



Rep. Tracy Katz Muhl

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10300HB5557ham001

LRB103 38850 AWJ 71582 a

1 AMENDMENT TO HOUSE BILL 5557

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 5557 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Open Meetings Act is amended by changing  
5 Section 3.5 as follows:

6 (5 ILCS 120/3.5)

7 Sec. 3.5. Public Access Counselor; opinions.

8 (a) A person who believes that a violation of this Act by a  
9 public body has occurred may file a request for review with the  
10 Public Access Counselor established in the Office of the  
11 Attorney General not later than 60 days after the alleged  
12 violation. If facts concerning the violation are not  
13 discovered within the 60-day period, but are discovered at a  
14 later date, not exceeding 2 years after the alleged violation,  
15 by a person utilizing reasonable diligence, the request for  
16 review may be made within 60 days of the discovery of the

1 alleged violation. The request for review must be in writing,  
2 must be signed by the requester, and must include a summary of  
3 the facts supporting the allegation. The changes made by this  
4 amendatory Act of the 99th General Assembly apply to  
5 violations alleged to have occurred at meetings held on or  
6 after the effective date of this amendatory Act of the 99th  
7 General Assembly.

8 (b) Upon receipt of a request for review, the Public  
9 Access Counselor shall determine whether further action is  
10 warranted. If the Public Access Counselor determines from the  
11 request for review that the alleged violation is unfounded, he  
12 or she shall so advise the requester and the public body of the  
13 refusal. The Public Access Counselor shall draft language, to  
14 be included in the notice to the requester, regarding the  
15 requester's right to amend and refile the request with  
16 additional relevant information before the deadline set forth  
17 in paragraph (a), if the deadline has not yet passed, and shall  
18 state in the notice that ~~and~~ no further action shall be taken  
19 unless the request is timely amended and refiled ~~undertaken~~.

20 In all other cases, the Public Access Counselor shall forward  
21 a copy of the request for review to the public body within 7  
22 working days. The Public Access Counselor shall specify the  
23 records or other documents that the public body shall furnish  
24 to facilitate the review. Within 7 working days after receipt  
25 of the request for review, the public body shall provide  
26 copies of the records requested and shall otherwise fully

1 cooperate with the Public Access Counselor. If a public body  
2 fails to furnish specified records pursuant to this Section,  
3 or if otherwise necessary, the Attorney General may issue a  
4 subpoena to any person or public body having knowledge of or  
5 records pertaining to an alleged violation of this Act. For  
6 purposes of conducting a thorough review, the Public Access  
7 Counselor has the same right to examine a verbatim recording  
8 of a meeting closed to the public or the minutes of a closed  
9 meeting as does a court in a civil action brought to enforce  
10 this Act.

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

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

1 germane to the review.

2 (e) In responding to any written request under this  
3 Section, the Public Access Counselor may exercise the Public  
4 Access Counselor's discretion and choose to resolve a request  
5 for review by: (1) issuing a binding opinion; (2) issuing a  
6 nonbinding opinion; or (3) mediation or another means other  
7 than the issuance of a binding opinion. The decision not to  
8 issue a binding opinion shall not be reviewable. A binding  
9 ~~Unless the Public Access Counselor extends the time by no more~~  
10 ~~than 21 business days by sending written notice to the~~  
11 ~~requester and public body that includes a statement of the~~  
12 ~~reasons for the extension in the notice, or decides to address~~  
13 ~~the matter without the issuance of a binding opinion, the~~  
14 ~~Attorney General shall examine the issues and the records,~~  
15 ~~shall make findings of fact and conclusions of law, and shall~~  
16 ~~issue to the requester and the public body an opinion within 60~~  
17 ~~days after initiating review. The opinion shall be binding~~  
18 upon both the requester and the public body, subject to  
19 administrative review under Section 7.5 of this Act.

20 In the case of binding opinions, the Public Access  
21 Counselor shall examine the issues and the records, shall make  
22 findings of fact and conclusions of law, and shall issue to the  
23 requester and the public body an opinion within 60 days after  
24 initiating review. The Public Access Counselor may extend the  
25 issuance of a binding opinion by sending written notice to the  
26 requester and public body that includes: (1) a statement of

1 the reasons for the extension in the notice by a specified  
2 period of days not to exceed 21 business days or (2) a  
3 certification if a case is of particular public interest  
4 warranting an indefinite extension.

5 ~~In responding to any written request under this Section~~  
6 ~~3.5, the Attorney General may exercise his or her discretion~~  
7 ~~and choose to resolve a request for review by mediation or by a~~  
8 ~~means other than the issuance of a binding opinion. The~~  
9 ~~decision not to issue a binding opinion shall not be~~  
10 ~~reviewable.~~

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

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

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

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

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

20 (i) The Public Access Counselor may initiate an internal  
21 investigation, gather data, and report on a public body for  
22 frequent violations of this Act or for frequent violations of  
23 court orders for failure to comply with this Act.

24 If the Public Access Counselor finds that a public body  
25 has frequently violated this Act or has frequently violated  
26 court orders for failure to comply with this Act, the Public

1 Access Counselor may impose a civil penalty of \$1,000 for the  
2 first finding of a violation of this Act after investigation  
3 under this Section and \$2,000 for the second and each  
4 subsequent finding of a violation. A civil penalty may only be  
5 imposed after a hearing with notice to the public body and an  
6 opportunity for the public body's representative to be heard.  
7 The Attorney General may enforce a penalty imposed by filing  
8 an action in circuit court.

9 The Attorney General shall adopt rules to implement this  
10 subsection, including the procedures of the investigation and  
11 hearings and defining "frequent violation".

12 (Source: P.A. 99-402, eff. 8-19-15.)

13 Section 10. The Freedom of Information Act is amended by  
14 changing Sections 3 and 9.5 as follows:

15 (5 ILCS 140/3) (from Ch. 116, par. 203)

16 Sec. 3. (a) Each public body shall make available to any  
17 person for inspection or copying all public records, except as  
18 otherwise provided in Sections 7 and 8.5 of this Act.  
19 Notwithstanding any other law, a public body may not grant to  
20 any person or entity, whether by contract, license, or  
21 otherwise, the exclusive right to access and disseminate any  
22 public record as defined in this Act.

23 (b) Subject to the fee provisions of Section 6 of this Act,  
24 each public body shall promptly provide, to any person who

1 submits a request, a copy of any public record required to be  
2 disclosed by subsection (a) of this Section and shall certify  
3 such copy if so requested.

4 (c) Requests for inspection or copies shall be made in  
5 writing and directed to the public body. Written requests may  
6 be submitted to a public body via personal delivery, mail,  
7 telefax, or other means available to the public body. A public  
8 body may honor oral requests for inspection or copying. A  
9 public body may not require that a request be submitted on a  
10 standard form or require the requester to specify the purpose  
11 for a request, except to determine whether the records are  
12 requested for a commercial purpose or whether to grant a  
13 request for a fee waiver. All requests for inspection and  
14 copying received by a public body shall immediately be  
15 forwarded to its Freedom of Information officer or designee.

16 (d) Each public body shall, promptly, either comply with  
17 or deny a request for public records within 5 business days  
18 after its receipt of the request, unless the time for response  
19 is properly extended under subsection (e) of this Section.  
20 Denial shall be in writing as provided in Section 9 of this  
21 Act. Failure to comply with a written request, extend the time  
22 for response, or deny a request within 5 business days after  
23 its receipt shall be considered a denial of the request. A  
24 public body that fails to respond to a request within the  
25 requisite periods in this Section but thereafter provides the  
26 requester with copies of the requested public records may not



1 impose a fee for such copies. A public body that fails to  
2 respond to a request received may not treat the request as  
3 unduly burdensome under subsection (g).

4 (e) The time for response under this Section may be  
5 extended by the public body for not more than 5 business days  
6 from the original due date for any of the following reasons:

7 (i) the requested records are stored in whole or in  
8 part at other locations than the office having charge of  
9 the requested records;

10 (ii) the request requires the collection of a  
11 substantial number of specified records;

12 (iii) the request is couched in categorical terms and  
13 requires an extensive search for the records responsive to  
14 it;

15 (iv) the requested records have not been located in  
16 the course of routine search and additional efforts are  
17 being made to locate them;

18 (v) the requested records require examination and  
19 evaluation by personnel having the necessary competence  
20 and discretion to determine if they are exempt from  
21 disclosure under Section 7 of this Act or should be  
22 revealed only with appropriate deletions;

23 (vi) the request for records cannot be complied with  
24 by the public body within the time limits prescribed by  
25 subsection (d) of this Section without unduly burdening or  
26 interfering with the operations of the public body;

1           (vii) there is a need for consultation, which shall be  
2           conducted with all practicable speed, with another public  
3           body or among 2 or more components of a public body having  
4           a substantial interest in the determination or in the  
5           subject matter of the request.

6           The person making a request and the public body may agree  
7           in writing to extend the time for compliance for a period to be  
8           determined by the parties. If the requester and the public  
9           body agree to extend the period for compliance, a failure by  
10          the public body to comply with any previous deadlines shall  
11          not be treated as a denial of the request for the records.

12          (f) When additional time is required for any of the above  
13          reasons, the public body shall, within 5 business days after  
14          receipt of the request, notify the person making the request  
15          of the reasons for the extension and the date by which the  
16          response will be forthcoming. Failure to respond within the  
17          time permitted for extension shall be considered a denial of  
18          the request. A public body that fails to respond to a request  
19          within the time permitted for extension but thereafter  
20          provides the requester with copies of the requested public  
21          records may not impose a fee for those copies. A public body  
22          that requests an extension and subsequently fails to respond  
23          to the request may not treat the request as unduly burdensome  
24          under subsection (g).

25          (g) Requests calling for all records falling within a  
26          category shall be complied with unless compliance with the

1 request would be unduly burdensome for the complying public  
2 body and there is no way to narrow the request and the burden  
3 on the public body outweighs the public interest in the  
4 information. Before invoking this exemption, the public body  
5 shall extend to the person making the request an opportunity  
6 to confer with it in an attempt to reduce the request to  
7 manageable proportions. The public body's response to the  
8 request shall provide specific suggestions that are likely to  
9 narrow the request, such as providing an alternative time  
10 period or limiting the authors or recipients of records. If  
11 any public body responds to a categorical request by stating  
12 that compliance would unduly burden its operation and the  
13 conditions described above are met, it shall do so in writing,  
14 specifying the reasons why it would be unduly burdensome,  
15 including, but not limited to, stating the manner in which the  
16 public body searched for records or explaining why it would  
17 not be feasible to conduct a search, the approximate number of  
18 records located or estimated to exist, the approximate time to  
19 review each record, including the basis for that time  
20 estimate, and the extent to which compliance will so burden  
21 the operations of the public body. Such a response shall be  
22 treated as a denial of the request for information.

23 Repeated requests from the same person for the same  
24 records that are unchanged or identical to records previously  
25 provided or properly denied under this Act shall be deemed  
26 unduly burdensome under this provision.

1 (h) Each public body may promulgate rules and regulations  
2 in conformity with the provisions of this Section pertaining  
3 to the availability of records and procedures to be followed,  
4 including:

5 (i) the times and places where such records will be  
6 made available, and

7 (ii) the persons from whom such records may be  
8 obtained.

9 (i) The time periods for compliance or denial of a request  
10 to inspect or copy records set out in this Section shall not  
11 apply to requests for records made for a commercial purpose,  
12 requests by a recurrent requester, or voluminous requests.  
13 Such requests shall be subject to the provisions of Sections  
14 3.1, 3.2, and 3.6 of this Act, as applicable.

15 (Source: P.A. 101-81, eff. 7-12-19.)

16 (5 ILCS 140/9.5)

17 Sec. 9.5. Public Access Counselor; opinions.

18 (a) A person whose request to inspect or copy a public  
19 record is denied by a public body, except the General Assembly  
20 and committees, commissions, and agencies thereof, may file a  
21 request for review with the Public Access Counselor  
22 established in the Office of the Attorney General not later  
23 than 60 days after the date of the final denial. The request  
24 for review must be in writing, signed by the requester, and  
25 include (i) a copy of the request for access to records and

1 (ii) any responses from the public body.

2 (b) A person whose request to inspect or copy a public  
3 record is made for a commercial purpose as defined in  
4 subsection (c-10) of Section 2 of this Act may not file a  
5 request for review with the Public Access Counselor. A person  
6 whose request to inspect or copy a public record was treated by  
7 the public body as a request for a commercial purpose under  
8 Section 3.1 of this Act may file a request for review with the  
9 Public Access Counselor for the limited purpose of reviewing  
10 whether the public body properly determined that the request  
11 was made for a commercial purpose.

12 (b-5) A person whose request to inspect or copy a public  
13 record was treated by a public body, except the General  
14 Assembly and committees, commissions, and agencies thereof, as  
15 a voluminous request under Section 3.6 of this Act may file a  
16 request for review with the Public Access Counselor for the  
17 purpose of reviewing whether the public body properly  
18 determined that the request was a voluminous request.

19 (c) Upon receipt of a request for review, the Public  
20 Access Counselor shall determine whether further action is  
21 warranted. If the Public Access Counselor determines from the  
22 request for review that the alleged violation is unfounded, he  
23 or she shall so advise the requester and the public body of the  
24 refusal. The Public Access Counselor shall draft language, to  
25 be included in the notice to the requester, regarding the  
26 requester's right to amend and refile the request with

1 additional relevant information before the deadline set forth  
2 in paragraph (a), if the deadline has not yet passed, and shall  
3 state in the notice that ~~and~~ no further action shall be taken  
4 unless the request is timely amended and refiled ~~undertaken~~.

5 In all other cases, the Public Access Counselor shall forward  
6 a copy of the request for review to the public body within 7  
7 business days after receipt and shall specify the records or  
8 other documents that the public body shall furnish to  
9 facilitate the review. Within 7 business days after receipt of  
10 the request for review, the public body shall provide copies  
11 of records requested and shall otherwise fully cooperate with  
12 the Public Access Counselor. If a public body fails to furnish  
13 specified records pursuant to this Section, or if otherwise  
14 necessary, the Attorney General may issue a subpoena to any  
15 person or public body having knowledge of or records  
16 pertaining to a request for review of a denial of access to  
17 records under the Act. Records or documents obtained by the  
18 Public Access Counselor from a public body for the purpose of  
19 addressing a request for review under this Section may not be  
20 disclosed to the public, including the requester, by the  
21 Public Access Counselor. These records, while in the  
22 possession of the Public Access Counselor, are exempt under  
23 this Act from disclosure by the Public Access Counselor.

24 (d) Within 7 business days after it receives a copy of a  
25 request for review and request for production of records from  
26 the Public Access Counselor, the public body may, but is not

1 required to, answer the allegations of the request for review.  
2 The answer may take the form of a letter, brief, or memorandum.  
3 The Public Access Counselor shall forward a copy of the answer  
4 to the person submitting the request for review, with any  
5 alleged confidential information to which the request pertains  
6 redacted from the copy. The requester may, but is not required  
7 to, respond in writing to the answer within 7 business days and  
8 shall provide a copy of the response to the public body.

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

13 (f) In responding to any written request under this  
14 Section, the Public Access Counselor may exercise the Public  
15 Access Counselor's discretion and choose to resolve a request  
16 for review by: (1) issuing a binding opinion; (2) issuing a  
17 nonbinding opinion; or (3) mediation or another means other  
18 than the issuance of a binding opinion. The decision not to  
19 issue a binding opinion shall not be reviewable. A binding  
20 opinion shall be binding upon both the requester and the  
21 public body, subject to administrative review under Section  
22 11.5.

23 In the case of binding opinions, the Public Access  
24 Counselor shall examine the issues and the records, shall make  
25 findings of fact and conclusions of law, and shall issue to the  
26 requester and the public body an opinion within 60 days after

1 initiating review. The Public Access Counselor may extend the  
2 issuance of a binding opinion by sending written notice to the  
3 requester and public body that includes: (1) a statement of  
4 the reasons for the extension in the notice by a specified  
5 period of days not to exceed 30 business days or (2) a  
6 certification if a case is of particular public interest  
7 warranting an indefinite extension.

8 ~~Unless the Public Access Counselor extends the time by~~  
9 ~~no more than 30 business days by sending written notice to the~~  
10 ~~requester and the public body that includes a statement of the~~  
11 ~~reasons for the extension in the notice, or decides to address~~  
12 ~~the matter without the issuance of a binding opinion, the~~  
13 ~~Attorney General shall examine the issues and the records,~~  
14 ~~shall make findings of fact and conclusions of law, and shall~~  
15 ~~issue to the requester and the public body an opinion in~~  
16 ~~response to the request for review within 60 days after its~~  
17 ~~receipt. The opinion shall be binding upon both the requester~~  
18 ~~and the public body, subject to administrative review under~~  
19 ~~Section 11.5.~~

20 ~~In responding to any request under this Section 9.5, the~~  
21 ~~Attorney General may exercise his or her discretion and choose~~  
22 ~~to resolve a request for review by mediation or by a means~~  
23 ~~other than the issuance of a binding opinion. The decision not~~  
24 ~~to issue a binding opinion shall not be reviewable.~~

25 Upon receipt of a binding opinion concluding that a  
26 violation of this Act has occurred, the public body shall



1 either take necessary action immediately to comply with the  
2 directive of the opinion or shall initiate administrative  
3 review under Section 11.5. If the opinion concludes that no  
4 violation of the Act has occurred, the requester may initiate  
5 administrative review under Section 11.5.

6 A public body that discloses records in accordance with an  
7 opinion of the Attorney General is immune from all liabilities  
8 by reason thereof and shall not be liable for penalties under  
9 this Act.

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

16 (h) The Attorney General may also issue advisory opinions  
17 to public bodies regarding compliance with this Act. A review  
18 may be initiated upon receipt of a written request from the  
19 head of the public body or its attorney, which shall contain  
20 sufficient accurate facts from which a determination can be  
21 made. The Public Access Counselor may request additional  
22 information from the public body in order to assist in the  
23 review. A public body that relies in good faith on an advisory  
24 opinion of the Attorney General in responding to a request is  
25 not liable for penalties under this Act, so long as the facts  
26 upon which the opinion is based have been fully and fairly

1 disclosed to the Public Access Counselor.

2 (i) The Public Access Counselor may initiate an internal  
3 investigation, gather data, and report on a public body for  
4 frequent violations of this Act, for frequent violations of  
5 court orders, for failure to comply with this Act, for  
6 unreasonably denying a request under this Act, and for failure  
7 to adequately inform a requester why a request is denied.

8 If the Public Access Counselor finds that a public body  
9 has violated any of the topics allowed to be investigated  
10 under this Section, the Public Access Counselor may impose a  
11 civil penalty of \$1,000 for the first finding of a violation of  
12 this Act after investigation under this Section and \$2,000 for  
13 the second and each subsequent finding of a violation. A civil  
14 penalty may only be imposed after a hearing with notice to the  
15 public body and an opportunity for the public body's  
16 representative to be heard. The Attorney General may enforce a  
17 penalty imposed by filing an action in circuit court.

18 The Attorney General shall adopt rules to implement this  
19 subsection, including the procedures of the investigation and  
20 hearings and defining "frequent violation".

21 (Source: P.A. 103-69, eff. 1-1-24.)".