

CHAPTER 1115

REGULATION OF OPEN RECORDS AND PUBLIC MEETINGS

S.F. 430

AN ACT relating to violations of the open records and public meetings laws and the creation of the Iowa public information board, and including effective date provisions.

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

Section 1. Section 21.6, subsection 3, paragraph a, subparagraph (3), Code Supplement 2011, is amended to read as follows:

(3) Reasonably relied upon a decision of a court, a formal opinion of the Iowa public information board, the attorney general, or the attorney for the governmental body, given in writing, or as memorialized in the minutes of the meeting at which a formal oral opinion was given, or an advisory opinion of the Iowa public information board, the attorney general, or the attorney for the governmental body, given in writing.

Sec. 2. Section 22.7, Code Supplement 2011, is amended by adding the following new subsection:

NEW SUBSECTION. 65. Tentative, preliminary, draft, speculative, or research material, prior to its completion for the purpose for which it is intended and in a form prior to the form in which it is submitted for use or used in the actual formulation, recommendation, adoption, or execution of any official policy or action by a public official authorized to make such decisions for the governmental body or the government body. This subsection shall not apply to public records that are actually submitted for use or are used in the formulation, recommendation, adoption, or execution of any official policy or action of a governmental body or a government body by a public official authorized to adopt or execute official policy for the governmental body or the government body.

Sec. 3. Section 22.10, subsection 3, paragraph b, subparagraph (3), Code Supplement 2011, is amended to read as follows:

(3) Reasonably relied upon a decision of a court, a formal opinion of the Iowa public information board, the attorney general, or the attorney for the government body, given in writing, or as memorialized in the minutes of the meeting at which a formal oral opinion was given, or an advisory opinion of the Iowa public information board, the attorney general, or the attorney for the government body, given in writing.

Sec. 4. **NEW SECTION. 23.1 Citation and purpose.**

This chapter may be cited as the “*Iowa Public Information Board Act*”. The purpose of this chapter is to provide an alternative means by which to secure compliance with and enforcement of the requirements of chapters 21 and 22 through the provision by the Iowa public information board to all interested parties of an efficient, informal, and cost-effective process for resolving disputes.

Sec. 5. **NEW SECTION. 23.2 Definitions.**

1. “*Board*” means the Iowa public information board created in section 23.3.
2. “*Complainant*” means a person who files a complaint with the board.
3. “*Complaint*” means a written and signed document filed with the board alleging a violation of chapter 21 or 22.
4. “*Custodian*” means a government body, government official, or government employee designated as the lawful custodian of a government record pursuant to section 22.1.
5. “*Government body*” means the same as defined in section 22.1.
6. “*Governmental body*” means the same as defined in section 21.2.
7. “*Person*” means an individual, partnership, association, corporation, legal representative, trustee, receiver, custodian, government body, or official, employee, agency, or political subdivision of this state.
8. “*Respondent*” means any agency or other unit of state or local government, custodian, government official, or government employee who is the subject of a complaint.

Sec. 6. NEW SECTION. **23.3 Board appointed — executive director.**

1. An Iowa public information board is created consisting of nine members appointed by the governor, subject to confirmation by the senate. No more than three members appointed shall be representatives from the media including newspapers and no more than three members appointed shall be representatives of cities, counties, and other political subdivisions of the state.

2. Appointments to the board shall be subject to sections 69.16 and 69.16A.

3. Members appointed to the board shall serve staggered four-year terms beginning and ending as provided in section 69.19.

4. A quorum of the board shall consist of five members.

5. A vacancy on the board shall be filled by the governor, as provided in subsection 1.

6. The board shall select one of its members to serve as chairperson and shall employ a person who shall be an attorney admitted to practice law before the courts of this state to serve as the executive director of the board.

7. The board shall meet at least quarterly and at the call of the chairperson.

8. The board shall be an independent agency.

Sec. 7. NEW SECTION. **23.4 Compensation and expenses.**

Board members appointed by the governor shall be paid a per diem as specified in section 7E.6 and shall be reimbursed for actual and necessary expenses incurred while on official board business. Such per diem and expenses shall be paid from funds appropriated to the board.

Sec. 8. NEW SECTION. **23.5 Election of remedies.**

1. An aggrieved person, any taxpayer to or citizen of this state, the attorney general, or any county attorney may seek enforcement of the requirements of chapters 21 and 22 by electing either to file an action pursuant to section 17A.19, 21.6, or 22.10, whichever is applicable, or in the alternative, to file a timely complaint with the board.

2. If more than one person seeks enforcement of chapter 21 or 22 with respect to the same incident involving an alleged violation, and one or more of such persons elects to do so by filing an action under section 17A.19, 21.6, or 22.10, and one or more of such persons elects to do so by filing a timely complaint with the board, the court in which the action was filed shall stay the action pending resolution of the complaint with the board, authorizing the complainant to file a complaint with respect to the same incident with the board without regard to the timeliness of the filing of the complaint at the time the action in court is stayed.

3. If a person files an action pursuant to section 22.8 seeking to enjoin the inspection of a public record, the respondent or person requesting access to the record which is the subject of the request for injunction may remove the proceeding to the board for its determination by filing, within thirty days of the commencement of the judicial proceeding, a complaint with the board alleging a violation of chapter 22 in regard to the same matter.

Sec. 9. NEW SECTION. **23.6 Board powers and duties.**

The board shall have all of the following powers and duties:

1. Employ one employee as executive director who is an attorney admitted to practice law in the courts of this state to execute its authority and prosecute respondents in proceedings before the board and to represent the board in proceedings before a court.

2. Adopt rules pursuant to chapter 17A calculated to implement, enforce, and interpret the requirements of chapters 21 and 22 and to implement any authority delegated to the board by this chapter.

3. Issue, consistent with the requirements of section 17A.9, declaratory orders with the force of law determining the applicability of chapter 21 or 22 to specified fact situations and issue informal advice to any person concerning the applicability of chapters 21 and 22.

4. Receive complaints alleging violations of chapter 21 or 22, seek resolution of such complaints through informal assistance or through mediation and settlement, formally investigate such complaints, decide after such an investigation whether there is probable cause to believe a violation of chapter 21 or 22 has occurred, and if probable cause has been

found prosecute the respondent before the board in a contested case proceeding conducted according to the provisions of chapter 17A.

5. Request and receive from a governmental body or a government body assistance and information as necessary in the performance of its duties.

6. The board may examine a record of a government body that is the subject matter of a complaint, including any record that is confidential by law. Confidential records provided to the board by a government body shall continue to maintain their confidential status. Any member or employee of the board is subject to the same policies and penalties regarding the confidentiality of the document as an employee of the government body.

7. Issue subpoenas enforceable in court for the purpose of investigating complaints and to facilitate the prosecution and conduct of contested cases before the board.

8. After appropriate board proceedings, issue orders with the force of law, determining whether there has been a violation of chapter 21 or 22, requiring compliance with specified provisions of those chapters, imposing civil penalties equivalent to and to the same extent as those provided for in section 21.6 or 22.10, as applicable, on a respondent who has been found in violation of chapter 21 or 22, and imposing any other appropriate remedies calculated to declare, terminate, or remediate any violation of those chapters.

9. Represent itself in judicial proceedings to enforce or defend its orders and rules through attorneys on its own staff, through the office of the attorney general, or through other attorneys retained by the board, at its option.

10. Make training opportunities available to lawful custodians, governmental bodies, government bodies, and other persons subject to the requirements of chapters 21 and 22 and require, in its discretion, appropriate persons who have responsibilities in relation to chapters 21 and 22 to receive periodic training approved by the board.

11. Disseminate information calculated to inform members of the public about the public's right to access government information in this state including procedures to facilitate this access and including information relating to the obligations of governmental bodies under chapter 21 and lawful custodians under chapter 22 and other laws dealing with this subject.

12. Prepare and transmit to the governor and to the general assembly, at least annually, reports describing complaints received, board proceedings, investigations, hearings conducted, decisions rendered, and other work performed by the board.

13. Make recommendations to the governor and the general assembly proposing legislation relating to public access to government information deemed desirable by the board in light of the policy of this state to provide as much public access as possible to government information as is consistent with the public interest.

Sec. 10. NEW SECTION. 23.7 Filing of complaints with the board.

1. The board shall adopt rules pursuant to chapter 17A providing for the timing, form, content, and means by which any aggrieved person, any taxpayer to or citizen of this state, the attorney general, or any county attorney may file a complaint with the board alleging a violation of chapter 21 or 22. The complaint must be filed within sixty days from the time the alleged violation occurred or the complainant could have become aware of the violation with reasonable diligence. All complaints filed with the board shall be public records.

2. All board proceedings in response to the filing of a complaint shall be conducted as expeditiously as possible.

Sec. 11. NEW SECTION. 23.8 Initial processing of complaint.

Upon receipt of a complaint alleging a violation of chapter 21 or 22, the board shall do either of the following:

1. Determine that, on its face, the complaint is within the board's jurisdiction, appears legally sufficient, and could have merit. In such a case the board shall accept the complaint, and shall notify the parties of that fact in writing.

2. Determine that, on its face, the complaint is outside its jurisdiction, is legally insufficient, is frivolous, is without merit, involves harmless error, or relates to a specific incident that has previously been finally disposed of on its merits by the board or a court. In such a case the board shall decline to accept the complaint. If the board refuses to accept a complaint, the board shall provide the complainant with a written order explaining its reasons for the action.

Sec. 12. **NEW SECTION. 23.9 Informal assistance — mediation and settlement.**

1. After accepting a complaint, the board shall promptly work with the parties through its employees to reach an informal, expeditious resolution of the complaint. If an informal resolution satisfactory to the parties cannot be reached, the board or the board's designee shall offer the parties an opportunity to resolve the dispute through mediation and settlement.

2. The mediation and settlement process shall enable the complainant to attempt to resolve the dispute with the aid of a neutral mediator employed and selected by the board, in its discretion, from either its own staff or an outside source.

3. Mediation shall be conducted as an informal, nonadversarial process and in a manner calculated to help the parties reach a mutually acceptable and voluntary settlement agreement. The mediator shall assist the parties in identifying issues and shall foster joint problem solving and the exploration of settlement alternatives.

Sec. 13. **NEW SECTION. 23.10 Enforcement.**

1. If any party declines mediation or settlement or if mediation or settlement fails to resolve the matter to the satisfaction of all parties, the board shall initiate a formal investigation concerning the facts and circumstances set forth in the complaint. The board shall, after an appropriate investigation, make a determination as to whether the complaint is within the board's jurisdiction and whether there is probable cause to believe that the facts and circumstances alleged in the complaint constitute a violation of chapter 21 or 22.

2. If the board finds the complaint is outside the board's jurisdiction or there is no probable cause to believe there has been a violation of chapter 21 or 22, the board shall issue a written order explaining the reasons for the board's conclusions and dismissing the complaint, and shall transmit a copy to the complainant and to the party against whom the complaint was filed.

3. *a.* If the board finds the complaint is within the board's jurisdiction and there is probable cause to believe there has been a violation of chapter 21 or 22, the board shall issue a written order to that effect and shall commence a contested case proceeding under chapter 17A against the respondent. Notwithstanding section 17A.10A, if there are no material facts in dispute, the board may order that the contested case procedures relating to the presentation of evidence shall not apply. An attorney selected by the executive director of the board shall prosecute the respondent in the contested case proceeding. At the termination of the contested case proceeding the board shall, by a majority vote of its members, render a final decision as to the merits of the complaint. If the board finds that the complaint has merit, the board may issue any appropriate order to ensure enforcement of chapter 21 or 22 including but not limited to an order requiring specified action or prohibiting specified action and any appropriate order to remedy any failure of the respondent to observe any provision of those chapters.

b. If the board determines, by a majority vote of its members, that the respondent has violated chapter 21 or 22, the board may also do any or all of the following:

(1) Require the respondent to pay damages as provided for in section 21.6 or 22.10, whichever is applicable, to the extent that provision would make such damages payable if the complainant had sought to enforce a violation in court instead of through the board.

(2) Void any action taken in violation of chapter 21 if a court would be authorized to do so in similar circumstances pursuant to section 21.6.

(3) Require the respondent to take any remedial action deemed appropriate by the board.

c. The board shall not have the authority to remove a person from public office for a violation of chapter 21 or 22. The board may file an action under chapter 21 or 22 to remove a person from office for violations that would subject a person to removal under those chapters.

d. A final board order resulting from such proceedings may be enforced by the board in court and is subject to judicial review pursuant to section 17A.19.

Sec. 14. **NEW SECTION. 23.11 Defenses in a contested case proceeding.**

A respondent may defend against a proceeding before the board charging a violation of chapter 21 or 22 on the ground that if such a violation occurred it was only harmless error or that clear and convincing evidence demonstrated that grounds existed to justify a court to

issue an injunction against disclosure pursuant to section 22.8.

Sec. 15. NEW SECTION. 23.12 Jurisdiction.

The board shall not have jurisdiction over the judicial or legislative branches of state government or any entity, officer, or employee of those branches, or over the governor or the office of the governor.

Sec. 16. IOWA PUBLIC INFORMATION BOARD — TRANSITION PROVISIONS.

1. The initial members of the Iowa public information board established pursuant to this Act shall be appointed by September 1, 2012.

2. Notwithstanding any provision of this Act to the contrary, the executive director of the board shall not be hired prior to July 1, 2013.

3. Prior to July 1, 2013, the board shall meet as necessary to organize and prepare a report to be submitted to the governor and the general assembly. The report shall include a job description for the executive director of the board, goals for board operations, procedures for the handling of confidential information by the executive director and members of the board, conflict of interest policies for board members, and performance measures to measure achievement of the board's goals.

Sec. 17. EFFECTIVE DATE. Except for the section of this Act establishing transition provisions for the Iowa public information board, this Act takes effect July 1, 2013.

Approved May 3, 2012