

# HB0175



## 99TH GENERAL ASSEMBLY

### State of Illinois

2015 and 2016

HB0175

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 discovery of an alleged violation of the Act (instead of 60 days after the alleged violation) if facts concerning the violation are not discovered within 60 days after the alleged violation but are discovered at a later date by a person utilizing reasonable diligence. Effective immediately.

LRB099 02871 HLH 22879 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. If facts concerning the violation are not discovered  
13 within the 60-day period, but are discovered at a later date by  
14 a person utilizing reasonable diligence, the request for review  
15 may be made within 60 days of the discovery of the alleged  
16 violation. The request for review must be in writing, must be  
17 signed by the requester, and must include a summary of the  
18 facts supporting the allegation.

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

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

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

1 answer, if furnished, to the person submitting the request for  
2 review. The requester may, but is not required to, respond in  
3 writing to the answer within 7 working days and shall provide a  
4 copy of the response to the public body.

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

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

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

26 Upon receipt of a binding opinion concluding that a

1 violation of this Act has occurred, the public body shall  
2 either take necessary action as soon as practical to comply  
3 with the directive of the opinion or shall initiate  
4 administrative review under Section 7.5. If the opinion  
5 concludes that no violation of the Act has occurred, the  
6 requester may initiate administrative review under Section  
7 7.5.

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

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

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

1 information from the public body in order to facilitate the  
2 review. A public body that relies in good faith on an advisory  
3 opinion of the Attorney General in complying with the  
4 requirements of this Act is not liable for penalties under this  
5 Act, so long as the facts upon which the opinion is based have  
6 been fully and fairly disclosed to the Public Access Counselor.  
7 (Source: P.A. 96-542, eff. 1-1-10.)

8 Section 99. Effective date. This Act takes effect upon  
9 becoming law.