



An SSA Commissioner's Guide to the The Illinois Open Meetings Act

This Guide is a summary of the Illinois Attorney General's *Guide to the Illinois Open Meetings Act (Revised 2004)*. For the full guide and the complete Illinois Open Meetings Act (5 ILCS 120), visit www.illinoisattorneygeneral.gov.

IL Open Meetings Act Highlights:

- SSA Commissions are public bodies and subject to the IL Open Meetings Act (the "Act").
- A meeting is 1) a *gathering* of a 2) *majority of a quorum* of the members of a public body held for the purpose of 3) *discussing public business*.
- All meetings of public bodies are open to the public unless the meetings fall within one or more of the exceptions contained in the Act and are closed in accordance with the Act.
- Any person may record the proceedings at open meetings by tape, film or other means under most circumstances. Closed meetings must be recorded via audio or video.
- Minutes must be kept of open meetings that include: the date/time/place; absent/present members; and a summary of discussion, including votes. Final (not draft) minutes must be made available within seven days of approval (e.g. post on SSA website).
- Meeting Types, Schedules and Recording Overview:
 - **Annual Schedule:** Public bodies must give public notice, at the beginning of each year, of the dates, times, and places of their regular meetings that year.
 - **Change in Annual Schedule:** If a permanent change is made to the annual meeting schedule, the change must be published in a local media source.
 - **Emergency Meetings:** Notice of a meeting held in the event of a bona fide emergency should be given as soon as practicable (48-hour rule does not apply).
 - **Special, Rescheduled & Reconvened Meetings:** Public notice and an agenda of these three meeting types must be given 48 hours in advance (some exceptions apply).
 - **Agenda Posting:** Agendas for regular meetings must be posted 48 hours before the meeting at the SSA Commission's office and at the meeting location. News media that filed to receive notice are entitled to notice (ads are not required).
 - **New Business:** New business can be discussed, but no action (e.g. vote) can be taken.
 - **Availability of Meeting Schedule:** The schedule of regular meetings must be available at the SSA Commission's office and online, listing times/places of regular meetings.
 - **Convenience:** Public meetings must be held at times and places convenient and open to the public.
- Civil and criminal enforcements apply for noncompliance with the Act.

I. What Meetings Must Be Open?

1. Types of Bodies Covered

The Act covers all public bodies, whether State or local, administrative or advisory, executive or legislative, paid or unpaid. SSA Commissions are local / advisory / executive / unpaid bodies. The Act applies to SSA committees and subcommittees.

2. Types of Gatherings Covered

Meeting: a *gathering of a majority of a quorum* of the members of a public body held for the purpose of *discussing public business*. The definition of "meeting" must meet three conditions:

- a) a gathering
- b) a majority of a quorum (or of 3 or more members of a five-member public body)
- c) discussing public business

a) Gathering

The term "gathering" includes in-person, telephonic and electronic assemblages. A conference call is a "meeting" for purposes of the Open Meetings Act when a majority of a quorum of a public body participates in such a call. It is important to note that the purpose of the Act is to ensure that the actions of public bodies are taken openly and that their deliberations are conducted openly. If e-mail or other technology is used to circumvent this purpose, a court may find that a "gathering" does exist when it is conducted by a majority of a quorum.

b) A majority of a quorum

A majority of all members is generally a quorum, so a majority of a quorum of a seven member board normally is four. SSA Commission "members" are duly appointed and confirmed SSA Commissioners, not the maximum number of seats in the SSA ordinance. In the case of a committee or other subgroup, the calculation is based on the members of the subgroup, not the larger public body of which it is a part.

c) Discussing public business

The Act does not apply to purely social gatherings, but a gathering that is not "held for the purpose of discussing public business" at the outset is subject to conversion to a meeting at any point. The phrase "discussing public business" refers to an exchange of views and ideas among public body members, on any item germane to the affairs of their public body. The discussion need not be aimed at reaching an immediate decision in order to be considered a discussion of public business.

How can members gather for the meeting?

- The gathering may be in person or by video or audio conference, telephone call, electronic means (such as electronic mail, electronic chat, and instant messaging).
- However, a quorum of members of a public body generally must be physically present at the location of an open meeting, and for most public bodies, attendance by other means other than physical presence is permitted only if the member is prevented from physically attending because of:
 - personal illness or disability
 - employment purposes or the business of the public body; or

- a family or other emergency, and the rules of the body allow for the lack of physical presence.

3. When is Closing a Meeting Allowed?

All meetings of public bodies are open to the public unless the meetings fall within one or more of the exceptions contained in the Act and are closed in accordance with the Act. Exceptions are limited, very specific, and subject to the following:

- The exceptions are to be strictly construed, extending only to subjects clearly within the public body's scope.
- The exceptions authorize but do not require the closing of a meeting falling within the public body's scope.
- Discussion in a closed meeting under an exception to the Act must be limited in scope to the cited exception authorizing the closed meeting.
- The taking of final action at any closed meeting is prohibited.
- A public body must disclose to the public the substance of any final action which is being taken, whether that substance has been discussed in an open or a closed meeting.

Most of the exceptions fall under one of the following headings, however most SSA Commission business would not warrant a closed meeting. **NOTE:** Not all matters or meetings that might fall under a general heading are exempt--only those within the scope of a specific exception.

- **Employment/Appointment Matters:** Such as employment compensation or discipline, collective bargaining matters, or filling vacancies in public office.
- **Legal Matters:** Such as deliberations of a quasi-adjudicative body to evaluate testimony presented in an open hearing; pending, probable or imminent litigation; or hiring or terminating legal counsel.
- **Business Matters:** Such as discussing the purchase or lease of real property for the use of the public body or the price for sale of property owned by the public body, including meetings held for the purpose of discussing whether a particular parcel should be acquired, the setting of a price for sale or lease of property owned by the public body, the sale or purchase of securities, investments, or investment contracts.
- **Security/Criminal Matters:** Meetings on the following subjects may be closed: Security procedures 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 or the public, or public property. 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.
- **School Matters:** Such as student disciplinary cases.
- **Closed Meetings Specifically Authorized by Law:** A meeting may be closed if a State statute expressly requires or authorizes it. For example, Section 24 of the Illinois Public Labor Relations Act (5 ILCS 315/24) and Section 18 of the Illinois Educational Labor Relations Act (115 ILCS 5/18) provide that the Open Meetings Act "shall not apply to collective bargaining negotiations and grievance arbitration[s] conducted pursuant to" those Acts.

II. Taping & Filming Meetings

- The Act provides that "any person may record the proceedings at meetings required to be open by this Act by tape, film or other means."
- In certain circumstances, however, taping or filming is subject to another Illinois statute which provides: "No witness shall be compelled to testify in any proceeding conducted by a court, commission, administrative agency or other tribunal in this State if any portion of his or her testimony is to be broadcast or televised or if motion pictures are to be taken of him or her while he or she is testifying." (735 ILCS 5/8-701.)
- Under Section 2.05 of the Act, if a witness before a "commission, administrative agency or other tribunal" refuses to testify because his or her testimony will be taped or filmed, "the authority holding the meeting shall prohibit such recording during the testimony of the witness." (5 ILCS 120/2a.)
- That Section also provides that "[t]he authority holding the meeting shall prescribe reasonable rules to govern the right to make . . . recordings." The Attorney General recommends that rules be written and published after appropriate public notice and deliberation.
- See Section IV below for the requirement to record closed meetings.

III. Procedures for Closing Meetings

- Section 2a of the Act allows a public body, upon a majority vote of a quorum present, to vote to close a meeting or to hold a closed meeting at a specified future date. The vote must be taken at an open meeting. Additional notice is not required prior to holding a closed meeting when such meeting is part of an open meeting for which proper notice has been given. Separate notice is required, however, for all other closed meetings.
- Section 2a requires that the vote of each member on the question of holding a closed meeting, as well as a citation to the exception in section 2(c) authorizing the closed meeting, be publicly disclosed at the time of the vote and recorded and entered in the minutes of the meeting at which the vote is taken.
- The public statement and citation should recite the language of the exception.
- Discussion in a closed meeting is limited to matters covered by the exception specified in the vote to close.
- Section 2a authorizes the closing of a series of meetings by a single vote as long as each meeting in the series involves the same particular matter and is scheduled to be held within three months of the vote. Subsequent meetings, however, would be subject to the notice requirements of section 2.02.

IV. Recording Closed Meetings & Minutes

1. Recording of Closed Meetings

Prior to 2004, the Act required that minutes be kept of both open and closed meetings. Effective January 1, 2004, for closed meetings only, public bodies are required to keep a verbatim record of all their closed meetings in the form of an audio or video recording. Although minutes are not specifically required for closed meetings, the audio or video tapes may not be destroyed unless minutes are approved.

The requirement to record all closed meetings applies to all public bodies. Thus, it applies not only to governing boards such as city councils, county boards, and boards of township trustees, but to all committees, subcommittees and other subsidiary bodies that are themselves subject to the Open Meetings Act.

Recordings are confidential unless the public body or a court determines otherwise. The verbatim recording of a closed meeting shall not be open for public inspection or subject to discovery unless:

- The public body determines that the recording no longer requires confidential treatment or otherwise consents to disclosure.
- A court in a civil proceeding, after an in camera examination, determines that the meeting was unlawful and that all or portions of the recording must be made publicly available.
- A court in a criminal proceeding, after an in camera examination, determines that certain portions of the recording should be made available to the parties for use as evidence in the prosecution.

Each recording of a closed meeting must be kept a minimum of 18 months. Although recordings may be destroyed after 18 months without the permission of the appropriate records commission, no recording may be destroyed unless the public body (1) approves destruction of the particular recording and (2) approves minutes (meeting the requirements stated below) of the closed meeting.

2. Minutes for Open and Closed Meetings

Open Meetings

Section 2.06 requires a public body to keep minutes of all open meetings. Minutes must include, but need not be limited to:

- (i) the date, time and place of the meeting;
- (ii) the members of the body recorded as present or absent; and
- (iii) a summary of discussion on all matters proposed, deliberated or decided, and a record of any votes taken.

Section 2.06(b) requires that minutes of open meetings be made available for public inspection within seven days of approval of such minutes by the public body. Typically SSA Commissions have their minutes posted online at the SSA provider's website or their SSA website.

Closed Meetings

Minutes of closed meetings are available only after a determination by the public body that it is no longer necessary to protect the public interest or the privacy of an individual by keeping them confidential, or by court order pursuant to the provisions of 5 ILCS 120/3(c), when it is determined that the meeting to which such minutes pertain was closed in violation of the Act. A closed meeting may be held to approve the minutes of a prior closed meeting.

Public bodies are required to review closed meeting minutes at least twice a year to determine whether a need for confidentiality exists with respect to all or part of the minutes. A closed meeting may be held to conduct the mandated review, but determinations on such minutes are to be reported in open session. (5 ILCS 120/2(c)(21).) Minutes of closed meetings are exempt from inspection under the Freedom of Information Act (5 ILCS 140/7(m)) "until the public body makes the minutes available to the public."

V. Public Notice of Time and Place

Following are key requirements for public notice:

- **Annual Schedule:** The Act requires public bodies to give public notice, at the beginning of each calendar or fiscal year, of the dates, times, and places of their regular meetings to be held during the year.
- **Meeting Change:** 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. [NOTE: The Attorney General has stated that this requirement appears to relate to a permanent change in the regular meeting schedule and not to the rescheduling of a single meeting, which may be done with 48 hours notice.]
- **Agenda Posting:** The posting of an agenda for each regular meeting at least 48 hours in advance of the meeting is also required. The regular meeting agenda "shall be posted at the principal office of the public body and at the location where the meeting is to be held." This is usually the Service Provider agency's office and the meeting location, if they are different locations.
- **New Business:** Since discussion of new business is allowed at regular meetings, consideration of such items is appropriate even if they are not included in the agenda. However, an appellate court has held that "consideration of" an item of new business not included on the agenda for the meeting is limited to deliberation and discussion and does not include the taking of action on such item.
- **Other Meeting Types:** Public notice of any special, rescheduled or reconvened meeting must be given at least 48 hours in advance except that public notice is not necessary for a meeting to be reconvened within 24 hours or if the time and place of the reconvened meeting was announced at the original meeting and there is no change in the agenda.
- **Emergency Meetings:** Notice of a meeting held in the event of a bona fide emergency need not be given 48 hours prior to such meeting. Notice in such a

circumstance shall, however, be given as soon as practicable, and in any event prior to the holding of such meeting, to any news medium that has filed an annual request for notice under the Act. An agenda must be included in the notice for any special, rescheduled or reconvened meeting.

- **Two Notice Requirements:**
 - Posting a notice at the public body's principal office or, if it has no office, at the building in which the meeting will be held (SSA Commission offices are the Service Provider's office); and
 - sending a notice to each news medium that has filed an annual request for notice. Such news media providing a local address or telephone number for notice are entitled to notice of special, emergency, rescheduled or reconvened meetings given in the same manner as it is given to members of the public body.
- **Availability of Meeting Schedule:** The schedule of regular meetings must be "available," presumably at the office of the public body. This schedule must list the times and places of regular meetings. 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 of the governing body of that public body.
- **Convenience:** Public meetings must be held at times and places convenient and open to the public. A public meeting may not be held on a legal holiday "unless the regular meeting day falls on that holiday." (5 ILCS 120/2.01)

VI. Enforcement

1. Civil Enforcement

Subsection 3(a) authorizes any person, including the State's Attorney of the county in which noncompliance may occur, to bring a civil action for the enforcement of the Act within 60 days after a meeting alleged to have been held in violation of the Act, or, if facts concerning the meeting are not discovered within that period, within 60 days of the discovery of a violation by the appropriate State's Attorney. The provision clearly authorizes members of the general public to institute enforcement proceedings under the Act.

The time limitation on civil actions in section 3 was placed in the Act as an adjunct to the language in subsection 3(c), which authorizes a court to declare null and void any final action taken at a closed meeting in violation of the Act. This was to remove the cloud of voidability from certain actions, such as authorizations for issuance of bonds, as quickly as practicable, in order to prevent undue hardship and certification delays.

Subsection 3(b) authorizes a court, in addition to taking other evidence, to examine in camera any portion of the minutes of a closed meeting at which a violation of the Act is alleged to have occurred. Additionally, under subsection 3(c), the court may grant such relief as it deems appropriate including:

- 1) issuing a writ of mandamus requiring that a meeting be open to the public;
- 2) granting an injunction against future violations of the Act;
- 3) ordering the public body to make available for public inspection the minutes of an improperly closed meeting; and

- 4) declaring null and void any final action taken at a closed meeting in violation of the Act.

Item 4 above is a significant provision since it makes certain actions taken in violation of the Act voidable. A court, however, is not required to void an action when the voiding of the action is not in the public interest. It should also be noted that the voidability provision relates only to final actions taken in closed meetings held in violation of the Act. Courts normally do not void action because of a technical notice violation, but a court has voided action taken on an item of new business that was not included in the agenda.

Subsection 3(d) authorizes the court to assess against any party, except a State's Attorney, reasonable attorney's fees and costs incurred by any other party who substantially prevails in an action brought in accordance with section 3. Assessment of fees against a private party, however, calls for an additional determination that the action brought by such party was "frivolous or malicious" in nature.

2. Criminal Enforcement

In addition to civil penalties, violators of the Open Meetings Act are subject to criminal penalties. Any criminal action must be initiated by a State's Attorney. Violation of the Act is a Class C misdemeanor (5 ILCS 120/4), which is punishable by a fine of up to \$1,500 and imprisonment for up to 30 days. (730 ILCS 5/5-8-3 and 5/5-9-1.)