



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB3326

by Rep. Jeanne M Ives

SYNOPSIS AS INTRODUCED:

5 ILCS 120/2.06

from Ch. 102, par. 42.06

5 ILCS 120/3

from Ch. 102, par. 43

Amends the Open Meetings Act. Specifies that at each regular or special meeting which is open to the public, any person shall have the opportunity to address public officials with comments or questions, subject to reasonable constraints. Provides that any answers to questions asked during the open meeting shall be provided by the public body within 45 days. Provides that if a court determines that a public body willfully and intentionally failed to comply with the Act, or otherwise acted in bad faith, the court shall, in addition to any other relief authorized, also impose upon the public body a civil penalty of not less than \$2,500, but no more than \$5,000, for each violation. Provides that the court shall (currently, 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 prevails (currently, substantially prevails) in an action brought under the Act.

LRB100 10920 RJF 21157 b

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 2.06 and 3 as follows:

6 (5 ILCS 120/2.06) (from Ch. 102, par. 42.06)

7 Sec. 2.06. Minutes; right to speak.

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

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

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

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

19 (b) A public body shall approve the minutes of its open
20 meeting within 30 days after that meeting or at the public
21 body's second subsequent regular meeting, whichever is later.
22 The minutes of meetings open to the public shall be available
23 for public inspection within 10 days after the approval of such

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

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

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

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

21 (d) Each public body shall periodically, but no less than
22 semi-annually, meet to review minutes of all closed meetings.
23 At such meetings a determination shall be made, and reported in
24 an open session that (1) the need for confidentiality still
25 exists as to all or part of those minutes or (2) that the
26 minutes or portions thereof no longer require confidential

1 treatment and are available for public inspection. The failure
2 of a public body to strictly comply with the semi-annual review
3 of closed session written minutes, whether before or after the
4 effective date of this amendatory Act of the 94th General
5 Assembly, shall not cause the written minutes or related
6 verbatim record to become public or available for inspection in
7 any judicial proceeding, other than a proceeding involving an
8 alleged violation of this Act, if the public body, within 60
9 days of discovering its failure to strictly comply with the
10 technical requirements of this subsection, reviews the closed
11 session minutes and determines and thereafter reports in open
12 session that either (1) the need for confidentiality still
13 exists as to all or part of the minutes or verbatim record, or
14 (2) that the minutes or recordings or portions thereof no
15 longer require confidential treatment and are available for
16 public inspection.

17 (e) Unless the public body has made a determination that
18 the verbatim recording no longer requires confidential
19 treatment or otherwise consents to disclosure, the verbatim
20 record of a meeting closed to the public shall not be open for
21 public inspection or subject to discovery in any administrative
22 or judicial proceeding other than one brought to enforce this
23 Act. In the case of a civil action brought to enforce this Act,
24 the court, if the judge believes such an examination is
25 necessary, must conduct such in camera examination of the
26 verbatim record as it finds appropriate in order to determine

1 whether there has been a violation of this Act. In the case of
2 a criminal proceeding, the court may conduct an examination in
3 order to determine what portions, if any, must be made
4 available to the parties for use as evidence in the
5 prosecution. Any such initial inspection must be held in
6 camera. If the court determines that a complaint or suit
7 brought for noncompliance under this Act is valid it may, for
8 the purposes of discovery, redact from the minutes of the
9 meeting closed to the public any information deemed to qualify
10 under the attorney-client privilege. The provisions of this
11 subsection do not supersede the privacy or confidentiality
12 provisions of State or federal law. Access to verbatim
13 recordings shall be provided to duly elected officials or
14 appointed officials filling a vacancy of an elected office in a
15 public body, and access shall be granted in the public body's
16 main office or official storage location, in the presence of a
17 records secretary, an administrative official of the public
18 body, or any elected official of the public body. No verbatim
19 recordings shall be recorded or removed from the public body's
20 main office or official storage location, except by vote of the
21 public body or by court order. Nothing in this subsection (e)
22 is intended to limit the Public Access Counselor's access to
23 those records necessary to address a request for administrative
24 review under Section 7.5 of this Act.

25 (f) Minutes of meetings closed to the public shall be
26 available only after the public body determines that it is no

1 longer necessary to protect the public interest or the privacy
2 of an individual by keeping them confidential, except that duly
3 elected officials or appointed officials filling a vacancy of
4 an elected office in a public body shall be provided access to
5 minutes of meetings closed to the public. Access to minutes
6 shall be granted in the public body's main office or official
7 storage location, in the presence of a records secretary, an
8 administrative official of the public body, or any elected
9 official of the public body. No minutes of meetings closed to
10 the public shall be removed from the public body's main office
11 or official storage location, except by vote of the public body
12 or by court order. Nothing in this subsection (f) is intended
13 to limit the Public Access Counselor's access to those records
14 necessary to address a request for administrative review under
15 Section 7.5 of this Act.

16 (g) At each regular or special meeting which is open to the
17 public, any ~~Any~~ person shall be permitted an opportunity to
18 address public officials with comments or questions, subject to
19 reasonable constraints, under the rules established and
20 recorded by the public body. Answers to the questions asked
21 during the meeting shall be provided by the public body within
22 45 days.

23 (Source: P.A. 99-515, eff. 6-30-16.)

24 (5 ILCS 120/3) (from Ch. 102, par. 43)

25 Sec. 3. (a) Where the provisions of this Act are not

1 complied with, or where there is probable cause to believe that
2 the provisions of this Act will not be complied with, any
3 person, including the State's Attorney of the county in which
4 such noncompliance may occur, may bring a civil action in the
5 circuit court for the judicial circuit in which the alleged
6 noncompliance has occurred or is about to occur, or in which
7 the affected public body has its principal office, prior to or
8 within 60 days of the meeting alleged to be in violation of
9 this Act or, if facts concerning the meeting are not discovered
10 within the 60-day period, within 60 days of the discovery of a
11 violation by the State's Attorney or, if the person timely
12 files a request for review under Section 3.5, within 60 days of
13 the decision by the Attorney General to resolve a request for
14 review by a means other than the issuance of a binding opinion
15 under subsection (e) of Section 3.5.

16 Records that are obtained by a State's Attorney from a
17 public body for purposes of reviewing whether the public body
18 has complied with this Act may not be disclosed to the public.
19 Those records, while in the possession of the State's Attorney,
20 are exempt from disclosure under the Freedom of Information
21 Act.

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

26 (c) The court, having due regard for orderly administration

1 and the public interest, as well as for the interests of the
2 parties, may grant such relief as it deems appropriate,
3 including granting a relief by mandamus requiring that a
4 meeting be open to the public, granting an injunction against
5 future violations of this Act, ordering the public body to make
6 available to the public such portion of the minutes of a
7 meeting as is not authorized to be kept confidential under this
8 Act, or declaring null and void any final action taken at a
9 closed meeting in violation of this Act. If the court
10 determines that a public body willfully and intentionally
11 failed to comply with this Act, or otherwise acted in bad
12 faith, the court shall, in addition to any relief authorized
13 under this Section, also impose upon the public body a civil
14 penalty of not less than \$2,500, but no more than \$5,000, for
15 each violation.

16 (d) The court shall ~~may~~ assess against any party, except a
17 State's Attorney, reasonable attorney's fees and other
18 litigation costs reasonably incurred by any other party who
19 ~~substantially~~ prevails in any action brought in accordance with
20 this Section, provided that costs may be assessed against any
21 private party or parties bringing an action pursuant to this
22 Section only upon the court's determination that the action is
23 malicious or frivolous in nature.

24 (Source: P.A. 99-714, eff. 8-5-16.)