate or interfere with the activities of the commission in any manner not specifically provided by law and shall not in any manner interfere with the budget request of or withhold any moneys appropriated to the commission by the general assembly. All members of the commission shall be appointed by the governor with the advice and consent of the senate from lists submitted pursuant to this section. Each congressional district committee

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.

of the political parties having the two highest number of votes cast for their candidate for governor at the last gubernatorial election shall submit two names of eligible nominees for membership on the commission to the governor, and the governor shall select six members from such nominees to serve on the commission.

2. Within thirty days of submission of the person's name to the governor as provided in subsection 1 of this section, and in order to be an eligible nominee for appointment to the commission, a person shall file a financial interest statement in the manner provided by section 105.485 and shall provide the governor, the president pro tempore of the senate, and the commission with a list of all political contributions and the name of the candidate or committee, political party, or continuing committee, as defined in chapter 130, RSMo, to which those contributions were made within the four-year period prior to such appointment, made by the nominee, the nominee's spouse, or any business entity in which the nominee has a substantial interest. The information shall be maintained by the commission and available for public inspection during the period of time during which the appointee is a member of the commission. In order to be an eligible nominee for membership on the commission, a person shall be a citizen and a resident of the state and shall have been a registered voter in the state for a period of at least five years preceding the person's appointment.

3. The term of each member shall be for four years, except that of the members first appointed, the governor shall select three members from even-numbered congressional districts and three members from odd-numbered districts. Not more than three members of the commission shall be members of the same political party, nor shall more than one member be from any one United States congressional district. Not more than two members appointed from the even-numbered congressional districts shall be members of the same political party, and no more than two members from the odd-numbered congressional districts shall be members of the same political party. Of the members first appointed, the terms of the members appointed from the odd-numbered congressional districts shall expire on March 15, 1994, and the terms of the members appointed from the even-numbered congressional districts shall expire on March 15, 1996. Thereafter all successor members of the commission shall be appointed for four-year terms. Terms of successor members of the commission shall expire on March fifteenth of the fourth year of their term. No member of the commission shall serve on the commission after the expiration of the member's term. No person shall be appointed to more than one full four-year term on the commission.

4. Vacancies or expired terms on the commission shall be filled in the same manner as the original appointment was made, except as provided in this subsection. Within thirty days of the vacancy or ninety days before the expiration of the term, the names of two eligible nominees for membership on the commission shall be submitted to the governor by the congressional

district committees of the political party or parties of the vacating member or members, from the even- or odd-numbered congressional districts, based on the residence of the vacating member or members, other than from the congressional district committees from districts then represented on the commission and from the same congressional district party committee or committees which originally appointed the member or members whose positions are vacated. Appointments to fill vacancies or expired terms shall be made within forty-five days after the deadline for submission of names by the congressional district committees, and shall be subject to the same qualifications for appointment and eligibility as is provided in subsections 2 and 3 of this section. Appointments to fill vacancies for unexpired terms shall be for the remainder of the unexpired term of the member whom the appointee succeeds, and such appointees shall be eligible for appointment to one full four-year term. If the congressional district committee does not submit the required two nominees within the thirty days or if the congressional district committee does not submit the two nominees within an additional thirty days after receiving notice from the governor to submit the nominees, then the governor may appoint a person or persons who shall be subject to the same qualifications for appointment and eligibility as provided in subsections 2 and 3 of this section.

5. The governor, with the advice and consent of the senate, may remove any member only for substantial neglect of duty, inability to discharge the powers and duties of office, gross misconduct or conviction of a felony or a crime involving moral turpitude. Members of the commission also may be removed from office by concurrent resolution of the general assembly signed by the governor. If such resolution receives the vote of two-thirds or more of the membership of both houses of the general assembly, the signature of the governor shall not be necessary to effect removal. The office of any member of the commission who moves from the congressional district from which the member was appointed shall be deemed vacated upon such change of residence.

6. The commission shall elect biennially one of its members as the chairman. The chairman may not succeed himself or herself after two years. No member of the commission shall succeed as chairman any member of the same political party as himself or herself. At least four members are necessary to constitute a quorum, and at least four affirmative votes shall be required for any action or recommendation of the commission.

7. No member or employee of the commission, during the person's term of service, shall hold or be a candidate for any other public office.

8. In the event that a retired judge is appointed as a member of the commission, the judge shall not serve as a special investigator while serving as a member of the commission.

9. No member of the commission shall, during the member's term of service or within one year thereafter:

(1) Be employed by the state or any political subdivision of the state;

(2) Be employed as a lobbyist;

(3) Serve on any other governmental board or commission;

(4) Be an officer of any political party or political organization;

(5) Permit the person's name to be used, or make contributions, in support of or in opposition to any candidate or proposition;

(6) Participate in any way in any election campaign; except that a member or employee of the commission shall retain the right to register and vote in any election, to express the person's opinion privately on political subjects or candidates, to participate in the activities of a civic, community, social, labor or professional organization and to be a member of a political party.

10. Each member of the commission shall receive, as full compensation for the member's services, the sum of one hundred dollars per day for each full day actually spent on work of the commission, and the member's actual and necessary expenses incurred in the performance of the member's official duties.

11. The commission shall appoint an executive director who shall serve subject to the supervision of and at the pleasure of the commission, but in no event for more than six years. The executive director shall be responsible for the administrative operations of the commission and perform such other duties as may be delegated or assigned to the director by law or by rule of the commission. The executive director shall employ staff and retain such contract services as the director deems necessary, within the limits authorized by appropriations by the general assembly.

12. Beginning on January 1, 1993, all lobbyist registration and expenditure reports filed pursuant to section 105.473, financial interest statements filed pursuant to subdivision (1) of section 105.489, and campaign finance disclosure reports filed other than with election authorities or local election authorities as provided by section 130.026, RSMo, shall be filed with the commission.

13. Within sixty days of the initial meeting of the first commission appointed, the commission shall obtain from the clerk of the supreme court or the state courts administrator a list of retired appellate and circuit court judges who did not leave the judiciary as a result of being defeated in an election. The executive director shall determine those judges who indicate their desire to serve as special investigators and to investigate any and all complaints referred to them by the commission. The executive director shall maintain an updated list of those judges qualified and available for appointment to serve as special investigators. Such list shall be updated at least annually. The commission shall refer complaints to such special investigators on that list on a rotating schedule which ensures a random assignment of each special

investigator. Each special investigator shall receive only one unrelated investigation at a time and shall not be assigned to a second or subsequent investigation until all other eligible investigators on the list have been assigned to an investigation. In the event that no special investigator is qualified or available to conduct a particular investigation, the commission may appoint a special investigator to conduct such particular investigation.

14. The commission shall have the following duties and responsibilities relevant to the impartial and effective enforcement of sections 105.450 to 105.496 and chapter 130, RSMo, as provided in sections 105.955 to 105.963:

(1) Receive and review complaints regarding alleged violation of sections 105.450 to 105.496 and chapter 130, RSMo, conduct initial reviews and investigations regarding such complaints as provided herein; refer complaints to appropriate prosecuting authorities and appropriate disciplinary authorities along with recommendations for sanctions; and initiate judicial proceedings as allowed by sections 105.955 to 105.963;

(2) Review and audit any reports and statements required by the campaign finance disclosure laws contained in chapter 130, RSMo, and financial interest disclosure laws or lobbyist registration and reporting laws as provided by sections 105.470 to 105.492, for timeliness, accuracy and completeness of content as provided in sections 105.955 to 105.963;

(3) Develop appropriate systems to file and maintain an index of all such reports and statements to facilitate public access to such information, except as may be limited by confidentiality requirements otherwise provided by law, including cross-checking of information contained in such statements and reports. The commission may enter into contracts with the appropriate filing officers to effectuate such system. Such filing officers shall cooperate as necessary with the commission as reasonable and necessary to effectuate such purposes;

(4) Provide information and assistance to lobbyists, elected and appointed officials, and employees of the state and political subdivisions in carrying out the provisions of sections 105.450 to 105.496 and chapter 130, RSMo;

(5) Make recommendations to the governor and general assembly or any state agency on the need for further legislation with respect to the ethical conduct of public officials and employees and to advise state and local government in the development of local government codes of ethics and methods of disclosing conflicts of interest as the commission may deem appropriate to promote high ethical standards among all elected and appointed officials or employees of the state or any political subdivision thereof and lobbyists;

(6) Render advisory opinions as provided by this section;

(7) Promulgate rules relating to the provisions of sections 105.955 to 105.963 and chapter 130, RSMo. All rules and regulations issued by the commission shall be prospective only in operation;

(8) Request and receive from the officials and entities identified in subdivision (6) of section 105.450 designations of decision-making public servants.

15. In connection with such powers provided by sections 105.955 to 105.963 and chapter 130, RSMo, the commission may:

(1) Subpoena witnesses and compel their attendance and testimony. Subpoenas shall be served and enforced in the same manner provided by section 536.077, RSMo;

(2) Administer oaths and affirmations;

(3) Take evidence and require by subpoena duces tecum the production of books, papers, and other records relating to any matter being investigated or to the performance of the commission's duties or exercise of its powers. Subpoenas duces tecum shall be served and enforced in the same manner provided by section 536.077, RSMo;

(4) Employ such personnel, including legal counsel, and contract for services including legal counsel, within the limits of its appropriation, as it deems necessary provided such legal counsel, either employed or contracted, represents the Missouri ethics commission before any state agency or before the courts at the request of the Missouri ethics commission. Nothing in this section shall limit the authority of the Missouri ethics commission as provided for in subsection 2 of section 105.961; and

(5) Obtain information from any department, division or agency of the state or any political subdivision reasonably calculated to lead to the discovery of evidence which will reasonably assist the commission in carrying out the duties prescribed in sections 105.955 to 105.963 and chapter 130, RSMo.

16. (1) Upon written request for an advisory opinion received by the commission, and if the commission determines that the person requesting the opinion would be directly affected by the application of law to the facts presented by the requesting person, the commission shall issue a written opinion advising the person who made the request, in response to the person's particular request, regarding any issue that the commission can receive a complaint on pursuant to section 105.957. The commission may decline to issue a written opinion by a vote of four members and shall provide to the requesting person the reason for the refusal in writing. The commission shall give an approximate time frame as to when the written opinion shall be issued. Such advisory opinions shall be issued no later than ninety days from the date of receipt by the commission. Such requests and advisory opinions, deleting the name and identity of the requesting person, shall be compiled and published by the commission on at least an annual basis. Advisory opinions issued by the commission shall be maintained and made available for public inspection and copying at the office of the commission during normal business hours. Any advisory opinion or portion of an advisory opinion rendered pursuant to this subsection shall be withdrawn by the commission if, after hearing thereon, the joint committee on administrative

rules finds that such advisory opinion is beyond or contrary to the statutory authority of the commission or is inconsistent with the legislative intent of any law enacted by the general assembly, and after the general assembly, by concurrent resolution, votes to adopt the findings and conclusions of the joint committee on administrative rules. Any such concurrent resolution adopted by the general assembly shall be published at length by the commission in its publication of advisory opinions of the commission next following the adoption of such resolution, and a copy of such concurrent resolution shall be maintained by the commission, along with the withdrawn advisory opinion, in its public file of advisory opinions. The commission shall also send a copy of such resolution to the person who originally requested the withdrawn advisory opinion. Any advisory opinion issued by the ethics commission shall act as legal direction to any person requesting such opinion and no person shall be liable for relying on the opinion and it shall act as a defense of justification against prosecution. An advisory opinion of the commission shall not be withdrawn unless:

(a) The authorizing statute is declared unconstitutional;

(b) The opinion goes beyond the power authorized by statute; or

(c) The authorizing statute is changed to invalidate the opinion.

(2) Upon request, the attorney general shall give the attorney general's opinion, without fee, to the commission, any elected official of the state or any political subdivision, any member of the general assembly, or any director of any department, division or agency of the state, upon any question of law regarding the effect or application of sections 105.450 to 105.496, or chapter 130, RSMo. Such opinion need be in writing only upon request of such official, member or director, and in any event shall be rendered within sixty days **[**that**]** **after** such request is delivered to the attorney general.

17. The state auditor and the state auditor's duly authorized employees who have taken the oath of confidentiality required by section 29.070, RSMo, may audit the commission and in connection therewith may inspect materials relating to the functions of the commission. Such audit shall include a determination of whether appropriations were spent within the intent of the general assembly, but shall not extend to review of any file or document pertaining to any particular investigation, audit or review by the commission, an investigator or any staff or person employed by the commission or under the supervision of the commission or an investigator. The state auditor and any employee of the state auditor shall not disclose the identity of any person who is or was the subject of an investigation by the commission and whose identity is not public information as provided by law.

18. From time to time but no more frequently than annually the commission may request the officials and entities described in subdivision (6) of section 105.450 to identify for the commission in writing those persons associated with such office or entity which such office or

entity has designated as a decision-making public servant. Each office or entity delineated in subdivision (6) of section 105.450 receiving such a request shall identify those so designated within thirty days of the commission's request.

19. Notwithstanding any other provision of law to the contrary, all records of the commission shall be open records, except that investigative reports prepared by commission employees after the initial complaint received by the commission shall be closed records under chapter 610 until a decision is rendered as to the complaint under investigation. If the commission decides to dismiss the complaint, such investigative reports shall continue to be closed records under chapter 610.

105.961. 1. Upon receipt of a complaint as described by section 105.957, the commission shall assign the complaint to a special investigator, who may be a commission employee, who shall investigate and determine the merits of the complaint. Within ten days of such assignment, the special investigator shall review such complaint and disclose, in writing, to the commission any conflict of interest which the special investigator has or might have with respect to the investigation and subject thereof. Within one hundred twenty days of receipt of the complaint from the commission, the special investigator shall submit the special investigator's report to the commission. The commission, after review of such report, shall determine:

(1) That there is reasonable grounds for belief that a violation has occurred; or

(2) That there are no reasonable grounds for belief that a violation exists and the complaint should be dismissed; or

(3) That additional time is necessary to complete the investigation, and the status and progress of the investigation to date. The commission, in its discretion, may allow the investigation to proceed for additional successive periods of one hundred twenty days each, pending reports regarding the status and progress of the investigation at the end of each such period.

2. When the commission concludes, based on the report from the special investigator, or based on an audit conducted pursuant to section 105.959, that there are reasonable grounds to believe that a violation of any criminal law has occurred, and if the commission believes that criminal prosecution would be appropriate upon a vote of four members of the commission, the commission shall refer the report to the Missouri office of prosecution services, prosecutors coordinators training council established in section 56.760, RSMo, which shall submit a panel of five attorneys for recommendation to the court having criminal jurisdiction, for appointment of an attorney to serve as a special prosecutor; except that, the attorney general of Missouri or any assistant attorney general shall not act as such special prosecutor. The court shall then appoint from such panel a special prosecutor pursuant to section 56.110, RSMo, who shall have

all the powers provided by section 56.130, RSMo. The court shall allow a reasonable and necessary attorney's fee for the services of the special prosecutor. Such fee shall be assessed as costs if a case is filed, or ordered by the court if no case is filed, and paid together with all other costs in the proceeding by the state, in accordance with rules and regulations promulgated by the state courts administrator, subject to funds appropriated to the office of administration for such purposes. If the commission does not have sufficient funds to pay a special prosecutor, the commission shall refer the case to the prosecutor or prosecutors having criminal jurisdiction. If the prosecutor having criminal jurisdiction is not able to prosecute the case due to a conflict of interest, the court may appoint a special prosecutor, paid from county funds, upon appropriation by the county or the attorney general to investigate and, if appropriate, prosecute the case. The special prosecutor or prosecutor shall commence an action based on the report by the filing of an information or seeking an indictment within sixty days of the date of such prosecutor's appointment, or shall file a written statement with the commission explaining why criminal charges should not be sought. If the special prosecutor or prosecutor fails to take either action required by this subsection, upon request of the commission, a new special prosecutor, who may be the attorney general, shall be appointed. The report may also be referred to the appropriate disciplinary authority over the person who is the subject of the report.

3. When the commission concludes, based on the report from the special investigator or based on an audit conducted pursuant to section 105.959, that there are reasonable grounds to believe that a violation of any law has occurred which is not a violation of criminal law or that criminal prosecution is not appropriate, the commission shall conduct a hearing **[**which shall be a closed meeting and not open to the public**]**. The hearing shall be conducted pursuant to the procedures provided by sections 536.063 to 536.090, RSMo, and shall be considered to be a contested case for purposes of such sections. **Notwithstanding any other provision of law to the contrary, all records introduced at a hearing or any portion thereof, and the record of the hearing, shall be open records under chapter 610 when the commission determines at a hearing that probable cause exists that a violation has occurred. Upon the motion of any party, the commission shall, upon good cause shown, close any record to be introduced at a hearing, including the record of the hearing, or any portion thereof. The order of the commission regarding the motion to close any record of the hearing shall be an open record, and shall state the reasons for the commission's order.** The commission shall determine, in its discretion, whether or not that there is probable cause that a violation has occurred. If the commission determines, by a vote of at least four members of the commission, that probable cause exists that a violation has occurred, the commission may refer its findings and conclusions to the appropriate disciplinary authority over the person who is the subject of the report, as described in subsection 7 of this section. After the commission determines by a

vote of at least four members of the commission that probable cause exists that a violation has occurred, and the commission has referred the findings and conclusions to the appropriate disciplinary authority over the person subject of the report, the subject of the report may appeal the determination of the commission to the administrative hearing commission. Such appeal shall stay the action of the Missouri ethics commission. Such appeal shall be filed not later than the fourteenth day after the subject of the commission's action receives actual notice of the commission's action.

4. If the appropriate disciplinary authority receiving a report from the commission pursuant to subsection 3 of this section fails to follow, within sixty days of the receipt of the report, the recommendations contained in the report, or if the commission determines, by a vote of at least four members of the commission that some action other than referral for criminal prosecution or for action by the appropriate disciplinary authority would be appropriate, the commission shall take any one or more of the following actions:

(1) Notify the person to cease and desist violation of any provision of law which the report concludes was violated and that the commission may seek judicial enforcement of its decision pursuant to subsection 5 of this section;

(2) Notify the person of the requirement to file, amend or correct any report, statement, or other document or information required by sections 105.473, 105.483 to 105.492, or chapter 130, RSMo, and that the commission may seek judicial enforcement of its decision pursuant to subsection 5 of this section; and

(3) File the report with the executive director to be maintained as a public document; or

(4) Issue a letter of concern or letter of reprimand to the person, which would be maintained as a public document; or

(5) Issue a letter that no further action shall be taken, which would be maintained as a public document; or

(6) Through reconciliation agreements or civil action, the power to seek fees for violations in an amount not greater than one thousand dollars or double the amount involved in the violation.

5. Upon vote of at least four members, the commission may initiate formal judicial proceedings seeking to obtain any of the following orders:

(1) Cease and desist violation of any provision of sections 105.450 to 105.496, or chapter 130, RSMo, or sections 105.955 to 105.963;

(2) Pay any civil penalties required by sections 105.450 to 105.496 or chapter 130, RSMo;

(3) File any reports, statements, or other documents or information required by sections 105.450 to 105.496, or chapter 130, RSMo; or

(4) Pay restitution for any unjust enrichment the violator obtained as a result of any violation of any criminal statute as described in subsection 6 of this section.

The Missouri ethics commission shall give actual notice to the subject of the complaint of the proposed action as set out in this section. The subject of the complaint may appeal the action of the Missouri ethics commission, other than a referral for criminal prosecution, to the administrative hearing commission. Such appeal shall stay the action of the Missouri ethics commission. Such appeal shall be filed no later than fourteen days after the subject of the commission's actions receives actual notice of the commission's actions.

6. In the proceeding in circuit court, the commission may seek restitution against any person who has obtained unjust enrichment as a result of violation of any provision of sections 105.450 to 105.496, or chapter 130, RSMo, and may recover on behalf of the state or political subdivision with which the alleged violator is associated, damages in the amount of any unjust enrichment obtained and costs and attorney's fees as ordered by the court.

7. The appropriate disciplinary authority to whom a report shall be sent pursuant to subsection 2 or 3 of this section shall include, but not be limited to, the following:

(1) In the case of a member of the general assembly, the ethics committee of the house of which the subject of the report is a member;

(2) In the case of a person holding an elective office or an appointive office of the state, if the alleged violation is an impeachable offense, the report shall be referred to the ethics committee of the house of representatives;

(3) In the case of a person holding an elective office of a political subdivision, the report shall be referred to the governing body of the political subdivision;

(4) In the case of any officer or employee of the state or of a political subdivision, the report shall be referred to the person who has immediate supervisory authority over the employment by the state or by the political subdivision of the subject of the report;

(5) In the case of a judge of a court of law, the report shall be referred to the commission on retirement, removal and discipline, or if the inquiry involves an employee of the judiciary to the applicable presiding judge;

(6) In the case of a person holding an appointive office of the state, if the alleged violation is not an impeachable offense, the report shall be referred to the governor;

(7) In the case of a statewide elected official, the report shall be referred to the attorney general;

(8) In a case involving the attorney general, the report shall be referred to the prosecuting attorney of Cole County.

8. The special investigator having a complaint referred to the special investigator by the commission shall have the following powers:

(1) To request and shall be given access to information in the possession of any person or agency which the special investigator deems necessary for the discharge of the special investigator's responsibilities;

(2) To examine the records and documents of any person or agency, unless such examination would violate state or federal law providing for confidentiality;

(3) To administer oaths and affirmations;

(4) Upon refusal by any person to comply with a request for information relevant to an investigation, an investigator may issue a subpoena for any person to appear and give testimony, or for a subpoena duces tecum to produce documentary or other evidence which the investigator deems relevant to a matter under the investigator's inquiry. The subpoenas and subpoenas duces tecum may be enforced by applying to a judge of the circuit court of Cole County or any county where the person or entity that has been subpoenaed resides or may be found, for an order to show cause why the subpoena or subpoena duces tecum should not be enforced. The order and a copy of the application therefor shall be served in the same manner as a summons in a civil action, and if, after hearing, the court determines that the subpoena or subpoena duces tecum should be sustained and enforced, the court shall enforce the subpoena or subpoena duces tecum in the same manner as if it had been issued by the court in a civil action; and

(5) To request from the commission such investigative, clerical or other staff assistance or advancement of other expenses which are necessary and convenient for the proper completion of an investigation. Within the limits of appropriations to the commission, the commission may provide such assistance, whether by contract to obtain such assistance or from staff employed by the commission, or may advance such expenses.

9. (1) Any retired judge may request in writing to have the judge's name removed from the list of special investigators subject to appointment by the commission or may request to disqualify himself or herself from any investigation. Such request shall include the reasons for seeking removal;

(2) By vote of four members of the commission, the commission may disqualify a judge from a particular investigation or may permanently remove the name of any retired judge from the list of special investigators subject to appointment by the commission.

10. Any person who is the subject of any investigation pursuant to this section shall be entitled to be represented by counsel at any proceeding before the special investigator or the commission.

11. The provisions of sections 105.957, 105.959 and 105.961 are in addition to other provisions of law under which any remedy or right of appeal or objection is provided for any

person, or any procedure provided for inquiry or investigation concerning any matter. The provisions of this section shall not be construed to limit or affect any other remedy or right of appeal or objection.

12. No person shall be required to make or file a complaint to the commission as a prerequisite for exhausting the person's administrative remedies before pursuing any civil cause of action allowed by law.

13. If, in the opinion of the commission, the complaining party was motivated by malice or reason contrary to the spirit of any law on which such complaint was based, in filing the complaint without just cause, this finding shall be reported to appropriate law enforcement authorities. Any person who knowingly files a complaint without just cause, or with malice, is guilty of a class A misdemeanor.

14. A respondent party who prevails in a formal judicial action brought by the commission shall be awarded those reasonable fees and expenses incurred by that party in the formal judicial action, unless the court finds that the position of the commission was substantially justified or that special circumstances make such an award unjust.

15. The special investigator and members and staff of the commission shall maintain confidentiality with respect to all matters concerning a complaint until and if a report is filed with the commission, with the exception of communications with any person which are necessary to the investigation. The report filed with the commission resulting from a complaint acted upon under the provisions of this section shall not contain the name of the complainant or other person providing information to the investigator, if so requested in writing by the complainant or such other person. Any person who violates the confidentiality requirements imposed by this section or subsection 17 of section 105.955 required to be confidential is guilty of a class A misdemeanor and shall be subject to removal from or termination of employment by the commission.

16. Any judge of the court of appeals or circuit court who ceases to hold such office by reason of the judge's retirement and who serves as a special investigator pursuant to this section shall receive annual compensation, salary or retirement for such services at the rates of compensation provided for senior judges by subsections 1, 2 and 4 of section 476.682, RSMo. Such retired judges shall by the tenth day of each month following any month in which the judge provided services pursuant to this section certify to the commission and to the state courts administrator the amount of time engaged in such services by hour or fraction thereof, the dates thereof, and the expenses incurred and allowable pursuant to this section. The commission shall then issue a warrant to the state treasurer for the payment of the salary and expenses to the extent, and within limitations, provided for in this section. The state treasurer upon receipt of such

warrant shall pay the same out of any appropriations made for this purpose on the last day of the month during which the warrant was received by the state treasurer.

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:

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

(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 by or at the direction of any of the named entities 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 chief executive officer of any college or university system or individual institution at the

direction of the governing body of such institution which is supported in whole or in part with state funds 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 public funds provided, however, the staff of the college or university president, chancellor or chief executive officer shall not constitute such a policy advisory committee. The custodian of the records of any public governmental body shall maintain a list of the policy advisory committees described in this subdivision;

(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 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 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; **[**and**]**

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

(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 such meeting is conducted in person or by means of communication equipment, including, but not limited to, conference call, video conference, Internet chat, or Internet message board. 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 public 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 public 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 for the public governmental body by a consultant or other professional service paid for in whole or in part by public funds, including records created or maintained by private

contractors under an agreement with a public governmental body or on behalf of a public governmental body; 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. The term "public record" shall not include any internal memorandum or letter received or prepared by or on behalf of a member of a public governmental body consisting of advice, opinions and recommendations in connection with the deliberative decision-making process of said body, unless such records are retained by the public governmental body or presented at a public meeting. Any document or study prepared for a public governmental body by a consultant or other professional service as described in this subdivision shall be retained by the public governmental body in the same manner as any other public record;

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

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 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. 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.

4. 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.

5. 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.

6. 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.

7. 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**, but not be limited to,** the date, time, place, members present, members absent and a record of any votes taken. 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. **Minutes shall reflect a summary of the discussions occurring during any closed meeting, but nothing in this subsection shall require the disclosure of records or votes that are properly closed pursuant to section 610.021.**

8. Notwithstanding other provisions of this section to the contrary, for any public meeting addressing issues regarding a fee or tax increase, eminent domain, zoning, transportation development districts, capital improvement districts, commercial improvement districts, or tax increment financing, the governing body of any county, city, town, or village, or any entity created by such county, city, town, or village, shall give notice conforming with all the requirements of subsection 1 of this section at least five days before such entity may vote to address such issues, exclusive of weekends and holidays

when the facility is closed. Each public meeting described in this subsection shall include a period of time in which the members of the public may offer comments on matters of the public business of the entity holding the meeting. Public comment shall be taken after the proponents of the proposal have made their presentation. If the notice required under this subsection is not properly given, any discussion of such issues shall be postponed, and no vote on such issues shall be held for at least twenty days after the public meeting for which notice under this subsection should have been provided. An entity may discuss and vote on any issue if proper notice has been provided pursuant to this subsection. For the purpose of this subsection, a tax increase shall not include the setting of the annual tax rates provided for under sections 67.110 and 137.055.

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, vote or 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 be **[**made public**] publicly disclosed in an open meeting** upon final disposition of the matter voted upon or upon the signing by the parties of the settlement agreement, unless, prior to final disposition, the settlement agreement is ordered closed by a court after a written finding that the adverse impact to a plaintiff or plaintiffs to the action clearly outweighs the public policy considerations of section 610.011, however, the amount of any moneys paid by, or on behalf of, the public governmental body shall be disclosed; provided, however, in matters involving the exercise of the power of eminent domain, the vote shall be **[**announced or become public**] publicly disclosed in an open meeting** immediately following the action on the motion to authorize institution of such a legal action. Legal work product shall be considered a closed record**. When public disclosure in an open meeting is prescribed, such disclosure shall be done orally or in writing, or both, and shall occur at the next scheduled open meeting of the public body, or at the resumption of a recessed or subsequent open meeting, whatever is applicable soonest to the timelines for disclosure as prescribed in this section. As used in this subdivision, "cause of action" means that a lawsuit has been filed, regardless of whether the lawsuit has been served, or correspondence from a party to the body stating that litigation shall be filed unless certain demands are met and the body agrees that such**

demands will not be met or are unlikely to be met, or the body agrees that a substantial likelihood exists that litigation may occur;

(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, 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 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 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 shall be made available with a record of how each member voted 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 names, positions, salaries and lengths of service of officers and employees of public agencies once they are employed as such, and the names of private sources donating or contributing money to the salary of a chancellor or president at all public colleges and universities in the state of Missouri and the amount of money contributed by the source;

(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;

(16) Records relating to municipal hotlines established for the reporting of abuse and wrongdoing;

(17) Confidential or privileged communications between a public governmental body and its auditor, including all auditor work product; however, all final audit reports issued by the auditor are to be considered open records pursuant to this chapter;

(18) Operational guidelines and policies developed, adopted, or maintained by any public agency responsible for law enforcement, public safety, first response, or public health for use in responding to or preventing any critical incident which is or appears to be terrorist in nature and which has the potential to endanger individual or public safety or health. Nothing in this exception shall be deemed to close information regarding expenditures, purchases, or contracts made by an agency in implementing these guidelines or policies. When seeking to close information pursuant to this exception, the agency shall affirmatively state in writing that disclosure would impair its ability to protect the safety or health of persons, and shall in the same writing state that the public interest in nondisclosure outweighs the public interest in disclosure of the records. This exception shall sunset on December 31, 2012;

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

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

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

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

(d) This exception shall sunset on December 31, 2012;

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

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

(22) Records submitted by an individual, corporation, or other business entity to a public institution of higher education in connection with a proposal to license intellectual property or perform sponsored research and which contains sales projections or other business plan information the disclosure of which may endanger the competitiveness of a business**; except the name of the individual, corporation, or other business entity and the amount of any public funding provided to such individual, corporation, or other business entity by the public institution of higher education shall be deemed as records open for public inspection**.

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 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 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. **Only members of a public governmental body, their attorney and staff assistants, and any other person necessary to provide information needed by or requested by the public governmental body in regard to the matter being discussed shall be permitted in a closed meeting.** Public governmental bodies holding a closed meeting shall close only an existing 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 pursuant to the provisions of this chapter.

6. In the event any member of a public governmental body makes a motion to close a meeting, or a record, or a vote from the public and any other member believes that such motion, if passed, would cause a meeting, record or vote to be closed from the public in violation of any provision in this chapter, such latter member shall state his or her objection to the motion at or before the time the vote is taken on the motion. The public governmental body shall enter in the minutes of the public governmental body any objection made pursuant to this subsection. Any member making such an objection shall be allowed to fully participate in any meeting, record or vote that is closed from the public over the member's objection. In the event the objecting member also voted in opposition to the motion to close the meeting, record or vote at issue, the objection and vote of the member as entered in the minutes shall be an absolute defense to any claim filed against the objecting member pursuant to section 610.027.

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, after August 28, 1998, grant to any

person or entity, whether by contract, license or otherwise, the exclusive right to access and disseminate any public record unless the granting of such right is necessary to facilitate coordination with, or uniformity among, industry regulators having similar authority.

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 records are requested in a certain format, the public body shall provide the records in the requested format, if such format is available. **Data-processing programs used by public governmental bodies shall allow for copying of data in a format that is easily accessed and manipulated by programs commonly available to the public, provided that this requirement shall not be construed to compel a hospital operated by the board of curators of the University of Missouri or under chapter 96, 205, or 206 to violate its licensing agreement for the use of proprietary data processing systems for financial or patient medical record information.** 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.

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

[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.**]**

2. In any legal proceeding, there shall be a presumption that a meeting, record, or vote is open to the public. The burden shall be on a public governmental body or a member of a public governmental body to prove that such meeting, record, or vote may be closed to the public.

3. Upon a finding by a preponderance of the evidence that a public governmental body or a member of a public governmental body has knowingly violated sections 610.010 to 610.026, the public governmental body or the member shall be subject to a civil penalty in an amount **[**up to**] of** one thousand dollars. If the court finds that there is a knowing violation of sections 610.010 to 610.026, 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. **[**The court shall determine the amount of the penalty by taking into account the size of the jurisdiction, the seriousness of the offense, and whether the public governmental body or member of a public governmental body has violated sections 610.010 to 610.026 previously.**]**

4. 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 610.026, the public governmental body or the member shall be subject to a civil penalty in an amount up to **[**five**] eight** thousand dollars. If the court finds that there was a purposeful violation of sections 610.010 to 610.026, then the court shall order the payment by such body or member of all costs and reasonable attorney fees to any party successfully establishing such a violation. **As used in this subsection, "purposely violated" means exhibiting a conscious design, intent, or plan to violate the law, and doing so with awareness of the probable consequences.** The court shall determine the amount of the penalty by taking into account the size of the jurisdiction, the seriousness of the offense, and whether the public governmental body or member of a public governmental body has violated sections 610.010 to 610.026 previously.

5. 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 shall be brought within one year from which the violation is ascertainable and in no event shall it be brought later than two years 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.

6. 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 provide access to its public records to members of the public in an electronic format. A public governmental body **[**is strongly encouraged to**] that maintains its records in an electronic format shall** make information available in **a format easily accessed and managed by programs commonly available to the public [**usable electronic formats to the greatest extent feasible**]**. A public governmental body may not enter into a contract for the creation or maintenance of a public records database if that contract impairs the ability of the public to inspect or copy the public records of that agency, including public records that are on-line or stored in an electronic record-keeping system used by the agency. Such contract may not allow any impediment that as a practical matter makes it more difficult for the public to inspect or copy the records than to inspect or copy the public governmental body's records. For purposes of this section, a usable electronic format shall allow, at a minimum, viewing and printing of records. However, if the public governmental body keeps a record on a system capable of allowing the copying of electronic documents into other electronic documents, the public governmental body shall provide data to the public in such electronic format, if requested. The activities authorized 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 database. This subsection shall not apply to contracts initially entered into before August 28, 2004.

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 pursuant to this section.

610.040. 1. Each elected or appointed public official who is a member of a public governmental body subject to this chapter shall complete a course of training of not less

than one and not more than two hours regarding the responsibilities of the public governmental body and its members concerning open meetings laws not later than the ninetieth day after the date the member:

(1) Takes the oath of office, if the member is required to take an oath of office to assume the person's duties as a member of the public governmental body; or

(2) Otherwise assumes responsibilities as a member of the public governmental body, if the member is not required to take an oath of office to assume the person's duties as a member of the public governmental body.

2. The attorney general shall ensure that the training is made available. The office of the attorney general may provide the training and may also approve any acceptable course of training offered by a public governmental body or other entity. The attorney general shall ensure that at least one course of training approved or provided by the attorney general is available on videotape or a functionally similar and widely available medium at no cost. The training must include:

(1) The general background of the legal requirements for open meetings;

(2) The applicability of this chapter to public governmental bodies;

(3) Procedures and requirements regarding quorums, notice, and record keeping under this chapter;

(4) Procedures and requirements for holding an open meeting and for holding a closed meeting under this chapter;

(5) Procedures for retaining e-mails, memos, and other office communications; and

(6) Penalties and other consequences for failure to comply with this chapter.

3. The office of the attorney general or other entity providing the training shall provide a certificate of course completion to persons who complete the training required by this section. A public governmental body shall maintain and make available for public inspection the record of its members' completion of the training.

4. Completing the required training as a member of the public governmental body satisfies the requirements of this section with regard to the member's service on a committee or subcommittee of the public governmental body and the member's ex-officio service on any other public governmental body.

5. The training required by this section may be used to satisfy any corresponding training requirements concerning this chapter or open meetings required by law for the members of a public governmental body. The attorney general shall attempt to coordinate the training required by this section with training required by other law to the extent practicable.

6. The failure of one or more members of a public governmental body to complete the training required by this section does not affect the validity of an action taken by the public governmental body.

7. A certificate of course completion is admissible as evidence in a criminal prosecution under this chapter. However, evidence that a defendant completed a course of training offered under this section is not prima facie evidence that the defendant knowingly violated this chapter.

610.045. 1. This section applies to an elected or appointed public official who is:

(1) A member of a multimember public governmental body;

(2) The governing officer of a public governmental body that is headed by a single officer rather than by a multimember public governmental body; or

(3) The officer for public information of a public governmental body, without regard to whether the officer is elected or appointed to a specific term.

2. Each public official shall complete a course of training of not less than one and not more than two hours regarding the responsibilities of the public governmental body with which the official serves and its officers and employees concerning open records and public information laws not later than the ninetieth day after the date the public official:

(1) Takes the oath of office, if the person is required to take an oath of office to assume the person's duties as a public official; or

(2) Otherwise assumes the person's duties as a public official, if the person is not required to take an oath of office to assume the person's duties.

3. A public official may designate a public information coordinator to satisfy the training requirements of this section for the public official if the public information coordinator is primarily responsible for administering the responsibilities of the public official or public governmental body under this chapter. Designation of a public information coordinator under this subsection does not relieve a public official from the duty to comply with any other requirement of this chapter that applies to the public official. The designated public information coordinator shall complete the training course regarding the responsibilities of the public governmental body with which the coordinator serves and of its officers and employees under this chapter not later than the ninetieth day after the date the coordinator assumes the person's duties as coordinator.

4. The attorney general shall ensure that the training is made available. The office of the attorney general may provide the training and may also approve any acceptable course of training offered by a public governmental body or other entity. The attorney general shall ensure that at least one course of training approved or provided by the

attorney general is available on videotape or a functionally similar and widely available medium at no cost. The training must include instruction in:

(1) The general background of the legal requirements for open records and public information;

(2) The applicability of this chapter to public governmental bodies;

(3) Procedures and requirements regarding complying with a request for information under this chapter;

(4) The role of the attorney general under this chapter;

(5) Procedures for retaining e-mails, memos, and other office communications; and

(6) Penalties and other consequences for failure to comply with this chapter.

5. The office of the attorney general or other entity providing the training shall provide a certificate of course completion to persons who complete the training required by this section. A public governmental body shall maintain and make available for public inspection the record of its public officials or, if applicable, the public information coordinator's completion of the training.

6. Completing the required training as a public official of the public governmental body satisfies the requirements of this section with regard to the public official's service on a committee or a subcommittee of the public governmental body and the public official's ex-officio service on any other public governmental body.

7. The training required by this section may be used to satisfy any corresponding training requirements concerning this chapter or open records required by law for a public official or public information coordinator. The attorney general shall attempt to coordinate the training required by this section with training required by other law to the extent practicable.

8. A certificate of course completion is admissible as evidence in a criminal prosecution under this chapter. However, evidence that a defendant completed a course of training offered under this section is not prima facie evidence that the defendant knowingly violated this chapter.

610.050. Each elected or appointed public official who is a member of a public governmental body subject to sections 610.040 and 610.045 and who has taken the oath of office or otherwise assumed the person's responsibilities before January 1, 2010, shall complete the course of training required by sections 610.040 and 610.045 before January 1, 2011.

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 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 the person's arrest, the arrest report shall thereafter be a closed record except that the disposition portion of the record may be accessed 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, including a family member of such person within the first degree of consanguinity if such person is deceased or incompetent, 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 family member within the first degree of consanguinity if such individual is deceased or incompetent, 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 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**]** **have its** reasonable and necessary costs and attorneys' fees **[**of both parties, unless**]** **paid if** 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 knowingly violated this section, the officer or agency shall be subject to a civil penalty in an amount up to one thousand dollars. If the court finds that there is a knowing violation of this section, the court may order payment by such officer or agency of all costs and attorneys' fees, as provided by section 610.027. 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 up to five thousand dollars and the court shall order payment by such officer or agency of all costs and attorney fees, as provided in section 610.027. The court shall determine the amount of the penalty by taking into account the size of the jurisdiction, the seriousness of the offense, and whether the law enforcement officer or agency has violated this section previously.

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

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