

**ILLINOIS OPEN MEETINGS ACT
PROPOSED STATUTORY REVISIONS**

5 ILCS 120/1

Sec. 1. Policy. It is the public policy of this State that public bodies exist to aid in the conduct of the people’s business and that the people have a right to be informed as to the conduct of their business. In order that the people shall be informed, the General Assembly finds and declares that it is the intent of this Act to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly.

The General Assembly further declares it to be the public policy of this State that the public its citizens shall be given advance notice of and the right to attend all meetings at which any business of a public body is discussed or acted upon in any way. Exceptions to the public’s right to attend exist only in those limited circumstances where the General Assembly has specifically determined that the public interest would be clearly endangered or the personal privacy or guaranteed rights of individuals would be clearly in danger of unwarranted invasion.

To implement this policy, the General Assembly declares:

- (1) It is the intent of this Act to protect the citizen’s right to know of the public; and
- (2) The provisions for exceptions to the open meeting requirements shall be strictly construed against closed meetings.

5 ILCS 120/1.01

Sec. 1.01. This Act shall be known and may be cited as the Open Meetings Act.

5 ILCS 120/1.02

Sec. 1.02. For the purposes of this Act:

“Meeting” means any gathering, whether in person or by video or audio conference, telephone call, electronic means (such as, without limitation, electronic mail, electronic chat, and instant messaging), or other means of contemporaneous interactive communication, of a majority of a quorum of the members of a public body held for the purpose of discussing public business or, for a 5-member public body, a quorum of the members of a public body held for the purpose of discussing public business.

Accordingly, for a 5-member public body, 3 members of the body constitute a quorum and the affirmative vote of 3 members is necessary to adopt any motion, resolution, or ordinance, unless a greater number is otherwise required.

“Public body” includes all legislative, executive, administrative or advisory bodies of the State, counties, townships, cities, villages, incorporated towns, school districts and all

other municipal corporations, boards, bureaus, committees or commissions of this State, and any subsidiary bodies of any of the foregoing including but not limited to committees and subcommittees which are supported in whole or in part by tax revenue, or which expend tax revenue, except the General Assembly and committees or commissions thereof. “Public body” includes any corporation created by a political subdivision under this Section if it accepts any public funds from a public body. “Public body” includes tourism boards and convention or civic center boards located in counties that are contiguous to the Mississippi River with populations of more than 250,000 but less than 300,000. “Public body” includes the Health Facilities Planning Board. “Public body” does not include a child death review team or the Illinois Child Death Review Teams Executive Council established under the Child Death Review Team Act or an ethics commission acting under the State Officials and Employees Ethics Act.

5 ILCS 120/2

Sec. 2. Open meetings.

(a) Openness required. All meetings of public bodies shall be open to the public unless excepted in subsection (c) and closed in accordance with Section 2a.

(b) Construction of exceptions. The exceptions contained in subsection (c) are in derogation of the requirement that public bodies meet in the open, and therefore, the exceptions are to be strictly construed, extending only to subjects clearly within their scope. The exceptions authorize but do not require the holding of a closed meeting to discuss a subject included within an enumerated exception.

(c) Exceptions. A public body may hold closed meetings to consider the following subjects:

(1) The appointment, employment, compensation, discipline, performance, or dismissal of specific employees of the public body or legal counsel for the public body, including hearing testimony on a complaint lodged against an employee of the public body or against legal counsel for the public body to determine its validity. Modification or elimination of an employee’s position for reasons not based on discipline, performance or dismissal of a specific employee does not meet the exception requirement set forth in this Section.

(2) Collective negotiating matters between the public body and its employees or their representatives, or deliberations concerning salary schedules for one or more classes of employees.

~~(3) The selection of a person to fill a public office, as defined in this Act, including a vacancy in a public office, when the public body is given power to appoint under law or ordinance, or the discipline, performance or removal of the occupant of a public office, when the public body is given power to remove the occupant under law or ordinance.~~

- | (34) Evidence or testimony presented in open hearing, or in closed hearing where specifically authorized by law, to a quasi-adjudicative body, as defined in this Act, provided that the body prepares and makes available for public inspection a written decision setting forth its determinative reasoning.
- | (45) The purchase or lease of real property for the use of the public body, including meetings held for the purpose of discussing whether a particular parcel should be acquired.
- | (56) The setting of a price for sale or lease of property owned by the public body.
- | (67) The sale or purchase of securities, investments, or investment contracts.
- | (78) Security procedures and the use of personnel and equipment to respond to an actual, a threatened, or a reasonably potential danger to the safety of employees, students, staff, the public, or public property.
- | (89) Student disciplinary cases.
- | (94) The placement of individual students in special education programs and other matters relating to individual students.
- | (104) Litigation, when an action against, affecting or on behalf of the particular public body has been filed and is pending before a court or administrative tribunal, or when the public body finds that an action is probable ~~or~~ and imminent, in which case the basis for the finding shall be recorded and entered into the minutes of the closed meeting. Only verbal or written notice of potential litigation satisfies the requirement that litigation is probable and imminent.
- | (112) The establishment of reserves or settlement of claims as provided in the Local Governmental and Governmental Employees Tort Immunity Act, if otherwise the disposition of a claim or potential claim might be prejudiced, or the review or discussion of claims, loss or risk management information, records, data, advice or communications from or with respect to any insurer of the public body or any intergovernmental risk management association or self insurance pool of which the public body is a member.
- | (123) Conciliation of complaints of discrimination in the sale or rental of housing, when closed meetings are authorized by the law or ordinance prescribing fair housing practices and creating a commission or administrative agency for their enforcement.
- | (143) Informant sources, the hiring or assignment of undercover personnel or equipment, or ongoing, prior or future criminal investigations, when discussed by a public body with criminal investigatory responsibilities.

| (154) Professional ethics or performance when considered by an advisory body appointed to advise a licensing or regulatory agency on matters germane to the advisory body's field of competence.

| (165) Self evaluation, practices and procedures or professional ethics, when meeting with a representative of a statewide association of which the public body is a member.

| (176) The recruitment, credentialing, discipline or formal peer review of physicians or other health care professionals for a hospital, or other institution providing medical care, that is operated by the public body.

| (187) Deliberations for decisions of the Prisoner Review Board.

| (198) Review or discussion of applications received under the Experimental Organ Transplantation Procedures Act.

| (1929) The classification and discussion of matters classified as confidential or continued confidential by the State Employees Suggestion Award Board.

| (204) Discussion of minutes of meetings lawfully closed under this Act, whether for purposes of approval by the body of the minutes or ~~semi-annual~~monthly review of the minutes as mandated by Section 2.06.

| (212) Deliberations for decisions of the State Emergency Medical Services Disciplinary Review Board.

| (223) The operation by a municipality of a municipal utility or the operation of a municipal power agency or municipal natural gas agency when the discussion involves (i) contracts relating to the purchase, sale, or delivery of electricity or natural gas or (ii) the results or conclusions of load forecast studies.

| (234) Meetings of a residential health care facility resident sexual assault and death review team or the Residential Health Care Facility Resident Sexual Assault and Death Review Teams Executive Council under the Residential Health Care Facility Resident Sexual Assault and Death Review Team Act.

(d) Definitions. For purposes of this Section:

“Employee” means a person employed by a public body whose relationship with the public body constitutes an employer-employee relationship under the usual common law rules, and who is not an independent contractor.

“Public office” means a position created by or under the Constitution or laws of this State, the occupant of which is charged with the exercise of some portion of the sovereign power of this State. The term “public office” shall include members of the public body, but it shall not include organizational positions filled by members thereof, whether

established by law or by a public body itself, that exist to assist the body in the conduct of its business.

“Quasi-adjudicative body” means an administrative body charged by law or ordinance with the responsibility to conduct hearings, receive evidence or testimony and make determinations based thereon, but does not include local electoral boards when such bodies are considering petition challenges.

(e) Final action. No final action may be taken at a closed meeting. Final action shall be preceded by a public recital of the nature of the matter being considered and other information that will inform the public of the business being conducted. The circuit court shall have the jurisdiction to invalidate a final action taken at a closed session not in accordance with this Act. The court shall not have jurisdiction to invalidate a decision of a public body for a violation of this act unless an action is commenced pursuant to this Act within 120 days after the approved minutes are made available to the public by the public body. The procedures set forth in Section 3 apply to invalidation of a final action. In any case where an action has been initiated to invalidate a decision of a public body on the ground that it was not taken in conformity with the requirements of this Act, the public body may not reenact the disputed decision in conformity with this Act in order to evade liability.

5 ILCS 120/2.01

Sec. 2.01. All meetings required by this Act to be public shall be held at specified times and places which are convenient and open to the public. Each public body shall provide an opportunity for public comment at meetings. Public comment shall be subject only to time, place and manner restrictions. No meeting required by this Act to be public shall be held on a legal holiday unless the regular meeting day falls on that holiday. A person shall not be excluded from a meeting otherwise open to the public except for a breach of the peace actually committed at the meeting.

A quorum of members of a public body must be physically present at the location of an open meeting. If, however, an open meeting of a public body (except one with jurisdiction limited to a specific geographic area that is less than statewide) is held simultaneously at one of its offices and one or more other locations in a public building, which may include other of its offices, through an interactive video conference and the public body provides public notice and public access as required under this Act for all locations, then members physically present in those locations all count towards determining a quorum. "Public building", as used in this Section, means any building or portion thereof owned or leased by any public body. The requirement that a quorum be physically present at the location of an open meeting shall not apply, however, to State advisory boards or bodies that do not have authority to make binding recommendations or determinations or to take any other substantive action.

A quorum of members of a public body that is not a public body with statewide jurisdiction must be physically present at the location of a closed meeting. Other members who are not physically present at a closed meeting of such a public body may participate in the meeting by means of a video or audio conference.

5 ILCS 120/2.02

Sec. 2.02. Public notice of all meetings, whether open or closed to the public, shall be given as follows:

(a) Every public body shall give public notice of the schedule of regular meetings at the beginning of each calendar or fiscal year and shall state the regular dates, times, and places of such meetings. An agenda for each regular meeting shall be posted at the principal office of the public body and at the location where the meeting is to be held at least 48 hours in advance of the holding of the meeting. A public body that has a website that the full-time staff of the public body maintains shall also post on its website the agenda of any regular meetings of the governing body of that public body. Any agenda of a regular meeting that is posted on a public body's website shall remain posted on the website until the regular meeting is concluded. The requirement of a regular meeting agenda shall not preclude the consideration of items not specifically set forth in the agenda. Public notice of any special meeting except a meeting held in the event of a bona fide emergency, or of any rescheduled regular meeting, or of any reconvened meeting, shall be given at least 48 hours before such meeting, which notice shall also include the agenda for the special, rescheduled, or reconvened meeting, but the validity of any action taken by the public body which is germane to a subject on the agenda shall not be affected by other errors or omissions in the agenda. The requirement of public notice of reconvened meetings does not apply to any case where the meeting was open to the public and (1) it is to be reconvened within 24 hours, or (2) an announcement of the time and place of the reconvened meeting was made at the original meeting and there is no change in the agenda. Notice of an emergency meeting shall be given as soon as practicable, but in any event prior to the holding of such meeting, to any news medium which has filed an annual request for notice under subsection (b) of this Section.

(b) Agendas for all regular, special, rescheduled or reconvened meetings must include sufficient detail to reasonably inform the public regarding what matters shall be discussed and what actions shall be taken.

(bc) Public notice shall be given by posting a copy of the notice 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. At least one copy of the notice must be posted outside the building so that members of the public have access to the notice if the office or building is closed. In addition, a public body that has a website that the full-time staff of the public body maintains shall post notice on its website of all meetings of the governing body of the public body. Any notice of an annual schedule of meetings shall remain on the website until a new public notice of the schedule of regular meetings is approved. Any notice of a regular meeting that is posted on a public body's website shall remain posted on the website until the regular meeting is concluded. The body shall supply copies of the notice of its regular meetings, and of the notice of any special, emergency, rescheduled or reconvened meeting, to any news medium that has filed an annual request for such notice. Any such news medium shall also be given the same notice of all special, emergency,

rescheduled or reconvened meetings in the same manner as is given to members of the body provided such news medium has given the public body an address or telephone number within the territorial jurisdiction of the public body at which such notice may be given. The failure of a public body to post on its website notice of any meeting or the agenda of any meeting shall not invalidate any meeting or any actions taken at a meeting.

5 ILCS 120/2.03

Sec. 2.03. In addition to the notice required by Section 2.02, each body subject to this Act must, at the beginning of each calendar or fiscal year, prepare and make available a schedule of all its regular meetings for such calendar or fiscal year, listing the times and places of such meetings.

If a change is made in regular meeting dates, at least 10 days' notice of such change shall be given by publication in a newspaper of general circulation in the area in which such body functions. However, in the case of bodies of local governmental units with a population of less than 500 in which no newspaper is published, such 10 days' notice may be given by posting a notice of such change in at least 3 prominent places within the governmental unit. Notice of such change shall also be posted at the principal office of the public body or, if no such office exists, at the building in which the meeting is to be held. Notice of such change shall also be supplied to those news media which have filed an annual request for notice as provided in paragraph (b) of Section 2.02.

5 ILCS 120/2.04

Sec. 2.04. The notice requirements of this Act are in addition to, and not in substitution of, any other notice required by law. Failure of any news medium to receive a notice provided for by this Act shall not invalidate any meeting provided notice was in fact given in accordance with this Act.

5 ILCS 120/2.05

Sec. 2.05. Recording meetings. Subject to the provisions of Section 8-701 of the Code of Civil Procedure, any person may record the proceedings at meetings required to be open by this Act by tape, film or other means. The authority holding the meeting shall prescribe reasonable rules to govern the right to make such recordings. and shall adopt these rules by law and make available copies of these rules at each meeting to any interested persons. The authority holding the meeting must allow any person to use the electrical outlet for taping and/or filming purposes within fifteen minutes prior to the start of the meeting, during the meeting and for fifteen minutes after the meeting to record the proceedings, may not charge any cost for the use of the outlet and may not require that the individual using the outlet physically attend the meeting to tape and/or film the meeting.

If a witness at any meeting required to be open by this Act which is conducted by a commission, administrative agency or other tribunal, refuses to testify on the grounds that

he may not be compelled to testify if any portion of his testimony is to be broadcast or televised or if motion pictures are to be taken of him while he is testifying, the authority holding the meeting shall prohibit such recording during the testimony of the witness. Nothing in this Section shall be construed to extend the right to refuse to testify at any meeting not subject to the provisions of Section 8-701 of the Code of Civil Procedure.

5 ILCS 120/2.06

Sec. 2.06. (a) All public bodies shall keep written minutes of all their meetings, whether open or closed, and a verbatim record of all their closed meetings in the form of an audio or video recording. Minutes shall include, but need not be limited to:

(1) the date, time and place of the meeting;

(2) the members of the public body recorded as either present or absent and whether the members were physically present or present by means of video or audio conference; and

(3) a detailed summary of discussion on all matters proposed, deliberated, or decided, and a record of any votes taken.

(b) A public body shall make proposed minutes available for public inspection within 8 business days after the meeting to which the minutes refer. The public body shall make approved minutes available for public inspection within 5 business days after the meeting at which the minutes are approved by the public body. The minutes of meetings open to the public shall be available for public inspection within 7 days of the approval of such minutes by the public body. Beginning July 1, 2006, at the time it complies with the other requirements of this subsection, a public body that has a website that the full-time staff of the public body maintains shall post the minutes of a regular meeting of its governing body open to the public on the public body's website within 7 days of the approval of the minutes by the public body. Beginning July 1, 2006, any minutes of meetings open to the public posted on the public body's website shall remain posted on the website for at least 60 days after their initial posting.

(c) The verbatim record shall be preserved for two years, subject to the following conditions. If an action is brought claiming that public business not covered by a closed meeting exemption was transacted at a closed meeting held pursuant to this Act during the time when the tape is not available to the public, the court shall review the recording of the meeting in camera. If the court finds that this Act was not violated, the action shall be dismissed and the recording shall be sealed and preserved in the records of the court until otherwise made available to the public pursuant to this Act. If the court finds that this section was violated, the recording may be introduced at trial in its entirety subject to any protective orders as requested by either party and deemed appropriate by the court. The verbatim record may be destroyed without notification to or the approval of a records commission or the State Archivist under the Local Records Act or the State Records Act no less than 18 months after the completion of the meeting recorded but only after:

~~(1) the public body approves the destruction of a particular recording; and~~

~~(2) the public body approves minutes of the closed meeting that meet the written minutes requirements of subsection (a) of this Section.~~

(d) Each public body shall ~~periodically, but no less than semi-annually,~~ meet on no less than a monthly basis to review minutes of all closed meetings. At such meetings a determination shall be made, and reported in an open session that (1) the need for confidentiality still exists as to all or part of those minutes or (2) that the minutes or portions thereof no longer require confidential treatment and are available for public inspection. The failure of a public body to strictly comply with the semi-annual review of closed session written minutes, whether before or after the effective date of this amendatory Act of the 94th General Assembly, shall not cause the written minutes or related verbatim record to become public or available for inspection in any judicial proceeding, other than a proceeding involving an alleged violation of this Act, if the public body, within 60 days of discovering its failure to strictly comply with the technical requirements of this subsection, reviews the closed session minutes and determines and thereafter reports in open session that either (1) the need for confidentiality still exists as to all or part of the minutes or verbatim record, or (2) that the minutes or recordings or portions thereof no longer require confidential treatment and are available for public inspection.

(e) Unless the public body has made a determination that the verbatim recording no longer requires confidential treatment or otherwise consents to disclosure, the verbatim record of a meeting closed to the public shall not be open for public inspection or subject to discovery in any administrative or judicial proceeding other than one brought to enforce this Act. In the case of a civil action brought to enforce this Act, the court, if the judge believes such an examination is necessary, must conduct such in camera examination of the verbatim record as it finds appropriate in order to determine whether there has been a violation of this Act. In the case of a criminal proceeding, the court may conduct an examination in order to determine what portions, if any, must be made available to the parties for use as evidence in the prosecution. Any such initial inspection must be held in camera. If the court determines that a complaint or suit brought for noncompliance under this Act is valid it may, for the purposes of discovery, redact from the minutes of the meeting closed to the public any information deemed to qualify under the attorney-client privilege. The provisions of this subsection do not supersede the privacy or confidentiality provisions of State or federal law.

(f) Minutes of meetings closed to the public shall be available only after the public body determines that it is no longer necessary to protect the public interest or the privacy of an individual by keeping them confidential.

5 ILCS 120/2a

Sec. 2a. A public body may hold a meeting closed to the public, or close a portion of a meeting to the public, upon a majority vote of a quorum present, taken at a meeting open to the public for which notice has been given as required by this Act. A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, provided each meeting in such series involves the same particular matters and is scheduled to be held within no more than 3 months of the vote. The vote of each member on the question of holding a meeting closed to the public and a citation to the specific exception contained in Section 2 of this Act which authorizes the closing of the meeting to the public shall be publicly disclosed at the time of the vote and shall be recorded and entered into the minutes of the meeting. Nothing in this Section or this Act shall be construed to require that any meeting be closed to the public.

At any open meeting of a public body for which proper notice under this Act has been given, the body may, without additional notice under Section 2.02, hold a closed meeting in accordance with this Act. Only topics specified in the vote to close under this Section may be considered during the closed meeting.

5 ILCS 120/2b

Sec. 2b. (Repealed).

5 ILCS 120/3

Sec. 3. (a) Where the provisions of this Act are not complied with, or where there is probable cause to believe that the provisions of this Act will not be complied with, any person, including the State's Attorney of the county in which such noncompliance may occur or the State Attorney General's office, may bring a civil action in the circuit court for the judicial circuit in which the alleged noncompliance has occurred or is about to occur, or in which the affected public body has its principal office, prior to or within ~~60~~ 120 days of the meeting alleged to be in violation of this Act or, if facts concerning the meeting are not discovered within the ~~6120~~-day period, within ~~6120~~ days of the discovery of a violation by the State's Attorney by any person.

(b) In deciding such a case the court may examine in camera any portion of the minutes of a meeting at which a violation of the Act is alleged to have occurred, and may take such additional evidence as it deems necessary.

(c) The court, having due regard for orderly administration and the public interest, as well as for the interests of the parties, may grant such relief as it deems appropriate, including granting a relief by mandamus requiring that a meeting be open to the public, granting an injunction against future violations of this Act, ordering the public body to make available to the public such portion of the minutes of a meeting as is not authorized to be kept confidential under this Act, or declaring null and void any final action taken at a closed meeting in violation of this Act.

(d) Any person who intentionally violates this Act shall be subject to personal liability in the form of a civil penalty in an amount not to exceed \$1,000 for a single occurrence, which may not be paid by the public body.

(e) If a person has been found to have intentionally violated this Act in three or more actions brought under this Act involving the same governing body, such person shall forfeit any further right to serve on such governing body or in any other capacity with such public body for a period of time equal to the term of office such person was then serving. The court determining the merits of any action in connection with any alleged third violation shall receive competent, relevant evidence in connection therewith and, upon finding as to the occurrence of a separate third violation, unrelated to the previous violations, issue its order declaring the position vacant and notify the appointing authority or clerk of the governing body. As soon as practicable thereafter, the appointing authority or the governing body shall fill the position as in the case of any other vacancy.

(f) The court may assess against any party, ~~except a State's Attorney,~~ reasonable Attorney's fees and other litigation costs reasonably incurred by any other party who substantially prevails in an action brought in accordance with this Section regardless of whether the plaintiff was represented by an attorney or represented himself or herself, provided that costs may be assessed against any private party or parties bringing an action pursuant to this Section only upon the court's determination that the action is malicious or frivolous in nature. Attorneys' fees or costs awarded to a State's Attorney shall be provided to the county where the State's Attorney's office is based. Attorneys' fees or costs awarded to the Attorney General shall be provided to the state.

5 ILCS 120/4

Sec. 4. Criminal charges may be brought under this Act by the State's Attorney or the State Attorney General's office. Any person violating any of the provisions of this Act shall be guilty of a Class C misdemeanor.

5 ILCS 120/5

Sec. 5. If any provision of this Act, or the application of this Act to any particular meeting or type of meeting is held invalid or unconstitutional, such decision shall not affect the validity of the remaining provisions or the other applications of this Act.

5 ILCS 120/6

Sec. 6. The provisions of this Act constitute minimum requirements for home rule units; any home rule unit may enact an ordinance prescribing more stringent requirements binding upon itself which would serve to give further notice to the public and facilitate public access to meetings.

5 ILCS 120/6.5

Sec. 6.5. Effective January 1, 2010, the legislative branch of the state government shall create an independent regulatory body in the office of the State Attorney General with the power and authority to enforce this Act.

5 ILCS 120/6.7

Sec. 6.7. (a) The Public Access Counselor of the Office of the Attorney General serves the following purposes: offering education and training programs to government officials, the public and the media; answering questions concerning this Act; working to resolve disputes under this Act; and working to ensure compliance with the Act.

(b) In furtherance of those purposes, the Public Access Counselor may, at the Counselor's discretion, issue opinions regarding a public body's compliance with the Act.

(c) If there is a proceeding under Sections 3 or 4 of this Act and the Public Access Counselor has previously issued an opinion requiring specific action but the public body refuses to comply within a reasonable time, upon motion of the plaintiff the court may consider the public body's refusal willful and act in accordance with Sections 3 or 4 of this Act.

5 ILCS 120/7

Sec. 7. Attendance by a means other than physical presence.

(a) If a quorum of the members of the public body is physically present as required by Section 2.01, a majority of the public body may allow a member of that body to attend the meeting by other means if the member is prevented from physically attending because of: (i) personal illness or disability; (ii) employment purposes or the business of the public body; or (iii) a family or other emergency. "Other means" is by video or audio conference.

(b) If a member wishes to attend a meeting by other means, the member must notify the recording secretary or clerk of the public body before the meeting unless advance notice is impractical.

(c) A majority of the public body may allow a member to attend a meeting by other means only in accordance with and to the extent allowed by rules adopted by the public body. The rules must conform to the requirements and restrictions of this Section, may further limit the extent to which attendance by other means is allowed, and may provide for the giving of additional notice to the public or further facilitate public access to meetings.

(d) The limitations of this Section shall not apply to (i) closed meetings of public bodies with statewide jurisdiction or (ii) open or closed meetings of State advisory boards or bodies that do not have authority to make binding recommendations or determinations or to take any other substantive action. State advisory boards or bodies and public bodies

with statewide jurisdiction, however, may permit members to attend meetings by other means only in accordance with and to the extent allowed by specific procedural rules adopted by the body.