

100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB4583

by Rep. Brad Halbrook

SYNOPSIS AS INTRODUCED:

5 ILCS 120/2.02	from Ch. 102, par. 42.02
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. Provides that certain notice provisions that currently apply to regular meetings of a public body shall also apply to special meetings of a public body. Requires a public body that has a website maintained by a full-time staff to post the agenda and notice of meetings for both the governing body and all subsidiary bodies of the public body. Removes a provision stating that 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. Requires a public body that has a website to post the minutes of a regular, special, or emergency meeting of its governing body (currently, only regular meeting). Allows a court to declare null and void any final action taken at a meeting in violation of the Act, regardless of whether or not the meeting was a closed meeting. Provides that a court shall (rather than 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 any action brought under specified provisions of the Act.

LRB100 18041 RJF 33230 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 2.02, 2.06, and 3 as follows:

6 (5 ILCS 120/2.02) (from Ch. 102, par. 42.02)

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

9 (a) Every public body shall give public notice of the
10 schedule of regular meetings at the beginning of each calendar
11 or fiscal year and shall state the regular dates, times, and
12 places of such meetings. An agenda for each regular or special
13 meeting shall be posted at the principal office of the public
14 body and at the location where the meeting is to be held at
15 least 48 hours in advance of the holding of the meeting. A
16 public body that has a website that the full-time staff of the
17 public body maintains shall also post on its website the agenda
18 of any regular or special meetings of the governing body and of
19 all subsidiary bodies of that public body. Any agenda of a
20 regular or special meeting that is posted on a public body's
21 website shall remain posted on the website until the regular or
22 special meeting is concluded. The requirement of a regular
23 meeting agenda shall not preclude the consideration of items

1 not specifically set forth in the agenda. Public notice of any
2 special meeting except a meeting held in the event of a bona
3 fide emergency, or of any rescheduled regular meeting, or of
4 any reconvened meeting, shall be given at least 48 hours before
5 such meeting, which notice shall also include the agenda for
6 the special, rescheduled, or reconvened meeting, but the
7 validity of any action taken by the public body which is
8 germane to a subject on the agenda shall not be affected by
9 other errors or omissions in the agenda. The requirement of
10 public notice of reconvened meetings does not apply to any case
11 where the meeting was open to the public and (1) it is to be
12 reconvened within 24 hours, or (2) an announcement of the time
13 and place of the reconvened meeting was made at the original
14 meeting and there is no change in the agenda. Notice of an
15 emergency meeting shall be given as soon as practicable, but in
16 any event prior to the holding of such meeting, to any news
17 medium which has filed an annual request for notice under
18 subsection (b) of this Section.

19 (b) Public notice shall be given by posting a copy of the
20 notice at the principal office of the body holding the meeting
21 or, if no such office exists, at the building in which the
22 meeting is to be held. In addition, a public body that has a
23 website that the full-time staff of the public body maintains
24 shall post notice on its website of all meetings of the
25 governing body and of all subsidiary bodies of the public body.
26 Any notice of an annual schedule of meetings shall remain on

1 the website until a new public notice of the schedule of
2 regular meetings is approved. Any notice of a regular or
3 special meeting that is posted on a public body's website shall
4 remain posted on the website until the regular or special
5 meeting is concluded. The body shall supply copies of the
6 notice of its regular meetings, and of the notice of any
7 special, emergency, rescheduled or reconvened meeting, to any
8 news medium that has filed an annual request for such notice.
9 Any such news medium shall also be given the same notice of all
10 special, emergency, rescheduled or reconvened meetings in the
11 same manner as is given to members of the body provided such
12 news medium has given the public body an address or telephone
13 number within the territorial jurisdiction of the public body
14 at which such notice may be given. ~~The failure of a public body~~
15 ~~to post on its website notice of any meeting or the agenda of~~
16 ~~any meeting shall not invalidate any meeting or any actions~~
17 ~~taken at a meeting.~~

18 (c) Any agenda required under this Section shall set forth
19 the general subject matter of any resolution or ordinance that
20 will be the subject of final action at the meeting. The public
21 body conducting a public meeting shall ensure that at least one
22 copy of any requested notice and agenda for the meeting is
23 continuously available for public review during the entire
24 48-hour period preceding the meeting. Posting of the notice and
25 agenda on a website that is maintained by the public body
26 satisfies the requirement for continuous posting under this

1 subsection (c). If a notice or agenda is not continuously
2 available for the full 48-hour period due to actions outside of
3 the control of the public body, then that lack of availability
4 does not invalidate any meeting or action taken at a meeting.

5 (Source: P.A. 97-827, eff. 1-1-13.)

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
24 minutes by the public body. Beginning July 1, 2006, at the time
25 it complies with the other requirements of this subsection, a

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

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

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

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

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

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

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

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

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

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

14 (g) Any person shall be permitted an opportunity to address
15 public officials under the rules established and recorded by
16 the public body.

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

18 (5 ILCS 120/3) (from Ch. 102, par. 43)

19 Sec. 3. (a) Where the provisions of this Act are not
20 complied with, or where there is probable cause to believe that
21 the provisions of this Act will not be complied with, any
22 person, including the State's Attorney of the county in which
23 such noncompliance may occur, may bring a civil action in the
24 circuit court for the judicial circuit in which the alleged
25 noncompliance has occurred or is about to occur, or in which

1 the affected public body has its principal office, prior to or
2 within 60 days of the meeting alleged to be in violation of
3 this Act or, if facts concerning the meeting are not discovered
4 within the 60-day period, within 60 days of the discovery of a
5 violation by the State's Attorney or, if the person timely
6 files a request for review under Section 3.5, within 60 days of
7 the decision by the Attorney General to resolve a request for
8 review by a means other than the issuance of a binding opinion
9 under subsection (e) of Section 3.5.

10 Records that are obtained by a State's Attorney from a
11 public body for purposes of reviewing whether the public body
12 has complied with this Act may not be disclosed to the public.
13 Those records, while in the possession of the State's Attorney,
14 are exempt from disclosure under the Freedom of Information
15 Act.

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

20 (c) The court, having due regard for orderly administration
21 and the public interest, as well as for the interests of the
22 parties, may grant such relief as it deems appropriate,
23 including granting a relief by mandamus requiring that a
24 meeting be open to the public, granting an injunction against
25 future violations of this Act, ordering the public body to make
26 available to the public such portion of the minutes of a

1 meeting as is not authorized to be kept confidential under this
2 Act, or declaring null and void any final action taken at a
3 ~~closed~~ meeting in violation of this Act.

4 (d) The court shall ~~may~~ assess against any party, except a
5 State's Attorney, reasonable attorney's fees and other
6 litigation costs reasonably incurred by any other party who
7 substantially prevails in any action brought in accordance with
8 this Section, provided that costs may be assessed against any
9 private party or parties bringing an action pursuant to this
10 Section only upon the court's determination that the action is
11 malicious or frivolous in nature.

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