

# COMMITTEE REPORT

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## MADAM PRESIDENT:

**The Senate Committee on Local Government and Elections, to which was referred House Bill No. 1129, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:**

- 1 Delete everything after the enacting clause and insert the following:  
2 SECTION 1. IC 5-14-1.5-2 IS AMENDED TO READ AS  
3 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. For the purposes of  
4 this chapter:  
5 (a) "Public agency" means the following:  
6 (1) Any board, commission, department, agency, authority, or  
7 other entity, by whatever name designated, exercising a portion of  
8 the executive, administrative, or legislative power of the state.  
9 (2) Any county, township, school corporation, city, town, political  
10 subdivision, or other entity, by whatever name designated,  
11 exercising in a limited geographical area the executive,  
12 administrative, or legislative power of the state or a delegated  
13 local governmental power.  
14 (3) Any entity which is subject to either:  
15 (A) budget review by either the department of local  
16 government finance or the governing body of a county, city,  
17 town, township, or school corporation; or  
18 (B) audit by the state board of accounts.  
19 (4) Any building corporation of a political subdivision of the state  
20 of Indiana that issues bonds for the purpose of constructing public  
21 facilities.

- 1 (5) Any advisory commission, committee, or body created by  
 2 statute, ordinance, or executive order to advise the governing  
 3 body of a public agency, except medical staffs or the committees  
 4 of any such staff.
- 5 (6) The Indiana gaming commission established by IC 4-33,  
 6 including any department, division, or office of the commission.
- 7 (7) The Indiana horse racing commission established by IC 4-31,  
 8 including any department, division, or office of the commission.
- 9 (b) "Governing body" means two (2) or more individuals who are:  
 10 (1) a public agency that:  
 11 (A) is a board, a commission, an authority, a council, a  
 12 committee, a body, or other entity; and  
 13 (B) takes official action on public business;  
 14 (2) the board, commission, council, or other body of a public  
 15 agency which takes official action upon public business; or  
 16 (3) any committee appointed directly by the governing body or its  
 17 presiding officer to which authority to take official action upon  
 18 public business has been delegated. An agent or agents appointed  
 19 by the governing body to conduct collective bargaining on behalf  
 20 of the governing body does not constitute a governing body for  
 21 purposes of this chapter.
- 22 (c) "Meeting" means a gathering of a majority of the governing body  
 23 of a public agency for the purpose of taking official action upon public  
 24 business. It does not include:  
 25 (1) any social or chance gathering not intended to avoid this  
 26 chapter;  
 27 (2) any on-site inspection of any: ~~project or program;~~  
 28 (A) **project;**  
 29 (B) **program; or**  
 30 (C) **facility of an applicant for an incentive or assistance**  
 31 **from the governing body;**  
 32 (3) traveling to and attending meetings of organizations devoted  
 33 to betterment of government; or  
 34 (4) a caucus;  
 35 (5) **a gathering to discuss an industrial or a commercial**  
 36 **prospect that does not include a conclusion as to**  
 37 **recommendations, policy, decisions, or final action on the**  
 38 **terms of a request or an offer of public financial resources;**  
 39 (6) **orientation of members of the governing body on their role**  
 40 **and responsibilities as public officials, but not for any other**  
 41 **official action; or**  
 42 (7) **a gathering for the sole purpose of administering an oath**

1           **of office to an individual.**

2           (d) "Official action" means to:

- 3           (1) receive information;
- 4           (2) deliberate;
- 5           (3) make recommendations;
- 6           (4) establish policy;
- 7           (5) make decisions; or
- 8           (6) take final action.

9           (e) "Public business" means any function upon which the public  
10 agency is empowered or authorized to take official action.

11          (f) "Executive session" means a meeting from which the public is  
12 excluded, except the governing body may admit those persons  
13 necessary to carry out its purpose.

14          (g) "Final action" means a vote by the governing body on any  
15 motion, proposal, resolution, rule, regulation, ordinance, or order.

16          (h) "Caucus" means a gathering of members of a political party or  
17 coalition which is held for purposes of planning political strategy and  
18 holding discussions designed to prepare the members for taking official  
19 action.

20          (i) "Deliberate" means a discussion which may reasonably be  
21 expected to result in official action (defined under subsection (d)(3),  
22 (d)(4), (d)(5), or (d)(6)).

23          (j) "News media" means all newspapers qualified to receive legal  
24 advertisements under IC 5-3-1, all news services (as defined in  
25 IC 34-6-2-87), and all licensed commercial or public radio or television  
26 stations.

27          (k) "Person" means an individual, a corporation, a limited liability  
28 company, a partnership, an unincorporated association, or a  
29 governmental entity.

30          SECTION 2. IC 5-14-1.5-3 IS AMENDED TO READ AS  
31 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. (a) Except as  
32 provided in section 6.1 of this chapter, all meetings of the governing  
33 bodies of public agencies must be open at all times for the purpose of  
34 permitting members of the public to observe and record them.

35          (b) A secret ballot vote may not be taken at a meeting.

36          (c) A meeting conducted in compliance with IC 5-1.5-2-2.5 does not  
37 violate this section.

38          **(d) A member of the governing body of a public agency who is**  
39 **not physically present at a meeting of the governing body but who**  
40 **communicates with members of the governing body during the**  
41 **meeting by telephone, computer, videoconferencing, or any other**  
42 **electronic means of communication:**

1           **(1) may not participate in final action taken at the meeting**  
 2           **unless the member's participation is expressly authorized by**  
 3           **statute; and**

4           **(2) may not be considered to be present at the meeting unless**  
 5           **considering the member to be present at the meeting is**  
 6           **expressly authorized by statute.**

7           SECTION 3. IC 5-14-1.5-3.1 IS ADDED TO THE INDIANA  
 8           CODE AS A NEW SECTION TO READ AS FOLLOWS  
 9           [EFFECTIVE JULY 1, 2007]: **Sec. 3.1. (a) The governing body of a**  
 10          **public agency violates this chapter if members of the governing**  
 11          **body participate in a series of at least two (2) gatherings of**  
 12          **members of the governing body and the series of gatherings meets**  
 13          **all of the following criteria:**

14               **(1) One (1) of the gatherings is attended by at least three (3)**  
 15               **members but less than a quorum of the members of the**  
 16               **governing body and the other gatherings include at least two**  
 17               **(2) members of the governing body.**

18               **(2) The sum of the number of different members of the**  
 19               **governing body attending any of the gatherings equals at least**  
 20               **a quorum of the governing body.**

21               **(3) All the gatherings concern the same subject matter and**  
 22               **are held within a period of not more than seven (7) days.**

23               **(4) The gatherings are held to take official action on public**  
 24               **business.**

25          **For purposes of this subsection, a member of a governing body**  
 26          **attends a gathering if the member is present at the gathering in**  
 27          **person or if the member participates in the gathering by telephone**  
 28          **or other electronic means, excluding electronic mail.**

29               **(b) A gathering under subsection (a) does not include:**

30                   **(1) a social or chance gathering not intended by any member**  
 31                   **of the governing body to avoid the requirements of this**  
 32                   **chapter;**

33                   **(2) an onsite inspection of any:**

34                           **(A) project;**

35                           **(B) program; or**

36                           **(C) facility of an applicant for an incentive or assistance**  
 37                           **from the governing body;**

38                   **(3) traveling to and attending meetings of organizations**  
 39                   **devoted to the betterment of government;**

40                   **(4) a caucus;**

41                   **(5) a gathering to discuss an industrial or a commercial**  
 42                   **prospect that does not include a conclusion as to**

- 1           **recommendations, policy, decisions, or final action on the**  
 2           **terms of a request or an offer of public financial resources;**  
 3           **(6) orientation of members of the governing body on their role**  
 4           **and responsibilities as public officials, but not for any other**  
 5           **official action;**  
 6           **(7) a gathering for the sole purpose of administering an oath**  
 7           **of office to an individual; or**  
 8           **(8) a meeting between less than a quorum of the members of**  
 9           **the governing body intended solely for members to engage in**  
 10           **informal discussion concerning whether a member or**  
 11           **members may be inclined to support a member's proposal or**  
 12           **a particular piece of legislation and at which no other official**  
 13           **or final action will occur.**

14           **(c) A violation described in subsection (a) is subject to section 7**  
 15           **of this chapter.**

16           SECTION 4. IC 5-14-1.5-7 IS AMENDED TO READ AS  
 17           FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 7. (a) An action may be  
 18           filed by any person in any court of competent jurisdiction to:

- 19           (1) obtain a declaratory judgment;  
 20           (2) enjoin continuing, threatened, or future violations of this  
 21           chapter; or  
 22           (3) declare void any policy, decision, or final action:  
 23           (A) taken at an executive session in violation of section 3(a) of  
 24           this chapter;  
 25           (B) taken at any meeting of which notice is not given in  
 26           accordance with section 5 of this chapter;  
 27           (C) that is based in whole or in part upon official action taken  
 28           at any:  
 29           (i) executive session in violation of section 3(a) of this  
 30           chapter; ~~or at any~~  
 31           (ii) meeting of which notice is not given in accordance with  
 32           section 5 of this chapter; or  
 33           (iii) **series of gatherings that violates this chapter as**  
 34           **described in section 3.1 of this chapter; or**  
 35           (D) taken at a meeting held in a location in violation of section  
 36           8 of this chapter.

37           The plaintiff need not allege or prove special damage different from  
 38           that suffered by the public at large.

39           (b) Regardless of whether a formal complaint or an informal inquiry  
 40           is pending before the public access counselor, any action to declare any  
 41           policy, decision, or final action of a governing body void, or to enter an  
 42           injunction which would invalidate any policy, decision, or final action

1 of a governing body, based on violation of this chapter occurring before  
 2 the action is commenced, shall be commenced:

3 (1) prior to the delivery of any warrants, notes, bonds, or  
 4 obligations if the relief sought would have the effect, if granted,  
 5 of invalidating the notes, bonds, or obligations; or

6 (2) with respect to any other subject matter, within thirty (30)  
 7 days of either:

8 (A) the date of the act or failure to act complained of; or

9 (B) the date that the plaintiff knew or should have known that  
 10 the act or failure to act complained of had occurred;

11 whichever is later. If the challenged policy, decision, or final action is  
 12 recorded in the memoranda or minutes of a governing body, a plaintiff  
 13 is considered to have known that the act or failure to act complained of  
 14 had occurred not later than the date that the memoranda or minutes are  
 15 first available for public inspection.

16 (c) If a court finds that a governing body of a public agency has  
 17 violated this chapter, it may not find that the violation was cured by the  
 18 governing body by only having taken final action at a meeting that  
 19 complies with this chapter.

20 (d) In determining whether to declare any policy, decision, or final  
 21 action void, a court shall consider the following factors among other  
 22 relevant factors:

23 (1) The extent to which the violation:

24 (A) affected the substance of the policy, decision, or final  
 25 action;

26 (B) denied or impaired access to any meetings that the public  
 27 had a right to observe and record; and

28 (C) prevented or impaired public knowledge or understanding  
 29 of the public's business.

30 (2) Whether voiding of the policy, decision, or final action is a  
 31 necessary prerequisite to a substantial reconsideration of the  
 32 subject matter.

33 (3) Whether the public interest will be served by voiding the  
 34 policy, decision, or final action by determining which of the  
 35 following factors outweighs the other:

36 (A) The remedial benefits gained by effectuating the public  
 37 policy of the state declared in section 1 of this chapter.

38 (B) The prejudice likely to accrue to the public if the policy,  
 39 decision, or final action is voided, including the extent to  
 40 which persons have relied upon the validity of the challenged  
 41 action and the effect declaring the challenged action void  
 42 would have on them.

1 (4) Whether the defendant acted in compliance with an informal  
 2 inquiry response or advisory opinion issued by the public access  
 3 counselor concerning the violation.

4 (e) If a court declares a policy, decision, or final action of a  
 5 governing body of a public agency void, the court may enjoin the  
 6 governing body from subsequently acting upon the subject matter of  
 7 the voided act until it has been given substantial reconsideration at a  
 8 meeting or meetings that comply with this chapter.

9 (f) In any action filed under this section, a court shall award  
 10 reasonable attorney's fees, court costs, and other reasonable expenses  
 11 of litigation to the prevailing party if:

- 12 (1) the plaintiff prevails; or  
 13 (2) the defendant prevails and the court finds that the action is  
 14 frivolous and vexatious.

15 The plaintiff is not eligible for the awarding of attorney's fees, court  
 16 costs, and other reasonable expenses if the plaintiff filed the action  
 17 without first seeking and receiving an informal inquiry response or  
 18 advisory opinion from the public access counselor, unless the plaintiff  
 19 can show the filing of the action was necessary to prevent a violation  
 20 of this chapter.

21 (g) A court shall expedite the hearing of an action filed under this  
 22 section.

23 SECTION 5. IC 8-1-2.2-31 IS ADDED TO THE INDIANA CODE  
 24 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 25 1, 2007]: **Sec. 31. (a) This section applies to a meeting of the board  
 26 of commissioners of a joint agency at which at least a quorum of  
 27 the board is physically present at the place where the meeting is  
 28 conducted.**

29 **(b) A member of the board of commissioners of a joint agency  
 30 may participate in a meeting of the board of commissioners by  
 31 using a means of communication that permits:**

- 32 **(1) all other members participating in the meeting; and  
 33 (2) all members of the public physically present at the place  
 34 where the meeting is conducted;**

35 **to simultaneously communicate with each other during the  
 36 meeting.**

37 **(c) A member of the board of commissioners of a joint agency  
 38 who participates in a meeting under subsection (b) is considered to  
 39 be present at the meeting.**

40 **(d) The memoranda of a meeting of the board of commissioners  
 41 of a joint agency prepared under IC 5-14-1.5-4 must state the name  
 42 of:**

- 1           **(1) each member who was physically present at the place**  
 2           **where the meeting was conducted;**  
 3           **(2) each member who participated in the meeting by using a**  
 4           **means of communication described in subsection (b); and**  
 5           **(3) each member who was absent.**

6           SECTION 6. IC 21-22-3-5 IS ADDED TO THE INDIANA CODE  
 7 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 8 1, 2007]: **Sec. 5. (a) This section applies to a meeting of the state**  
 9 **board or a committee of the state board at which at least a quorum**  
 10 **of the board or the committee is physically present at the place**  
 11 **where the meeting is conducted.**

12           **(b) A member of the state board or a committee of the state**  
 13 **board may participate in a meeting of the state board or a**  
 14 **committee of the state board by using a means of communication**  
 15 **that permits:**

- 16           **(1) all other members participating in the meeting; and**  
 17           **(2) all members of the public physically present at the place**  
 18           **where the meeting is conducted;**  
 19 **to simultaneously communicate with each other during the**  
 20 **meeting.**

21           **(c) A member who participates in a meeting under subsection**  
 22 **(b) is considered to be present at the meeting.**

23           **(d) The memoranda of the meeting prepared under**  
 24 **IC 5-14-1.5-4 must state the name of:**

- 25           **(1) each member who was physically present at the place**  
 26           **where the meeting was conducted;**  
 27           **(2) each member who participated in the meeting by using a**  
 28           **means of communication described in subsection (b); and**  
 29           **(3) each member who was absent.**

30           SECTION 7. IC 21-25-3-8 IS ADDED TO THE INDIANA CODE  
 31 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 32 1, 2007]: **Sec. 8. (a) This section applies to a meeting of the board**  
 33 **of trustees or a committee of the board of trustees at which at least**  
 34 **a quorum of the board or the committee is physically present at the**  
 35 **place where the meeting is conducted.**

36           **(b) A member of the board or a committee of the board may**  
 37 **participate in a meeting of the board or the committee by using a**  
 38 **means of communication that permits:**

- 39           **(1) all other members participating in the meeting; and**  
 40           **(2) all members of the public physically present at the place**  
 41           **where the meeting is conducted;**  
 42 **to simultaneously communicate with each other during the**

1 meeting.

2 (c) A member who participates in a meeting under subsection  
3 (b) is considered to be present at the meeting.

4 (d) The memoranda of the meeting prepared under  
5 IC 5-14-1.5-4 must state the name of:

6 (1) each member who was physically present at the place  
7 where the meeting was conducted;

8 (2) each member who participated in the meeting by using a  
9 means of communication described in subsection (b); and

10 (3) each member who was absent.

11 SECTION 8. IC 21-27-2-2 IS ADDED TO THE INDIANA CODE  
12 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
13 1, 2007]: Sec. 2. (a) This section applies to a meeting of the board  
14 of trustees or a committee of the board of trustees of any state  
15 educational institution (as defined in IC 21-7-13-32).

16 (b) A member of the board of trustees may participate in a  
17 meeting of the board at which at least a quorum is physically  
18 present at the place where the meeting is conducted by using a  
19 means of communication that permits:

20 (1) all other members participating in the meeting; and

21 (2) all members of the public physically present at the place  
22 where the meeting is conducted;

23 to simultaneously communicate with each other during the  
24 meeting.

25 (c) A member of a committee of the board of trustees may  
26 participate in a committee meeting by using a means of  
27 communication that permits:

28 (1) all other members participating in the meeting; and

29 (2) all members of the public physically present at the place  
30 where the meeting is conducted;

31 to simultaneously communicate with each other during the  
32 meeting.

33 (d) A member who participates in a meeting under subsection  
34 (b) or (c) is considered to be present at the meeting.

35 (e) The memoranda of the meeting prepared under  
36 IC 5-14-1.5-4 must state the name of:

37 (1) each member who was physically present at the place  
38 where the meeting was conducted;

39 (2) each member who participated in the meeting by using a  
40 means of communication described in subsection (b) or (c);  
41 and

42 (3) each member who was absent.

1 SECTION 9. IC 25-1-14 IS ADDED TO THE INDIANA CODE AS  
 2 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
 3 1, 2007]:

4 **Chapter 14. Meetings**

5 **Sec. 1. This chapter applies to a meeting of a board, committee,**  
 6 **or commission listed in IC 25-1-5-3 or IC 25-1-6-3.**

7 **Sec. 2. A member of a board, committee, or commission may**  
 8 **participate in a meeting of the board, committee, or commission by**  
 9 **using a means of communication that permits:**

10 **(1) all other members participating in the meeting; and**

11 **(2) all members of the public physically present at the place**  
 12 **where the meeting is conducted;**

13 **to simultaneously communicate with each other during the**  
 14 **meeting.**

15 **Sec. 3. A member who participates in a meeting under section**  
 16 **2 of this chapter:**

17 **(1) is considered to be present at the meeting;**

18 **(2) shall be counted for purposes of establishing a quorum;**  
 19 **and**

20 **(3) may vote at the meeting.**

21 **Sec. 4. The memoranda of the meeting prepared under**  
 22 **IC 5-14-1.5-4 must state the name of:**

23 **(1) each member who was physically present at the place**  
 24 **where the meeting was conducted;**

25 **(2) each member who participated in the meeting by using a**  
 26 **means of communication described in section 2 of this**  
 27 **chapter; and**

28 **(3) each member who was absent.**

(Reference is to HB 1129 as reprinted January 24, 2007.)

**and when so amended that said bill do pass .**

Committee Vote: Yeas 9, Nays 1.

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**Senator Lawson C, Chairperson**