February 1, 2013

HOUSE BILL No. 1102

DIGEST OF HB 1102 (Updated January 29, 2013 12:27 pm - DI 87)

Citations Affected: IC 5-14.

Synopsis: Open meetings. Provides with regard to the law allowing the governing body of a public agency to conduct an executive session to discuss strategy with respect to the initiation of litigation, "litigation" includes any judicial action or administrative law proceeding under state or federal law. Provides that collective bargaining discussions that a governing body of a school corporation engages in directly with bargaining adversaries (because the governing body has not appointed a collective bargaining agent) are not subject to the requirements of the open door law.

Effective: July 1, 2013.

Davisson, Thompson, Candelaria Reardon

January 8, 2013, read first time and referred to Committee on Government and Regulatory Reform.
January 31, 2013, amended, reported — Do Pass.

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February 1, 2013

First Regular Session 118th General Assembly (2013)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2012 Regular Session of the General Assembly.

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HOUSE BILL No. 1102

A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 5-14-1.5-2, AS AMENDED BY P.L.179-2007, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 2. For the purposes of this chapter:

(a) "Public agency", except as provided in section 2.1 of this chapter, means the following:

(1) Any board, commission, department, agency, authority, or other entity, by whatever name designated, exercising a portion of the executive, administrative, or legislative power of the state.

(2) Any county, township, school corporation, city, town, political subdivision, or other entity, by whatever name designated, exercising in a limited geographical area the executive, administrative, or legislative power of the state or a delegated local governmental power.

(3) Any entity which is subject to either:

(A) budget review by either the department of local government finance or the governing body of a county, city, town, township, or school corporation; or

(B) audit by the state board of accounts that is required by statute, rule, or regulation.

(4) Any building corporation of a political subdivision of the state of Indiana that issues bonds for the purpose of constructing public facilities.

(5) Any advisory commission, committee, or body created by statute, ordinance, or executive order to advise the governing body of a public agency, except medical staffs or the committees of any such staff.

(6) The Indiana gaming commission established by IC 4-33, including any department, division, or office of the commission.

(7) The Indiana horse racing commission established by IC 4-31, including any department, division, or office of the commission.

(b) "Governing body" means two (2) or more individuals who are:

(1) A public agency that:

(A) is a board, a commission, an authority, a council, a committee, a body, or other entity; and

(B) takes official action on public business.

(2) The board, commission, council, or other body of a public agency which takes official action upon public business. ~~or~~

(3) Any committee appointed directly by the governing body or its presiding officer to which authority to take official action upon public business has been delegated. An agent or agents appointed by the governing body to conduct collective bargaining on behalf of the governing body does not constitute a governing body for purposes of this chapter**.**

(c) "Meeting" means a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business. It does not include **any of the following:**

(1) Any social or chance gathering not intended to avoid this chapter.

(2) Any on-site inspection of any:

(A) project;

(B) program; or

(C) facilities of applicants for incentives or assistance from the governing body.

(3) Traveling to and attending meetings of organizations devoted to betterment of government.

(4) A caucus.

(5) A gathering to discuss an industrial or a commercial prospect that does not include a conclusion as to recommendations, policy, decisions, or final action on the terms of a request or an offer of

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public financial resources.

(6) An orientation of members of the governing body on their role and responsibilities as public officials, but not for any other official action. ~~or~~

(7) A gathering for the sole purpose of administering an oath of office to an individual.

(8) Collective bargaining discussions that the governing body of a school corporation engages in directly with bargaining adversaries. This subdivision only applies to a governing body that has not appointed an agent or agents to conduct collective bargaining on behalf of the governing body as described in subsection (b)(3).

(d) "Official action" means to:

(1) receive information;

(2) deliberate;

(3) make recommendations;

(4) establish policy;

(5) make decisions; or

(6) take final action.

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

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

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

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

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

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

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

SECTION 2. IC 5-14-1.5-6.1, AS AMENDED BY P.L.24-2012, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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JULY 1, 2013]: Sec. 6.1. (a) As used in this section, "public official" means a person:

(1) who is a member of a governing body of a public agency; or

(2) whose tenure and compensation are fixed by law and who executes an oath.

(b) Executive sessions may be held only in the following instances:

(1) Where authorized by federal or state statute.

(2) For discussion of strategy with respect to any of the following:

(A) Collective bargaining.

(B) Initiation of litigation or litigation that is either pending or has been threatened specifically in writing. **As used in this clause, "litigation" includes any judicial action or administrative law proceeding under federal or state law.**

(C) The implementation of security systems.

(D) The purchase or lease of real property by the governing body up to the time a contract or option to purchase or lease is executed by the parties.

(E) School consolidation.

However, all such strategy discussions must be necessary for competitive or bargaining reasons and may not include competitive or bargaining adversaries.

(3) For discussion of the assessment, design, and implementation of school safety and security measures, plans, and systems.

(4) Interviews and negotiations with industrial or commercial prospects or agents of industrial or commercial prospects by the Indiana economic development corporation, the office of tourism development, the Indiana finance authority, the ports of Indiana, an economic development commission, the Indiana state department of agriculture, a local economic development organization (as defined in IC 5-28-11-2(3)), or a governing body of a political subdivision.

(5) To receive information about and interview prospective employees.

(6) With respect to any individual over whom the governing body has jurisdiction:

(A) to receive information concerning the individual's alleged misconduct; and

(B) to discuss, before a determination, the individual's status as an employee, a student, or an independent contractor who is:

(i) a physician; or

(ii) a school bus driver.

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(7) For discussion of records classified as confidential by state or federal statute.

(8) To discuss before a placement decision an individual student's abilities, past performance, behavior, and needs.

(9) To discuss a job performance evaluation of individual employees. This subdivision does not apply to a discussion of the salary, compensation, or benefits of employees during a budget process.

(10) When considering the appointment of a public official, to do the following:

(A) Develop a list of prospective appointees.

(B) Consider applications.

(C) Make one (1) initial exclusion of prospective appointees from further consideration.

Notwithstanding IC 5-14-3-4(b)(12), a governing body may release and shall make available for inspection and copying in accordance with IC 5-14-3-3 identifying information concerning prospective appointees not initially excluded from further consideration. An initial exclusion of prospective appointees from further consideration may not reduce the number of prospective appointees to fewer than three (3) unless there are fewer than three (3) prospective appointees. Interviews of prospective appointees must be conducted at a meeting that is open to the public.

(11) To train school board members with an outside consultant about the performance of the role of the members as public officials.

(12) To prepare or score examinations used in issuing licenses, certificates, permits, or registrations under IC 25.

(13) To discuss information and intelligence intended to prevent, mitigate, or respond to the threat of terrorism.

(14) To train members of a board of aviation commissioners appointed under IC 8-22-2 or members of an airport authority board appointed under IC 8-22-3 with an outside consultant about the performance of the role of the members as public officials. A board may hold not more than one (1) executive session per calendar year under this subdivision.

(c) A final action must be taken at a meeting open to the public.

(d) Public notice of executive sessions must state the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held under subsection (b). The requirements stated in section 4 of this chapter for memoranda and minutes being

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made available to the public is modified as to executive sessions in that the memoranda and minutes must identify the subject matter considered by specific reference to the enumerated instance or instances for which public notice was given. The governing body shall certify by a statement in the memoranda and minutes of the governing body that no subject matter was discussed in the executive session other than the subject matter specified in the public notice.

(e) A governing body may not conduct an executive session during a meeting, except as otherwise permitted by applicable statute. A meeting may not be recessed and reconvened with the intent of circumventing this subsection.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Government and Regulatory Reform, to which was referred House Bill 1102, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 5-14-1.5-2, AS AMENDED BY P.L.179-2007, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 2. For the purposes of this chapter:

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(3) Any entity which is subject to either:

(A) budget review by either the department of local government finance or the governing body of a county, city, town, township, or school corporation; or

(B) audit by the state board of accounts that is required by statute, rule, or regulation.

(4) Any building corporation of a political subdivision of the state of Indiana that issues bonds for the purpose of constructing public facilities.

(5) Any advisory commission, committee, or body created by statute, ordinance, or executive order to advise the governing body of a public agency, except medical staffs or the committees of any such staff.

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(1) A public agency that:

(A) is a board, a commission, an authority, a council, a committee, a body, or other entity; and

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(B) takes official action on public business.

(2) The board, commission, council, or other body of a public agency which takes official action upon public business. ~~or~~

(3) Any committee appointed directly by the governing body or its presiding officer to which authority to take official action upon public business has been delegated. An agent or agents appointed by the governing body to conduct collective bargaining on behalf of the governing body does not constitute a governing body for purposes of this chapter**.**

(c) "Meeting" means a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business. It does not include **any of the following:**

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(2) Any on-site inspection of any:

(A) project;

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(C) facilities of applicants for incentives or assistance from the governing body.

(3) Traveling to and attending meetings of organizations devoted to betterment of government.

(4) A caucus.

(5) A gathering to discuss an industrial or a commercial prospect that does not include a conclusion as to recommendations, policy, decisions, or final action on the terms of a request or an offer of public financial resources.

(6) An orientation of members of the governing body on their role and responsibilities as public officials, but not for any other official action. ~~or~~

(7) A gathering for the sole purpose of administering an oath of office to an individual.

(8) Collective bargaining discussions that the governing body of a school corporation engages in directly with bargaining adversaries. This subdivision only applies to a governing body that has not appointed an agent or agents to conduct collective bargaining on behalf of the governing body as described in subsection (b)(3).

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(1) receive information;

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(5) make decisions; or

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

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

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

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

Page 1, line 14, delete "action," and insert "**action or administrative law proceeding under federal or state law.**".

Page 1, delete lines 15 through 16.

Page 2, delete lines 8 through 15.

Page 2, line 16, reset in roman "(3)".

Page 2, line 16, delete "(4)".

Page 2, line 19, reset in roman "(4)".

Page 2, line 19, delete "(5)".

Page 2, line 27, reset in roman "(5)".

Page 2, line 27, delete "(6)".

Page 2, line 29, reset in roman "(6)".

Page 2, line 29, delete "(7)".

Page 2, line 38, reset in roman "(7)".

Page 2, line 38, delete "(8)".

Page 2, line 40, reset in roman "(8)".

Page 2, line 40, delete "(9)".

Page 2, line 42, reset in roman "(9)".

Page 2, line 42, delete "(10)".

Page 3, line 4, reset in roman "(10)".

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Page 3, line 4, delete "(11)".
Page 3, line 20, reset in roman "(11)".
Page 3, line 20, delete "(12)".
Page 3, line 23, reset in roman "(12)".
Page 3, line 23, delete "(13)".
Page 3, line 25, reset in roman "(13)".
Page 3, line 25, delete "(14)".
Page 3, line 27, reset in roman "(14)".
Page 3, line 27, delete "(15)".
Page 4, delete lines 7 through 42.
Delete pages 5 through 8.
Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1102 as introduced.)

MAHAN, Chair

Committee Vote: yeas 10, nays 0.

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