

he or she works in connection with the maintenance of the institution, in an industry maintained in the institution, or while otherwise on detail to perform services for pay.

Sec. 7. This Act is effective January 1, 1979.

Approved June 5, 1978

CHAPTER 1037

OFFICIAL MEETINGS OPEN TO PUBLIC

H. F. 2074

AN ACT relating to the holding of meetings by governmental bodies expressly created by statute or executive order, local governmental bodies, and other groups created by such governmental bodies, in open session, unless otherwise exempted by statute, and providing remedies and damages.

Be It Enacted by the General Assembly of the State of Iowa:

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

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

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

1. "Governmental body" means:
 - a. A board, council, commission or other governing body expressly created by the statutes of this state or by executive order.
 - b. A board, council, commission, or other governing body of a political subdivision or tax-supported district in this state.
 - c. A multimembered body formally and directly created by one or more boards, councils, commissions, or other governing bodies subject to paragraphs "a" and "b" of this subsection.
 - d. Those multimembered bodies to which the state board of regents or a president of a university has delegated the

responsibility for the management and control of the intercollegiate athletic programs at the state universities.

2. "Meeting" means a gathering in person or by electronic means, formal or informal, of a majority of the members of a governmental body where there is deliberation or action upon any matter within the scope of the governmental body's policy-making duties. Meetings shall not include a gathering of members of a governmental body for purely ministerial or social purposes when there is no discussion of policy or no intent to avoid the purposes of this Act.

3. "Open session" means a meeting to which all members of the public have access.

Sec. 4. NEW SECTION. MEETINGS OF GOVERNMENTAL BODIES. Meetings of governmental bodies shall be preceded by public notice as provided in section five (5) of this Act and shall be held in open session unless closed sessions are expressly permitted by law. Except as provided in section six (6) of this Act, all actions and discussions at meetings of governmental bodies, whether formal or informal, shall be conducted and executed in open session.

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

Sec. 5. NEW SECTION. PUBLIC NOTICE.

1. A governmental body, except township trustees, shall give notice of the time, date, and place of each meeting, and its tentative agenda, in a manner reasonably calculated to apprise the public of that information. Reasonable notice shall include advising the news media who have filed a request for notice with the governmental body and posting the notice on a bulletin board or other prominent place which is easily accessible to the public and clearly designated for that purpose 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.

2. Notice conforming with all of the requirements of subsection one (1) of this section shall be given at least twenty-four hours prior to the commencement of any meeting of a governmental body unless for good cause such notice is impossible or impractical, in which case as much notice as is reasonably possible shall be given. Each meeting shall

be held at a place reasonably accessible to the public, and at a time reasonably convenient to the public, unless for good cause such a place or time is impossible or impractical. Special access to the meeting may be granted to handicapped or disabled individuals.

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

3. A formally constituted subunit of a parent governmental body may conduct a meeting without notice as required by this section during a lawful meeting of the parent governmental body, a recess in that meeting, or immediately following that meeting, if the meeting of the subunit is publicly announced at the parent meeting and the subject of the meeting reasonably coincides with the subjects discussed or acted upon by the parent governmental body.

4. If another section of the Code requires a manner of giving specific notice of a meeting, hearing or an intent to take action by a governmental body, compliance with that section shall constitute compliance with the notice requirements of this section.

Sec. 6. NEW SECTION. CLOSED SESSION.

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

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

b. To discuss application for letters patent.

c. To discuss strategy with counsel in matters that are presently in litigation or where litigation is imminent where its disclosure would be likely to prejudice or disadvantage the position of the governmental body in that litigation.

d. To discuss the contents of a licensing examination or whether to initiate licensee disciplinary investigations or proceedings if the governmental body is a licensing or examining board.

e. To discuss whether to conduct a hearing or to conduct hearings to suspend or expel a student, unless an open session is requested by the student or a parent or guardian of the student if the student is a minor.

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

g. To avoid disclosure of specific law enforcement matters, such as current or proposed investigations, inspection or auditing techniques or schedules, which if disclosed would enable law violators to avoid detection.

h. To avoid disclosure of specific law enforcement matters, such as allowable tolerances or criteria for the selection, prosecution or settlement of cases, which if disclosed would facilitate disregard of requirements imposed by law.

i. To evaluate the professional competency of an individual whose appointment, hiring, performance or discharge is being considered when necessary to prevent needless and irreparable injury to that individual's reputation and that individual requests a closed session.

j. To discuss the purchase of particular real estate only where premature disclosure could be reasonably expected to increase the price the governmental body would have to pay for that property. The minutes and the tape recording of a session closed under this paragraph shall be available for public examination when the transaction discussed is completed.

2. The vote of each member on the question of holding the closed session and the reason for holding the closed session by reference to a specific exemption under this section shall be announced publicly at the open session and entered in the minutes. A governmental body shall not discuss any business during a closed session which does not directly relate to the specific reason announced as justification for the closed session.

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

4. A governmental body shall keep detailed minutes of all discussion, persons present, and action occurring at a closed session, and shall also tape record all of the closed session. The detailed minutes and tape recording of a closed session shall be sealed and shall not be public records open to public inspection. However, upon order of the court in

an action to enforce this Act, the detailed minutes and tape recording shall be unsealed and examined by the court in camera. The court shall then determine what part, if any, of the minutes should be disclosed to the party seeking enforcement of this Act for use in that enforcement proceeding. In determining whether any portion of the minutes or recording shall be disclosed to such a party for this purpose, the court shall weigh the prejudicial effects to the public interest of the disclosure of any portion of the minutes or recording in question, against its probative value as evidence in an enforcement proceeding. After such a determination, the court may permit inspection and use of all or portions of the detailed minutes and tape recording by the party seeking enforcement of this Act. A governmental body shall keep the detailed minutes and tape recording of any closed session for a period of at least one year from the date of that meeting.

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

Sec. 7. NEW SECTION. ENFORCEMENT.

1. The remedies provided by this section against state governmental bodies shall be in addition to those provided by section seventeen A point nineteen (17A.19) of the Code. Any aggrieved person, taxpayer or citizen of the state of Iowa, or the attorney general or county attorney, may seek judicial enforcement of the requirements of this Act. Suits to enforce this Act shall be brought in the district court for the county in which the governmental body has its principal place of business.

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

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

a. Shall assess each member of the governmental body who participated in its violation damages in the amount of not more than five hundred dollars nor less than one hundred dollars. These damages shall be paid by the court imposing it to the state of Iowa, if the body in question is a state governmental body, or to the local government involved if

the body in question is a local governmental body. A member of a governmental body found to have violated this Act shall not be assessed such damages if that member proves that he or she did any of the following:

- (1) Voted against the closed session.
- (2) Had good reason to believe and in good faith believed facts which, if true, would have indicated compliance with all the requirements of this Act.
- (3) Reasonably relied upon a decision of a court or a formal opinion of the attorney general or the attorney for the governmental body.

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

c. Shall void any action taken in violation of this Act, if the suit for enforcement of this Act is brought within six months of the violation and the court finds under the facts of the particular case that the public interest in the enforcement of the policy of this Act outweighs the public interest in sustaining the validity of the action taken in the closed session. This paragraph shall not apply to an action taken regarding the issuance of bonds or other evidence of indebtedness of a governmental body if a public hearing, election or public sale has been held regarding the bonds or evidence of indebtedness.

d. Shall issue an order removing a member of a governmental body from office if that member has engaged in two prior violations of this Act for which damages were assessed against the member during his or her term.

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

4. Ignorance of the legal requirements of this Act shall be no defense to an enforcement proceeding brought under this section. A governmental body which is in doubt about the legality of closing a particular meeting is authorized to bring suit at the expense of that governmental body in the

district court of the county of the governmental body's principal place of business to ascertain the propriety of any such action, or seek a formal opinion of the attorney general or an attorney for the governmental body.

Sec. 8. NEW SECTION. RULES OF CONDUCT AT MEETINGS. The public may use cameras or recording devices at any open session. Nothing in this Act shall prevent a governmental body from making and enforcing reasonable rules for the conduct of its meetings to assure those meetings are orderly, and free from interference or interruption by spectators.

Sec. 9. NEW SECTION. ELECTRONIC MEETINGS.

1. A governmental body may conduct a meeting by electronic means only in circumstances where such a meeting in person is impossible or impractical and only if the governmental body complies with all of the following:

a. The governmental body provides public access to the conversation of the meeting to the extent reasonably possible.

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

c. Minutes are kept of the meeting.

The minutes shall include a statement explaining why a meeting in person was impossible or impractical.

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

3. A meeting by electronic means may be conducted without complying with paragraph 'a' of subsection one (1) if conducted in accordance with all of the requirements for a closed session contained in section six (6) of this Act.

Sec. 10. Section twenty point seventeen (20.17), subsection three (3), Code 1977, is amended to read as follows:

3. Negotiating sessions, ~~including~~ strategy meetings of public employers or employee organizations, mediation and the deliberative process of arbitrators shall be exempt from the provisions of chapter 28A. However, the employee organization shall present its initial bargaining position to the public employer at the first bargaining session. The public employer shall present its initial bargaining position to the employee organization at the second bargaining session, which shall be held no later than two weeks following the first bargaining session. Both sessions shall be open to the public and subject to the provisions of chapter twenty-

eight A (28A) of the Code. Hearings conducted by arbitrators shall be open to the public.

Sec. 11. Section eight hundred thirteen point two (813.2), Rule 3, subsection 4, paragraph j, Code 1977 Supplement, is amended by adding the following new subparagraph:

(4) The detailed minutes and tape recordings sealed pursuant to section six (6) of this Act.

Sec. 12. This Act is effective January 1, 1979.

Approved June 5, 1978

CHAPTER 1038

UNIFIED LAW ENFORCEMENT

S. F. 380

AN ACT relating to unified law enforcement, including clarification of the tax levy, election procedures, and administration of the district.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section twenty-eight E point twenty-one (28E.21), Code 1977, is amended to read as follows:

28E.21 DEFINITION. For the purpose of this division, the term "~~unified-law-enforcement~~ district" means a unified law enforcement district established by an agreement under the provisions of this chapter by ~~counties~~ a county, or portions thereof, or cities to provide law enforcement within the boundaries of the member political subdivisions.

Sec. 2. Section twenty-eight E point twenty-two (28E.22), Code 1977, is amended to read as follows:

28E.22 REFERENDUM FOR TAX. ~~In every county that establishes a unified law enforcement district, the board of supervisors~~ The board of supervisors, or the city councils of a district composed only of cities, may, and upon receipt of a petition signed by five percent of the qualified electors residing in the ~~unified-law-enforcement~~ district shall, submit a proposition to the ~~county~~ electorate residing in the ~~unified law-enforcement~~ district at any ~~countywide~~ general election providing or at a special election held throughout the district. The proposition shall provide for the establishment of a public safety fund and the levy of a tax on taxable property located in the ~~unified-law-enforcement~~ district at rates not exceeding the ~~rate~~ rates specified in this section