



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB2615

by Rep. Amy Grant

SYNOPSIS AS INTRODUCED:

5 ILCS 120/3
5 ILCS 140/11

from Ch. 102, par. 43
from Ch. 116, par. 211

Amends the Open Meetings Act and the Freedom of Information Act. Provides that "substantially prevails" and "prevails" mean: (1) the party obtains some of his or her requested relief through a judicial order in his or her favor or through any settlement agreement approved by the court; or (2) the pursuit of a nonfrivolous claim was a catalyst for a unilateral change in position by the opposing party relative to the relief sought.

LRB101 09710 HEP 54809 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 Section 3 as follows:

6 (5 ILCS 120/3) (from Ch. 102, par. 43)

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

23 Records that are obtained by a State's Attorney from a

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

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

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

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

1 malicious or frivolous in nature. As used in this Section,
2 "substantially prevails" means: (1) the party obtains some of
3 his or her requested relief through a judicial order in his or
4 her favor or through any settlement agreement approved by the
5 court; or (2) the pursuit of a nonfrivolous claim was a
6 catalyst for a unilateral change in position by the opposing
7 party relative to the relief sought.

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

9 Section 10. The Freedom of Information Act is amended by
10 changing Section 11 as follows:

11 (5 ILCS 140/11) (from Ch. 116, par. 211)

12 Sec. 11. (a) Any person denied access to inspect or copy
13 any public record by a public body may file suit for injunctive
14 or declaratory relief.

15 (a-5) In accordance with Section 11.6 of this Act, a
16 requester may file an action to enforce a binding opinion
17 issued under Section 9.5 of this Act.

18 (b) Where the denial is from a public body of the State,
19 suit may be filed in the circuit court for the county where the
20 public body has its principal office or where the person denied
21 access resides.

22 (c) Where the denial is from a municipality or other public
23 body, except as provided in subsection (b) of this Section,
24 suit may be filed in the circuit court for the county where the

1 public body is located.

2 (d) The circuit court shall have the jurisdiction to enjoin
3 the public body from withholding public records and to order
4 the production of any public records improperly withheld from
5 the person seeking access. If the public body can show that
6 exceptional circumstances exist, and that the body is
7 exercising due diligence in responding to the request, the
8 court may retain jurisdiction and allow the agency additional
9 time to complete its review of the records.

10 (e) On motion of the plaintiff, prior to or after in camera
11 inspection, the court shall order the public body to provide an
12 index of the records to which access has been denied. The index
13 shall include the following:

14 (i) A description of the nature or contents of each
15 document withheld, or each deletion from a released
16 document, provided, however, that the public body shall not
17 be required to disclose the information which it asserts is
18 exempt; and

19 (ii) A statement of the exemption or exemptions claimed
20 for each such deletion or withheld document.

21 (f) In any action considered by the court, the court shall
22 consider the matter de novo, and shall conduct such in camera
23 examination of the requested records as it finds appropriate to
24 determine if such records or any part thereof may be withheld
25 under any provision of this Act. The burden shall be on the
26 public body to establish that its refusal to permit public

1 inspection or copying is in accordance with the provisions of
2 this Act. Any public body that asserts that a record is exempt
3 from disclosure has the burden of proving that it is exempt by
4 clear and convincing evidence.

5 (g) In the event of noncompliance with an order of the
6 court to disclose, the court may enforce its order against any
7 public official or employee so ordered or primarily responsible
8 for such noncompliance through the court's contempt powers.

9 (h) Except as to causes the court considers to be of
10 greater importance, proceedings arising under this Section
11 shall take precedence on the docket over all other causes and
12 be assigned for hearing and trial at the earliest practicable
13 date and expedited in every way.

14 (i) If a person seeking the right to inspect or receive a
15 copy of a public record prevails in a proceeding under this
16 Section, the court shall award such person reasonable
17 attorney's fees and costs. In determining what amount of
18 attorney's fees is reasonable, the court shall consider the
19 degree to which the relief obtained relates to the relief
20 sought. As used in this Section, "prevails" means: (1) the
21 party obtains some of his or her requested relief through a
22 judicial order in his or her favor or through any settlement
23 agreement approved by the court; or (2) the pursuit of a
24 nonfrivolous claim was a catalyst for a unilateral change in
25 position by the opposing party relative to the relief sought.
26 The changes contained in this subsection apply to an action

1 filed on or after January 1, 2010 (the effective date of Public
2 Act 96-542).

3 (j) If the court determines that a public body willfully
4 and intentionally failed to comply with this Act, or otherwise
5 acted in bad faith, the court shall also impose upon the public
6 body a civil penalty of not less than \$2,500 nor more than
7 \$5,000 for each occurrence. In assessing the civil penalty, the
8 court shall consider in aggravation or mitigation the budget of
9 the public body and whether the public body has previously been
10 assessed penalties for violations of this Act. The court may
11 impose an additional penalty of up to \$1,000 for each day the
12 violation continues if:

13 (1) the public body fails to comply with the court's
14 order after 30 days;

15 (2) the court's order is not on appeal or stayed; and

16 (3) the court does not grant the public body additional
17 time to comply with the court's order to disclose public
18 records.

19 The changes contained in this subsection made by Public Act
20 96-542 apply to an action filed on or after January 1, 2010
21 (the effective date of Public Act 96-542).

22 (k) The changes to this Section made by this amendatory Act
23 of the 99th General Assembly apply to actions filed on or after
24 the effective date of this amendatory Act of the 99th General
25 Assembly.

26 (Source: P.A. 99-586, eff. 1-1-17; 99-642, eff. 7-28-16.)