



Rep. Dwight Kay

Filed: 4/15/2016

09900HB6147ham001

LRB099 20498 RJF 47693 a

1 AMENDMENT TO HOUSE BILL 6147

2 AMENDMENT NO. _____. Amend House Bill 6147 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Open Meetings Act is amended by changing
5 Sections 2.01, 3, and 3.5 as follows:

6 (5 ILCS 120/2.01) (from Ch. 102, par. 42.01)

7 Sec. 2.01. All meetings required by this Act to be public
8 shall be held at specified times and places which are
9 convenient and open to the public. No meeting required by this
10 Act to be public shall be held on a legal holiday unless the
11 regular meeting day falls on that holiday.

12 A quorum of members of a public body must be physically
13 present at the location of an open meeting. If, however, an
14 open meeting of a public body (i) with statewide jurisdiction,
15 (ii) that is an Illinois library system with jurisdiction over
16 a specific geographic area of more than 4,500 square miles,

1 (iii) that is a municipal transit district with jurisdiction
2 over a specific geographic area of more than 4,500 square
3 miles, or (iv) that is a local workforce investment area with
4 jurisdiction over a specific geographic area of more than 4,500
5 square miles is held simultaneously at one of its offices and
6 one or more other locations in a public building, which may
7 include other of its offices, through an interactive video
8 conference and the public body provides public notice and
9 public access as required under this Act for all locations,
10 then members physically present in those locations all count
11 towards determining a quorum. "Public building", as used in
12 this Section, means any building or portion thereof owned or
13 leased by any public body. The requirement that a quorum be
14 physically present at the location of an open meeting shall not
15 apply, however, to State advisory boards or bodies that do not
16 have authority to make binding recommendations or
17 determinations or to take any other substantive action.

18 A quorum of members of a public body that is not (i) a
19 public body with statewide jurisdiction, (ii) an Illinois
20 library system with jurisdiction over a specific geographic
21 area of more than 4,500 square miles, (iii) a municipal transit
22 district with jurisdiction over a specific geographic area of
23 more than 4,500 square miles, or (iv) a local workforce
24 investment area with jurisdiction over a specific geographic
25 area of more than 4,500 square miles must be physically present
26 at the location of a closed meeting. Other members who are not

1 physically present at a closed meeting of such a public body
2 may participate in the meeting by means of a video or audio
3 conference. For the purposes of this Section, "local workforce
4 investment area" means any local workforce investment area or
5 areas designated by the Governor pursuant to the federal
6 Workforce Investment Act of 1998 or its reauthorizing
7 legislation.

8 No public body may refuse to allow any of its members to
9 attend any open or closed meeting of the public body. However,
10 a public body may exclude a member or members from attending a
11 closed meeting when the public body determines that the member
12 or members have a conflict of interest.

13 (Source: P.A. 98-992, eff. 8-18-14.)

14 (5 ILCS 120/3) (from Ch. 102, par. 43)

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

1 violation by the State's Attorney.

2 Records that are obtained by a State's Attorney from a
3 public body for purposes of reviewing whether the public body
4 has complied with this Act may not be disclosed to the public.
5 Those records, while in the possession of the State's Attorney,
6 are exempt from disclosure under the Freedom of Information
7 Act.

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

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

22 (d) The court shall ~~may~~ assess against any party, except a
23 State's Attorney, reasonable attorney's fees and other
24 litigation costs reasonably incurred by any other party who
25 substantially prevails in any action brought in accordance with
26 this Section, provided that costs may be assessed against any

1 private party or parties bringing an action pursuant to this
2 Section only upon the court's determination that the action is
3 malicious or frivolous in nature.

4 (Source: P.A. 96-542, eff. 1-1-10.)

5 (5 ILCS 120/3.5)

6 Sec. 3.5. Public Access Counselor; opinions.

7 (a) A person who believes that a violation of this Act by a
8 public body has occurred may file a request for review with the
9 Public Access Counselor established in the Office of the
10 Attorney General not later than 60 days after the alleged
11 violation. If facts concerning the violation are not discovered
12 within the 60-day period, but are discovered at a later date,
13 not exceeding 2 years after the alleged violation, by a person
14 utilizing reasonable diligence, the request for review may be
15 made within 60 days of the discovery of the alleged violation.
16 The request for review must be in writing, must be signed by
17 the requester, and must include a summary of the facts
18 supporting the allegation. The changes made by Public Act
19 99-402 ~~this amendatory Act of the 99th General Assembly~~ apply
20 to violations alleged to have occurred at meetings held on or
21 after August 19, 2015 (the effective date of Public Act 99-402)
22 ~~this amendatory Act of the 99th General Assembly~~.

23 (b) Upon receipt of a request for review, the Public Access
24 Counselor shall determine whether further action is warranted.
25 If the Public Access Counselor determines from the request for

1 review that the alleged violation is unfounded, he or she shall
2 so advise the requester and the public body and no further
3 action shall be undertaken. In all other cases, the Public
4 Access Counselor shall forward a copy of the request for review
5 to the public body within 7 working days. The Public Access
6 Counselor shall specify the records or other documents that the
7 public body shall furnish to facilitate the review. Within 7
8 working days after receipt of the request for review, the
9 public body shall provide copies of the records requested and
10 shall otherwise fully cooperate with the Public Access
11 Counselor. If a public body fails to furnish specified records
12 pursuant to this Section, or if otherwise necessary, the
13 Attorney General may issue a subpoena to any person or public
14 body having knowledge of or records pertaining to an alleged
15 violation of this Act. For purposes of conducting a thorough
16 review, the Public Access Counselor has the same right to
17 examine a verbatim recording of a meeting closed to the public
18 or the minutes of a closed meeting as does a court in a civil
19 action brought to enforce this Act.

20 (c) Within 7 working days after it receives a copy of a
21 request for review and request for production of records from
22 the Public Access Counselor, the public body may, but is not
23 required to, answer the allegations of the request for review.
24 The answer may take the form of a letter, brief, or memorandum.
25 Upon request, the public body may also furnish the Public
26 Access Counselor with a redacted copy of the answer excluding

1 specific references to any matters at issue. The Public Access
2 Counselor shall forward a copy of the answer or redacted
3 answer, if furnished, to the person submitting the request for
4 review. The requester may, but is not required to, respond in
5 writing to the answer within 7 working days and shall provide a
6 copy of the response to the public body.

7 (d) In addition to the request for review, and the answer
8 and the response thereto, if any, a requester or a public body
9 may furnish affidavits and records concerning any matter
10 germane to the review.

11 (e) Unless the Public Access Counselor extends the time by
12 no more than 21 business days by sending written notice to the
13 requester and public body that includes a statement of the
14 reasons for the extension in the notice, or decides to address
15 the matter without the issuance of a binding opinion, the
16 Attorney General shall examine the issues and the records,
17 shall make findings of fact and conclusions of law, and shall
18 issue to the requester and the public body an opinion within 20
19 ~~60~~ days after initiating review. The opinion shall be binding
20 upon both the requester and the public body, subject to
21 administrative review under Section 7.5 of this Act.

22 In responding to any written request under this Section
23 3.5, the Attorney General may exercise his or her discretion
24 and choose to resolve a request for review by mediation or by a
25 means other than the issuance of a binding opinion. The
26 decision not to issue a binding opinion shall not be

1 reviewable.

2 Upon receipt of a binding opinion concluding that a
3 violation of this Act has occurred, the public body shall
4 either take necessary action as soon as practical to comply
5 with the directive of the opinion or shall initiate
6 administrative review under Section 7.5. If the opinion
7 concludes that no violation of the Act has occurred, the
8 requester may initiate administrative review under Section
9 7.5.

10 (f) If the requester files suit under Section 3 with
11 respect to the same alleged violation that is the subject of a
12 pending request for review, the requester shall notify the
13 Public Access Counselor, and the Public Access Counselor shall
14 take no further action with respect to the request for review
15 and shall so notify the public body.

16 (g) Records that are obtained by the Public Access
17 Counselor from a public body for purposes of addressing a
18 request for review under this Section 3.5 may not be disclosed
19 to the public, including the requester, by the Public Access
20 Counselor. Those records, while in the possession of the Public
21 Access Counselor, shall be exempt from disclosure by the Public
22 Access Counselor under the Freedom of Information Act.

23 (h) The Attorney General may also issue advisory opinions
24 to public bodies regarding compliance with this Act. A review
25 may be initiated upon receipt of a written request from the
26 head of the public body or its attorney. The request must

1 contain sufficient accurate facts from which a determination
2 can be made. The Public Access Counselor may request additional
3 information from the public body in order to facilitate the
4 review. A public body that relies in good faith on an advisory
5 opinion of the Attorney General in complying with the
6 requirements of this Act is not liable for penalties under this
7 Act, so long as the facts upon which the opinion is based have
8 been fully and fairly disclosed to the Public Access Counselor.
9 (Source: P.A. 99-402, eff. 8-19-15.)".