

# HB6298



## 98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB6298

by Rep. David McSweeney

### SYNOPSIS AS INTRODUCED:

5 ILCS 120/3.5

Amends the Open Meetings Act. Provides that a request for review may be filed not later than 60 days after the alleged violation occurs or, if facts concerning the meeting are not discovered within the 60-day period, within 60 days of the discovery of the alleged violation (currently, within 60 days after the alleged violation). Effective immediately.

LRB098 22718 HLH 61655 b

A BILL FOR

1 AN ACT concerning State 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 3.5 as follows:

6 (5 ILCS 120/3.5)

7 Sec. 3.5. Public Access Counselor; opinions.

8 (a) A person who believes that a violation of this Act by a  
9 public body has occurred may file a request for review with the  
10 Public Access Counselor established in the Office of the  
11 Attorney General not later than 60 days after the alleged  
12 violation or, if facts concerning the meeting are not  
13 discovered within the 60-day period, within 60 days of the  
14 discovery of the alleged violation. The request for review must  
15 be in writing, must be signed by the requester, and must  
16 include a summary of the facts supporting the allegation.

17 (b) Upon receipt of a request for review, the Public Access  
18 Counselor shall determine whether further action is warranted.  
19 If the Public Access Counselor determines from the request for  
20 review that the alleged violation is unfounded, he or she shall  
21 so advise the requester and the public body and no further  
22 action shall be undertaken. In all other cases, the Public  
23 Access Counselor shall forward a copy of the request for review

1 to the public body within 7 working days. The Public Access  
2 Counselor shall specify the records or other documents that the  
3 public body shall furnish to facilitate the review. Within 7  
4 working days after receipt of the request for review, the  
5 public body shall provide copies of the records requested and  
6 shall otherwise fully cooperate with the Public Access  
7 Counselor. If a public body fails to furnish specified records  
8 pursuant to this Section, or if otherwise necessary, the  
9 Attorney General may issue a subpoena to any person or public  
10 body having knowledge of or records pertaining to an alleged  
11 violation of this Act. For purposes of conducting a thorough  
12 review, the Public Access Counselor has the same right to  
13 examine a verbatim recording of a meeting closed to the public  
14 or the minutes of a closed meeting as does a court in a civil  
15 action brought to enforce this Act.

16 (c) Within 7 working days after it receives a copy of a  
17 request for review and request for production of records from  
18 the Public Access Counselor, the public body may, but is not  
19 required to, answer the allegations of the request for review.  
20 The answer may take the form of a letter, brief, or memorandum.  
21 Upon request, the public body may also furnish the Public  
22 Access Counselor with a redacted copy of the answer excluding  
23 specific references to any matters at issue. The Public Access  
24 Counselor shall forward a copy of the answer or redacted  
25 answer, if furnished, to the person submitting the request for  
26 review. The requester may, but is not required to, respond in

1 writing to the answer within 7 working days and shall provide a  
2 copy of the response to the public body.

3 (d) In addition to the request for review, and the answer  
4 and the response thereto, if any, a requester or a public body  
5 may furnish affidavits and records concerning any matter  
6 germane to the review.

7 (e) Unless the Public Access Counselor extends the time by  
8 no more than 21 business days by sending written notice to the  
9 requester and public body that includes a statement of the  
10 reasons for the extension in the notice, or decides to address  
11 the matter without the issuance of a binding opinion, the  
12 Attorney General shall examine the issues and the records,  
13 shall make findings of fact and conclusions of law, and shall  
14 issue to the requester and the public body an opinion within 60  
15 days after initiating review. The opinion shall be binding upon  
16 both the requester and the public body, subject to  
17 administrative review under Section 7.5 of this Act.

18 In responding to any written request under this Section  
19 3.5, the Attorney General may exercise his or her discretion  
20 and choose to resolve a request for review by mediation or by a  
21 means other than the issuance of a binding opinion. The  
22 decision not to issue a binding opinion shall not be  
23 reviewable.

24 Upon receipt of a binding opinion concluding that a  
25 violation of this Act has occurred, the public body shall  
26 either take necessary action as soon as practical to comply

1 with the directive of the opinion or shall initiate  
2 administrative review under Section 7.5. If the opinion  
3 concludes that no violation of the Act has occurred, the  
4 requester may initiate administrative review under Section  
5 7.5.

6 (f) If the requester files suit under Section 3 with  
7 respect to the same alleged violation that is the subject of a  
8 pending request for review, the requester shall notify the  
9 Public Access Counselor, and the Public Access Counselor shall  
10 take no further action with respect to the request for review  
11 and shall so notify the public body.

12 (g) Records that are obtained by the Public Access  
13 Counselor from a public body for purposes of addressing a  
14 request for review under this Section 3.5 may not be disclosed  
15 to the public, including the requester, by the Public Access  
16 Counselor. Those records, while in the possession of the Public  
17 Access Counselor, shall be exempt from disclosure by the Public  
18 Access Counselor under the Freedom of Information Act.

19 (h) The Attorney General may also issue advisory opinions  
20 to public bodies regarding compliance with this Act. A review  
21 may be initiated upon receipt of a written request from the  
22 head of the public body or its attorney. The request must  
23 contain sufficient accurate facts from which a determination  
24 can be made. The Public Access Counselor may request additional  
25 information from the public body in order to facilitate the  
26 review. A public body that relies in good faith on an advisory

1 opinion of the Attorney General in complying with the  
2 requirements of this Act is not liable for penalties under this  
3 Act, so long as the facts upon which the opinion is based have  
4 been fully and fairly disclosed to the Public Access Counselor.  
5 (Source: P.A. 96-542, eff. 1-1-10.)

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