



Rep. Robert F. Flider

Filed: 5/17/2005

09400HB1038ham006

LRB094 07115 JAM 46337 a

1 AMENDMENT TO HOUSE BILL 1038

2 AMENDMENT NO. _____. Amend House Bill 1038, AS AMENDED, by
3 replacing everything after the enacting clause with the
4 following:

5 "Section 5. The Open Meetings Act is amended by changing
6 Sections 1.02, 2.01, 2.05, and 2.06 and by adding Section 7 as
7 follows:

8 (5 ILCS 120/1.02) (from Ch. 102, par. 41.02)

9 Sec. 1.02. For the purposes of this Act:

10 "Meeting" means any gathering, whether in person or by
11 video or audio conference, telephone call, electronic means
12 (such as, without limitation, electronic mail, electronic
13 chat, and instant messaging), or other means of interactive
14 communication, of a majority of a quorum of the members of a
15 public body held for the purpose of discussing public business.

16 "Public body" includes all legislative, executive,
17 administrative or advisory bodies of the State, counties,
18 townships, cities, villages, incorporated towns, school
19 districts and all other municipal corporations, boards,
20 bureaus, committees or commissions of this State, and any
21 subsidiary bodies of any of the foregoing including but not
22 limited to committees and subcommittees which are supported in
23 whole or in part by tax revenue, or which expend tax revenue,
24 except the General Assembly and committees or commissions

1 thereof. "Public body" includes tourism boards and convention
2 or civic center boards located in counties that are contiguous
3 to the Mississippi River with populations of more than 250,000
4 but less than 300,000. "Public body" includes the Health
5 Facilities Planning Board. "Public body" does not include a
6 child death review team or the Illinois Child Death Review
7 Teams Executive Council established under the Child Death
8 Review Team Act or an ethics commission acting under the State
9 Officials and Employees Ethics Act.

10 (Source: P.A. 92-468, eff. 8-22-01; 93-617, eff. 12-9-03.)

11 (5 ILCS 120/2.01) (from Ch. 102, par. 42.01)

12 Sec. 2.01. All meetings required by this Act to be public
13 shall be held at specified times and places which are
14 convenient and open to the public. No meeting required by this
15 Act to be public shall be held on a legal holiday unless the
16 regular meeting day falls on that holiday.

17 A quorum of members of a public body must be physically
18 present at the location of an open meeting. Other members who
19 are not physically present at the open meeting may participate
20 in the meeting and vote on all matters, if they are voting
21 members, by means of a video or audio conference; provided,
22 however, that the requirement that a quorum be physically
23 present at the location of an open meeting shall not apply to
24 State advisory boards or bodies that do not have authority to
25 make binding recommendations or determinations or to take any
26 other substantive action.

27 (Source: P.A. 88-621, eff. 1-1-95.)

28 (5 ILCS 120/2.05) (from Ch. 102, par. 42.05)

29 Sec. 2.05. Recording meetings. Subject to the provisions of
30 Section 8-701 of the Code of Civil Procedure ~~"An Act in~~
31 ~~relation to the rights of witnesses at proceedings conducted by~~
32 ~~a court, commission, administrative agency or other tribunal in~~

1 ~~this State which are televised or broadcast or at which motion~~
2 ~~pictures are taken", approved July 14, 1953, as amended,~~ any
3 person may record the proceedings at meetings required to be
4 open by this Act by tape, film or other means. The authority
5 holding the meeting shall prescribe reasonable rules to govern
6 the right to make such recordings.

7 If a witness at any meeting required to be open by this Act
8 which is conducted by a commission, administrative agency or
9 other tribunal, refuses to testify on the grounds that he may
10 not be compelled to testify if any portion of his testimony is
11 to be broadcast or televised or if motion pictures are to be
12 taken of him while he is testifying, the authority holding the
13 meeting shall prohibit such recording during the testimony of
14 the witness. Nothing in this Section shall be construed to
15 extend the right to refuse to testify at any meeting not
16 subject to the provisions of Section 8-701 of the Code of Civil
17 Procedure ~~"An Act in relation to the rights of witnesses at~~
18 ~~proceedings conducted by a court, commission, administrative~~
19 ~~agency or other tribunal in this State which are televised or~~
20 ~~broadcast or at which motion pictures are taken", approved July~~
21 ~~14, 1953, as amended.~~

22 (Source: P.A. 82-378.)

23 (5 ILCS 120/2.06) (from Ch. 102, par. 42.06)

24 Sec. 2.06. Minutes. (a) All public bodies shall keep
25 written minutes of all their meetings, whether open or closed,
26 and a verbatim record of all their closed meetings in the form
27 of an audio or video recording. Minutes shall include, but need
28 not be limited to:

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

30 (2) the members of the public body recorded as either
31 present or absent and whether the members were physically
32 present or present by means of video or audio conference;

33 and

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

3 (b) The minutes of meetings open to the public shall be
4 available for public inspection within 7 days of the approval
5 of such minutes by the public body.

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

11 (1) the public body approves the destruction of a
12 particular recording; and

13 (2) the public body approves minutes of the closed
14 meeting that meet the written minutes requirements of
15 subsection (a) of this Section.

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

23 (e) Unless the public body has made a determination that
24 the verbatim recording no longer requires confidential
25 treatment or otherwise consents to disclosure, the verbatim
26 record of a meeting closed to the public shall not be open for
27 public inspection or subject to discovery in any administrative
28 or judicial proceeding other than one brought to enforce this
29 Act. In the case of a civil action brought to enforce this Act,
30 the court, if the judge believes such an examination is
31 necessary, must conduct such in camera examination of the
32 verbatim record as it finds appropriate in order to determine
33 whether there has been a violation of this Act. In the case of
34 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.

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.

15 (Source: P.A. 93-523, eff. 1-1-04; 93-974, eff. 1-1-05.)

16 (5 ILCS 120/7 new)

17 Sec. 7. Attendance by a means other than physical presence.

18 (a) If a quorum of the members of the public body is
19 physically present at the place designated in the notice of the
20 meeting, a majority of the public body may allow a member of
21 that body to attend the meeting by other means if the member is
22 prevented from physically attending because of: (i) personal
23 illness or disability; (ii) employment purposes or the business
24 of the public body; or (iii) a family or other emergency.
25 "Other means" is by video or audio conference.

26 (b) If a member wishes to attend a meeting by other means,
27 the member must notify the recording secretary or clerk of the
28 public body before the meeting unless advance notice is
29 impractical.

30 (c) A majority of the public body may allow a member to
31 attend a meeting by other means only in accordance with and to
32 the extent allowed by rules adopted by the public body. The
33 rules must conform to the requirements and restrictions of this

1 Section, may further limit the extent to which attendance by
2 other means is allowed, and may provide for the giving of
3 additional notice to the public or further facilitate public
4 access to meetings.

5 (d) The limitations of this Section shall not apply to
6 State advisory boards or bodies that do not have authority to
7 make binding recommendations or determinations or to take any
8 other substantive action. State advisory boards or bodies,
9 however, may permit members to attend meetings by other means
10 only in accordance with and to the extent allowed by specific
11 procedural rules adopted by the body.

12 Section 10. The Environmental Protection Act is amended by
13 changing Section 5 as follows:

14 (415 ILCS 5/5) (from Ch. 111 1/2, par. 1005)

15 Sec. 5. Pollution Control Board.

16 (a) There is hereby created an independent board to be
17 known as the Pollution Control Board.

18 Until July 1, 2003 or when all of the new members to be
19 initially appointed under this amendatory Act of the 93rd
20 General Assembly have been appointed by the Governor, whichever
21 occurs later, the Board shall consist of 7 technically
22 qualified members, no more than 4 of whom may be of the same
23 political party, to be appointed by the Governor with the
24 advice and consent of the Senate.

25 The term of each appointed member of the Board who is in
26 office on June 30, 2003 shall terminate at the close of
27 business on that date or when all of the new members to be
28 initially appointed under this amendatory Act of the 93rd
29 General Assembly have been appointed by the Governor, whichever
30 occurs later.

31 Beginning on July 1, 2003 or when all of the new members to
32 be initially appointed under this amendatory Act of the 93rd

1 General Assembly have been appointed by the Governor, whichever
2 occurs later, the Board shall consist of 5 technically
3 qualified members, no more than 3 of whom may be of the same
4 political party, to be appointed by the Governor with the
5 advice and consent of the Senate. Members shall have verifiable
6 technical, academic, or actual experience in the field of
7 pollution control or environmental law and regulation.

8 Of the members initially appointed pursuant to this
9 amendatory Act of the 93rd General Assembly, one shall be
10 appointed for a term ending July 1, 2004, 2 shall be appointed
11 for terms ending July 1, 2005, and 2 shall be appointed for
12 terms ending July 1, 2006. Thereafter, all members shall hold
13 office for 3 years from the first day of July in the year in
14 which they were appointed, except in case of an appointment to
15 fill a vacancy. In case of a vacancy in the office when the
16 Senate is not in session, the Governor may make a temporary
17 appointment until the next meeting of the Senate, when he or
18 she shall nominate some person to fill such office; and any
19 person so nominated, who is confirmed by the Senate, shall hold
20 the office during the remainder of the term.

21 Members of the Board shall hold office until their
22 respective successors have been appointed and qualified. Any
23 member may resign from office, such resignation to take effect
24 when a successor has been appointed and has qualified.

25 Board members shall be paid \$37,000 per year or an amount
26 set by the Compensation Review Board, whichever is greater, and
27 the Chairman shall be paid \$43,000 per year or an amount set by
28 the Compensation Review Board, whichever is greater. Each
29 member shall devote his or her entire time to the duties of the
30 office, and shall hold no other office or position of profit,
31 nor engage in any other business, employment, or vocation. Each
32 member shall be reimbursed for expenses necessarily incurred
33 and shall make a financial disclosure upon appointment.

34 Each Board member may employ one secretary and one

1 assistant, and the Chairman one secretary and 2 assistants. The
2 Board also may employ and compensate hearing officers to
3 preside at hearings under this Act, and such other personnel as
4 may be necessary. Hearing officers shall be attorneys licensed
5 to practice law in Illinois.

6 The Board may have an Executive Director; if so, the
7 Executive Director shall be appointed by the Governor with the
8 advice and consent of the Senate. The salary and duties of the
9 Executive Director shall be fixed by the Board.

10 The Governor shall designate one Board member to be
11 Chairman, who shall serve at the pleasure of the Governor.

12 The Board shall hold at least one meeting each month and
13 such additional meetings as may be prescribed by Board rules.
14 In addition, special meetings may be called by the Chairman or
15 by any 2 Board members, upon delivery of 24 hours written
16 notice to the office of each member. All Board meetings shall
17 be open to the public, and public notice of all meetings shall
18 be given at least 24 hours in advance of each meeting. In
19 emergency situations in which a majority of the Board certifies
20 that exigencies of time require the requirements of public
21 notice and of 24 hour written notice to members may be
22 dispensed with, and Board members shall receive such notice as
23 is reasonable under the circumstances.

24 If there is no vacancy on the Board, 3 4 members of the
25 Board shall constitute a quorum to transact business;
26 otherwise, a majority of the Board shall constitute a quorum to
27 transact business, and no vacancy shall impair the right of the
28 remaining members to exercise all of the powers of the Board.
29 Every action approved by a majority of the members of the Board
30 shall be deemed to be the action of the Board. The Board shall
31 keep a complete and accurate record of all its meetings.

32 (b) The Board shall determine, define and implement the
33 environmental control standards applicable in the State of
34 Illinois and may adopt rules and regulations in accordance with

1 Title VII of this Act.

2 (c) The Board shall have authority to act for the State in
3 regard to the adoption of standards for submission to the
4 United States under any federal law respecting environmental
5 protection. Such standards shall be adopted in accordance with
6 Title VII of the Act and upon adoption shall be forwarded to
7 the Environmental Protection Agency for submission to the
8 United States pursuant to subsections (l) and (m) of Section 4
9 of this Act. Nothing in this paragraph shall limit the
10 discretion of the Governor to delegate authority granted to the
11 Governor under any federal law.

12 (d) The Board shall have authority to conduct proceedings
13 upon complaints charging violations of this Act, any rule or
14 regulation adopted under this Act, any permit or term or
15 condition of a permit, or any Board order; upon administrative
16 citations; upon petitions for variances or adjusted standards;
17 upon petitions for review of the Agency's final determinations
18 on permit applications in accordance with Title X of this Act;
19 upon petitions to remove seals under Section 34 of this Act;
20 and upon other petitions for review of final determinations
21 which are made pursuant to this Act or Board rule and which
22 involve a subject which the Board is authorized to regulate.
23 The Board may also conduct other proceedings as may be provided
24 by this Act or any other statute or rule.

25 (e) In connection with any proceeding pursuant to
26 subsection (b) or (d) of this Section, the Board may subpoena
27 and compel the attendance of witnesses and the production of
28 evidence reasonably necessary to resolution of the matter under
29 consideration. The Board shall issue such subpoenas upon the
30 request of any party to a proceeding under subsection (d) of
31 this Section or upon its own motion.

32 (f) The Board may prescribe reasonable fees for permits
33 required pursuant to this Act. Such fees in the aggregate may
34 not exceed the total cost to the Agency for its inspection and

1 permit systems. The Board may not prescribe any permit fees
2 which are different in amount from those established by this
3 Act.

4 (Source: P.A. 92-574, eff. 6-26-02; 93-152, eff. 7-10-03;
5 93-509, eff. 8-11-03; revised 9-11-03.)".