

# Complying With the Illinois Open Meetings Act

*Presented by:*

Andrew J. Keyt  
Heyl, Royster, Voelker & Allen, P.C.  
*akeyt@heyloyster.com*

2021 Illinois Association of County Board Members



## **Complying With the Illinois Open Meetings Act**

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**Heyl, Royster, Voelker & Allen, P.C.  
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## 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. 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 shall 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.

# Training

- 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.

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- Each elected or appointed member of a public body shall successfully complete the electronic training curriculum developed and administered by the Public Access Counselor. The training must be completed not later than the 90th day after the date the member:
    1. takes the oath of office,
    2. otherwise assumes responsibilities as a member of the public body.
  - Each member successfully completing the electronic training curriculum shall file a copy of the certificate of completion with the public body.

## Open meetings

- 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.



- 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.



- A quorum of members of a public body must be physically present at the location of an open meeting (unless under disaster declaration).



- 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.



- (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.



- (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.



- 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 or general circulation in the area in which such body functions.
- 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.

## Recording meetings

- 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.

# Minutes

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 meetings;
- (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.



- 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.






The verbatim record may be destroyed 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.



Each public body shall periodically, but no less than semi-annually, meet to review minutes of all closed meetings. At such meeting 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.

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- 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.



- 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 meeting closed to the public.



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



- 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 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.

## Public Access Counselor.

- 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.
- Upon receipt of a request for review, the Public Access Counselor shall determine whether further action is warranted.
- 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.

## Public Access Counselor.

- In addition, a requester or a public body may furnish affidavits and records concerning any matter germane to the review.
- Unless the Public Access Counselor extends the time by no more than 21 business days, 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.



## Attendance by a means other than physical presence.

- If a quorum of the members of the public body is physically present as required, 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.

## Exceptions to in physical presence

- New changes came into effect in 2020 which alleviate in person attendance under very limited circumstances.

## Public Act 101-0640

- Governor Pritzker signed into law Public Act 101-0640 which amends Section 7 of the Open Meetings Act to allow meetings of public body members (commission, board, etc . . . ) without a quorum of the board being physically present at a meeting location.

## Conditions for meeting via audio or video conferencing

- Governor or IDPH declares a disaster (as defined by the Illinois Emergency Management Agency Act) in all or part of the jurisdiction covered by the public body
- The head of the public body determines that an in-person meeting is not practical or prudent because of the disaster
- All participating members shall be verified that they can hear one another and the discussion(s)

## Conditions cont. . .

- At least one member of the body, chief legal counsel, or chief administrative officer must be physically present at the meeting, unless unfeasible due to the disaster.
- All votes are conducted by roll call, so each member's vote on each issue can be identified and recorded.
- Each member present by audio or video is considered present.

## Conditions cont. . .

- Notice shall provide information as to how the public can access the meeting in order to participate in the meeting.
- The public body must record (keep verbatim recording) of any open session conducted by audio or video. The verbatim recording shall be made available to the public.

## Practical considerations for electronic meetings

- You can permit comment by e-mail
- Electronic formats such as Zoom are preferred as it allows for muting members of the public
- Have a back up number/ link in case of a dreaded “Zoom Bombing”
- Have someone in the office designated as the electronic meeting coordinator

## Closed Session

- Only utilize it when necessary
- Stick to the topic
- Only people that are necessary for the discussion of the topic should be allowed in closed session



## Exceptions for closed session (pursuant to Section 2(c))

A public body may hold closed meetings to consider the following subjects:

1. The appointment, employment, compensation, discipline, performance, or dismissal of specific employees of the public body or legal counsel for the public body.
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.
4. Evidence or testimony presented in open hearing, or in closed hearing where specifically authorized by law, to a quasi-adjudicative body, provided that the body prepares and makes available for public inspection a written decision setting forth its determinative reasoning.

## Exceptions

5. The purchase or lease of real property for the use of the public body.
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.
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.

## Exceptions

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.
12. The establishment of reserves or settlement of claims as provided in the Local Governmental and Governmental Employees Tort Immunity Act.

## Exceptions

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.

## Exceptions

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 or the federal Health Insurance Portability and Accountability Act of 1996.
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.

## Exceptions

21. Discussion of minutes of meetings lawfully closed under this Act.
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.

## Exceptions

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.

# Exceptions

27. 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.
28. 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.



# Exceptions

29. 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.
30. Meetings and deliberations for decisions of the Concealed Carry Licensing Review Board under the Firearm Concealed Carry Act.
31. 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.
32. 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.

## Exceptions

33. 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.
34. Meetings of the group established to discuss Medicaid capitation rates under Section 5-30.8 of the Illinois Public Aid Code.

## 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.

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