

SB3774



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

SB3774

Introduced 2/9/2024, by Sen. Ram Villivalam

SYNOPSIS AS INTRODUCED:

5 ILCS 120/2
5 ILCS 120/2.06

from Ch. 102, par. 42
from Ch. 102, par. 42.06

Amends the Open Meetings Act. Provides that a public body may hold a closed session to consider the minutes (instead of discussion of minutes) of meetings lawfully closed under the Act, whether for purposes of approval by the body of the minutes or semi-annual review of the minutes, and, notwithstanding the requirement of the Act that no final action may be taken at a closed meeting, the final approval of minutes in closed session. In provisions concerning the semi-annual review of minutes of a closed session, provides that the public body may may approve any closed session minutes taken since the last meeting to fully satisfy the requirement to approve closed session minutes at a public meeting.

LRB103 37235 MXP 67354 b

A BILL FOR

1 AN ACT concerning government.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Open Meetings Act is amended by changing
5 Sections 2 and 2.06 as follows:

6 (5 ILCS 120/2) (from Ch. 102, par. 42)

7 Sec. 2. Open meetings.

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

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

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

20 (1) The appointment, employment, compensation,
21 discipline, performance, or dismissal of specific
22 employees, specific individuals who serve as independent
23 contractors in a park, recreational, or educational

1 setting, or specific volunteers of the public body or
2 legal counsel for the public body, including hearing
3 testimony on a complaint lodged against an employee, a
4 specific individual who serves as an independent
5 contractor in a park, recreational, or educational
6 setting, or a volunteer of the public body or against
7 legal counsel for the public body to determine its
8 validity. However, a meeting to consider an increase in
9 compensation to a specific employee of a public body that
10 is subject to the Local Government Wage Increase
11 Transparency Act may not be closed and shall be open to the
12 public and posted and held in accordance with this Act.

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

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

24 (4) Evidence or testimony presented in open hearing,
25 or in closed hearing where specifically authorized by law,
26 to a quasi-adjudicative body, as defined in this Act,

1 provided that the body prepares and makes available for
2 public inspection a written decision setting forth its
3 determinative reasoning.

4 (4.5) Evidence or testimony presented to a school
5 board regarding denial of admission to school events or
6 property pursuant to Section 24-24 of the School Code,
7 provided that the school board prepares and makes
8 available for public inspection a written decision setting
9 forth its determinative reasoning.

10 (5) The purchase or lease of real property for the use
11 of the public body, including meetings held for the
12 purpose of discussing whether a particular parcel should
13 be acquired.

14 (6) The setting of a price for sale or lease of
15 property owned by the public body.

16 (7) The sale or purchase of securities, investments,
17 or investment contracts. This exception shall not apply to
18 the investment of assets or income of funds deposited into
19 the Illinois Prepaid Tuition Trust Fund.

20 (8) Security procedures, school building safety and
21 security, and the use of personnel and equipment to
22 respond to an actual, a threatened, or a reasonably
23 potential danger to the safety of employees, students,
24 staff, the public, or public property.

25 (9) Student disciplinary cases.

26 (10) The placement of individual students in special

1 education programs and other matters relating to
2 individual students.

3 (11) Litigation, when an action against, affecting or
4 on behalf of the particular public body has been filed and
5 is pending before a court or administrative tribunal, or
6 when the public body finds that an action is probable or
7 imminent, in which case the basis for the finding shall be
8 recorded and entered into the minutes of the closed
9 meeting.

10 (12) The establishment of reserves or settlement of
11 claims as provided in the Local Governmental and
12 Governmental Employees Tort Immunity Act, if otherwise the
13 disposition of a claim or potential claim might be
14 prejudiced, or the review or discussion of claims, loss or
15 risk management information, records, data, advice or
16 communications from or with respect to any insurer of the
17 public body or any intergovernmental risk management
18 association or self insurance pool of which the public
19 body is a member.

20 (13) Conciliation of complaints of discrimination in
21 the sale or rental of housing, when closed meetings are
22 authorized by the law or ordinance prescribing fair
23 housing practices and creating a commission or
24 administrative agency for their enforcement.

25 (14) Informant sources, the hiring or assignment of
26 undercover personnel or equipment, or ongoing, prior or

1 future criminal investigations, when discussed by a public
2 body with criminal investigatory responsibilities.

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

7 (16) Self evaluation, practices and procedures or
8 professional ethics, when meeting with a representative of
9 a statewide association of which the public body is a
10 member.

11 (17) The recruitment, credentialing, discipline or
12 formal peer review of physicians or other health care
13 professionals, or for the discussion of matters protected
14 under the federal Patient Safety and Quality Improvement
15 Act of 2005, and the regulations promulgated thereunder,
16 including 42 C.F.R. Part 3 (73 FR 70732), or the federal
17 Health Insurance Portability and Accountability Act of
18 1996, and the regulations promulgated thereunder,
19 including 45 C.F.R. Parts 160, 162, and 164, by a
20 hospital, or other institution providing medical care,
21 that is operated by the public body.

22 (18) Deliberations for decisions of the Prisoner
23 Review Board.

24 (19) Review or discussion of applications received
25 under the Experimental Organ Transplantation Procedures
26 Act.

1 (20) The classification and discussion of matters
2 classified as confidential or continued confidential by
3 the State Government Suggestion Award Board.

4 (21) The Discussion of minutes of meetings lawfully
5 closed under this Act, whether for purposes of approval by
6 the body of the minutes or semi-annual review of the
7 minutes as mandated by Section 2.06, and notwithstanding
8 subsection (e) of this Section, final approval of minutes
9 in closed session.

10 (22) Deliberations for decisions of the State
11 Emergency Medical Services Disciplinary Review Board.

12 (23) The operation by a municipality of a municipal
13 utility or the operation of a municipal power agency or
14 municipal natural gas agency when the discussion involves
15 (i) contracts relating to the purchase, sale, or delivery
16 of electricity or natural gas or (ii) the results or
17 conclusions of load forecast studies.

18 (24) Meetings of a residential health care facility
19 resident sexual assault and death review team or the
20 Executive Council under the Abuse Prevention Review Team
21 Act.

22 (25) Meetings of an independent team of experts under
23 Brian's Law.

24 (26) Meetings of a mortality review team appointed
25 under the Department of Juvenile Justice Mortality Review
26 Team Act.

1 (27) (Blank).

2 (28) Correspondence and records (i) that may not be
3 disclosed under Section 11-9 of the Illinois Public Aid
4 Code or (ii) that pertain to appeals under Section 11-8 of
5 the Illinois Public Aid Code.

6 (29) Meetings between internal or external auditors
7 and governmental audit committees, finance committees, and
8 their equivalents, when the discussion involves internal
9 control weaknesses, identification of potential fraud risk
10 areas, known or suspected frauds, and fraud interviews
11 conducted in accordance with generally accepted auditing
12 standards of the United States of America.

13 (30) Those meetings or portions of meetings of a
14 fatality review team or the Illinois Fatality Review Team
15 Advisory Council during which a review of the death of an
16 eligible adult in which abuse or neglect is suspected,
17 alleged, or substantiated is conducted pursuant to Section
18 15 of the Adult Protective Services Act.

19 (31) Meetings and deliberations for decisions of the
20 Concealed Carry Licensing Review Board under the Firearm
21 Concealed Carry Act.

22 (32) Meetings between the Regional Transportation
23 Authority Board and its Service Boards when the discussion
24 involves review by the Regional Transportation Authority
25 Board of employment contracts under Section 28d of the
26 Metropolitan Transit Authority Act and Sections 3A.18 and

1 3B.26 of the Regional Transportation Authority Act.

2 (33) Those meetings or portions of meetings of the
3 advisory committee and peer review subcommittee created
4 under Section 320 of the Illinois Controlled Substances
5 Act during which specific controlled substance prescriber,
6 dispenser, or patient information is discussed.

7 (34) Meetings of the Tax Increment Financing Reform
8 Task Force under Section 2505-800 of the Department of
9 Revenue Law of the Civil Administrative Code of Illinois.

10 (35) Meetings of the group established to discuss
11 Medicaid capitation rates under Section 5-30.8 of the
12 Illinois Public Aid Code.

13 (36) Those deliberations or portions of deliberations
14 for decisions of the Illinois Gaming Board in which there
15 is discussed any of the following: (i) personal,
16 commercial, financial, or other information obtained from
17 any source that is privileged, proprietary, confidential,
18 or a trade secret; or (ii) information specifically
19 exempted from the disclosure by federal or State law.

20 (37) Deliberations for decisions of the Illinois Law
21 Enforcement Training Standards Board, the Certification
22 Review Panel, and the Illinois State Police Merit Board
23 regarding certification and decertification.

24 (38) Meetings of the Ad Hoc Statewide Domestic
25 Violence Fatality Review Committee of the Illinois
26 Criminal Justice Information Authority Board that occur in

1 closed executive session under subsection (d) of Section
2 35 of the Domestic Violence Fatality Review Act.

3 (39) Meetings of the regional review teams under
4 subsection (a) of Section 75 of the Domestic Violence
5 Fatality Review Act.

6 (40) Meetings of the Firearm Owner's Identification
7 Card Review Board under Section 10 of the Firearm Owners
8 Identification Card Act.

9 (d) Definitions. For purposes of this Section:

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

14 "Public office" means a position created by or under the
15 Constitution or laws of this State, the occupant of which is
16 charged with the exercise of some portion of the sovereign
17 power of this State. The term "public office" shall include
18 members of the public body, but it shall not include
19 organizational positions filled by members thereof, whether
20 established by law or by a public body itself, that exist to
21 assist the body in the conduct of its business.

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

1 challenges.

2 (e) Final action. No final action may be taken at a closed
3 meeting. Final action shall be preceded by a public recital of
4 the nature of the matter being considered and other
5 information that will inform the public of the business being
6 conducted.

7 (Source: P.A. 102-237, eff. 1-1-22; 102-520, eff. 8-20-21;
8 102-558, eff. 8-20-21; 102-813, eff. 5-13-22; 103-311, eff.
9 7-28-23.)

10 (5 ILCS 120/2.06) (from Ch. 102, par. 42.06)

11 Sec. 2.06. Minutes; right to speak.

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

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

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

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

23 (b) A public body shall approve the minutes of its open
24 meeting within 30 days after that meeting or at the public
25 body's second subsequent regular meeting, whichever is later.

1 The minutes of meetings open to the public shall be available
2 for public inspection within 10 days after the approval of
3 such minutes by the public body. Beginning July 1, 2006, at the
4 time it complies with the other requirements of this
5 subsection, a public body that has a website that the
6 full-time staff of the public body maintains shall post the
7 minutes of a regular meeting of its governing body open to the
8 public on the public body's website within 10 days after the
9 approval of the minutes by the public body. Beginning July 1,
10 2006, any minutes of meetings open to the public posted on the
11 public body's website shall remain posted on the website for
12 at least 60 days after their initial posting.

13 (c) The verbatim record may be destroyed without
14 notification to or the approval of a records commission or the
15 State Archivist under the Local Records Act or the State
16 Records Act no less than 18 months after the completion of the
17 meeting recorded but only after:

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

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

23 (d) Each public body shall periodically meet to review
24 minutes of all closed meetings. Meetings to review minutes
25 shall occur every 6 months, or as soon thereafter as is
26 practicable, taking into account the nature and meeting

1 schedule of the public body. Committees which are ad hoc in
2 nature shall review closed session minutes at the later of (1)
3 6 months from the date of the last review of closed session
4 minutes or (2) at the next scheduled meeting of the ad hoc
5 committee. At such meetings a determination shall be made, and
6 reported in an open session that (1) the need for
7 confidentiality still exists as to all or part of those
8 minutes or (2) that the minutes or portions thereof no longer
9 require confidential treatment and are available for public
10 inspection. The failure of a public body to strictly comply
11 with the semi-annual review of closed session written minutes,
12 whether before or after the effective date of this amendatory
13 Act of the 94th General Assembly, shall not cause the written
14 minutes or related verbatim record to become public or
15 available for inspection in any judicial proceeding, other
16 than a proceeding involving an alleged violation of this Act,
17 if the public body, within 60 days of discovering its failure
18 to strictly comply with the technical requirements of this
19 subsection, reviews the closed session minutes and determines
20 and thereafter reports in open session that either (1) the
21 need for confidentiality still exists as to all or part of the
22 minutes or verbatim record, or (2) that the minutes or
23 recordings or portions thereof no longer require confidential
24 treatment and are available for public inspection. The public
25 body may approve any closed session minutes taken since the
26 previous meeting under this subsection to fully satisfy the

1 requirement to approve closed session minutes at a public
2 meeting.

3 (e) Unless the public body has made a determination that
4 the verbatim recording no longer requires confidential
5 treatment or otherwise consents to disclosure, the verbatim
6 record of a meeting closed to the public shall not be open for
7 public inspection or subject to discovery in any
8 administrative or judicial proceeding other than one brought
9 to enforce this Act. In the case of a civil action brought to
10 enforce this Act, the court, if the judge believes such an
11 examination is necessary, must conduct such in camera
12 examination of the verbatim record as it finds appropriate in
13 order to determine whether there has been a violation of this
14 Act. In the case of a criminal proceeding, the court may
15 conduct an examination in order to determine what portions, if
16 any, must be made available to the parties for use as evidence
17 in the prosecution. Any such initial inspection must be held
18 in camera. If the court determines that a complaint or suit
19 brought for noncompliance under this Act is valid it may, for
20 the purposes of discovery, redact from the minutes of the
21 meeting closed to the public any information deemed to qualify
22 under the attorney-client privilege. The provisions of this
23 subsection do not supersede the privacy or confidentiality
24 provisions of State or federal law. Access to verbatim
25 recordings shall be provided to duly elected officials or
26 appointed officials filling a vacancy of an elected office in

1 a public body, and access shall be granted in the public body's
2 main office or official storage location, in the presence of a
3 records secretary, an administrative official of the public
4 body, or any elected official of the public body. No verbatim
5 recordings shall be recorded or removed from the public body's
6 main office or official storage location, except by vote of
7 the public body or by court order. Nothing in this subsection
8 (e) is intended to limit the Public Access Counselor's access
9 to those records necessary to address a request for
10 administrative review under Section 7.5 of this Act.

11 (f) Minutes of meetings closed to the public shall be
12 available only after the public body determines that it is no
13 longer necessary to protect the public interest or the privacy
14 of an individual by keeping them confidential, except that
15 duly elected officials or appointed officials filling a
16 vacancy of an elected office in a public body shall be provided
17 access to minutes of meetings closed to the public. Access to
18 minutes shall be granted in the public body's main office or
19 official storage location, in the presence of a records
20 secretary, an administrative official of the public body, or
21 any elected official of the public body. No minutes of
22 meetings closed to the public shall be removed from the public
23 body's main office or official storage location, except by
24 vote of the public body or by court order. Nothing in this
25 subsection (f) is intended to limit the Public Access
26 Counselor's access to those records necessary to address a

1 request for administrative review under Section 7.5 of this
2 Act.

3 (g) Any person shall be permitted an opportunity to
4 address public officials under the rules established and
5 recorded by the public body.

6 (h) When a public body is dissolved, disbanded,
7 eliminated, or consolidated by executive action, legislative
8 action, or referendum, and its functions and responsibilities
9 are assumed by a unit of local government, the unit of local
10 government which assumes the functions of the prior public
11 body shall review the closed session minutes of that public
12 body pursuant to subsection (d).

13 (Source: P.A. 102-653, eff. 1-1-22.)