

# A Reference Guide to the Illinois Open Meetings Act



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Prepared by: O'Halloran Kosoff Geitner &  
Cook, LLC for the ICRMT

Date: September 2020

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## **Purpose of the Open Meetings Act**

The Illinois Open Meetings Act (OMA) (5 ILCS 120/1) provides the people of the State of Illinois with the right to be informed as to the conduct of public business. The OMA declares that it is the intent of the Act that public bodies take action (vote) in open meetings, and that public bodies deliberate openly. According to the OMA, citizens are to be given advance notice of and the right to attend all meetings at which any business of a public body is discussed or acted upon. There are exceptions to the public's right to attend meetings, but the exceptions are strictly construed and limited to those situations delineated in the statute. 5 ILCS 120/1.

### **Meetings are to be Open (Unless an Exception Applies)**

All meetings of a public body are to be open unless an exception (as set forth in Section 2(c) of the OMA) applies. 5 ILCS 120/2 (a). Exceptions are strictly construed.

### **What is a Meeting**

The OMA defines a "meeting" as "any gathering, whether in person or by video or audio conference, telephone call, electronic means (such as, without limitation, electronic mail, electronic chat, and instant messaging), or other means of contemporaneous interactive communication, of a majority of a quorum of the members of a public body held for the purpose of discussing public business or, for a 5-member public body, a quorum of the members of a public body held for the purpose of discussing public

business.” 5 ILCS 120/1.02. The definition has essentially three requirements. First, there must be a gathering, but it need not be an in-person gathering; it can be an electronic “gathering.” Second, a majority of a quorum of the board must be present (except in the case of a 5-member board). Third, the meeting must be held to discuss public business. Board members should be aware that it is possible for a purely social gathering to turn into a meeting in violation of the OMA if all three prerequisites are met. For example, if a majority of a quorum of the board is gathered at a party, and the discussion turns to public business, the social gathering has been converted to a meeting in violation of the OMA. Discussing public business means that the board members are exchanging views on any matters germane to the business of the public body.

### **Interpretive Court Decisions:**

In *People v. Barr*, the Illinois Supreme Court held that when 9 members of a 15 member board met to discuss public business in advance of their regularly scheduled meeting, they held a meeting in violation of the OMA. 83 Ill.2d 191 (1980).

### **Interpretive Attorney General Opinions:**

The Illinois Attorney General has found that a meeting which was attended by the re-elected mayor, a re-elected commissioner and three newly elected, but unsworn, commissioners of a village, held to discuss the appointment of village officials for the next term by the

village council, violated the OMA. 1996 *Op. Att’y. Gen. No. 96-005*.

The Illinois Attorney General has opined that a gathering need not be prearranged and set as to time, nor need it be an official meeting in order to come within the purview of the Act. 1974 *Op. Att’y. Gen. No. S-726*.

### **Entities Subject to the OMA**

The OMA defines a “public body” to include “all legislative, executive, administrative or advisory bodies of the State, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees or commissions of this State, and any subsidiary bodies of any of the foregoing including but not limited to committees and subcommittees which are supported in whole or in part by tax revenue or which expend tax revenue, except the General Assembly and committees or commissions thereof...” 5 ILCS 120/1.02. Boards should be aware that committees and subcommittees are subject to all requirements of the OMA, including, but not limited to, the requirements for providing public notice of meetings, conducting open meetings, preparing agendas, and keeping minutes.

### **Interpretive Court Decisions:**

A not-for-profit corporation that operated a zoo on public land, but did not conduct public business was not a public

entity for purposes of the OMA. *O'Toole v. Chicago Zoological Society*, 2015 IL 118254.

An athletic advisory council that was created to advise a state university on athletic issues was a public body for purposes of the OMA. *Board of Regents v. Reynard*, 292 Ill.App.3d 968 (1997).

### **Interpretive Attorney General Opinions:**

A committee of the full public body is a separate public body for purposes of complying with OMA. *Ill. Att'y Gen. Pub. Acc. Op. No. 13-002* (Apr. 16, 2013).

The requirements of the OMA apply to committees which consist of less than a majority of the quorum of the public body. *1982 Op. Att'y. Gen. No. 88*.

### **Proper Notice**

#### **Annual Schedule:**

A public body must prepare a schedule of regular meetings at the beginning of each calendar or fiscal year. The schedule must state the regular dates, times and places of the meetings. 5 ILCS 120/2.02(a). If a change is made in regular meeting dates, at least 10 days' notice of the change must be given by publication in a newspaper of general circulation in the area in which the public body functions. In the case of public bodies with a population of less than 500 in which no newspaper is published, 10 days' notice must be given by posting notice in at least

three prominent places within the governmental unit, and at the principal office, or if no principal office exists, at the building in which the meeting is to be held. Notice of the change of schedule must also be given to news media which have filed an annual request for notice. 5 ILCS 120/2.03.

### **Regular Meetings:**

An agenda for each regular meeting must be posted at the principal office of the public body and at the location where the meeting is to be held at least 48 hours in advance of the holding of the meeting. A public body that has a website that the full-time staff of the public body maintains must also post on its website the agenda of any regular meetings. Any agenda posted on the website must remain posted until the regular meeting is concluded. 5 ILCS 120/2.01(a).

The agenda preparation requirement does not preclude the consideration of items not specifically set forth in the agenda, but a public entity may not vote on a matter not on the agenda. 5 ILCS 120/2.01(a).

### **Special Meetings:**

The notice of any special meeting except those held in the event of a bona fide emergency must be given at least 48 hours before the meeting and should also include an agenda. The validity of any action taken by the public body which is germane to a subject on the agenda shall

not be affected by other errors or omissions on the agenda. 5 ILCS 120/2.01 (a).

### **Emergency Meetings:**

Notice of an emergency meeting must be given as soon as practicable, but in any event prior to the holding of the meeting, and notice should also be given to any news medium that has filed an annual request for notice. 5 ILCS 120/2.02(a).

### **Where to Post Notice of Meetings**

Notice of the meeting should be posted at the principal office of the public body holding the meeting or, if no such office exists, at the building in which the meeting is to be held. In addition, a public body that has a website that is maintained by its full-time staff must post the notice on its website. Notice posted on the website must remain posted until the meeting is concluded. Also notice of the annual schedule must remain on the public body's website until a new public notice of the schedule of regular meetings is approved. Any news medium that has requested copies should also be provided with copies of any regular, special, reconvened, rescheduled or emergency meetings. Failure to post notice on the public body's website does not invalidate a meeting or any action taken at the meeting. 5 ILCS 120/2.02(b).

## Agenda Content

An agenda must set forth the general subject matter of any resolution or ordinance that will be the subject of final action at the meeting. The public body conducting a meeting must ensure that at least one copy of any notice and agenda for the meeting is continuously available for public review during the entire 48 hour period preceding the meeting. Posting of the notice and agenda on a website that is maintained by the public body satisfies the requirement for continuous posting. If the notice or agenda is not continuously available for the full 48 hour period, due to actions outside the control of the public body, then that lack of availability does not invalidate the meeting or action taken at the meeting. 5 ILCS 120/2.02(c). The requirement of a regular meeting agenda does not preclude the consideration of matters not specifically on the agenda, but a public body may not vote on a matter that was not on the agenda. 5 ILCS 120/2.02(a).

### **Interpretive Court Decisions:**

An agenda item stating “Approval of Resolution regarding the \*\*\* Agreement \*\*\*Between Superintendent \*\*\* Milton \*\*\* and the Board” with an electronic link to the Agreement gave the public sufficient notice of a vote on a resolution relating to a severance agreement. *Bd. of Educ. of Springfield Sch. Dist. No. 186 v. Attorney General of Ill.*, 2015 IL App (4<sup>th</sup>) 140941, *aff’d on other grounds*, 2017 IL 120343.

A village did not violate the OMA where its agenda referenced “Discussion and Consideration of potential annexation of property,” and the village voted at the special meeting to annex a specific parcel. The vote was germane to the topic listed on the agenda. *In re Foxfield Subdivision v. Village of Campton Hills*, 396 Ill.App.3d 989 (2d Dist. 2009).

A published agenda does not need to indicate at all that a public body will enter closed session. *Wyman v. Schweighart*, 385 Ill.App.3d 1099 (4<sup>th</sup> Dist. 2008).

An agenda listing “new business” did not provide sufficient notice of a vote on a resolution to provide an alternative benefit program for elected officers. *Rice v. Adams County*, 326 Ill.App.3d 1120 (4<sup>th</sup> Dist. 2002).

The OMA does not require notice in the agenda of items that will be discussed in closed session. *Gosnell v. Hogan*, 179 Ill. App.3d 161 (5<sup>th</sup> Dist. 1998). (Note that while closed session topics do not need to be listed on the agenda, if a public body intends to vote in open session on a matter that was discussed in closed session, it must be on the agenda.)

An agenda item listing “all other matters pertaining to the function of the Township” was too generic to give proper notice of a vote to appoint an official. *People v. Giglio*, 238 Ill.App.3d 141 (1<sup>st</sup> Dist. 1992).

A public body’s vote to extend its superintendent’s term and change the term of a chairperson’s appointment was

germane to the special meeting agenda item of “review and discussion of salaries involving administrators, supervisors and other personnel.” *Argo High School Council of Local 571 v. Argo Comm. High Sch.*, 163 Ill.App.3d 578 (1<sup>st</sup> Dist. 1987).

### **Interpretive Attorney General Opinions:**

Agenda item which a identified city code section by number only and indicated that council would consider an ordinance amending that section violated the OMA because agenda item failed to set forth the general subject matter of the ordinance to be considered. *Ill. Att’y Gen. Pub. Acc. Op. No. 19-012* (Nov. 13, 2019).

Failure to include information on the agenda regarding the subject matter of final action on a settlement agreement violated the OMA. *Ill. Att’y Gen. Pub. Acc. Op. No. 17-004* (June 6, 2017).

A board violated the OMA when it failed to indicate on its agenda that it would vote on a contract for police services. *Ill. Att’y Gen. Pub. Acc. Op. No. 15-005* (Aug. 4, 2015).

A board did not violate the OMA by removing two items scheduled for a vote from its agenda less than 48 hours prior to the meeting, and moving those items to “closed session” on the agenda. The OMA only requires the agenda to list the general subject matter of any resolution or ordinance that will be the subject of final action. In addition, the OMA does not require notice on the agenda

for items that will be discussed in closed session. *Ill. Att’y Gen. Pub. Acc. Op. No. 14-003* (May 5, 2014).

A board’s agenda failed to indicate that the board would be voting on an increase in the museum admission price. Even though a committee of the board, which met earlier the same day, had the admission price topic on its agenda, the committee was a separate public body, and the committee’s inclusion of the item on the agenda did not satisfy the board’s separate duty to include the item on its agenda. *Ill. Att’y Gen. Pub. Acc. Op. No. 13-002* (Apr. 16, 2013).

### **Minutes and Verbatim Recordings**

#### **Content of Minutes and Verbatim Record:**

Public bodies must keep written minutes of all of their open and closed meetings, and must also keep a verbatim record of all closed meetings in either audio or video format. Minutes must include the date, time and place of the meeting, the members of the public body that were present or absent, and whether the members were physically present or present by means of video or audio conference. The minutes must also include a summary of discussion on all matters proposed, deliberated, or decided, and a record of the votes taken. 5 ILCS 120/2.06(a).

### **Approval of Minutes:**

The public body must approve the minutes of its open meeting within 30 days after that meeting or at its second subsequent regular meeting, whichever is later. Within 10 days after approval, the minutes must be available for public inspection. A public body that has a website that is maintained by its full-time staff must post on its website the minutes of a regular open meeting of its governing body within 10 days of approval. Minutes must remain posted there for at least 60 days after their initial posting. 5 ILCS 120/2.06(b).

### **Destruction of Closed Session Verbatim Recording:**

The verbatim record of a closed session may be destroyed without notification to or approval of a records commission or the State Archivist under the Local Records Act or State Records Act no less than 18 months after completion of the meeting, but only after (a) the public body approves the destruction of a particular recording; and (b) the public body approves the minutes of the closed session that meet the requirements of the OMA. 5 ILCS 120/2.06(c).

### **Semi-Annual Review of Closed Session Minutes:**

No less than semi-annually, a public body must meet to review minutes of all closed meetings. This can occur in closed session. At the meeting, the public body must make a determination that (1) the need for confidentiality still exists as to all or part of those minutes; and (2) that

the minutes or portions thereof no longer require confidential treatment and are available for public inspection. The determination must be reported in open session. 5 ILCS 120/2.06(d).

### **Failure to Strictly Comply with Semi-Annual Review:**

Failure to strictly comply with the semi-annual review of closed session minutes will not cause the written minutes or verbatim record to become public or available for inspection in any judicial proceeding, other than a proceeding involving an alleged violation of the OMA, if the public body, within 60 days of discovering its failure to strictly comply, reviews the closed minutes, makes a determination about the continued need for confidentiality, and reports the determination in open session. 5 ILCS 120/2.06(d).

### **Verbatim Record Confidential:**

The OMA provides that unless a public body has made a determination that the verbatim record from closed session no longer requires confidential treatment or otherwise consents to disclosure, that it will not be open for public inspection or subject to discovery in any administrative or judicial proceeding other than one to enforce the OMA. The Act provides a mechanism for the court to privately review the verbatim record in a civil proceeding to determine whether there has been a violation of the Act. The Act also allows a judge in a criminal proceeding to review the verbatim record in order to determine what portions must be made available

to the parties for use as evidence in the prosecution. These provisions of the OMA do not supersede privacy or confidentiality provisions of state or federal law. 5 ILCS 120/2.06(e). Public officials should be aware that in certain circumstances, a court may order all or part of a verbatim record to be released publicly.

### **Access to Verbatim Record by Officials Filling Vacancy:**

The OMA states that access to the closed session verbatim recordings and closed session minutes must be provided to duly elected officials or appointed officials filling a vacancy of an elected office in a public body, and access is to be granted in the public body's main office or official storage location, in the presence of a records secretary, an administrative official of the public body or any elected official of the public body. The verbatim record may not be recorded, nor may the closed session minutes or verbatim record be removed from the public body's main office or storage location except by vote of the public body or by court order. This section does not limit the Public Access Counselor's access to the verbatim record or closed session minutes as necessary to address an action for administrative review. 5 ILCS 120/2.06(e) and (f).

### **Interpretive Court Decisions:**

The OMA does not automatically protect audiotapes of closed session meetings from discovery in litigation. Where the need for probative evidence in a lawsuit outweighs the interests served by the privilege, audio tapes, or portions thereof, must be produced. *Kodish v.*

*Oakbrook Terrace Fire Prot. Dist.*, 225 F.R.D. 447 (N.D. Ill., 2006).

Closed session recorded conversations among board members discussing the legal advice of their attorney and closed session recorded conversations among board members and their attorney about litigation strategy were privileged against discovery in litigation. *Kodish v. Oakbrook Terrace Fire Prot. Dist.*, 225 F.R.D. 447 (N.D. Ill., 2006).

### **Interpretive Attorney General Opinions:**

Failure of a finance committee to keep a verbatim record of its closed session violated the OMA. *Ill. Att’y Gen. Pub. Acc. Op. No. 12-013* (Nov. 5, 2012).

It is the statutory duty of a county clerk to keep an accurate record of the proceedings of the county board either in person or by deputy. Therefore, a clerk may not ordinarily be excluded from open or closed county board meetings. Only in extraordinary circumstances, such as where the clerk might have a conflict of interest in attending closed meeting, may the clerk be excluded. 2000 Ill. Atty. Gen. Op. 004.

### **Where and When to Hold Meetings**

All meetings required to be public must be held at specified times and places that are convenient and open to the public. No meeting required to be public may be held

on a legal holiday unless the regular meeting falls on the holiday. 5 ILCS 120/2.01.

### **Interpretive Court Decisions:**

Requiring members of the public to leave the building during closed session and wait in the parking lot until 1:15 a.m. on a cold night until closed session ended did not violate the OMA. *In re. Foxfield Subdivision v. Village of Campton Hills*, 396 Ill.App.3d 989 (2d Dist. 2009).

A reasonable fact finder could determine that holding a public meeting in the usual boardroom was not convenient to the public where overflow crowds were unable to enter the room. *Gerwin v. Livingston County Board*, 345 Ill.App.3d 352 (4<sup>th</sup> Dist. 2003).

### **Interpretive Attorney General Opinions:**

Holding a meeting more than 20 miles from the board's regular meeting location was not convenient. The additional travel time likely deterred people who might otherwise have attended from traveling to the meeting. *Ill. Att'y Gen. Pub. Acc. Op. No. 13-014* (Sept. 5, 2013).

Holding a meeting at the school district superintendent's home was not convenient. Even though the meeting was open to the public, citizens might have been deterred from attending because they felt uncomfortable going to the superintendent's home. *Ill. Att'y Gen. Pub. Acc. Op. No. 12-008* (Apr. 4, 2012).

## Quorum Required

Except as otherwise provided in the OMA, a quorum of members of the public body must be physically present at the location of the meeting. 5 ILCS 120/2.01.

## Reasons for Holding Closed Meetings

The OMA permits a board to go into closed session only for very specific reasons, which are delineated in the statute at Section 2(c). 5 ILCS 120/2(c). The following is listing of the permitted reasons for holding closed meetings as set forth in Section 2(c):

### **Employment matters:**

- The appointment, employment, compensation, discipline, performance, or dismissal of specific employees, specific individuals who serve as independent contractors in a park, recreational, or educational setting, or specific volunteers of the public body or legal counsel for the public body, including hearing testimony on a complaint lodged against an employee, a specific individual who serves as an independent contractor in a park, recreational, or educational setting, or a volunteer of the public body or against legal counsel for the public body to determine its validity. However, a meeting to consider an increase in compensation to a specific employee that is subject to the Local Government Wage Increase Transparency Act may not be closed and must be open to the public. 5 ILCS 120/2(c)(1).

- Collective negotiating matters between the public body and its employees or their representatives, or deliberations concerning the salary schedules for one or more classes of employees. 5 ILCS 120/2(c)(2).

### **Selecting a Person to Fill a Public Office Vacancy:**

- The selection of a person to fill a public office, as defined in the OMA, including a vacancy in a public office, when the public body is given the power to appoint under law or ordinance, or the discipline, performance or removal of the occupant of a public office, when the public body is given power to remove the occupant under law or ordinance. 5 ILCS 120/2(c)(3).

### **Consideration of Evidence:**

- Evidence or testimony presented in open hearing, or in closed hearing where specifically authorized by law, to a quasi-adjudicative body, as defined in the OMA, provided that the body prepares and makes available for public inspection a written decision setting forth its determinative reasoning. 5 ILCS 120/2(c)(4).

### **Real Estate Matters:**

- The purchase or lease of real property for the use of the public body, including meetings held for the purpose of discussing whether a particular parcel should be acquired. 5 ILCS 120/2(c)(5).
- The setting of a price for sale or lease of property owned by the public body. 5 ILCS 120/2(c)(6).

### **Sale or Purchase of Securities:**

- The sale or purchase of securities, investments, or investment contracts. This exemption does not apply to the investment of assets or income of funds deposited into the Illinois Prepaid Tuition Trust fund. 5 ILCS 120/2(c)(7).

### **Security Matters:**

- Security procedures, school building safety and security, and the use of personnel and equipment to respond to an actual, a threatened, or a reasonably potential danger to the safety of employees, students, staff, the public or public property. 5 ILCS 120/2(c)(8).

### **Student Matters:**

- Student disciplinary cases. 5 ILCS 120/2(c)(9).
- The placement of individual students in special education programs and other matters relating to individual students. 5 ILCS 120/2(c)(10).

### **Litigation or Claims:**

- Litigation, when an action against, affecting or on behalf of the particular public body has been filed and is pending before a court or administrative tribunal, or when the public body finds that an action is probable or imminent, in which case the basis for the finding must be

recorded and entered into the minutes of the closed meeting. 5 ILCS 120/2(c)(11).

- The establishment of reserves or settlement of claims as provided in the Local Governmental and Governmental Employees Tort Immunity Act, if otherwise the disposition of a claim or potential claim might be prejudiced, or the review or discussion of claims, loss or risk management information, records, data, advice or communications from or with respect to any insurer of the public body or any intergovernmental risk management association or self insurance pool of which the public body is a member. 5 ILCS 120/2(c)(12).
- Conciliation of complaints of discrimination in the sale or rental of housing, when closed meetings are authorized by the law or ordinance prescribing fair housing practices and creating a commission or administrative agency for their enforcement. 5 ILCS 120/2(c)(13).

### **Informants:**

- Informant sources, the hiring or assignment of undercover personnel or equipment, or ongoing, prior or future criminal investigations, when discussed by a public body with criminal investigatory responsibilities. 5 ILCS 120/2(c)(14).

### **Professional Ethics:**

- Professional ethics or performance when considered by an advisory body appointed to advise a licensing or regulatory agency on matters germane to the advisory body's field of competence. 5 ILCS 120/2(c)(15).

- Self evaluation, practices and procedures or professional ethics, when meeting with a representative of a statewide association of which the public body is a member. 5 ILCS 120/2(c)(16).

**Peer Review:**

- The recruitment, credentialing, discipline or formal peer review of physicians or other health care professionals for a hospital, or other institutions providing medical care, that is operated by the public body. 5 ILCS 120/2(c)(17).

**Prisoner Review Board:**

- Deliberations for decisions of the Prisoner Review Board. 5 ILCS 120/2(c)(18).

**Closed Meeting Minutes:**

- Discussion of minutes of meetings lawfully closed under the OMA, whether for purposes of approval by the body of the minutes or semi-annual review of the minutes as mandated in Section 2.06. 5 ILCS 120/2(c)(21).

**Matters relating to Utilities:**

- The operation by a municipality of a municipal utility or the operation of a municipal power agency or municipal natural gas agency when the discussion involves (i) contracts relating to the purchase, sale, or delivery of electricity or natural gas or (ii) the results or conclusions of load forecast studies. 5 ILCS 120/2(c)(23).

### **Auditing Matters:**

- Meetings between internal and external auditors and governmental audit committees, finance committees, and their equivalents, when the discussion involves internal control weaknesses, identification of potential fraud risk areas, known or suspected frauds, and fraud interviews conducted in accordance with generally accepted auditing standards of the United States of America. 5 ILCS 120/2(c)(29).

### **Concealed Carry:**

- Meetings and deliberations for decisions of the Concealed Carry Licensing Review Board under the Firearm Concealed Carry Act. 5 ILCS 120/2(c)(31).

### **Miscellaneous:**

- Review or discussion of applications received under the Experimental Organ Transplantation Procedures Act. 5 ILCS 120/2(c)(19).
- Meetings of a residential health care facility resident sexual assault and death review team or the Executive Council under the Abuse Prevention Review Team Act. 5 ILCS 120/2(c)(24).
- Meetings of an independent team of experts under Brian's Law. 5 ILCS 120/2(c)(25).
- Meetings of a mortality review team appointed under the Department of Juvenile Justice Mortality Review Team Act. 5 ILCS 120/2(c)(26).

- Correspondence and records (i) that may not be disclosed under Section 11-9 of the Public Aid Code or (ii) that pertain to appeals under Section 11-8 of the Public Aid Code. 5 ILCS 120/2(c)(28).
- Deliberations for decisions of the State Emergency Medical Services Disciplinary Review Board. 5 ILCS 120/2(c)(22).
- The classification and discussion of matters classified as confidential or continued confidential by the State Government Suggestion Award Board. 5 ILCS 120/2(c)(20).
- Meetings between the Regional Transportation Authority Board and its Service Boards when the discussion involves review by the Regional Transportation Authority Board of employment contracts under Section 28d of the Metropolitan Transit Authority Act and Sections 3A.18 and 3B.26 of the Regional Transportation Authority Act. 5 ILCS 120/2(c)(32).
- Those meetings or portions of meetings of a fatality review team or the Illinois Fatality Review Team Advisory Council during which a review of the death of an eligible adult in which abuse or neglect is suspected, alleged or substantiated is conducted pursuant to Section 15 of the Adult Protective Services Act. 5 ILCS 120/2(c)(30).
- Deliberations or portions of deliberations for decisions of the Illinois Gaming Board in which there is discussion of personal, commercial, financial or other information obtained from any source that is privileged, proprietary, confidential, or a trade secret or exempt from disclosure under federal or state law. 5 ILCS 120(c)(36).

For purposes of these exemptions, “**employee**” means a person employed by a public body whose relationship with the public body constitutes an employer-employee relationship under the usual common rules, and who is not an independent contractor.

“**Public office**” means a position created by or under the Constitution or laws of Illinois, the occupant of which is charged with the exercise of some portion of the sovereign power of the State. It includes members of the public body, but it does not include organizational positions filled by members that exist to assist the public body in the conduct of its business.

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

### **Interpretive Court Decisions:**

The Open Meetings Act does not specify who is allowed to attend closed session. Therefore, the public body did not violate the Act when it allowed nonmembers into closed session. *Wyman v. Schweighart*, 385 Ill. App.3d 1099 (4<sup>th</sup> Dist. 2008).

A board’s holding of closed session to decide whether to postpone the sale of its property violated the Act. It did not fall within exception for setting a price for the sale of

real estate. *Bd. of Educ. School Dist. No. 67 v. Sikorski*, 214 Ill.App.3d 945 (1<sup>st</sup> Dist. 1991).

To go into closed session to discuss land acquisition, a board must be discussing formulating the terms of an offer to purchase specific real estate, discussing the seller's terms, or considering a strategy for obtaining specific real estate. *People v. ex. rel. Ryan v. Village of Villa Park*, 212 Ill.App.3d 187 (2d Dist. 1991).

### **Interpretive Attorney General Opinions:**

A local school council violated the OMA when it discussed the schedule and procedure for evaluating the school's principal in closed session. *Ill. Att'y Gen. Pub. Acc. Op. No. 20-004* (June 2, 2020).

Section 2(c)(1) of the OMA did not authorize a county finance committee to discuss the salary of the elected county auditor in closed session. *Ill. Att'y Gen. Pub. Acc. Op. No. 18-015* (Oct. 30, 2018).

A board violated the OMA when it discussed lay-offs and budgeting in closed session, rather than the performance or conduct of any specific employee. *Ill. Att'y Gen. Pub. Acc. Op. No. 18-012* (Oct. 2, 2018).

It was inappropriate for a city council to discuss an across-the-board pay increase in closed session because the discussion was not related to the performance of a specific employee, but rather concerned a broad category of

employees. *Ill. Att'y Gen. Pub. Acc. Op. No. 16-013* (Dec. 23, 2016).

It was inappropriate for a committee to discuss the elimination of a position in closed session when discussion was not related to the performance of a specific employee, but was instead related to budgetary issues. *Ill. Att'y Gen. Pub. Acc. Op. No. 15-007* (Sept. 16, 2015).

It was inappropriate for a committee to discuss a hiring freeze in closed session under the collective bargaining exemption. Even though the freeze could have later impacted some collective bargaining members, the county was not in active collective bargaining negotiations. *Ill. Att'y Gen. Pub. Acc. Op. No. 15-007* (Sept. 16, 2015).

A board is not authorized to go into closed session based on the possibility of litigation. Litigation must be pending or probable and imminent. Even though board's action had generated public opposition, the board had no reasonable basis to believe that it was more likely than not that litigation would ensue. *Ill. Att'y Gen. Pub. Acc. Op. No. 16-0007* (Sept. 13, 2016).

A board improperly discussed Sheriff's proposal to provide police services to the Village in closed session. *Ill. Att'y Gen. Pub. Acc. Op. No. 15-005* (Aug. 4, 2015).

A board's discussion of a college's financial condition was not an appropriate discussion for closed session. In addition, the board's discussion of efforts to sell or lease property that it owned exceeded the scope of Section

2(c)(5) which permits discussion in closed session regarding “*setting of a price for sale or lease of property owned by the public body.*” *Ill. Att’y Gen. Pub. Acc. Op. No. 15-003 (Mar. 20, 2015).*

A school board properly discussed the appointment of an interim superintendent in closed session. The board’s vote in closed session authorizing its attorney to gauge a candidate’s interest in the position was not final action in violation of the Act. The board publicly voted to appoint the candidate at a later meeting. *Ill. Att’y Gen. Pub. Acc. Op. No. 13-010 (June 4, 2013).*

The board properly discussed “probable and imminent” litigation in closed session when it had received several letters from an attorney threatening suit on behalf of his client if the board did not submit payment allegedly owed. *Ill. Att’y Gen. Pub. Acc. Op. No. 13-008 (May 28, 2013).*

It was inappropriate for a finance committee to discuss whether to recommend passage of an ordinance to the full board in closed session, even if there was a chance that the matter could ultimately lead to litigation. Litigation was not probable or imminent, and the litigation exemption only authorizes a board to discuss strategies, posture, theories and consequences of the litigation itself in closed session. *Ill. Att’y Gen. Pub. Acc. Op. No. 12-013 (Nov. 5, 2012).*

It is not permissible for a county board to go into closed session to discuss the appointment of persons to

committees. It is permissible, however, to go into closed session to discuss the appointment of persons to fill public offices. 2003 Op. Att'y. Gen. No. 006.

The OMA does not give a public body the authority to sanction one of its members for disclosing information or issues discussed by the public body in closed session. 1991 Op. Att'y. Gen. No. 1.

A city council was not authorized to discuss with its attorney the legal pros and cons of an annexation in a closed session. Even though an attorney spoke in opposition to the annexation at the open session, he expressly stated that he was not contemplating litigation at that time, and therefore, the council had insufficient grounds to believe that litigation was likely to occur or that litigation was close at hand. 1983 Op. Att'y. Gen. No. 82.

### **How to Close a Meeting**

A public body may hold a meeting closed to the public, or close a portion of a meeting to the public, upon a majority vote of a quorum present taken during open session of a meeting for which proper notice to the public has been given. The board may vote once to close a series of meetings or a portion or portions which are proposed to be closed, provided each meeting in the series involves the same matters and is to be held no more than 3 months from the vote. The vote to close a meeting should include a specific citation to the specific exemption in the OMA that authorizes a closed session. The citation to the

exemption should be publicly stated, and should be entered into the minutes of the meeting. Only topics specified in the vote to close the meeting should be discussed. During any properly noticed open meeting, a public body may, without additional notice, hold a closed meeting. 5 ILCS 120/2a.

### **Interpretive Court Decisions:**

A public body announced that intended to go into closed session to discuss pending litigation and land acquisition. This was sufficient notice to the public of the reason for the closed session. *Wyman v. Schweighart*, 385 Ill.App.3d 1099 (4<sup>th</sup> Dist. 2008).

A voice vote as opposed to a roll call vote was sufficient on a motion to go into closed session. *Wyman v. Schweighart*, 385 Ill.App.3d 1099 (4<sup>th</sup> Dist. 2008).

It was proper for a board to move to enter closed session “for an employment matter regarding the reclassification of an employee” as the content of the motion cited an appropriate statutory exception allowing a closed meeting. *Henry v. Anderson*, 356 Ill.App.3d 952 (4<sup>th</sup> Dist. 2005).

A board violated the OMA when it moved to go into closed session, citing “potential litigation” as the statutory exception. The OMA allows a board to discuss “pending litigation” or “probable or imminent” litigation. If litigation is probable or imminent, the board must state the basis for such a finding. The board did not indicate

that litigation was either pending or probable or imminent. *Henry v. Anderson*, 356 Ill.App.3d 952 (4<sup>th</sup> Dist. 2005).

An advisory board's failure to vote to go into closed session was a violation of the OMA. In addition, its failure to properly invoke the litigation exception by finding litigation probable or imminent (where there was no pending case) violated the Act. *Bd. of Regents of the Regency Univ. System v. Reynard*, 292 Ill.App.3d 968 (4<sup>th</sup> Dist. 1997).

### **Interpretive Attorney General Opinions:**

A general reference to "personnel" in the motion to go into closed session was not sufficient. The committee violated the OMA by failing to advise the public that it was going into closed session pursuant to Section 2(c)(1) and 2(c)(2). *Ill. Att'y Gen. Pub. Acc. Op. No. 15-007* (Sept. 16, 2015).

A board's failure to cite an appropriate exemption in its motion to go into closed session violated the OMA. *Ill. Att'y Gen. Pub. Acc. Op. No. 15-005* (Aug. 4, 2015).

A board violated the OMA when it went into closed session to discuss probable and imminent litigation, but failed to record in the closed session minutes the reason it felt that litigation was probable or imminent. *Ill. Att'y Gen. Pub. Acc. Op. No. 13-008* (May 28, 2013).

A finance committee violated the OMA when it went into closed session citing the litigation exception where litigation was not probable or imminent, and the board discussed matters other than litigation in the closed session. A landfill company's letter to the board three months prior to the meeting, which stated that it would file an appropriate legal action if the matter could not be resolved, did not indicate that litigation was imminent. The board also failed to cite in the closed session minutes the reason why litigation was probable or imminent. *Ill. Att'y Gen. Pub. Acc. Op. No. 12-013* (Nov. 5, 2012).

### **Final Action**

Final action (voting) must occur in open session. No final action may be taken at a closed meeting. Final action must be preceded by a public recital of the nature of the matter being considered and other information that will inform the public of the business being conducted. 5 ILCS 120/2 (e).

### **Interpretive Court Decisions:**

The public recital preceding a vote must announce the nature of the matter under consideration with sufficient detail to identify the particular transaction or issue, but need not provide an explanation of its terms or its significance. The board members' actions in signing, but not dating a severance agreement in closed session did not violate the OMA where board later voted in open session to approve the agreement. *Bd. of Educ. of*

*Springfield Dist. No. 186 v. Att’y Gen. of Illinois*, 2017 IL 120343.

Board’s public recital of matter which was up for vote lacked sufficient specificity to comply with the OMA where the matter was introduced as “approval of \*\*\*lease rates” and approval of “rates that came from the appraisal.” Such introductions failed to inform the public of the nature of the matter under consideration. *Allen v. Clark County Park Dist. Bd.*, 2016 IL App (4<sup>th</sup>) 150963.

A board’s preparation of a written decision before it voted on the written decision at an open session did not violate the OMA as the vote on the decision was the “final action,” not the preparation of the decision. *Kowalski v. Cook County Officers Electoral Board*, 2016 IL App (1<sup>st</sup>) 160528-U (Mar. 9, 2016).

An electoral board’s signing of an agreement which was never properly ratified at a meeting attended by a quorum of the board did not constitute final action, and therefore, the Circuit Court was without jurisdiction to review the board’s action. *Lawrence v. Williams*, 2013 IL App (1<sup>st</sup>) 130757.

A secret ballot for the election of a chairman of a county board violated Open Meetings Act even though the vote was conducted in the presence of public. *WSDR, Inc. v. Ogle Co.*, 100 Ill.App.3d 1008 (2d Dist. 1981).

## **Interpretive Attorney General Opinions:**

A board's vote in open session to terminate the employment of "Employee A" violated the Act. The board should have identified the employee by name. *Ill. Att'y Gen. Pub. Acc. Op. No. 13-016* (Sept. 24, 2013).

An advisory board's use of a secret ballot to decide upon a candidate to recommend to the county board to fill a vacancy was a violation of the OMA. *Ill. Att'y Gen. Pub. Acc. Op. No. 13-006* (May 13, 2013).

A public university board of trustees violated the OMA by voting in closed session to terminate a faculty member. *Ill. Att'y Gen. Pub. Acc. Op. No. 13-003* (Apr. 23, 2013).

A finance committee's decision to recommend to the full board that an ordinance be approved violated the OMA, where the finance committee reached a consensus in closed session, but never voted on the recommendation in open session. *Ill. Att'y Gen. Pub. Acc. Op. No. 12-013* (Nov. 5, 2012).

The OMA and public policy prohibit the taking of secret ballots at meetings of boards when such meetings are open to the public. 1975 Op. Att'y. Gen. No. S-917.

### **The Public's Right to Speak**

The OMA states that any person must be permitted an opportunity to address public officials under the rules

established and recorded by the public body. 5 ILCS 120/2.06(g).

### **Interpretive Court Decisions:**

Board rules which restricted the public's opportunity to address the board to written filings violated the OMA. *Roxana Comm. Unit Sch. Dist. No. 1 v. EPA*, 2013 IL App (4<sup>th</sup>) 120825.

### **Interpretive Attorney General Opinions:**

A city council violated the OMA when it prohibited a member of the public from offering public comment at a meeting because she was not a resident of the city. *Ill. Att'y Gen. Pub. Acc. Op. No. 19-009* (Oct. 1, 2019).

A board had not formally adopted as policy its past practice of limiting the total time for public comment at a meeting to 15 minutes, and therefore, it was a violation of the OMA to impose the time limitation at a meeting which addressed a highly contested hiring decision. *Ill. Att'y Gen. Pub. Acc. Op. No. 19-002* (Jan. 9, 2019).

A board rule which required members of the public to sign up to speak five days before a meeting was not a reasonable rule. Members of the public would not have an opportunity to review the meeting's agenda before deciding whether they wanted to address the board. *Ill. Att'y Gen. Pub. Acc. Op. No. 14-012* (Sept. 30, 2014).

A board practice of requiring all persons addressing the board to provide their home address was not a reasonable rule and violated the OMA. *Ill. Att’y Gen. Pub. Acc. Op. No. 14-009* (Sept. 4, 2014).

### **The Public’s Right to Record**

Any person may record the proceedings of an open meeting by tape, film or other means except that if a witness at an open meeting refuses to testify on the grounds that he may not be compelled to testify if any portion of his testimony is to be broadcast or televised or if a motion picture is taken of him while testifying, the public body must prohibit such recording during the testimony of the witness. The public body is to prescribe reasonable rules to govern the right to make recordings. 5 ILCS 120/2.05.

### **Interpretive Attorney General Opinions:**

A rule requiring a member of the public to provide advance notice to the clerk that an audio or video recording will be made is not reasonable. The board failed to show that the rule was necessary to prevent interference with the proceedings or to protect the safety of those in attendance. *Ill. Att’y Gen. Pub. Acc. Op. No. 12-010* (June 5, 2012).

Rules requiring that a recording device be placed on a tripod, prohibiting the movement of a camera, and requiring the recording device to be turned on before the start of the meeting and not turned off until the meeting

ended were not reasonable. A rule prohibiting recording devices from blocking aisles, entrances and exits was reasonable. *Ill. Atty. Gen. Inf. Op. No. I-00-015* (Apr. 5, 2000).

A board of trustees may not prevent a member of the public from tape recording a public meeting of the board. *1980 Op. Att'y. Gen. No. 102*.

A rule requiring 24-hour notice to record a meeting was not reasonably necessary to prevent interference with the meeting or to protect the safety of those in attendance. *Ill. Att'y Gen. Pub. Acc. Op. No.16-014* (Dec. 28, 2016).

### **Home Rule Entities**

The provisions of the OMA constitute the minimum requirements for home rule units. A home rule unit may enact an ordinance prescribing stricter requirements for itself which would serve to give further notice to the public and facilitate public access to meetings. 5 ILCS 120/6.

### **Remote Attendance**

#### **Normal Rules:**

If a quorum of the members of a public body is physically present, a majority of the public body may allow a member of the public body to attend remotely by video or audio conference if the member is prevented from physically attending due to (1) personal illness or

disability; (2) employment purposes or business of the public body; or (3) a family or other emergency. The member who intends to attend remotely must notify the recording secretary or clerk before the meeting unless notice is impractical. The majority of the public body may allow a member to attend remotely only in accordance with and to the extent allowed by rules adopted by the public body which must conform with the requirements of the Act, and may further limit the extent to which remote attendance is permitted, and may require additional notice to the public. The limitations of this section do not apply to specific public bodies as delineated in the statute. 5 ILCS 120/7.

### **Special Rules during Disaster Declaration relating to Public Health:**

An open or closed meeting may be conducted by audio or video conference, without the physical presence of a quorum of the members, so long as the following conditions are met:

(1) The Governor or the Director of the Illinois Department of Public Health has issued a disaster declaration relating to public health concerns under Section 4 of the Illinois Emergency Management Act and all or part of the public body is covered by the disaster area;

(2) The head of the public body determines that an in-person meeting is not practical or prudent due to the disaster;

(3) All members of the public body participating in the meeting, wherever they are located, shall be verified, and can hear one another and all discussion and testimony;

(4) For open meetings, members of the public present at the regular meeting location can hear all of the discussion and testimony and all votes of members of the body, unless attendance at the regular meeting location is not feasible due to the disaster, in which case the public body must make alternative arrangements and provide notice of such alternative arrangements in a manner to allow any interested member of the public access to contemporaneously hear all discussions, testimony, and roll call votes, such as by telephone or web-based link;

(5) At least one member of the body, chief legal counsel, or chief administrative officer is physically present at the regular meeting location, unless unfeasible due to the disaster, including the issued disaster declaration;

(6) All votes are conducted by roll call, so each member's vote on each issue can be identified and recorded;

(7) Except in the event of a bona fide emergency, 48 hours' notice shall be given of a meeting to be held pursuant to this section. Notice shall be given to all members of the public body, and shall also be provided to any news media who has requested notice pursuant to section 2.01(a). Additional requirements apply to emergency meetings;

(8) Each member participating by audio or video conference is considered present for the meeting and for the purposes of determining a quorum;

(9) Public bodies must keep a verbatim record of all their meetings in the form of audio or video recording and shall be made available to the public under Section 2.06.

(10) The public body must bear the cost of compliance with this Section.

5 ILCS 120/2.01(e).

### **Duty to Post Information**

#### **Compensation Package that Exceeds \$75,000:**

Within 6 days after an employer participating in IMRF approves a budget, the employer must post on its website the total compensation package for each employee who has a total compensation package that exceeds \$75,000 per year. If the employer does not maintain a website, it must post a physical copy of this information at the principal office. If it does maintain a website, it may choose to post a physical copy of this information at the principal office in lieu of posting the information on the website, but it must post directions on the website on how to access the information. A “total compensation package” includes salary, health insurance, a housing allowance, a vehicle allowance, a clothing allowance, bonuses, loans, vacation

days granted and sick days granted. 5 ILCS 120/7.3(a) and (c).

### **Compensation Package of \$150,000 or More:**

At least 6 days before an employer participating in IMRF approves an employee's total compensation package that is equal to or in excess of \$150,000 per year, the employer must post on its website the total compensation package for that employee. If the employer does not maintain a website, it must post a physical copy of the information at its principal office. If the employer maintains a website, it may choose to post a physical copy of the information at the principal office of the employer in lieu of posting the information on the website, but it must post directions on the website for how to access the information. A "total compensation package" includes salary, health insurance, a housing allowance, a vehicle allowance, a clothing allowance, bonuses, loans, vacation days granted and sick days granted. 5 ILCS 120/7.3(b) and (c).

### **Training Required**

#### **Training Designees:**

Every public body must designate employees, officers or members to receive training on compliance with the Act. The public body must submit a list of designated employees, officers or members to the Public Access Counselor. The designated individuals must successfully complete the electronic training curriculum developed and administered by the Public Access Counselor, and

thereafter must complete an annual training program. Whenever a public body designates an additional employee, officer or member to receive training, that person must successfully complete the electronic training curriculum within 30 days. 5 ILCS 120/1.05(a).

### **Elected and Appointed Members:**

Each elected or appointed member of a public body must successfully complete the electronic training curriculum developed and administered by the Public Access Counselor within 90 days of taking the oath of office or otherwise assuming the responsibilities as a member of the public body, if the member is not required to take an oath of office. Each member successfully completing the training curriculum must file a copy of the certificate of completion with the public body. Completing the training as a member of a public body satisfies the requirements of the OMA with regard to the member's service on a committee or subcommittee or his/her ex officio service on any other public body. The failure of one or more members of a public body to complete the training does not affect the validity of an action taken by the public body. Members of certain specified public bodies (elected school board member, commissioner of a drainage district, director of a soil and water conservation district, elected or appointed member of a park district, elected or appointed member of a public body of a municipality, elected or appointed member of a board of trustees of a fire protection district) may complete this training by other means specified in the statute. 5 ILCS 120/1.05(b)-(g).

## Public Access Counselor

### **Duties:**

The office of the Public Access Counselor (PAC) in the Illinois Attorney General's office was created by the General Assembly to establish and administer a training program on the OMA and FOIA, to prepare and distribute interpretive and educational materials and programs, to resolve disputes involving potential violation of OMA and FOIA by mediation, informal opinions or binding opinions, to issue advisory opinions regarding OMA and FOIA, to respond to formal inquiries, to conduct research on compliance issues, to make recommendations to the General Assembly, to develop and make available the online electronic training curriculum regarding OMA and FOIA, to prepare model policies, and to promulgate rules to implement these powers. 15 ILCS 205/7.

### **Request for PAC Review:**

A person who believes that a violation of the OMA has occurred may file a request for review with the PAC not later than 60 days after the alleged violation. If the facts concerning the violation are not discovered within the 60-day period, but are discovered at a later date, not exceeding 2 years after the alleged violation, by a person exercising reasonable diligence, the request for review may be made within 60 days of the discovery of the violation. The request for review must be in writing and signed by the requester, and must include a summary of the facts supporting the allegation. 5 ILCS 120/3.5(a).

## **PAC Review:**

Upon receipt of a request for review, the PAC must determine whether further action is warranted. If the PAC determines from the request that the alleged violation is unfounded, he or she will so advise the requester and no further action will be taken. In all other cases, the PAC will forward a copy of the request for review to the public body within 7 working days. The PAC will specify the records or other documents that the public body must furnish to facilitate the review. Within 7 working days after receipt of the request for review, the public body must provide copies of the records requested and must otherwise fully cooperate with the PAC. If the public body fails to furnish the specified records, or if otherwise necessary, the Attorney General may issue a subpoena to any person or public body having knowledge of or records pertaining to an alleged violation. The PAC also has the right to review the verbatim recording of a closed meeting or the minutes of a closed meeting. 5 ILCS 120/3.5(b).

Within 7 working days after the public body receives a copy of the request for review and request for production of records from the PAC, it may, but is not required to, answer the allegations of the request for review. The answer may take the form of a letter, brief or memorandum. Upon request, the public body may also furnish the PAC with a redacted copy of the answer excluding specific reference to any matters at issue. The PAC will forward a copy of the answer or redacted

answer to the person who submitted the request for review. The requester may, but is not required to respond to the public body's answer within 7 working days, and must provide a copy to the public body. A requester and the public body are also permitted to submit affidavits and records regarding any matter germane to the review. 5 ILCS 120/3.5(c) and (d).

### **PAC Decisions:**

Unless the PAC extends the time for response by no more than 21 business days by written notice to both parties, stating the reason for the extension, or decides to address the matter without the issuance of a binding opinion, the Attorney General must examine the issues and the records, and make findings of fact and conclusions of law, and must issue to the requester and the public body an opinion within 60 days after initiating review. The opinion is binding on both the requester and the public body. The Attorney General has the option to resolve a matter by mediation or by means other than a binding opinion. The Attorney General's decision not to issue a binding opinion is not reviewable. Upon receipt of a binding decision, concluding that a violation of the OMA occurred, the public body must either take necessary action as soon as practical to comply with the directive of the opinion or must initiate administrative review. If the requester files suit with respect to the same matter that is subject to a pending PAC request for review, the requester is to notify the PAC, and the PAC must take no further action, and must notify the public body. 5 ILCS 120/3.5(e) and (f).

Records that are obtained by the PAC from a public body for purposes of addressing a request for review may not be disclosed to the public, including the requester, by the PAC. While in the possession of the PAC, the records are exempt from disclosure by the PAC under FOIA. 5 ILCS 120/3.5(g).

### **Advisory Opinions:**

The Attorney General may issue advisory opinions to public bodies regarding compliance with the OMA. The public body may initiate a request for an advisory opinion by sending a written request from the head of the public body or from its attorney. The request must contain sufficient, accurate facts from which a determination can be made. The PAC may request additional information. A public body that relies, in good faith, on an advisory opinion in complying with the OMA is not liable for penalties under the OMA, so long as the facts upon which the opinion was based have been fully and fairly disclosed to the PAC. 5 ILCS 120/3.5(h).

### **Court Actions by the Attorney General:**

The Attorney General has the authority to file an action in the circuit court of Sangamon or Cook County for injunctive or other relief to compel compliance with a binding opinion issued by it, to prevent a violation of the OMA or for such other relief as may be required. 15 ILCS 205/7(f).

## **Interpretive Court Decisions:**

A non-binding or advisory opinion by the Attorney General cannot be the basis for a lawsuit or subject to enforcement in a court of law. *Brown v. Grosskopf*, 2013 IL App (4<sup>th</sup>) 120402 (2013).

### **Consequences for Failure to Comply**

Any person, including a State's Attorney, may bring a civil action in civil court where there is probable cause to believe that a violation of the OMA has or will occur. The action must be brought prior to or within 60 days of the meeting alleged to be in violation of the OMA, or if the facts concerning the meeting are not discovered within the 60 day period, within 60 days of the discovery by a State's Attorney. 5 ILCS 120/3(a).

A court may grant such relief as it deems appropriate, including granting relief by a mandamus requiring that a meeting be open to the public, granting an injunction against further violations, ordering the public body to make available to the public such portions of the minutes which are not authorized to be kept confidential or declaring null and void any final action taken at closed session in violation of the Act. 5 ILCS 120/3(c). When a public body is called into court to defend claims that it violated the OMA, the trial court has jurisdiction to enjoin any future meetings of that public body that are likely to violate the statute, regardless of whether the matters discussed at those meetings affect the plaintiffs or any

other named party. *Roxana Community Unit School Dist. No. 1 v. EPA*, 2012 IL App (4th) 120331.

The court may assess against any party, except a State's Attorney, reasonable attorney's fees and other litigation costs reasonably incurred by any other party who substantially prevails in any action, provided that costs may be assessed against any private party or parties bringing an action only upon the court's determination that the action is malicious or frivolous in nature. 5 ILCS 120/3(d).

Any person violating any of the provisions of the OMA, except for the training requirements, must be guilty of a Class C misdemeanor. 5 ILCS 120/4.

### **Interpretive Court Decisions:**

A village remedied its alleged holding of a secret, non-published meeting by later holding a proper meeting in compliance with the notice provisions of the Act. *Nord v. Village of Saybrook*, 2014 IL App (4th) 140017-U.

When awarding a prevailing party attorney's fees under the OMA, the court should consider a variety of factors in order to make a finding that the fees and costs are reasonable, including: (1) the skill and standing of the attorney; (2) the nature of the case; (3) the novelty or difficulty of the issues and work involved; (4) the importance of the matter; (5) the degree of responsibility required; (6) the usual and customary charges for comparable service; (7) the benefit to the client; and (8)

whether there was a reasonable connection between the fees charged and the amount of work involved in the litigation. OMA does not permit the award of compensatory or punitive damages aside from attorney's fees. *Parker v. Nichting*, 2012 IL App (3d) 100206 (3d Dist. 2012).

# The Open Meetings Act

## 5 ILCS 120/1

### 5 ILCS 120/1:

§ 1. Policy. It is the public policy of this State that public bodies exist to aid in the conduct of the people's business and that the people have a right to be informed as to the conduct of their business. In order that the people must be informed, the General Assembly finds and declares that it is the intent of this Act to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly.

The General Assembly further declares it to be the public policy of this State that its citizens must be given advance notice of and the right to attend all meetings at which any business of a public body is discussed or acted upon in any way. Exceptions to the public's right to attend exist only in those limited circumstances where the General Assembly has specifically determined that the public interest would be clearly endangered or the personal privacy or guaranteed rights of individuals would be clearly in danger of unwarranted invasion.

To implement this policy, the General Assembly declares:

(1) It is the intent of this Act to protect the citizen's right to know; and

(2) The provisions for exceptions to the open meeting requirements shall be strictly construed against closed meetings.

**5 ILCS 120/1.01:**

§ 1.01. This Act shall be known and may be cited as the Open Meetings Act.

**5 ILCS 120/1.02:**

§ 1.02. For the purposes of this Act:

“Meeting” means any gathering, whether in person or by video or audio conference, telephone call, electronic means (such as, without limitation, electronic mail, electronic chat, and instant messaging), or other means of contemporaneous interactive communication, of a majority of a quorum of the members of a public body held for the purpose of discussing public business or, for a 5-member public body, a quorum of the members of a public body held for the purpose of discussing public business.

Accordingly, for a 5-member public body, 3 members of the body constitute a quorum and the affirmative vote of 3 members is necessary to adopt any motion, resolution, or ordinance, unless a greater number is otherwise required.

“Public body” includes all legislative, executive, administrative or advisory bodies of the State, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees or commissions of this State, and any subsidiary bodies of any of the foregoing including but not limited to committees and subcommittees which are supported in whole or in part by tax revenue, or which expend tax revenue, except the General Assembly and committees or commissions thereof. “Public body” includes tourism boards and convention or civic center boards located in counties that are contiguous to the Mississippi River with populations of more than 250,000 but less than 300,000. “Public body” includes the Health Facilities and Services Review Board. “Public body” does not include a child death review team or the Illinois Child Death Review Teams Executive Council established under the Child Death Review Team Act, an ethics commission acting under the State Officials and Employees Ethics Act, a regional youth advisory board or the Statewide Youth Advisory Board established under the Department of Children and Family Services Statewide Youth Advisory Board Act, or the Illinois Independent Tax Tribunal.

**5 ILCS 120/1.05: (Text of section as amended by P.A. 100-1127. See, also, text of 5 ILCS 120/1.05 as amended by P.A. 101-233)**

§ 1.05. Training.

(a) Every public body shall designate employees, officers, or members to receive training on compliance with this

Act. Each public body shall submit a list of designated employees, officers, or members to the Public Access Counselor. Within 6 months after the effective date of this amendatory Act of the 96th General Assembly, the designated employees, officers, and members must successfully complete an electronic training curriculum, developed and administered by the Public Access Counselor, and thereafter must successfully complete an annual training program. Thereafter, whenever a public body designates an additional employee, officer, or member to receive this training, that person must successfully complete the electronic training curriculum within 30 days after that designation.

(b) Except as otherwise provided in this Section, each elected or appointed member of a public body subject to this Act who is such a member on the effective date of this amendatory Act of the 97th General Assembly must successfully complete the electronic training curriculum developed and administered by the Public Access Counselor. For these members, the training must be completed within one year after the effective date of this amendatory Act.

Except as otherwise provided in this Section, each elected or appointed member of a public body subject to this Act who becomes such a member after the effective date of this amendatory Act of the 97th General Assembly shall successfully complete the electronic training curriculum developed and administered by the Public Access Counselor. For these members, the training must be

completed not later than the 90th day after the date the member:

(1) takes the oath of office, if the member is required to take an oath of office to assume the person's duties as a member of the public body; or

(2) otherwise assumes responsibilities as a member of the public body, if the member is not required to take an oath of office to assume the person's duties as a member of the governmental body.

Each member successfully completing the electronic training curriculum shall file a copy of the certificate of completion with the public body.

Completing the required training as a member of the public body satisfies the requirements of this Section with regard to the member's service on a committee or subcommittee of the public body and the member's ex officio service on any other public body.

The failure of one or more members of a public body to complete the training required by this Section does not affect the validity of an action taken by the public body.

An elected or appointed member of a public body subject to this Act who has successfully completed the training required under this subsection (b) and filed a copy of the certificate of completion with the public body is not required to subsequently complete the training required under this subsection (b).

(c) An elected school board member may satisfy the training requirements of this Section by participating in a course of training sponsored or conducted by an organization created under Article 23 of the School Code. The course of training shall include, but not be limited to, instruction in:

(1) the general background of the legal requirements for open meetings;

(2) the applicability of this Act to public bodies;

(3) procedures and requirements regarding quorums, notice, and record-keeping under this Act;

(4) procedures and requirements for holding an open meeting and for holding a closed meeting under this Act; and

(5) penalties and other consequences for failing to comply with this Act.

If an organization created under Article 23 of the School Code provides a course of training under this subsection (c), it must provide a certificate of course completion to each school board member who successfully completes that course of training.

(d) A commissioner of a drainage district may satisfy the training requirements of this Section by participating in a course of training sponsored or conducted by an

organization that represents the drainage districts created under the Illinois Drainage Code. The course of training shall include, but not be limited to, instruction in:

- (1) the general background of the legal requirements for open meetings;
- (2) the applicability of this Act to public bodies;
- (3) procedures and requirements regarding quorums, notice, and record-keeping under this Act;
- (4) procedures and requirements for holding an open meeting and for holding a closed meeting under this Act; and
- (5) penalties and other consequences for failing to comply with this Act.

If an organization that represents the drainage districts created under the Illinois Drainage Code provides a course of training under this subsection (d), it must provide a certificate of course completion to each commissioner who successfully completes that course of training.

(e) A director of a soil and water conservation district may satisfy the training requirements of this Section by participating in a course of training sponsored or conducted by an organization that represents soil and water conservation districts created under the Soil and

Water Conservation Districts Act. The course of training shall include, but not be limited to, instruction in:

- (1) the general background of the legal requirements for open meetings;
- (2) the applicability of this Act to public bodies;
- (3) procedures and requirements regarding quorums, notice, and record-keeping under this Act;
- (4) procedures and requirements for holding an open meeting and for holding a closed meeting under this Act; and
- (5) penalties and other consequences for failing to comply with this Act.

If an organization that represents the soil and water conservation districts created under the Soil and Water Conservation Districts Act provides a course of training under this subsection (e), it must provide a certificate of course completion to each director who successfully completes that course of training.

(f) An elected or appointed member of a public body of a park district, forest preserve district, or conservation district may satisfy the training requirements of this Section by participating in a course of training sponsored or conducted by an organization that represents the park districts created in the Park District Code. The course of training shall include, but not be limited to, instruction in:

- (1) the general background of the legal requirements for open meetings;
- (2) the applicability of this Act to public bodies;
- (3) procedures and requirements regarding quorums, notice, and record-keeping under this Act;
- (4) procedures and requirements for holding an open meeting and for holding a closed meeting under this Act; and
- (5) penalties and other consequences for failing to comply with this Act.

If an organization that represents the park districts created in the Park District Code provides a course of training under this subsection (f), it must provide a certificate of course completion to each elected or appointed member of a public body who successfully completes that course of training.

(g) An elected or appointed member of the board of trustees of a fire protection district may satisfy the training requirements of this Section by participating in a course of training sponsored or conducted by an organization that represents fire protection districts created under the Fire Protection District Act. The course of training shall include, but not be limited to, instruction in:

- (1) the general background of the legal requirements for open meetings;
- (2) the applicability of this Act to public bodies;
- (3) procedures and requirements regarding quorums, notice, and record-keeping under this Act;
- (4) procedures and requirements for holding an open meeting and for holding a closed meeting under this Act; and
- (5) penalties and other consequences for failing to comply with this Act.

If an organization that represents fire protection districts organized under the Fire Protection District Act provides a course of training under this subsection (g), it must provide a certificate of course completion to each elected or appointed member of a board of trustees who successfully completes that course of training.

**(Text of section as amended by P.A. 101-233. See, also, text of section 5 ILCS 120/1.05, as amended by P.A. 100-1127)**

§ 1.05. Training.

(a) Every public body shall designate employees, officers, or members to receive training on compliance with this Act. Each public body shall submit a list of designated employees, officers, or members to the Public Access

Counselor. Within 6 months after the effective date of this amendatory Act of the 96th General Assembly, the designated employees, officers, and members must successfully complete an electronic training curriculum, developed and administered by the Public Access Counselor, and thereafter must successfully complete an annual training program. Thereafter, whenever a public body designates an additional employee, officer, or member to receive this training, that person must successfully complete the electronic training curriculum within 30 days after that designation.

(b) Except as otherwise provided in this Section, each elected or appointed member of a public body subject to this Act who is such a member on the effective date of this amendatory Act of the 97th General Assembly must successfully complete the electronic training curriculum developed and administered by the Public Access Counselor. For these members, the training must be completed within one year after the effective date of this amendatory Act.

Except as otherwise provided in this Section, each elected or appointed member of a public body subject to this Act who becomes such a member after the effective date of this amendatory Act of the 97th General Assembly shall successfully complete the electronic training curriculum developed and administered by the Public Access Counselor. For these members, the training must be completed not later than the 90th day after the date the member:

(1) takes the oath of office, if the member is required to take an oath of office to assume the person's duties as a member of the public body; or

(2) otherwise assumes responsibilities as a member of the public body, if the member is not required to take an oath of office to assume the person's duties as a member of the governmental body.

Each member successfully completing the electronic training curriculum shall file a copy of the certificate of completion with the public body.

Completing the required training as a member of the public body satisfies the requirements of this Section with regard to the member's service on a committee or subcommittee of the public body and the member's ex officio service on any other public body.

The failure of one or more members of a public body to complete the training required by this Section does not affect the validity of an action taken by the public body.

An elected or appointed member of a public body subject to this Act who has successfully completed the training required under this subsection (b) and filed a copy of the certificate of completion with the public body is not required to subsequently complete the training required under this subsection (b).

(c) An elected school board member may satisfy the training requirements of this Section by participating in a

course of training sponsored or conducted by an organization created under Article 23 of the School Code. The course of training shall include, but not be limited to, instruction in:

- (1) the general background of the legal requirements for open meetings;
- (2) the applicability of this Act to public bodies;
- (3) procedures and requirements regarding quorums, notice, and record-keeping under this Act;
- (4) procedures and requirements for holding an open meeting and for holding a closed meeting under this Act; and
- (5) penalties and other consequences for failing to comply with this Act.

If an organization created under Article 23 of the School Code provides a course of training under this subsection (c), it must provide a certificate of course completion to each school board member who successfully completes that course of training.

(d) A commissioner of a drainage district may satisfy the training requirements of this Section by participating in a course of training sponsored or conducted by an organization that represents the drainage districts created under the Illinois Drainage Code. The course of training shall include, but not be limited to, instruction in:

- (1) the general background of the legal requirements for open meetings;
- (2) the applicability of this Act to public bodies;
- (3) procedures and requirements regarding quorums, notice, and record-keeping under this Act;
- (4) procedures and requirements for holding an open meeting and for holding a closed meeting under this Act; and
- (5) penalties and other consequences for failing to comply with this Act.

If an organization that represents the drainage districts created under the Illinois Drainage Code provides a course of training under this subsection (d), it must provide a certificate of course completion to each commissioner who successfully completes that course of training.

(e) A director of a soil and water conservation district may satisfy the training requirements of this Section by participating in a course of training sponsored or conducted by an organization that represents soil and water conservation districts created under the Soil and Water Conservation Districts Act. The course of training shall include, but not be limited to, instruction in:

- (1) the general background of the legal requirements for open meetings;
- (2) the applicability of this Act to public bodies;
- (3) procedures and requirements regarding quorums, notice, and record-keeping under this Act;
- (4) procedures and requirements for holding an open meeting and for holding a closed meeting under this Act; and
- (5) penalties and other consequences for failing to comply with this Act.

If an organization that represents the soil and water conservation districts created under the Soil and Water Conservation Districts Act provides a course of training under this subsection (e), it must provide a certificate of course completion to each director who successfully completes that course of training.

(f) An elected or appointed member of a public body of a park district, forest preserve district, or conservation district may satisfy the training requirements of this Section by participating in a course of training sponsored or conducted by an organization that represents the park districts created in the Park District Code. The course of training shall include, but not be limited to, instruction in:

- (1) the general background of the legal requirements for open meetings;

- (2) the applicability of this Act to public bodies;
- (3) procedures and requirements regarding quorums, notice, and record-keeping under this Act;
- (4) procedures and requirements for holding an open meeting and for holding a closed meeting under this Act; and
- (5) penalties and other consequences for failing to comply with this Act.

If an organization that represents the park districts created in the Park District Code provides a course of training under this subsection (f), it must provide a certificate of course completion to each elected or appointed member of a public body who successfully completes that course of training.

(g) An elected or appointed member of a public body of a municipality may satisfy the training requirements of this Section by participating in a course of training sponsored or conducted by an organization that represents municipalities as designated in Section 1-8-1 of the Illinois Municipal Code. The course of training shall include, but not be limited to, instruction in:

- (1) the general background of the legal requirements for open meetings;
- (2) the applicability of this Act to public bodies;

(3) procedures and requirements regarding quorums, notice, and record-keeping under this Act;

(4) procedures and requirements for holding an open meeting and for holding a closed meeting under this Act; and

(5) penalties and other consequences for failing to comply with this Act.

If an organization that represents municipalities as designated in Section 1-8-1 of the Illinois Municipal Code provides a course of training under this subsection (g), it must provide a certificate of course completion to each elected or appointed member of a public body who successfully completes that course of training.

## **5 ILCS 120/2:**

### **§ 2. Open meetings.**

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

(b) Construction of exceptions. The exceptions contained in subsection (c) are in derogation of the requirement that public bodies meet in the open, and therefore, the exceptions are to be strictly construed, extending only to subjects clearly within their scope. The exceptions

authorize but do not require the holding of a closed meeting to discuss a subject included within an enumerated exception.

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

(1) The appointment, employment, compensation, discipline, performance, or dismissal of specific employees, specific individuals who serve as independent contractors in a park, recreational, or educational setting, or specific volunteers of the public body or legal counsel for the public body, including hearing testimony on a complaint lodged against an employee, a specific individual who serves as an independent contractor in a park, recreational, or educational setting, or a volunteer of the public body or against legal counsel for the public body to determine its validity. However, a meeting to consider an increase in compensation to a specific employee of a public body that is subject to the Local Government Wage Increase Transparency Act may not be closed and shall be open to the public and posted and held in accordance with this Act.

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

(3) The selection of a person to fill a public office, as defined in this Act, including a vacancy in a public office, when the public body is given power to appoint under

law or ordinance, or the discipline, performance or removal of the occupant of a public office, when the public body is given power to remove the occupant under law or ordinance.

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

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

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

(7) The sale or purchase of securities, investments, or investment contracts. This exception shall not apply to the investment of assets or income of funds deposited into the Illinois Prepaid Tuition Trust Fund.

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

(9) Student disciplinary cases.

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

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

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

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

(14) Informant sources, the hiring or assignment of undercover personnel or equipment, or ongoing, prior or

future criminal investigations, when discussed by a public body with criminal investigatory responsibilities.

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

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

(17) The recruitment, credentialing, discipline or formal peer review of physicians or other health care professionals, or for the discussion of matters protected under the federal Patient Safety and Quality Improvement Act of 2005, and the regulations promulgated thereunder, including 42 C.F.R. Part 3 (73 FR 70732), or the federal Health Insurance Portability and Accountability Act of 1996, and the regulations promulgated thereunder, including 45 C.F.R. Parts 160, 162, and 164, by a hospital, or other institution providing medical care, that is operated by the public body.

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

(19) Review or discussion of applications received under the Experimental Organ Transplantation Procedures Act.

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

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

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

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

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

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

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

(27) (Blank).

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

(29) Meetings between internal or external auditors and governmental audit committees, finance committees, and their equivalents, when the discussion involves internal control weaknesses, identification of potential fraud risk areas, known or suspected frauds, and fraud interviews conducted in accordance with generally accepted auditing standards of the United States of America.

(30) Those meetings or portions of meetings of a fatality review team or the Illinois Fatality Review Team Advisory Council during which a review of the death of an eligible adult in which abuse or neglect is suspected, alleged, or substantiated is conducted pursuant to Section 15 of the Adult Protective Services Act.

(31) Meetings and deliberations for decisions of the Concealed Carry Licensing Review Board under the Firearm Concealed Carry Act.

(32) Meetings between the Regional Transportation Authority Board and its Service Boards when the discussion involves review by the Regional Transportation Authority Board of employment contracts under Section 28d of the Metropolitan Transit Authority Act and Sections 3A.18 and 3B.26 of the Regional Transportation Authority Act.

(33) Those meetings or portions of meetings of the advisory committee and peer review subcommittee created under Section 320 of the Illinois Controlled Substances Act during which specific controlled substance prescriber, dispenser, or patient information is discussed.

(34) Meetings of the Tax Increment Financing Reform Task Force under Section 2505-800 of the Department of Revenue Law of the Civil Administrative Code of Illinois.

(35) Meetings of the group established to discuss Medicaid capitation rates under Section 5-30.8 of the Illinois Public Aid Code.

(36) Those deliberations or portions of deliberations for decisions of the Illinois Gaming Board in which there is discussed any of the following: (i) personal, commercial, financial, or other information obtained from any source that is privileged, proprietary, confidential, or a trade secret; or (ii) information specifically exempted from the disclosure by federal or State law.

(d) Definitions. For purposes of this Section:

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

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

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

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

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

#### **5 ILCS 120/2.01:**

§ 2.01. All meetings required by this Act to be public shall be held at specified times and places which are convenient and open to the public. No meeting required by this Act to be public shall be held on a legal holiday unless the regular meeting day falls on that holiday.

Except as otherwise provided in this Act, a quorum of members of a public body must be physically present at the location of an open meeting. If, however, an open meeting of a public body (i) with statewide jurisdiction,

(ii) that is an Illinois library system with jurisdiction over a specific geographic area of more than 4,500 square miles, (iii) that is a municipal transit district with jurisdiction over a specific geographic area of more than 4,500 square miles, or (iv) that is a local workforce investment area with jurisdiction over a specific geographic area of more than 4,500 square miles is held simultaneously at one of its offices and one or more other locations in a public building, which may include other of its offices, through an interactive video conference and the public body provides public notice and public access as required under this Act for all locations, then members physically present in those locations all count towards determining a quorum. "Public building", as used in this Section, means any building or portion thereof owned or leased by any public body. The requirement that a quorum be physically present at the location of an open meeting shall not apply, however, to State advisory boards or bodies that do not have authority to make binding recommendations or determinations or to take any other substantive action.

Except as otherwise provided in this Act, a quorum of members of a public body that is not (i) a public body with statewide jurisdiction, (ii) an Illinois library system with jurisdiction over a specific geographic area of more than 4,500 square miles, (iii) a municipal transit district with jurisdiction over a specific geographic area of more than 4,500 square miles, or (iv) a local workforce innovation area with jurisdiction over a specific geographic area of more than 4,500 square miles must be physically present at the location of a closed meeting.

Other members who are not physically present at a closed meeting of such a public body may participate in the meeting by means of a video or audio conference. For the purposes of this Section, "local workforce innovation area" means any local workforce innovation area or areas designated by the Governor pursuant to the federal Workforce Innovation and Opportunity Act or its reauthorizing legislation.

Credits

## **5 ILCS 120/2.02:**

§ 2.02. Public notice of all meetings, whether open or closed to the public, shall be given as follows:

(a) Every public body shall give public notice of the schedule of regular meetings at the beginning of each calendar or fiscal year and shall state the regular dates, times, and places of such meetings. An agenda for each regular meeting shall be posted at the principal office of the public body and at the location where the meeting is to be held at least 48 hours in advance of the holding of the meeting. A public body that has a website that the full-time staff of the public body maintains shall also post on its website the agenda of any regular meetings of the governing body of that public body. Any agenda of a regular meeting that is posted on a public body's website shall remain posted on the website until the regular meeting is concluded. The requirement of a regular meeting agenda shall not preclude the consideration of

items not specifically set forth in the agenda. Public notice of any special meeting except a meeting held in the event of a bonafide emergency, or of any rescheduled regular meeting, or of any reconvened meeting, shall be given at least 48 hours before such meeting, which notice shall also include the agenda for the special, rescheduled, or reconvened meeting, but the validity of any action taken by the public body which is germane to a subject on the agenda shall not be affected by other errors or omissions in the agenda. The requirement of public notice of reconvened meetings does not apply to any case where the meeting was open to the public and (1) it is to be reconvened within 24 hours, or (2) an announcement of the time and place of the reconvened meeting was made at the original meeting and there is no change in the agenda. Notice of an emergency meeting shall be given as soon as practicable, but in any event prior to the holding of such meeting, to any news medium which has filed an annual request for notice under subsection (b) of this Section.

(b) Public notice shall be given by posting a copy of the notice at the principal office of the body holding the meeting or, if no such office exists, at the building in which the meeting is to be held. In addition, a public body that has a website that the full-time staff of the public body maintains shall post notice on its website of all meetings of the governing body of the public body. Any notice of an annual schedule of meetings shall remain on the website until a new public notice of the schedule of regular meetings is approved. Any notice of a regular meeting that is posted on a public body's website shall

remain posted on the website until the regular meeting is concluded. The body shall supply copies of the notice of its regular meetings, and of the notice of any special, emergency, rescheduled or reconvened meeting, to any news medium that has filed an annual request for such notice. Any such news medium shall also be given the same notice of all special, emergency, rescheduled or reconvened meetings in the same manner as is given to members of the body provided such news medium has given the public body an address or telephone number within the territorial jurisdiction of the public body at which such notice may be given. The failure of a public body to post on its website notice of any meeting or the agenda of any meeting shall not invalidate any meeting or any actions taken at a meeting.

(c) Any agenda required under this Section shall set forth the general subject matter of any resolution or ordinance that will be the subject of final action at the meeting. The public body conducting a public meeting shall ensure that at least one copy of any requested notice and agenda for the meeting is continuously available for public review during the entire 48-hour period preceding the meeting. Posting of the notice and agenda on a website that is maintained by the public body satisfies the requirement for continuous posting under this subsection (c). If a notice or agenda is not continuously available for the full 48-hour period due to actions outside of the control of the public body, then that lack of availability does not invalidate any meeting or action taken at a meeting.

### **5 ILCS 120/2.03:**

§ 2.03. In addition to the notice required by Section 2.02, each body subject to this Act must, at the beginning of each calendar or fiscal year, prepare and make available a schedule of all its regular meetings for such calendar or fiscal year, listing the times and places of such meetings.

If a change is made in regular meeting dates, at least 10 days' notice of such change shall be given by publication in a newspaper of general circulation in the area in which such body functions. However, in the case of bodies of local governmental units with a population of less than 500 in which no newspaper is published, such 10 days' notice may be given by posting a notice of such change in at least 3 prominent places within the governmental unit. Notice of such change shall also be posted at the principal office of the public body or, if no such office exists, at the building in which the meeting is to be held. Notice of such change shall also be supplied to those news media which have filed an annual request for notice as provided in paragraph (b) of Section 2.02.

### **5 ILCS 120/2.04:**

§ 2.04. The notice requirements of this Act are in addition to, and not in substitution of, any other notice required by law. Failure of any news medium to receive a notice provided for by this Act shall not invalidate any meeting provided notice was in fact given in accordance with this Act.

## **5 ILCS 120/2.05:**

§ 2.05. Recording meetings. Subject to the provisions of Section 8-701 of the Code of Civil Procedure, any person may record the proceedings at meetings required to be open by this Act by tape, film or other means. The authority holding the meeting shall prescribe reasonable rules to govern the right to make such recordings.

If a witness at any meeting required to be open by this Act which is conducted by a commission, administrative agency or other tribunal, refuses to testify on the grounds that he may not be compelled to testify if any portion of his testimony is to be broadcast or televised or if motion pictures are to be taken of him while he is testifying, the authority holding the meeting shall prohibit such recording during the testimony of the witness. Nothing in this Section shall be construed to extend the right to refuse to testify at any meeting not subject to the provisions of Section 8-701 of the Code of Civil Procedure.

## **120/2.06:**

§ 2.06. Minutes; right to speak.

(a) All public bodies shall keep written minutes of all their meetings, whether open or closed, and a verbatim record of all their closed meetings in the form of an audio or video recording. Minutes shall include, but need not be limited to:

- (1) the date, time and place of the meeting;
- (2) the members of the public body recorded as either present or absent and whether the members were physically present or present by means of video or audio conference; and
- (3) a summary of discussion on all matters proposed, deliberated, or decided, and a record of any votes taken.

(b) A public body shall approve the minutes of its open meeting within 30 days after that meeting or at the public body's second subsequent regular meeting, whichever is later. The minutes of meetings open to the public shall be available for public inspection within 10 days after the approval of such minutes by the public body. Beginning July 1, 2006, at the time it complies with the other requirements of this subsection, a public body that has a website that the full-time staff of the public body maintains shall post the minutes of a regular meeting of its governing body open to the public on the public body's website within 10 days after the approval of the minutes by the public body. Beginning July 1, 2006, any minutes of meetings open to the public posted on the public body's website shall remain posted on the website for at least 60 days after their initial posting.

(c) The verbatim record may be destroyed without notification to or the approval of a records commission or the State Archivist under the Local Records Act or the State Records Act no less than 18 months after the completion of the meeting recorded but only after:

(1) the public body approves the destruction of a particular recording; and

(2) the public body approves minutes of the closed meeting that meet the written minutes requirements of subsection (a) of this Section.

(d) Each public body shall periodically, but no less than semi-annually, meet to review minutes of all closed meetings. At such meetings a determination shall be made, and reported in an open session that (1) the need for confidentiality still exists as to all or part of those minutes or (2) that the minutes or portions thereof no longer require confidential treatment and are available for public inspection. The failure of a public body to strictly comply with the semi-annual review of closed session written minutes, whether before or after the effective date of this amendatory Act of the 94th General Assembly, shall not cause the written minutes or related verbatim record to become public or available for inspection in any judicial proceeding, other than a proceeding involving an alleged violation of this Act, if the public body, within 60 days of discovering its failure to strictly comply with the technical requirements of this subsection, reviews the closed session minutes and determines and thereafter reports in open session that either (1) the need for confidentiality still exists as to all or part of the minutes or verbatim record, or (2) that the minutes or recordings or portions thereof no longer require confidential treatment and are available for public inspection.

(e) Unless the public body has made a determination that the verbatim recording no longer requires confidential treatment or otherwise consents to disclosure, the verbatim record of a meeting closed to the public shall not be open for public inspection or subject to discovery in any administrative or judicial proceeding other than one brought to enforce this Act. In the case of a civil action brought to enforce this Act, the court, if the judge believes such an examination is necessary, must conduct such in camera examination of the verbatim record as it finds appropriate in order to determine whether there has been a violation of this Act. In the case of a criminal proceeding, the court may conduct an examination in order to determine what portions, if any, must be made available to the parties for use as evidence in the prosecution. Any such initial inspection must be held in camera. If the court determines that a complaint or suit brought for noncompliance under this Act is valid it may, for the purposes of discovery, redact from the minutes of the meeting closed to the public any information deemed to qualify under the attorney-client privilege. The provisions of this subsection do not supersede the privacy or confidentiality provisions of State or federal law. Access to verbatim recordings shall be provided to duly elected officials or appointed officials filling a vacancy of an elected office in a public body, and access shall be granted in the public body's main office or official storage location, in the presence of a records secretary, an administrative official of the public body, or any elected official of the public body. No verbatim recordings shall be recorded or removed from the public body's main office or official storage location, except by vote of the

public body or by court order. Nothing in this subsection (e) is intended to limit the Public Access Counselor's access to those records necessary to address a request for administrative review under Section 7.5 of this Act.

(f) Minutes of meetings closed to the public shall be available only after the public body determines that it is no longer necessary to protect the public interest or the privacy of an individual by keeping them confidential, except that duly elected officials or appointed officials filling a vacancy of an elected office in a public body shall be provided access to minutes of meetings closed to the public. Access to minutes shall be granted in the public body's main office or official storage location, in the presence of a records secretary, an administrative official of the public body, or any elected official of the public body. No minutes of meetings closed to the public shall be removed from the public body's main office or official storage location, except by vote of the public body or by court order. Nothing in this subsection (f) is intended to limit the Public Access Counselor's access to those records necessary to address a request for administrative review under Section 7.5 of this Act.

(g) Any person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body

## **5 ILCS 120/2a:**

§ 2a. A public body may hold a meeting closed to the public, or close a portion of a meeting to the public, upon a majority vote of a quorum present, taken at a meeting open to the public for which notice has been given as required by this Act. A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, provided each meeting in such series involves the same particular matters and is scheduled to be held within no more than 3 months of the vote. The vote of each member on the question of holding a meeting closed to the public and a citation to the specific exception contained in Section 2 of this Act which authorizes the closing of the meeting to the public shall be publicly disclosed at the time of the vote and shall be recorded and entered into the minutes of the meeting. Nothing in this Section or this Act shall be construed to require that any meeting be closed to the public.

At any open meeting of a public body for which proper notice under this Act has been given, the body may, without additional notice under Section 2.02, hold a closed meeting in accordance with this Act. Only topics specified in the vote to close under this Section may be considered during the closed meeting.

## 5 ILCS 120/3:

§ 3. (a) Where the provisions of this Act are not complied with, or where there is probable cause to believe that the provisions of this Act will not be complied with, any person, including the State's Attorney of the county in which such noncompliance may occur, may bring a civil action in the circuit court for the judicial circuit in which the alleged noncompliance has occurred or is about to occur, or in which the affected public body has its principal office, prior to or within 60 days of the meeting alleged to be in violation of this Act or, if facts concerning the meeting are not discovered within the 60-day period, within 60 days of the discovery of a violation by the State's Attorney or, if the person timely files a request for review under Section 3.5, within 60 days of the decision by the Attorney General to resolve a request for review by a means other than the issuance of a binding opinion under subsection (e) of Section 3.5.

Records that are obtained by a State's Attorney from a public body for purposes of reviewing whether the public body has complied with this Act may not be disclosed to the public. Those records, while in the possession of the State's Attorney, are exempt from disclosure under the Freedom of Information Act.

(b) In deciding such a case the court may examine in camera any portion of the minutes of a meeting at which a violation of the Act is alleged to have occurred, and may take such additional evidence as it deems necessary.

(c) The court, having due regard for orderly administration and the public interest, as well as for the interests of the parties, may grant such relief as it deems appropriate, including granting a relief by mandamus requiring that a meeting be open to the public, granting an injunction against future violations of this Act, ordering the public body to make available to the public such portion of the minutes of a meeting as is not authorized to be kept confidential under this Act, or declaring null and void any final action taken at a closed meeting in violation of this Act.

(d) The court may assess against any party, except a State's Attorney, reasonable attorney's fees and other litigation costs reasonably incurred by any other party who substantially prevails in any action brought in accordance with this Section, provided that costs may be assessed against any private party or parties bringing an action pursuant to this Section only upon the court's determination that the action is malicious or frivolous in nature.

## **5 ILCS 120/3.5:**

### **§ 3.5. Public Access Counselor; opinions.**

(a) A person who believes that a violation of this Act by a public body has occurred may file a request for review with the Public Access Counselor established in the Office of the Attorney General not later than 60 days after the alleged violation. If facts concerning the violation are not

discovered within the 60-day period, but are discovered at a later date, not exceeding 2 years after the alleged violation, by a person utilizing reasonable diligence, the request for review may be made within 60 days of the discovery of the alleged violation. The request for review must be in writing, must be signed by the requester, and must include a summary of the facts supporting the allegation. The changes made by this amendatory Act of the 99th General Assembly apply to violations alleged to have occurred at meetings held on or after the effective date of this amendatory Act of the 99th General Assembly.

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

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

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

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

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

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

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

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

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

(g) Records that are obtained by the Public Access Counselor from a public body for purposes of addressing

a request for review under this Section 3.5 may not be disclosed to the public, including the requester, by the Public Access Counselor. Those records, while in the possession of the Public Access Counselor, shall be exempt from disclosure by the Public Access Counselor under the Freedom of Information Act.

(h) The Attorney General may also issue advisory opinions to public bodies regarding compliance with this Act. A review may be initiated upon receipt of a written request from the head of the public body or its attorney. The request must contain sufficient accurate facts from which a determination can be made. The Public Access Counselor may request additional information from the public body in order to facilitate the review. A public body that relies in good faith on an advisory opinion of the Attorney General in complying with the requirements of this Act is not liable for penalties under this Act, so long as the facts upon which the opinion is based have been fully and fairly disclosed to the Public Access Counselor.

#### **5 ILCS 120/4:**

§ 4. Any person violating any of the provisions of this Act, except subsection (b), (c), (d), (e), or (f) of Section 1.05, shall be guilty of a Class C misdemeanor.

### **5 ILCS 120/5:**

§ 5. If any provision of this Act, or the application of this Act to any particular meeting or type of meeting is held invalid or unconstitutional, such decision shall not affect the validity of the remaining provisions or the other applications of this Act.

### **5 ILCS 120/6:**

§ 6. The provisions of this Act constitute minimum requirements for home rule units; any home rule unit may enact an ordinance prescribing more stringent requirements binding upon itself which would serve to give further notice to the public and facilitate public access to meetings.

### **5 ILCS 120/7:**

§ 7. Attendance by a means other than physical presence.

(a) If a quorum of the members of the public body is physically present as required by Section 2.01, a majority of the public body may allow a member of that body to attend the meeting by other means if the member is prevented from physically attending because of: (i) personal illness or disability; (ii) employment purposes or the business of the public body; or (iii) a family or other emergency. "Other means" is by video or audio conference.

(b) If a member wishes to attend a meeting by other means, the member must notify the recording secretary or clerk of the public body before the meeting unless advance notice is impractical.

(c) A majority of the public body may allow a member to attend a meeting by other means only in accordance with and to the extent allowed by rules adopted by the public body. The rules must conform to the requirements and restrictions of this Section, may further limit the extent to which attendance by other means is allowed, and may provide for the giving of additional notice to the public or further facilitate public access to meetings.

(d) The limitations of this Section shall not apply to (i) closed meetings of (A) public bodies with statewide jurisdiction, (B) Illinois library systems with jurisdiction over a specific geographic area of more than 4,500 square miles, (C) municipal transit districts with jurisdiction over a specific geographic area of more than 4,500 square miles, or (D) local workforce innovation areas with jurisdiction over a specific geographic area of more than 4,500 square miles or (ii) open or closed meetings of State advisory boards or bodies that do not have authority to make binding recommendations or determinations or to take any other substantive action. State advisory boards or bodies, public bodies with statewide jurisdiction, Illinois library systems with jurisdiction over a specific geographic area of more than 4,500 square miles, municipal transit districts with jurisdiction over a specific geographic area of more than 4,500 square miles, and local

workforce investment areas with jurisdiction over a specific geographic area of more than 4,500 square miles, however, may permit members to attend meetings by other means only in accordance with and to the extent allowed by specific procedural rules adopted by the body. For the purposes of this Section, “local workforce innovation area” means any local workforce innovation area or areas designated by the Governor pursuant to the federal Workforce Innovation and Opportunity Act or its reauthorizing legislation.

(e) Subject to the requirements of Section 2.06 but notwithstanding any other provision of law, an open or closed meeting subject to this Act may be conducted by audio or video conference, without the physical presence of a quorum of the members, so long as the following conditions are met:

(1) the Governor or the Director of the Illinois Department of Public Health has issued a disaster declaration related to public health concerns because of a disaster as defined in Section 4 of the Illinois Emergency Management Agency Act, and all or part of the jurisdiction of the public body is covered by the disaster area;

(2) the head of the public body as defined in subsection (e) of Section 2 of the Freedom of Information Act determines that an in-person meeting or a meeting conducted under this Act is not practical or prudent because of a disaster;

(3) all members of the body participating in the meeting, wherever their physical location, shall be verified and can

hear one another and can hear all discussion and testimony;

(4) for open meetings, members of the public present at the regular meeting location of the body can hear all discussion and testimony and all votes of the members of the body, unless attendance at the regular meeting location is not feasible due to the disaster, including the issued disaster declaration, in which case the public body must make alternative arrangements and provide notice pursuant to this Section of such alternative arrangements in a manner to allow any interested member of the public access to contemporaneously hear all discussion, testimony, and roll call votes, such as by offering a telephone number or a web-based link;

(5) at least one member of the body, chief legal counsel, or chief administrative officer is physically present at the regular meeting location, unless unfeasible due to the disaster, including the issued disaster declaration; and

(6) all votes are conducted by roll call, so each member's vote on each issue can be identified and recorded.

(7) Except in the event of a bona fide emergency, 48 hours' notice shall be given of a meeting to be held pursuant to this Section. Notice shall be given to all members of the public body, shall be posted on the website of the public body, and shall also be provided to any news media who has requested notice of meetings pursuant to subsection (a) of Section 2.02 of this Act. If the public body declares a bona fide emergency:

(A) Notice shall be given pursuant to subsection (a) of Section 2.02 of this Act, and the presiding officer shall state the nature of the emergency at the beginning of the meeting.

(B) The public body must comply with the verbatim recording requirements set forth in Section 2.06 of this Act.

(8) Each member of the body participating in a meeting by audio or video conference for a meeting held pursuant to this Section is considered present at the meeting for purposes of determining a quorum and participating in all proceedings.

(9) In addition to the requirements for open meetings under Section 2.06, public bodies holding open meetings under this subsection (e) must also keep a verbatim record of all their meetings in the form of an audio or video recording. Verbatim records made under this paragraph (9) shall be made available to the public under, and are otherwise subject to, the provisions of Section 2.06.

(10) The public body shall bear all costs associated with compliance with this subsection (e).

### **5 ILCS 120/7.3:**

§ 7.3. Duty to post information pertaining to benefits offered through the Illinois Municipal Retirement Fund.

(a) Within 6 business days after an employer participating in the Illinois Municipal Retirement Fund approves a budget, that employer must post on its website the total compensation package for each employee having a total compensation package that exceeds \$75,000 per year. If the employer does not maintain a website, the employer must post a physical copy of this information at the principal office of the employer. If an employer maintains a website, it may choose to post a physical copy of this information at the principal office of the employer in lieu of posting the information directly on the website; however, the employer must post directions on the website on how to access that information.

(b) At least 6 days before an employer participating in the Illinois Municipal Retirement Fund approves an employee's total compensation package that is equal to or in excess of \$150,000 per year, the employer must post on its website the total compensation package for that employee. If the employer does not maintain a website, the employer shall post a physical copy of this information at the principal office of the employer. If an employer maintains a website, it may choose to post a physical copy of this information at the principal office of the employer in lieu of posting the information directly on the website; however, the employer must post directions on the website on how to access that information.

(c) For the purposes of this Section, "total compensation package" means payment by the employer to the employee for salary, health insurance, a housing

allowance, a vehicle allowance, a clothing allowance, bonuses, loans, vacation days granted, and sick days granted.

**5 ILCS 120/7.5:**

§ 7.5. Administrative review. A binding opinion issued by the Attorney General shall be considered a final decision of an administrative agency, for purposes of administrative review under the Administrative Review Law (735 ILCS 5/Art. III). An action for administrative review of a binding opinion of the Attorney General shall be commenced in Cook or Sangamon County. An advisory opinion issued to a public body shall not be considered a final decision of the Attorney General for purposes of this Section.