



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB6119

Introduced 2/11/2010, by Rep. Elaine Nekritz

SYNOPSIS AS INTRODUCED:

5 ILCS 140/7

from Ch. 116, par. 207

Amends the Freedom of Information Act. With respect to the disclosure exemption for administrative enforcement and law enforcement records, extends the exemption to records the disclosure of which would affect enforcement proceedings and investigations of any public body (now, the public body that receives the request). Requires a public body that receives any administrative enforcement or law enforcement records request but that is not the public body or law enforcement or correctional agency contemplating or conducting a proceeding or investigation to transmit the request to such body or agency. Effective immediately.

LRB096 16456 JAM 31725 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 Freedom of Information Act is amended by
5 changing Section 7 as follows:

6 (5 ILCS 140/7) (from Ch. 116, par. 207)

7 (Text of Section before amendment by P.A. 96-736)

8 Sec. 7. Exemptions.

9 (1) When a request is made to inspect or copy a public
10 record that contains information that is exempt from disclosure
11 under this Section, but also contains information that is not
12 exempt from disclosure, the public body may elect to redact the
13 information that is exempt. The public body shall make the
14 remaining information available for inspection and copying.
15 Subject to this requirement, the following shall be exempt from
16 inspection and copying:

17 (a) Information specifically prohibited from
18 disclosure by federal or State law or rules and regulations
19 implementing federal or State law.

20 (b) Private information, unless disclosure is required
21 by another provision of this Act, a State or federal law or
22 a court order.

23 (b-5) Files, documents, and other data or databases

1 maintained by one or more law enforcement agencies and
2 specifically designed to provide information to one or more
3 law enforcement agencies regarding the physical or mental
4 status of one or more individual subjects.

5 (c) Personal information contained within public
6 records, the disclosure of which would constitute a clearly
7 unwarranted invasion of personal privacy, unless the
8 disclosure is consented to in writing by the individual
9 subjects of the information. "Unwarranted invasion of
10 personal privacy" means the disclosure of information that
11 is highly personal or objectionable to a reasonable person
12 and in which the subject's right to privacy outweighs any
13 legitimate public interest in obtaining the information.
14 The disclosure of information that bears on the public
15 duties of public employees and officials shall not be
16 considered an invasion of personal privacy.

17 (d) Records in the possession of any public body
18 created in the course of administrative enforcement
19 proceedings, and any law enforcement or correctional
20 agency for law enforcement purposes, but only to the extent
21 that disclosure would:

22 (i) interfere with pending or actually and
23 reasonably contemplated law enforcement proceedings
24 conducted by any law enforcement or correctional
25 agency ~~that is the recipient of the request;~~

26 (ii) interfere with active administrative

1 enforcement proceedings conducted by any ~~the~~ public
2 body ~~that is the recipient of the request;~~

3 (iii) create a substantial likelihood that a
4 person will be deprived of a fair trial or an impartial
5 hearing;

6 (iv) unavoidably disclose the identity of a
7 confidential source, confidential information
8 furnished only by the confidential source, or persons
9 who file complaints with or provide information to
10 administrative, investigative, law enforcement, or
11 penal agencies; except that the identities of
12 witnesses to traffic accidents, traffic accident
13 reports, and rescue reports shall be provided by
14 agencies of local government, except when disclosure
15 would interfere with an active criminal investigation
16 ~~conducted by the agency that is the recipient of the~~
17 ~~request;~~

18 (v) disclose unique or specialized investigative
19 techniques other than those generally used and known or
20 disclose internal documents of correctional agencies
21 related to detection, observation or investigation of
22 incidents of crime or misconduct, ~~and disclosure would~~
23 ~~result in demonstrable harm to the agency or public~~
24 ~~body that is the recipient of the request;~~

25 (vi) endanger the life or physical safety of law
26 enforcement personnel or any other person; or

1 (vii) obstruct an ongoing criminal investigation
2 ~~by the agency that is the recipient of the request.~~

3 For the purposes of this paragraph (d), if the
4 recipient of the request for records is other than the
5 public body that is contemplating or conducting the
6 administrative enforcement proceeding or investigation or
7 other than the law enforcement or correctional agency that
8 is contemplating or conducting the law enforcement
9 proceeding or investigation, then the recipient of the
10 request shall transmit the request to the public body or
11 law enforcement or correctional agency that is
12 contemplating or conducting such proceeding or
13 investigation within 2 business days after the receipt of
14 the request by any means described in subsection (c) of
15 Section 3. In such event, and concurrently with the
16 transmission of the request, the recipient of the request
17 shall notify the requesting party that the request for
18 records has been transmitted to a public body or law
19 enforcement or correctional agency that is contemplating
20 or conducting an administrative enforcement or law
21 enforcement proceeding or investigation and shall identify
22 that public body or law enforcement or correctional agency
23 to the requesting party. Upon receipt of the transmitted
24 request, that public body or law enforcement or
25 correctional agency shall respond to the request within the
26 time limits set forth in subsection (d) of Section 3 or in

1 Section 3.1, as appropriate.

2 (e) Records that relate to or affect the security of
3 correctional institutions and detention facilities.

4 (f) Preliminary drafts, notes, recommendations,
5 memoranda and other records in which opinions are
6 expressed, or policies or actions are formulated, except
7 that a specific record or relevant portion of a record
8 shall not be exempt when the record is publicly cited and
9 identified by the head of the public body. The exemption
10 provided in this paragraph (f) extends to all those records
11 of officers and agencies of the General Assembly that
12 pertain to the preparation of legislative documents.

13 (g) Trade secrets and commercial or financial
14 information obtained from a person or business where the
15 trade secrets or commercial or financial information are
16 furnished under a claim that they are proprietary,
17 privileged or confidential, and that disclosure of the
18 trade secrets or commercial or financial information would
19 cause competitive harm to the person or business, and only
20 insofar as the claim directly applies to the records
21 requested.

22 The information included under this exemption includes
23 all ~~(i) All~~ trade secrets and commercial or financial
24 information obtained by a public body, including a public
25 pension fund, from a private equity fund or a privately
26 held company within the investment portfolio of a private

1 equity fund as a result of either investing or evaluating a
2 potential investment of public funds in a private equity
3 fund. The exemption contained in this item does not apply
4 to the aggregate financial performance information of a
5 private equity fund, nor to the identity of the fund's
6 managers or general partners. The exemption contained in
7 this item does not apply to the identity of a privately
8 held company within the investment portfolio of a private
9 equity fund, unless the disclosure of the identity of a
10 privately held company may cause competitive harm.

11 Nothing contained in this paragraph (g) shall be
12 construed to prevent a person or business from consenting
13 to disclosure.

14 (h) Proposals and bids for any contract, grant, or
15 agreement, including information which if it were
16 disclosed would frustrate procurement or give an advantage
17 to any person proposing to enter into a contractor
18 agreement with the body, until an award or final selection
19 is made. Information prepared by or for the body in
20 preparation of a bid solicitation shall be exempt until an
21 award or final selection is made.

22 (i) Valuable formulae, computer geographic systems,
23 designs, drawings and research data obtained or produced by
24 any public body when disclosure could reasonably be
25 expected to produce private gain or public loss. The
26 exemption for "computer geographic systems" provided in

1 this paragraph (i) does not extend to requests made by news
2 media as defined in Section 2 of this Act when the
3 requested information is not otherwise exempt and the only
4 purpose of the request is to access and disseminate
5 information regarding the health, safety, welfare, or
6 legal rights of the general public.

7 (j) The following information pertaining to
8 educational matters:

9 (i) test questions, scoring keys and other
10 examination data used to administer an academic
11 examination;

12 (ii) information received by a primary or
13 secondary school, college, or university under its
14 procedures for the evaluation of faculty members by
15 their academic peers;

16 (iii) information concerning a school or
17 university's adjudication of student disciplinary
18 cases, but only to the extent that disclosure would
19 unavoidably reveal the identity of the student; and

20 (iv) course materials or research materials used
21 by faculty members.

22 (k) Architects' plans, engineers' technical
23 submissions, and other construction related technical
24 documents for projects not constructed or developed in
25 whole or in part with public funds and the same for
26 projects constructed or developed with public funds,

1 including but not limited to power generating and
2 distribution stations and other transmission and
3 distribution facilities, water treatment facilities,
4 airport facilities, sport stadiums, convention centers,
5 and all government owned, operated, or occupied buildings,
6 but only to the extent that disclosure would compromise
7 security.

8 (l) Minutes of meetings of public bodies closed to the
9 public as provided in the Open Meetings Act until the
10 public body makes the minutes available to the public under
11 Section 2.06 of the Open Meetings Act.

12 (m) Communications between a public body and an
13 attorney or auditor representing the public body that would
14 not be subject to discovery in litigation, and materials
15 prepared or compiled by or for a public body in
16 anticipation of a criminal, civil or administrative
17 proceeding upon the request of an attorney advising the
18 public body, and materials prepared or compiled with
19 respect to internal audits of public bodies.

20 (n) Records relating to a public body's adjudication of
21 employee grievances or disciplinary cases; however, this
22 exemption shall not extend to the final outcome of cases in
23 which discipline is imposed.

24 (o) Administrative or technical information associated
25 with automated data processing operations, including but
26 not limited to software, operating protocols, computer

1 program abstracts, file layouts, source listings, object
2 modules, load modules, user guides, documentation
3 pertaining to all logical and physical design of
4 computerized systems, employee manuals, and any other
5 information that, if disclosed, would jeopardize the
6 security of the system or its data or the security of
7 materials exempt under this Section.

8 (p) Records relating to collective negotiating matters
9 between public bodies and their employees or
10 representatives, except that any final contract or
11 agreement shall be subject to inspection and copying.

12 (q) Test questions, scoring keys, and other
13 examination data used to determine the qualifications of an
14 applicant for a license or employment.

15 (r) The records, documents, and information relating
16 to real estate purchase negotiations until those
17 negotiations have been completed or otherwise terminated.
18 With regard to a parcel involved in a pending or actually
19 and reasonably contemplated eminent domain proceeding
20 under the Eminent Domain Act, records, documents and
21 information relating to that parcel shall be exempt except
22 as may be allowed under discovery rules adopted by the
23 Illinois Supreme Court. The records, documents and
24 information relating to a real estate sale shall be exempt
25 until a sale is consummated.

26 (s) Any and all proprietary information and records

1 related to the operation of an intergovernmental risk
2 management association or self-insurance pool or jointly
3 self-administered health and accident cooperative or pool.
4 Insurance or self insurance (including any
5 intergovernmental risk management association or self
6 insurance pool) claims, loss or risk management
7 information, records, data, advice or communications.

8 (t) Information contained in or related to
9 examination, operating, or condition reports prepared by,
10 on behalf of, or for the use of a public body responsible
11 for the regulation or supervision of financial
12 institutions or insurance companies, unless disclosure is
13 otherwise required by State law.

14 (u) Information that would disclose or might lead to
15 the disclosure of secret or confidential information,
16 codes, algorithms, programs, or private keys intended to be
17 used to create electronic or digital signatures under the
18 Electronic Commerce Security Act.

19 (v) Vulnerability assessments, security measures, and
20 response policies or plans that are designed to identify,
21 prevent, or respond to potential attacks upon a community's
22 population or systems, facilities, or installations, the
23 destruction or contamination of which would constitute a
24 clear and present danger to the health or safety of the
25 community, but only to the extent that disclosure could
26 reasonably be expected to jeopardize the effectiveness of

1 the measures or the safety of the personnel who implement
2 them or the public. Information exempt under this item may
3 include such things as details pertaining to the
4 mobilization or deployment of personnel or equipment, to
5 the operation of communication systems or protocols, or to
6 tactical operations.

7 (w) (Blank).

8 (x) Maps and other records regarding the location or
9 security of generation, transmission, distribution,
10 storage, gathering, treatment, or switching facilities
11 owned by a utility, by a power generator, or by the
12 Illinois Power Agency.

13 (y) Information contained in or related to proposals,
14 bids, or negotiations related to electric power
15 procurement under Section 1-75 of the Illinois Power Agency
16 Act and Section 16-111.5 of the Public Utilities Act that
17 is determined to be confidential and proprietary by the
18 Illinois Power Agency or by the Illinois Commerce
19 Commission.

20 (z) ~~(tt)~~ Information about students exempted from
21 disclosure under Sections 10-20.38 or 34-18.29 of the
22 School Code, and information about undergraduate students
23 enrolled at an institution of higher education exempted
24 from disclosure under Section 25 of the Illinois Credit
25 Card Marketing Act of 2009.

26 (2) A public record that is not in the possession of a

1 public body but is in the possession of a party with whom the
2 agency has contracted to perform a governmental function on
3 behalf of the public body, and that directly relates to the
4 governmental function and is not otherwise exempt under this
5 Act, shall be considered a public record of the public body,
6 for purposes of this Act.

7 (3) This Section does not authorize withholding of
8 information or limit the availability of records to the public,
9 except as stated in this Section or otherwise provided in this
10 Act.

11 (Source: P.A. 95-331, eff. 8-21-07; 95-481, eff. 8-28-07;
12 95-941, eff. 8-29-08; 95-988, eff. 6-1-09; 96-261, eff. 1-1-10;
13 96-328, eff. 8-11-09; 96-542, eff. 1-1-10; 96-558, eff. 1-1-10;
14 revised 9-25-09.)

15 (Text of Section after amendment by P.A. 96-736)

16 Sec. 7. Exemptions.

17 (1) When a request is made to inspect or copy a public
18 record that contains information that is exempt from disclosure
19 under this Section, but also contains information that is not
20 exempt from disclosure, the public body may elect to redact the
21 information that is exempt. The public body shall make the
22 remaining information available for inspection and copying.
23 Subject to this requirement, the following shall be exempt from
24 inspection and copying:

25 (a) Information specifically prohibited from

1 disclosure by federal or State law or rules and regulations
2 implementing federal or State law.

3 (b) Private information, unless disclosure is required
4 by another provision of this Act, a State or federal law or
5 a court order.

6 (b-5) Files, documents, and other data or databases
7 maintained by one or more law enforcement agencies and
8 specifically designed to provide information to one or more
9 law enforcement agencies regarding the physical or mental
10 status of one or more individual subjects.

11 (c) Personal information contained within public
12 records, the disclosure of which would constitute a clearly
13 unwarranted invasion of personal privacy, unless the
14 disclosure is consented to in writing by the individual
15 subjects of the information. "Unwarranted invasion of
16 personal privacy" means the disclosure of information that
17 is highly personal or objectionable to a reasonable person
18 and in which the subject's right to privacy outweighs any
19 legitimate public interest in obtaining the information.
20 The disclosure of information that bears on the public
21 duties of public employees and officials shall not be
22 considered an invasion of personal privacy.

23 (d) Records in the possession of any public body
24 created in the course of administrative enforcement
25 proceedings, and any law enforcement or correctional
26 agency for law enforcement purposes, but only to the extent

1 that disclosure would:

2 (i) interfere with pending or actually and
3 reasonably contemplated law enforcement proceedings
4 conducted by any law enforcement or correctional
5 agency ~~that is the recipient of the request;~~

6 (ii) interfere with active administrative
7 enforcement proceedings conducted by any ~~the~~ public
8 body ~~that is the recipient of the request;~~

9 (iii) create a substantial likelihood that a
10 person will be deprived of a fair trial or an impartial
11 hearing;

12 (iv) unavoidably disclose the identity of a
13 confidential source, confidential information
14 furnished only by the confidential source, or persons
15 who file complaints with or provide information to
16 administrative, investigative, law enforcement, or
17 penal agencies; except that the identities of
18 witnesses to traffic accidents, traffic accident
19 reports, and rescue reports shall be provided by
20 agencies of local government, except when disclosure
21 would interfere with an active criminal investigation
22 ~~conducted by the agency that is the recipient of the~~
23 ~~request;~~

24 (v) disclose unique or specialized investigative
25 techniques other than those generally used and known or
26 disclose internal documents of correctional agencies

1 related to detection, observation or investigation of
2 incidents of crime or misconduct, ~~and disclosure would~~
3 ~~result in demonstrable harm to the agency or public~~
4 ~~body that is the recipient of the request;~~

5 (vi) endanger the life or physical safety of law
6 enforcement personnel or any other person; or

7 (vii) obstruct an ongoing criminal investigation
8 ~~by the agency that is the recipient of the request.~~

9 For the purposes of this paragraph (d), if the
10 recipient of the request for records is other than the
11 public body that is contemplating or conducting the
12 administrative enforcement proceeding or investigation or
13 other than the law enforcement or correctional agency that
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15 proceeding or investigation, then the recipient of the
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9 correctional institutions and detention facilities.

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11 memoranda and other records in which opinions are
12 expressed, or policies or actions are formulated, except
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14 shall not be exempt when the record is publicly cited and
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18 pertain to the preparation of legislative documents.

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22 furnished under a claim that they are proprietary,
23 privileged or confidential, and that disclosure of the
24 trade secrets or commercial or financial information would
25 cause competitive harm to the person or business, and only
26 insofar as the claim directly applies to the records

1 requested.

2 The information included under this exemption includes
3 all ~~(i) All~~ trade secrets and commercial or financial
4 information obtained by a public body, including a public
5 pension fund, from a private equity fund or a privately
6 held company within the investment portfolio of a private
7 equity fund as a result of either investing or evaluating a
8 potential investment of public funds in a private equity
9 fund. The exemption contained in this item does not apply
10 to the aggregate financial performance information of a
11 private equity fund, nor to the identity of the fund's
12 managers or general partners. The exemption contained in
13 this item does not apply to the identity of a privately
14 held company within the investment portfolio of a private
15 equity fund, unless the disclosure of the identity of a
16 privately held company may cause competitive harm.

17 Nothing contained in this paragraph (g) shall be
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24 agreement with the body, until an award or final selection
25 is made. Information prepared by or for the body in
26 preparation of a bid solicitation shall be exempt until an

1 award or final selection is made.

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6 exemption for "computer geographic systems" provided in
7 this paragraph (i) does not extend to requests made by news
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19 secondary school, college, or university under its
20 procedures for the evaluation of faculty members by
21 their academic peers;

22 (iii) information concerning a school or
23 university's adjudication of student disciplinary
24 cases, but only to the extent that disclosure would
25 unavoidably reveal the identity of the student; and

26 (iv) course materials or research materials used

1 by faculty members.

2 (k) Architects' plans, engineers' technical
3 submissions, and other construction related technical
4 documents for projects not constructed or developed in
5 whole or in part with public funds and the same for
6 projects constructed or developed with public funds,
7 including but not limited to power generating and
8 distribution stations and other transmission and
9 distribution facilities, water treatment facilities,
10 airport facilities, sport stadiums, convention centers,
11 and all government owned, operated, or occupied buildings,
12 but only to the extent that disclosure would compromise
13 security.

14 (l) Minutes of meetings of public bodies closed to the
15 public as provided in the Open Meetings Act until the
16 public body makes the minutes available to the public under
17 Section 2.06 of the Open Meetings Act.

18 (m) Communications between a public body and an
19 attorney or auditor representing the public body that would
20 not be subject to discovery in litigation, and materials
21 prepared or compiled by or for a public body in
22 anticipation of a criminal, civil or administrative
23 proceeding upon the request of an attorney advising the
24 public body, and materials prepared or compiled with
25 respect to internal audits of public bodies.

26 (n) Records relating to a public body's adjudication of

1 employee grievances or disciplinary cases; however, this
2 exemption shall not extend to the final outcome of cases in
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5 with automated data processing operations, including but
6 not limited to software, operating protocols, computer
7 program abstracts, file layouts, source listings, object
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19 examination data used to determine the qualifications of an
20 applicant for a license or employment.

21 (r) The records, documents, and information relating
22 to real estate purchase negotiations until those
23 negotiations have been completed or otherwise terminated.
24 With regard to a parcel involved in a pending or actually
25 and reasonably contemplated eminent domain proceeding
26 under the Eminent Domain Act, records, documents and

1 information relating to that parcel shall be exempt except
2 as may be allowed under discovery rules adopted by the
3 Illinois Supreme Court. The records, documents and
4 information relating to a real estate sale shall be exempt
5 until a sale is consummated.

6 (s) Any and all proprietary information and records
7 related to the operation of an intergovernmental risk
8 management association or self-insurance pool or jointly
9 self-administered health and accident cooperative or pool.
10 Insurance or self insurance (including any
11 intergovernmental risk management association or self
12 insurance pool) claims, loss or risk management
13 information, records, data, advice or communications.

14 (t) Information contained in or related to
15 examination, operating, or condition reports prepared by,
16 on behalf of, or for the use of a public body responsible
17 for the regulation or supervision of financial
18 institutions or insurance companies, unless disclosure is
19 otherwise required by State law.

20 (u) Information that would disclose or might lead to
21 the disclosure of secret or confidential information,
22 codes, algorithms, programs, or private keys intended to be
23 used to create electronic or digital signatures under the
24 Electronic Commerce Security Act.

25 (v) Vulnerability assessments, security measures, and
26 response policies or plans that are designed to identify,

1 prevent, or respond to potential attacks upon a community's
2 population or systems, facilities, or installations, the
3 destruction or contamination of which would constitute a
4 clear and present danger to the health or safety of the
5 community, but only to the extent that disclosure could
6 reasonably be expected to jeopardize the effectiveness of
7 the measures or the safety of the personnel who implement
8 them or the public. Information exempt under this item may
9 include such things as details pertaining to the
10 mobilization or deployment of personnel or equipment, to
11 the operation of communication systems or protocols, or to
12 tactical operations.

13 (w) (Blank).

14 (x) Maps and other records regarding the location or
15 security of generation, transmission, distribution,
16 storage, gathering, treatment, or switching facilities
17 owned by a utility, by a power generator, or by the
18 Illinois Power Agency.

19 (y) Information contained in or related to proposals,
20 bids, or negotiations related to electric power
21 procurement under Section 1-75 of the Illinois Power Agency
22 Act and Section 16-111.5 of the Public Utilities Act that
23 is determined to be confidential and proprietary by the
24 Illinois Power Agency or by the Illinois Commerce
25 Commission.

26 (z) ~~(tt)~~ Information about students exempted from

1 disclosure under Sections 10-20.38 or 34-18.29 of the
2 School Code, and information about undergraduate students
3 enrolled at an institution of higher education exempted
4 from disclosure under Section 25 of the Illinois Credit
5 Card Marketing Act of 2009.

6 (aa) ~~(tt)~~ Information the disclosure of which is
7 exempted under the Viatical Settlements Act of 2009.

8 (2) A public record that is not in the possession of a
9 public body but is in the possession of a party with whom the
10 agency has contracted to perform a governmental function on
11 behalf of the public body, and that directly relates to the
12 governmental function and is not otherwise exempt under this
13 Act, shall be considered a public record of the public body,
14 for purposes of this Act.

15 (3) This Section does not authorize withholding of
16 information or limit the availability of records to the public,
17 except as stated in this Section or otherwise provided in this
18 Act.

19 (Source: P.A. 95-331, eff. 8-21-07; 95-481, eff. 8-28-07;
20 95-941, eff. 8-29-08; 95-988, eff. 6-1-09; 96-261, eff. 1-1-10;
21 96-328, eff. 8-11-09; 96-542, eff. 1-1-10; 96-558, eff. 1-1-10;
22 96-736, eff. 7-1-10; revised 9-25-09.)

23 Section 95. No acceleration or delay. Where this Act makes
24 changes in a statute that is represented in this Act by text
25 that is not yet or no longer in effect (for example, a Section

1 represented by multiple versions), the use of that text does
2 not accelerate or delay the taking effect of (i) the changes
3 made by this Act or (ii) provisions derived from any other
4 Public Act.

5 Section 99. Effective date. This Act takes effect upon
6 becoming law.