



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB3378

Introduced 2/24/2011, by Rep. Randy Ramey, Jr.

SYNOPSIS AS INTRODUCED:

5 ILCS 120/2
5 ILCS 140/7

from Ch. 102, par. 42
from Ch. 116, par. 207

Amends the Open Meetings Act. Authorizes a public body to hold a closed meeting to discuss correspondence and records (i) that may not be disclosed under a specific portion of the Public Aid Code or (ii) that pertain to appeals conducted a specific provision of the Public Aid Code. Amends the Freedom of Information Act. Exempts those types of correspondence and records from the Act's inspection and copying requirements. Effective immediately.

LRB097 08991 JDS 49125 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

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 2 as follows:

6 (5 ILCS 120/2) (from Ch. 102, par. 42)

7 Sec. 2. Open meetings.

8 (a) Openness required. All meetings of public bodies shall
9 be open to the public unless excepted in subsection (c) and
10 closed in accordance with Section 2a.

11 (b) Construction of exceptions. The exceptions contained
12 in subsection (c) are in derogation of the requirement that
13 public bodies meet in the open, and therefore, the exceptions
14 are to be strictly construed, extending only to subjects
15 clearly within their scope. The exceptions authorize but do not
16 require the holding of a closed meeting to discuss a subject
17 included within an enumerated exception.

18 (c) Exceptions. A public body may hold closed meetings to
19 consider the following subjects:

20 (1) The appointment, employment, compensation,
21 discipline, performance, or dismissal of specific
22 employees of the public body or legal counsel for the
23 public body, including hearing testimony on a complaint

1 lodged against an employee of the public body or against
2 legal counsel for the public body to determine its
3 validity.

4 (2) Collective negotiating matters between the public
5 body and its employees or their representatives, or
6 deliberations concerning salary schedules for one or more
7 classes of employees.

8 (3) The selection of a person to fill a public office,
9 as defined in this Act, including a vacancy in a public
10 office, when the public body is given power to appoint
11 under law or ordinance, or the discipline, performance or
12 removal of the occupant of a public office, when the public
13 body is given power to remove the occupant under law or
14 ordinance.

15 (4) Evidence or testimony presented in open hearing, or
16 in closed hearing where specifically authorized by law, to
17 a quasi-adjudicative body, as defined in this Act, provided
18 that the body prepares and makes available for public
19 inspection a written decision setting forth its
20 determinative reasoning.

21 (5) The purchase or lease of real property for the use
22 of the public body, including meetings held for the purpose
23 of discussing whether a particular parcel should be
24 acquired.

25 (6) The setting of a price for sale or lease of
26 property owned by the public body.

1 (7) The sale or purchase of securities, investments, or
2 investment contracts.

3 (8) Security procedures and the use of personnel and
4 equipment to respond to an actual, a threatened, or a
5 reasonably potential danger to the safety of employees,
6 students, staff, the public, or public property.

7 (9) Student disciplinary cases.

8 (10) The placement of individual students in special
9 education programs and other matters relating to
10 individual students.

11 (11) Litigation, when an action against, affecting or
12 on behalf of the particular public body has been filed and
13 is pending before a court or administrative tribunal, or
14 when the public body finds that an action is probable or
15 imminent, in which case the basis for the finding shall be
16 recorded and entered into the minutes of the closed
17 meeting.

18 (12) The establishment of reserves or settlement of
19 claims as provided in the Local Governmental and
20 Governmental Employees Tort Immunity Act, if otherwise the
21 disposition of a claim or potential claim might be
22 prejudiced, or the review or discussion of claims, loss or
23 risk management information, records, data, advice or
24 communications from or with respect to any insurer of the
25 public body or any intergovernmental risk management
26 association or self insurance pool of which the public body

1 is a member.

2 (13) Conciliation of complaints of discrimination in
3 the sale or rental of housing, when closed meetings are
4 authorized by the law or ordinance prescribing fair housing
5 practices and creating a commission or administrative
6 agency for their enforcement.

7 (14) Informant sources, the hiring or assignment of
8 undercover personnel or equipment, or ongoing, prior or
9 future criminal investigations, when discussed by a public
10 body with criminal investigatory responsibilities.

11 (15) Professional ethics or performance when
12 considered by an advisory body appointed to advise a
13 licensing or regulatory agency on matters germane to the
14 advisory body's field of competence.

15 (16) Self evaluation, practices and procedures or
16 professional ethics, when meeting with a representative of
17 a statewide association of which the public body is a
18 member.

19 (17) The recruitment, credentialing, discipline or
20 formal peer review of physicians or other health care
21 professionals for a hospital, or other institution
22 providing medical care, that is operated by the public
23 body.

24 (18) Deliberations for decisions of the Prisoner
25 Review Board.

26 (19) Review or discussion of applications received

1 under the Experimental Organ Transplantation Procedures
2 Act.

3 (20) The classification and discussion of matters
4 classified as confidential or continued confidential by
5 the State Government Suggestion Award Board.

6 (21) Discussion of minutes of meetings lawfully closed
7 under this Act, whether for purposes of approval by the
8 body of the minutes or semi-annual review of the minutes as
9 mandated by Section 2.06.

10 (22) Deliberations for decisions of the State
11 Emergency Medical Services Disciplinary Review Board.

12 (23) The operation by a municipality of a municipal
13 utility or the operation of a municipal power agency or
14 municipal natural gas agency when the discussion involves
15 (i) contracts relating to the purchase, sale, or delivery
16 of electricity or natural gas or (ii) the results or
17 conclusions of load forecast studies.

18 (24) Meetings of a residential health care facility
19 resident sexual assault and death review team or the
20 Executive Council under the Abuse Prevention Review Team
21 Act.

22 (25) Meetings of an independent team of experts under
23 Brian's Law.

24 (26) ~~(25)~~ Meetings of a mortality review team appointed
25 under the Department of Juvenile Justice Mortality Review
26 Team Act.

1 (27) ~~(25)~~ Confidential information, when discussed by
2 one or more members of an elder abuse fatality review team,
3 designated under Section 15 of the Elder Abuse and Neglect
4 Act, while participating in a review conducted by that team
5 of the death of an elderly person in which abuse or neglect
6 is suspected, alleged, or substantiated; provided that
7 before the review team holds a closed meeting, or closes an
8 open meeting, to discuss the confidential information,
9 each participating review team member seeking to disclose
10 the confidential information in the closed meeting or
11 closed portion of the meeting must state on the record
12 during an open meeting or the open portion of a meeting the
13 nature of the information to be disclosed and the legal
14 basis for otherwise holding that information confidential.

15 (28) Correspondence and records (i) that may not be
16 disclosed under Section 11-9 of the Public Aid Code or (ii)
17 that pertain to appeals under Section 11-8 of the Public
18 Aid Code.

19 (d) Definitions. For purposes of this Section:

20 "Employee" means a person employed by a public body whose
21 relationship with the public body constitutes an
22 employer-employee relationship under the usual common law
23 rules, and who is not an independent contractor.

24 "Public office" means a position created by or under the
25 Constitution or laws of this State, the occupant of which is
26 charged with the exercise of some portion of the sovereign

1 power of this State. The term "public office" shall include
2 members of the public body, but it shall not include
3 organizational positions filled by members thereof, whether
4 established by law or by a public body itself, that exist to
5 assist the body in the conduct of its business.

6 "Quasi-adjudicative body" means an administrative body
7 charged by law or ordinance with the responsibility to conduct
8 hearings, receive evidence or testimony and make
9 determinations based thereon, but does not include local
10 electoral boards when such bodies are considering petition
11 challenges.

12 (e) Final action. No final action may be taken at a closed
13 meeting. Final action shall be preceded by a public recital of
14 the nature of the matter being considered and other information
15 that will inform the public of the business being conducted.

16 (Source: P.A. 95-185, eff. 1-1-08; 96-1235, eff. 1-1-11;
17 96-1378, eff. 7-29-10; 96-1428, eff. 8-11-10; revised 9-2-10.)

18 Section 10. The Freedom of Information Act is amended by
19 changing Section 7 as follows:

20 (5 ILCS 140/7) (from Ch. 116, par. 207)

21 Sec. 7. Exemptions.

22 (1) When a request is made to inspect or copy a public
23 record that contains information that is exempt from disclosure
24 under this Section, but also contains information that is not

1 exempt from disclosure, the public body may elect to redact the
2 information that is exempt. The public body shall make the
3 remaining information available for inspection and copying.
4 Subject to this requirement, the following shall be exempt from
5 inspection and copying:

6 (a) Information specifically prohibited from
7 disclosure by federal or State law or rules and regulations
8 implementing federal or State law.

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

12 (b-5) Files, documents, and other data or databases
13 maintained by one or more law enforcement agencies and
14 specifically designed to provide information to one or more
15 law enforcement agencies regarding the physical or mental
16 status of one or more individual subjects.

17 (c) Personal information contained within public
18 records, the disclosure of which would constitute a clearly
19 unwarranted invasion of personal privacy, unless the
20 disclosure is consented to in writing by the individual
21 subjects of the information. "Unwarranted invasion of
22 personal privacy" means the disclosure of information that
23 is highly personal or objectionable to a reasonable person
24 and in which the subject's right to privacy outweighs any
25 legitimate public interest in obtaining the information.
26 The disclosure of information that bears on the public

1 duties of public employees and officials shall not be
2 considered an invasion of personal privacy.

3 (d) Records in the possession of any public body
4 created in the course of administrative enforcement
5 proceedings, and any law enforcement or correctional
6 agency for law enforcement purposes, but only to the extent
7 that disclosure would:

8 (i) interfere with pending or actually and
9 reasonably contemplated law enforcement proceedings
10 conducted by any law enforcement or correctional
11 agency that is the recipient of the request;

12 (ii) interfere with active administrative
13 enforcement proceedings conducted by the public body
14 that is the recipient of the request;

15 (iii) create a substantial likelihood that a
16 person will be deprived of a fair trial or an impartial
17 hearing;

18 (iv) unavoidably disclose the identity of a
19 confidential source, confidential information
20 furnished only by the confidential source, or persons
21 who file complaints with or provide information to
22 administrative, investigative, law enforcement, or
23 penal agencies; except that the identities of
24 witnesses to traffic accidents, traffic accident
25 reports, and rescue reports shall be provided by
26 agencies of local government, except when disclosure

1 would interfere with an active criminal investigation
2 conducted by the agency that is the recipient of the
3 request;

4 (v) disclose unique or specialized investigative
5 techniques other than those generally used and known or
6 disclose internal documents of correctional agencies
7 related to detection, observation or investigation of
8 incidents of crime or misconduct, and disclosure would
9 result in demonstrable harm to the agency or public
10 body that is the recipient of the request;

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

13 (vii) obstruct an ongoing criminal investigation
14 by the agency that is the recipient of the request.

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

17 (f) Preliminary drafts, notes, recommendations,
18 memoranda and other records in which opinions are
19 expressed, or policies or actions are formulated, except
20 that a specific record or relevant portion of a record
21 shall not be exempt when the record is publicly cited and
22 identified by the head of the public body. The exemption
23 provided in this paragraph (f) extends to all those records
24 of officers and agencies of the General Assembly that
25 pertain to the preparation of legislative documents.

26 (g) Trade secrets and commercial or financial

1 information obtained from a person or business where the
2 trade secrets or commercial or financial information are
3 furnished under a claim that they are proprietary,
4 privileged or confidential, and that disclosure of the
5 trade secrets or commercial or financial information would
6 cause competitive harm to the person or business, and only
7 insofar as the claim directly applies to the records
8 requested.

9 The information included under this exemption includes
10 all trade secrets and commercial or financial information
11 obtained by a public body, including a public pension fund,
12 from a private equity fund or a privately held company
13 within the investment portfolio of a private equity fund as
14 a result of either investing or evaluating a potential
15 investment of public funds in a private equity fund. The
16 exemption contained in this item does not apply to the
17 aggregate financial performance information of a private
18 equity fund, nor to the identity of the fund's managers or
19 general partners. The exemption contained in this item does
20 not apply to the identity of a privately held company
21 within the investment portfolio of a private equity fund,
22 unless the disclosure of the identity of a privately held
23 company may cause competitive harm.

24 Nothing contained in this paragraph (g) shall be
25 construed to prevent a person or business from consenting
26 to disclosure.

1 (h) Proposals and bids for any contract, grant, or
2 agreement, including information which if it were
3 disclosed would frustrate procurement or give an advantage
4 to any person proposing to enter into a contractor
5 agreement with the body, until an award or final selection
6 is made. Information prepared by or for the body in
7 preparation of a bid solicitation shall be exempt until an
8 award or final selection is made.

9 (i) Valuable formulae, computer geographic systems,
10 designs, drawings and research data obtained or produced by
11 any public body when disclosure could reasonably be
12 expected to produce private gain or public loss. The
13 exemption for "computer geographic systems" provided in
14 this paragraph (i) does not extend to requests made by news
15 media as defined in Section 2 of this Act when the
16 requested information is not otherwise exempt and the only
17 purpose of the request is to access and disseminate
18 information regarding the health, safety, welfare, or
19 legal rights of the general public.

20 (j) The following information pertaining to
21 educational matters:

22 (i) test questions, scoring keys and other
23 examination data used to administer an academic
24 examination;

25 (ii) information received by a primary or
26 secondary school, college, or university under its

1 procedures for the evaluation of faculty members by
2 their academic peers;

3 (iii) information concerning a school or
4 university's adjudication of student disciplinary
5 cases, but only to the extent that disclosure would
6 unavoidably reveal the identity of the student; and

7 (iv) course materials or research materials used
8 by faculty members.

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

21 (l) Minutes of meetings of public bodies closed to the
22 public as provided in the Open Meetings Act until the
23 public body makes the minutes available to the public under
24 Section 2.06 of the Open Meetings Act.

25 (m) Communications between a public body and an
26 attorney or auditor representing the public body that would

1 not be subject to discovery in litigation, and materials
2 prepared or compiled by or for a public body in
3 anticipation of a criminal, civil or administrative
4 proceeding upon the request of an attorney advising the
5 public body, and materials prepared or compiled with
6 respect to internal audits of public bodies.

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

11 (o) Administrative or technical information associated
12 with automated data processing operations, including but
13 not limited to software, operating protocols, computer
14 program abstracts, file layouts, source listings, object
15 modules, load modules, user guides, documentation
16 pertaining to all logical and physical design of
17 computerized systems, employee manuals, and any other
18 information that, if disclosed, would jeopardize the
19 security of the system or its data or the security of
20 materials exempt under this Section.

21 (p) Records relating to collective negotiating matters
22 between public bodies and their employees or
23 representatives, except that any final contract or
24 agreement shall be subject to inspection and copying.

25 (q) Test questions, scoring keys, and other
26 examination data used to determine the qualifications of an

1 applicant for a license or employment.

2 (r) The records, documents, and information relating
3 to real estate purchase negotiations until those
4 negotiations have been completed or otherwise terminated.
5 With regard to a parcel involved in a pending or actually
6 and reasonably contemplated eminent domain proceeding
7 under the Eminent Domain Act, records, documents and
8 information relating to that parcel shall be exempt except
9 as may be allowed under discovery rules adopted by the
10 Illinois Supreme Court. The records, documents and
11 information relating to a real estate sale shall be exempt
12 until a sale is consummated.

13 (s) Any and all proprietary information and records
14 related to the operation of an intergovernmental risk
15 management association or self-insurance pool or jointly
16 self-administered health and accident cooperative or pool.
17 Insurance or self insurance (including any
18 intergovernmental risk management association or self
19 insurance pool) claims, loss or risk management
20 information, records, data, advice or communications.

21 (t) Information contained in or related to
22 examination, operating, or condition reports prepared by,
23 on behalf of, or for the use of a public body responsible
24 for the regulation or supervision of financial
25 institutions or insurance companies, unless disclosure is
26 otherwise required by State law.

1 (u) Information that would disclose or might lead to
2 the disclosure of secret or confidential information,
3 codes, algorithms, programs, or private keys intended to be
4 used to create electronic or digital signatures under the
5 Electronic Commerce Security Act.

6 (v) Vulnerability assessments, security measures, and
7 response policies or plans that are designed to identify,
8 prevent, or respond to potential attacks upon a community's
9 population or systems, facilities, or installations, the
10 destruction or contamination of which would constitute a
11 clear and present danger to the health or safety of the
12 community, but only to the extent that disclosure could
13 reasonably be expected to jeopardize the effectiveness of
14 the measures or the safety of the personnel who implement
15 them or the public. Information exempt under this item may
16 include such things as details pertaining to the
17 mobilization or deployment of personnel or equipment, to
18 the operation of communication systems or protocols, or to
19 tactical operations.

20 (w) (Blank).

21 (x) Maps and other records regarding the location or
22 security of generation, transmission, distribution,
23 storage, gathering, treatment, or switching facilities
24 owned by a utility, by a power generator, or by the
25 Illinois Power Agency.

26 (y) Information contained in or related to proposals,

1 bids, or negotiations related to electric power
2 procurement under Section 1-75 of the Illinois Power Agency
3 Act and Section 16-111.5 of the Public Utilities Act that
4 is determined to be confidential and proprietary by the
5 Illinois Power Agency or by the Illinois Commerce
6 Commission.

7 (z) Information about students exempted from
8 disclosure under Sections 10-20.38 or 34-18.29 of the
9 School Code, and information about undergraduate students
10 enrolled at an institution of higher education exempted
11 from disclosure under Section 25 of the Illinois Credit
12 Card Marketing Act of 2009.

13 (aa) Information the disclosure of which is exempted
14 under the Viatical Settlements Act of 2009.

15 (bb) Records and information provided to a mortality
16 review team and records maintained by a mortality review
17 team appointed under the Department of Juvenile Justice
18 Mortality Review Team Act.

19 (cc) ~~(bb)~~ Information regarding interments,
20 entombments, or inurnments of human remains that are
21 submitted to the Cemetery Oversight Database under the
22 Cemetery Care Act or the Cemetery Oversight Act, whichever
23 is applicable.

24 (dd) Correspondence and records (i) that may not be
25 disclosed under Section 11-9 of the Public Aid Code or (ii)
26 that pertain to appeals under Section 11-8 of the Public

1 Aid Code.

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

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

13 (Source: P.A. 95-331, eff. 8-21-07; 95-481, eff. 8-28-07;
14 95-941, eff. 8-29-08; 95-988, eff. 6-1-09; 96-261, eff. 1-1-10;
15 96-328, eff. 8-11-09; 96-542, eff. 1-1-10; 96-558, eff. 1-1-10;
16 96-736, eff. 7-1-10; 96-863, eff. 3-1-10; 96-1378, eff.
17 7-29-10; revised 9-2-10.)

18 Section 99. Effective date. This Act takes effect upon
19 becoming law.