



Sen. Dan Duffy

Filed: 5/28/2015

09900HB0175sam001

LRB099 02871 JWD 36283 a

1 AMENDMENT TO HOUSE BILL 175

2 AMENDMENT NO. _____. Amend House Bill 175 by replacing
3 everything after the enacting clause with the following:

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. For the purposes of this subsection (a), "reasonable

1 diligence" means the exercise of due care to discover the
2 violation given the information available to the person. The
3 request for review must be in writing, must be signed by the
4 requester, and must include a summary of the facts supporting
5 the allegation. The changes made by this amendatory Act of the
6 99th General Assembly apply to violations occurring on or after
7 the effective date of this amendatory Act of the 99th General
8 Assembly.

9 (b) Upon receipt of a request for review, the Public Access
10 Counselor shall determine whether further action is warranted.
11 If the Public Access Counselor determines from the request for
12 review that the alleged violation is unfounded, he or she shall
13 so advise the requester and the public body and no further
14 action shall be undertaken. In all other cases, the Public
15 Access Counselor shall forward a copy of the request for review
16 to the public body within 7 working days. The Public Access
17 Counselor shall specify the records or other documents that the
18 public body shall furnish to facilitate the review. Within 7
19 working days after receipt of the request for review, the
20 public body shall provide copies of the records requested and
21 shall otherwise fully cooperate with the Public Access
22 Counselor. If a public body fails to furnish specified records
23 pursuant to this Section, or if otherwise necessary, the
24 Attorney General may issue a subpoena to any person or public
25 body having knowledge of or records pertaining to an alleged
26 violation of this Act. For purposes of conducting a thorough

1 review, the Public Access Counselor has the same right to
2 examine a verbatim recording of a meeting closed to the public
3 or the minutes of a closed meeting as does a court in a civil
4 action brought to enforce this Act.

5 (c) Within 7 working days after it receives a copy of a
6 request for review and request for production of records from
7 the Public Access Counselor, the public body may, but is not
8 required to, answer the allegations of the request for review.
9 The answer may take the form of a letter, brief, or memorandum.
10 Upon request, the public body may also furnish the Public
11 Access Counselor with a redacted copy of the answer excluding
12 specific references to any matters at issue. The Public Access
13 Counselor shall forward a copy of the answer or redacted
14 answer, if furnished, to the person submitting the request for
15 review. The requester may, but is not required to, respond in
16 writing to the answer within 7 working days and shall provide a
17 copy of the response to the public body.

18 (d) In addition to the request for review, and the answer
19 and the response thereto, if any, a requester or a public body
20 may furnish affidavits and records concerning any matter
21 germane to the review.

22 (e) Unless the Public Access Counselor extends the time by
23 no more than 21 business days by sending written notice to the
24 requester and public body that includes a statement of the
25 reasons for the extension in the notice, or decides to address
26 the matter without the issuance of a binding opinion, the

1 Attorney General shall examine the issues and the records,
2 shall make findings of fact and conclusions of law, and shall
3 issue to the requester and the public body an opinion within 60
4 days after initiating review. The opinion shall be binding upon
5 both the requester and the public body, subject to
6 administrative review under Section 7.5 of this Act.

7 In responding to any written request under this Section
8 3.5, the Attorney General may exercise his or her discretion
9 and choose to resolve a request for review by mediation or by a
10 means other than the issuance of a binding opinion. The
11 decision not to issue a binding opinion shall not be
12 reviewable.

13 Upon receipt of a binding opinion concluding that a
14 violation of this Act has occurred, the public body shall
15 either take necessary action as soon as practical to comply
16 with the directive of the opinion or shall initiate
17 administrative review under Section 7.5. If the opinion
18 concludes that no violation of the Act has occurred, the
19 requester may initiate administrative review under Section
20 7.5.

21 (f) If the requester files suit under Section 3 with
22 respect to the same alleged violation that is the subject of a
23 pending request for review, the requester shall notify the
24 Public Access Counselor, and the Public Access Counselor shall
25 take no further action with respect to the request for review
26 and shall so notify the public body.

1 (g) Records that are obtained by the Public Access
2 Counselor from a public body for purposes of addressing a
3 request for review under this Section 3.5 may not be disclosed
4 to the public, including the requester, by the Public Access
5 Counselor. Those records, while in the possession of the Public
6 Access Counselor, shall be exempt from disclosure by the Public
7 Access Counselor under the Freedom of Information Act.

8 (h) The Attorney General may also issue advisory opinions
9 to public bodies regarding compliance with this Act. A review
10 may be initiated upon receipt of a written request from the
11 head of the public body or its attorney. The request must
12 contain sufficient accurate facts from which a determination
13 can be made. The Public Access Counselor may request additional
14 information from the public body in order to facilitate the
15 review. A public body that relies in good faith on an advisory
16 opinion of the Attorney General in complying with the
17 requirements of this Act is not liable for penalties under this
18 Act, so long as the facts upon which the opinion is based have
19 been fully and fairly disclosed to the Public Access Counselor.
20 (Source: P.A. 96-542, eff. 1-1-10.)

21 Section 99. Effective date. This Act takes effect upon
22 becoming law."