

OPEN MEETINGS LAW SUBCOMMITTEE
OF THE
STANDING COMMITTEES ON STATE GOVERNMENT

Report to Members of the
Second Session of the Sixty-seventh General Assembly

State of Iowa
1978

FINAL REPORT
JOINT STATE GOVERNMENT SUBCOMMITTEE
on the
OPEN MEETINGS LAW

December, 1977

The Subcommittee was authorized by the Legislative Council on October 12, 1977 to study the present practice under Chapter 28A of the Code. The membership of the Subcommittee includes:

Senator E. Kevin Kelly, Co-chairperson
Representative Donald Avenson, Co-chairperson
Senator Minnette Doderer
Senator Lowell Junkins
Representative Norman Jesse
Representative Nancy Shimanek

The Subcommittee held its first meeting on November 14, 1977. This meeting was a public hearing and testimony was given by journalists, citizen groups, and government agencies. These parties spoke to the problems they encounter with the present language of the open meetings law and discussed suggested revisions. A survey was conducted of several state boards and commissions to obtain an indication of the frequency of use of the exceptions to the open meetings law.

The Subcommittee met on December 20, 1977 to discuss various drafts which had been submitted to it. At that meeting the Subcommittee approved a draft of an open meetings law which is attached to this report. Some of the principle features of this draft are as follows:

1. Those governmental bodies subject to the law are defined and the applicability of the law down the chain of administrative delegation is limited.
2. The requirements for notice of meetings is made more specific.
3. The justifications for closing a meeting are limited to discussion of confidential records, litigation strategy, licensee examinations and disciplinary actions, student disciplinary actions, deliberations of contested cases, and some law enforcement matters.
4. The voting requirement for closing a meeting is increased.
5. Detailed minutes and recordings are required to be kept of closed meetings and procedures are stated for the review and disclosure of the minutes and recordings in a court proceeding.

6. The action taken at an unlawfully closed meeting is avoidable.
7. Personal civil liability is provided for those who violate the open meetings law.
8. Attorneys' fees and costs can be recovered by parties bringing an action to enforce the law.
9. A public official can be removed from office for repeated violations of the law.
10. The use of conference call meetings is limited to emergency circumstances and prior notice is required.

PROPOSED SENATE FILE _____

By (PROPOSED COMMITTEE ON
STATE GOVERNMENT BILL)

Passed Senate, Date _____ Passed House, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to the holding of meetings by governmental
2 bodies in closed and open session and providing remedies
3 and damages.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Chapter twenty-eight A (28A), Code 1977, is
2 amended by striking the chapter and inserting in lieu thereof
3 sections two (2) through nine (9) of this Act.

4 Sec. 2. NEW SECTION. INTENT--DECLARATION OF POLICY. This
5 Act seeks to assure, through a requirement of open meetings
6 of governmental bodies, that the basis and rationale of govern-
7 mental decisions, as well as those decisions themselves, are
8 easily accessible to the people. Ambiguity in the construction
9 or application of this Act should be resolved in favor of
10 openness.

11 Sec. 3. NEW SECTION. DEFINITIONS. As used in this chapter:

12 1. "Governmental body" means:

13 a. A board, council, commission or other governing body
14 expressly created by the statutes of this state or by executive
15 order.

16 b. A board, council, commission, or other governing body
17 of a political subdivision or tax-supported district in this
18 state.

19 c. A multimembered body formally and directly created by
20 one or more boards, councils, commissions, or other governing
21 bodies subject to paragraphs "a" and "b" of this subsection.

22 2. "Meeting" means a gathering, formal or informal, of
23 a quorum of the members of a governmental body where the
24 business of that body is discussed or any action on its behalf
25 is taken.

26 3. "Open session" means a meeting:

27 a. To which interested members of the public have access.

28 b. In which members of the public may use cameras and
29 recording devices.

30 Sec. 4. NEW SECTION. MEETINGS OF GOVERNMENTAL BODIES.

31 Meetings of governmental bodies shall be preceded by public
32 notice as provided in section five (5) of his Act and shall
33 be held in open session unless closed sessions are expressly
34 permitted by law. All actions and discussions at meetings
35 of governmental bodies, whether formal or informal, shall

1 be conducted and executed in open session except as provided
2 in section six (6) of this Act.

3 Each governmental body shall keep minutes of all its meetings
4 showing the date, time and place, the members present, and
5 the action taken at each meeting. The minutes shall show
6 the results of each vote taken and the vote of each member
7 present shall be made public at the open session. The minutes
8 shall be public records open to public inspection.

9 Sec. 5. NEW SECTION. PUBLIC NOTICE.

10 1. A governmental body shall give notice of the time, date,
11 and place of each meeting, and its tentative agenda, in a
12 manner reasonably calculated to apprise the public of that
13 information. Reasonable notice shall include communicating
14 with the news media and posting the notice on a bulletin board
15 which is easily accessible to the public and clearly designated
16 for that purpose at the principal office of the body holding
17 the meeting, or if no such office exists, at the building
18 in which the meeting is to be held.

19 2. Notice conforming with all of the requirements of subsec-
20 tion one (1) of this section shall be given at least twenty-
21 four hours prior to the commencement of any meeting of a
22 governmental body unless for good cause such notice is
23 impossible or impractical, in which case as much notice as
24 is reasonably possible must be given. Each meeting shall
25 be held at a place reasonably accessible to the public, and
26 at a time reasonably convenient to the public, unless for
27 good cause such a place or time is impossible or impractical.

28 When it is necessary to hold a meeting on less than twenty-
29 four hours notice, or at a place that is not reasonably
30 accessible to the public, or at a time that is not reasonably
31 convenient to the public, the nature of the good cause
32 justifying that departure from the normal requirements shall
33 be stated in the minutes.

34 3. A formally constituted subunit of a parent governmental
35 body may conduct a meeting without notice as required by this

1 section during a lawful meeting of the parent governmental
2 body, a recess in that meeting, or immediately following that
3 meeting, if the meeting of the subunit is publicly announced
4 at the parent meeting and the subject of the meeting reasonably
5 coincides with the subjects discussed or acted upon by the
6 parent governmental body.

7 Sec. 6. NEW SECTION. CLOSED SESSION.

8 1. A governmental body may hold a closed session only by
9 affirmative public vote of either two-thirds of the members
10 of the body or all of the members present. A governmental
11 body may hold a closed session only to the extent a closed
12 session is necessary for any of the following reasons:

13 a. To review or discuss records which are required by state
14 or federal law to be kept confidential or to be kept
15 confidential as a condition for the governmental body's
16 possession or continued receipt of federal funds.

17 b. To discuss strategy with counsel in matters that are
18 presently in litigation where their disclosure would be likely
19 to prejudice or disadvantage the position of the governmental
20 body in that litigation.

21 c. To discuss the contents of a licensing examination or
22 charges made against a licensee if the governmental body is
23 a licensing or examining board.

24 d. To conduct hearings to suspend or expel a student,
25 unless an open session is requested by the student or a parent
26 or guardian of the student if the student is a minor.

27 e. To discuss the decision to be rendered in a contested
28 case conducted according to the provisions of chapter 17A
29 of the Code.

30 f. To avoid disclosure of law enforcement matters, such
31 as current or proposed investigations, inspection or auditing
32 techniques or schedules, which if disclosed would enable law
33 violators to avoid detection.

34 g. To avoid disclosure of law enforcement matters, such
35 as allowable tolerances or criteria for the selection,

1 prosecution or settlement of cases, which if disclosed would
2 facilitate disregard of requirements imposed by law.

3 2. The vote of each member on the question of holding the
4 closed session and the reason for holding the closed session
5 by reference to a specific exemption under this section shall
6 be announced publicly at the open session and entered in the
7 minutes. A governmental body shall not discuss any business
8 during a closed session except that which relates to the
9 announced reason for the closed session.

10 3. Final action on any matter shall be taken in an open
11 session unless some other provision of the Code expressly
12 permits such actions to be taken in closed session.

13 4. A governmental body shall keep detailed minutes of all
14 discussion, persons present, and action occurring at a closed
15 session, and shall also tape record all of the closed session.
16 The detailed minutes and tape recording of a closed session
17 shall be sealed and shall not be public records open to public
18 inspection. However, upon order of the court in an action
19 to enforce this Act, the detailed minutes and tape recording
20 shall be unsealed and examined by the court in camera. The
21 court shall then determine what part, if any, of the minutes
22 should be disclosed to the party seeking enforcement of this
23 Act for use in that enforcement proceeding. In determining
24 whether any portion of the minutes or recording shall be
25 disclosed to such a party for this purpose, the court shall
26 weigh the prejudicial effects to the public interest of the
27 disclosure of any portion of the minutes or recording in
28 question, against its probative value as evidence in an
29 enforcement proceeding. After such a determination, the court
30 may permit inspection of those portions of the detailed minutes
31 and tape recording to be disclosed by the party seeking
32 enforcement of this Act. A governmental body shall keep the
33 detailed minutes and tape recording of any closed session
34 for a period of at least one year from the date of that
35 meeting.

1 5. Nothing in this section requires a governmental body
2 to hold a closed session to discuss or act upon any matter.

3 Sec. 7. NEW SECTION. ENFORCEMENT.

4 1. The remedies provided by this section against state
5 governmental bodies shall be in addition to those provided
6 by section seventeen A point nineteen (17A.19) of the Code.
7 Any taxpayer to, or citizen of, the state of Iowa, or the
8 attorney general, may seek judicial enforcement of the
9 requirements of this Act against a state governmental body
10 and its members. Any taxpayer to a local governmental body
11 or its parent governmental unit, or any resident of its
12 jurisdiction may seek judicial enforcement of the requirements
13 of this Act against that local governmental body and its
14 members. Suits to enforce this Act shall be brought in the
15 district court for the county in which the governmental body
16 has its principal place of business.

17 2. Once a party seeking judicial enforcement of this Act
18 demonstrates to the court that the body in question is subject
19 to the requirements of this Act and has held a closed session,
20 the burden of proof shall be on the body and its members to
21 demonstrate compliance with the requirements of this Act.

22 3. Upon a finding by a preponderance of the evidence that
23 a governmental body has violated any provision of this Act,
24 a court:

25 a. Shall assess each member of the governmental body who
26 participated in its violation liquidated damages in the amount
27 of two hundred dollars. These damages shall be paid by the
28 court imposing it to the state of Iowa, if the body in question
29 is a state governmental body, or to the local government
30 involved if the body in question is a local governmental body.
31 A member of a governmental body found to have violated this
32 Act shall not be assessed such damages if that member proves
33 that he or she voted against the closed session, had good
34 reason to believe and in good faith believed facts which,
35 if true, would have indicated compliance with all requirements

1 of this Act or had reasonably relied upon a decision of a
2 court or a formal opinion of the attorney general or an
3 appropriate county or city attorney.

4 b. Shall order the payment of all costs and reasonable
5 attorneys fees to any party successfully establishing a
6 violation of this Act. The costs and fees shall be paid by
7 those members of the governmental body who are assessed damages
8 under paragraph "a" of this subsection. If no such members
9 exist because they have a lawful defense under that paragraph
10 to the imposition of such damages, the costs and fees shall
11 be paid to the successful party from the budget of the
12 offending governmental body or its parent.

13 c. Shall, if the suit for enforcement of this Act is
14 instituted within ninety days of the violation, void any
15 action taken in violation of this Act unless the court finds
16 under the facts of the particular case that the public interest
17 in sustaining the validity of the action taken in the closed
18 session outweighs the public interest in the enforcement of
19 the policy of this Act.

20 d. Shall, if a member of a governmental body is shown to
21 have engaged in three prior violations of this Act for which
22 damages were assessed against that member during his or her
23 term, issue an order removing him or her from office.

24 e. May issue a mandatory injunction punishable by civil
25 contempt ordering the members of the offending governmental
26 body to refrain for one year from any future violations of
27 this Act.

28 f. May award such other legal or equitable relief as may
29 be appropriate under the circumstances.

30 4. Ignorance of the legal requirements of this Act shall
31 be no defense to an enforcement proceeding brought under this
32 section. A governmental body which is in doubt about the
33 legality of closing a particular meeting is authorized to
34 bring suit at the expense of that governmental body in the
35 district court of the county of the governmental body's

1 principal place of business to ascertain the propriety of
2 any such action, or seek a formal opinion of the attorney
3 general or, where appropriate, a county or city attorney.

4 Sec. 8. NEW SECTION. RULES OF CONDUCT AT MEETINGS. Nothing
5 in this Act shall prevent a governmental body from making
6 and enforcing reasonable rules for the conduct of its meetings
7 to assure those meetings are orderly, and free from
8 interference or interruption by spectators.

9 Sec. 9. NEW SECTION. ELECTRONIC MEETINGS.

10 1. A governing body may conduct a meeting by electronic
11 means or telecommunications only under emergency circumstances
12 and only if the governing body complies with all of the
13 following:

14 a. The governing body provides access to the conversation
15 of the meeting to the extent reasonably possible.

16 b. The governmental body complies with section five (5)
17 of this Act. For the purpose of this paragraph, the place
18 of the meeting is the place from which the communication
19 originates or where access is provided to the conversation.

20 c. Minutes are kept of the meeting.

21 2. A meeting conducted in compliance with this section
22 shall not be considered in violation of this Act.

23 Sec. 10. This Act is effective January 1, 1979.

24 EXPLANATION

25 This bill rewrites the open meetings law repealing all of
26 the existing statute.

27 Section 2 provides a statement of policy and rule of
28 construction for the bill.

29 Section 3 defines the terms of the bill including the
30 governmental bodies subject to the provisions of the bill.
31 It includes bodies created by statute or by executive order,
32 governing bodies of political subdivisions or tax-supported
33 districts, and multimembered bodies formally created by the
34 bodies in the first two categories. The section defines a
35 meeting as a gathering of a quorum of the body where business

1 is discussed or action taken. The section defines an open
2 session as a meeting which is open to the public and which
3 may be photographed and recorded.

4 Section 4 requires meetings to be held in open session
5 unless the law permits a closed session. The section also
6 requires the keeping of minutes and establishes the required
7 contents of minutes.

8 Section 5 provides the requirements for notice of a meet-
9 ing and public access to a meeting.

10 Section 6 provides the exemptions for which a closed meet-
11 ing may be held. Exemptions are provided for the discussion
12 of confidential records, litigation strategy, licensing
13 examinations and investigations, student suspensions and
14 expulsions, deliberations on contested cases, and certain
15 law enforcement matters. The section provides for public
16 announcement of the exemption claimed and that final action
17 must be taken in open session. The section requires detailed
18 minutes and recordings of closed sessions and provides the
19 procedures for reviewing those records in an enforcement
20 action.

21 Section 7 provides for the enforcement of the bill. Any
22 taxpayer or resident of the affected jurisdiction may bring
23 an action to enforce the bill. If a closed session is shown
24 the burden of proof is shifted to the governmental body.
25 Personal liability in the amount of two hundred dollars is
26 established as liquidated damages. Three legal defenses to
27 the personal liability are established. Provision is made
28 for the award of attorneys fees and costs, voiding the action
29 taken, removing the members from office, enjoining future
30 violations, and other remedies. Ignorance of the law is not
31 allowed as a defense.

32 Section 8 recognizes that a governmental body may establish
33 rules of conduct at meetings.

34 Section 9 provides requirements for holding a meeting by
35 conference call or by other telecommunications means.