

HOUSE BILL No. 1080

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-14-1.5.

Synopsis: Public meetings. Provides that a member of a governing body may participate but may not vote in a meeting of the governing body by electronic communication if the governing body is attempting to take certain final actions. Restricts the circumstances in which the governing body of a state or local public agency may hold a virtual meeting during a declared disaster emergency without any of the governing body members physically present. Requires a governing body, with certain exceptions, to do the following: (1) Post an agenda at the meeting site that has each agenda item clearly specified. (2) Provide a meeting attendee with a reasonable opportunity to speak regarding an agenda item. (3) Limit all official action to the agenda items. Provides that a meeting that violates these requirements may result in a court action to: (1) void a final action, policy, or decision based upon official action taken at the meeting; or (2) assess civil penalties against the officer or employee responsible for the violation.

Effective: July 1, 2022.

Abbott, Cook

January 4, 2022, read first time and referred to Committee on Government and Regulatory Reform.



Second Regular Session of the 122nd General Assembly (2022)

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 2021 Regular Session of the General Assembly.

HOUSE BILL No. 1080

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:

1 SECTION 1. IC 5-14-1.5-3.5, AS AMENDED BY P.L.137-2021,
2 SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2022]: Sec. 3.5. (a) This section applies only to a governing
4 body of a public agency of a political subdivision, other than a
5 governing body of an airport authority, a department of aviation, or a
6 conservancy district as set forth in section 3.6 of this chapter.
7 (b) Subject to subsection (i), a member of the governing body of a
8 public agency who is not physically present at a meeting of the
9 governing body may participate in a meeting by any electronic means
10 of communication that does the following:
11 (1) Allows all participating members of the governing body to
12 simultaneously communicate with each other.
13 (2) Allows the public to simultaneously attend and observe the
14 meeting. However, this subdivision does not apply to a meeting
15 held in executive session.
16 Subject to subsection (i), a governing body member who participates
17 in the meeting by an electronic means of communication shall be



1 considered present for purposes of establishing a quorum but may
2 participate in any final action taken at the meeting only if the member
3 can be seen and heard.

4 (c) A technological failure in an electronic means of communication
5 that disrupts or prevents:

6 (1) the simultaneous communication between a member who is
7 not physically present at the meeting and the governing body; or

8 (2) a member of the public who is not present at the meeting from
9 attending and observing the meeting;

10 does not prevent the governing body from conducting the meeting or
11 affect the validity of an action taken by the governing body at the
12 meeting if the sum of the governing body members physically present
13 at the meeting and the governing body members participating by
14 electronic communication without technological failure satisfy the
15 quorum and (if a final action is taken) the voting requirements of the
16 governing body.

17 (d) The governing body shall adopt a written policy establishing the
18 procedures that apply to a member's participation in a meeting by an
19 electronic means of communication. The governing body may establish
20 procedures that are more restrictive than the procedures established by
21 this section. The policy adopted under this section may include:

22 (1) limiting the number of members who may participate by
23 electronic communication in any one (1) meeting;

24 (2) limiting the total number of meetings that the governing body
25 may conduct in a calendar year by electronic communication; and

26 (3) requiring a member, except in the case of a meeting called to
27 deal with an emergency under section 5(d) of this chapter, who
28 plans to attend a meeting by any electronic means of
29 communication to notify the presiding officer within a certain
30 period of time before the meeting, as specified by the governing
31 body, so that arrangements may be made for the member's
32 participation by electronic communication.

33 (e) The memoranda prepared under section 4 of this chapter for a
34 meeting in which a member participates by an electronic means of
35 communication must:

36 (1) state the name of each member of the governing body who:

37 (A) was physically present at the place where the meeting was
38 conducted;

39 (B) participated in the meeting by using any electronic means
40 of communication; and

41 (C) was absent; and

42 (2) identify the electronic means of communication by which:



- 1 (A) members of the governing body participated in the
 2 meeting; and
 3 (B) the public attended and observed the meeting, if the
 4 meeting was not held in executive session.
- 5 (f) All votes taken during a meeting under this section must be taken
 6 by roll call vote.
- 7 (g) At least fifty percent (50%) of the members of the governing
 8 body must be physically present at a meeting.
- 9 (h) A member of the governing body may not attend more than fifty
 10 percent (50%) of the governing body's meetings in a calendar year by
 11 means of electronic communication, unless the member's electronic
 12 participation is due to:
- 13 (1) military service;
 - 14 (2) illness or other medical condition;
 - 15 (3) death of a relative; or
 - 16 (4) an emergency involving actual or threatened injury to persons
 17 or property.
- 18 (i) A member of a governing body may ~~not~~ participate **but may not**
 19 **vote** in a meeting of the governing body by electronic communication
 20 if the governing body is attempting to take final action to:
- 21 (1) adopt a budget;
 - 22 (2) make a reduction in personnel;
 - 23 (3) initiate a referendum;
 - 24 (4) establish or increase a fee;
 - 25 (5) establish or increase a penalty;
 - 26 (6) use the governing body's eminent domain authority; or
 - 27 (7) establish, raise, or renew a tax.
- 28 (j) A governing body may not prohibit a member of the governing
 29 body from attending consecutive meetings by electronic
 30 communication. A member may attend two (2) consecutive meetings
 31 (a set of meetings) by electronic communication. A member shall
 32 physically attend at least one (1) meeting between sets of meetings that
 33 the member attends by electronic communication, unless the member's
 34 absence is due to:
- 35 (1) military service;
 - 36 (2) illness or other medical condition;
 - 37 (3) death of a relative; or
 - 38 (4) an emergency involving actual or threatened injury to persons
 39 or property.
- 40 SECTION 2. IC 5-14-1.5-3.7, AS ADDED BY P.L.88-2021,
 41 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 42 JULY 1, 2022]: Sec. 3.7. (a) ~~This section applies only if:~~ **As used in**



- 1 **this section, "disaster emergency" means:**
- 2 (1) ~~the governor declares~~ a disaster emergency **declared by the**
- 3 **governor** under IC 10-14-3-12; or
- 4 (2) ~~the executive (as defined in IC 36-1-2-5)~~ of a political
- 5 ~~subdivision declares~~ a local disaster emergency **declared by the**
- 6 **executive (as defined in IC 36-1-2-5) of a political subdivision**
- 7 under IC 10-14-3-29.
- 8 (b) Notwithstanding section 3.5 or 3.6 of this chapter, the members
- 9 of a governing body are not required to be physically present at a
- 10 meeting ~~until~~ if:
- 11 (1) **the disaster emergency order explicitly states:**
- 12 (A) **that the provisions contained in this section shall go**
- 13 **into effect; and**
- 14 (B) **the date:**
- 15 (i) **upon which the provisions contained in this section**
- 16 **become effective; and**
- 17 (ii) **the provisions contained in this section expire;**
- 18 (2) ~~the disaster emergency or local disaster emergency is~~
- 19 ~~terminated is in effect for all or part of the area within the~~
- 20 ~~governing body's jurisdiction; and~~
- 21 (3) **because of the particular danger, threat, or emergency**
- 22 **conditions that are the basis for the declaration of the disaster**
- 23 **emergency, meeting in person is prohibited.**
- 24 (c) **If the members of a governing body are not required to be**
- 25 **physically present at a meeting under subsection (b),** the members
- 26 of a governing body may meet by any means of electronic
- 27 communication, if the following are satisfied:
- 28 (1) At least a quorum of the members of the governing body
- 29 participate in the meeting by means of electronic communication
- 30 or in person.
- 31 (2) The public is able to simultaneously attend and observe the
- 32 meeting. However, this subdivision does not apply to a meeting
- 33 held in executive session.
- 34 (e) **(d)** The memoranda for a meeting prepared under section 4 of
- 35 this chapter for a meeting held under this section must:
- 36 (1) state the name of each member of the governing body who:
- 37 (A) participated in the meeting by using any electronic means
- 38 of communication; and
- 39 (B) was absent; and
- 40 (2) identify the electronic means of communication by which:
- 41 (A) members of the governing body participated in the
- 42 meeting; and



- 1 (B) the public attended and observed the meeting, if the
 2 meeting was not held in executive session.
- 3 ~~(d)~~ (e) All votes taken during a meeting under this section must be
 4 taken by roll call vote.
- 5 SECTION 3. IC 5-14-1.5-5.5 IS ADDED TO THE INDIANA
 6 CODE AS A NEW SECTION TO READ AS FOLLOWS
 7 [EFFECTIVE JULY 1, 2022]: **Sec. 5.5. (a) This section does not**
 8 **apply to the following:**
- 9 (1) A quasi-judicial proceeding or a meeting held in executive
 10 session.
- 11 (2) An official act that must be taken to deal with an
 12 emergency situation affecting the public health, welfare, or
 13 safety, if compliance with this section would cause an
 14 unreasonable delay in the ability of the governing body to act.
- 15 (3) Official acts that are ministerial, including approval of
 16 minutes and ceremonial proclamations.
- 17 (b) As used in this section, "attende" means a member of the
 18 public who is physically present at a meeting of a governing body.
 19 The term does not include a person who attends a meeting by
 20 electronic communication.
- 21 (c) The governing body shall provide attendees, or group
 22 representatives under a procedure established under subsection
 23 (f)(2), with a reasonable opportunity to speak to the governing
 24 body regarding an agenda item before or during the governing
 25 body's discussion or consideration of an agenda item. The
 26 opportunity to speak may be at:
- 27 (1) the same meeting at which the governing body takes
 28 official action on the agenda item; or
- 29 (2) a meeting that is within reasonable proximity in time
 30 before the meeting at which the governing body takes the
 31 official action.
- 32 (d) Except as otherwise provided in a procedure or restriction
 33 described subsection (f), if the governing body determines that
 34 there is insufficient meeting time for all attendees, or all group
 35 representatives under a procedure established under subsection
 36 (f)(2), to speak on an agenda item at a meeting, the governing body
 37 may defer or continue testimony on the agenda item until the
 38 governing body's next meeting. However, a governing body may
 39 not take final action on any agenda item until after all attendees, or
 40 all group representatives under a procedure established under
 41 subsection (f)(2), have been provided a reasonable opportunity to
 42 speak on the agenda item.



1 (e) The governing body shall prepare and post a meeting agenda
2 in accordance with section 4 of this chapter at least forty-eight (48)
3 hours before the convening time for the meeting. The agenda shall
4 include the following:

5 (1) All items to be considered by the governing body at the
6 meeting. Each agenda item must be described with sufficient
7 clarity and specificity to give a reasonable person notice of the
8 issue to be discussed at the meeting.

9 (2) A comment period before or during the governing body's
10 discussion or consideration of an agenda item that provides
11 attendees a reasonable opportunity to speak directly to the
12 governing body on an agenda item.

13 (f) The governing body may adopt reasonable rules or policies
14 governing attendee testimony, including the following:

15 (1) Reasonable restrictions on the length of time that an
16 attendee may speak on an agenda item. However, a policy or
17 rule may not limit an attendee to less than three (3) minutes
18 of testimony on an agenda item, regardless of whether the
19 attendee speaks on behalf of one (1) or more persons.

20 (2) Procedures for allowing group representatives instead of
21 individual group members to address the governing body
22 where there is a large number of attendees at a meeting who
23 have indicated a desire to speak.

24 (3) Prescribing forms for an attendee to communicate the
25 attendee's desire to:

26 (A) comment or indicate support, opposition, or neutrality
27 on an agenda item; or

28 (B) designate a representative to speak for the attendee or
29 the attendee's group on an agenda item.

30 (4) Reasonable time limit restrictions for the total amount of
31 time allotted to take attendee testimony.

32 (g) This section does not prohibit the governing body from
33 taking reasonable steps to maintain order in a meeting, including
34 removal of any attendee who is willfully disruptive of the meeting.

35 (h) The governing body shall provide attendees and any other
36 member of the public a reasonable opportunity to submit data,
37 views, or arguments, in writing, on any agenda item. However, the
38 governing body may not require an attendee to provide written
39 testimony instead of speaking on an agenda item.

40 SECTION 4. IC 5-14-1.5-7, AS AMENDED BY P.L.134-2012,
41 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
42 JULY 1, 2022]: Sec. 7. (a) An action may be filed by any person in any



- 1 court of competent jurisdiction to **do one (1) or more of the following:**
 2 (1) Obtain a declaratory judgment.
 3 (2) Enjoin continuing, threatened, or future violations of this
 4 chapter. ~~or~~
 5 (3) Declare void any policy, decision, or final action:
 6 (A) taken at an executive session in violation of section 3(a) of
 7 this chapter;
 8 (B) taken at any meeting of which notice is not given in
 9 accordance with section 5 of this chapter;
 10 (C) that is based in whole or in part upon official action taken
 11 at any:
 12 (i) executive session in violation of section 3(a) of this
 13 chapter;
 14 (ii) meeting of which notice is not given in accordance with
 15 section 5 of this chapter; or
 16 (iii) series of gatherings in violation of section 3.1 of this
 17 chapter; or
 18 (D) taken at a meeting held in a location in violation of section
 19 8 of this chapter.
 20 **(4) Declare void any policy, decision, or final action that is**
 21 **based in whole or in part upon:**
 22 **(A) official action taken at a meeting for which an agenda**
 23 **is not posted in accordance with sections 4 and 5.5 of this**
 24 **chapter;**
 25 **(B) official action taken on a subject matter that is not**
 26 **included as an agenda item in accordance with sections 4**
 27 **and 5.5 of this chapter; or**
 28 **(C) final action taken on an agenda item without providing**
 29 **attendees with a reasonable opportunity to speak directly**
 30 **to the governing body on the agenda item before final**
 31 **action is taken.**
 32 The plaintiff need not allege or prove special damage different from
 33 that suffered by the public at large.
 34 (b) Regardless of whether a formal complaint or an informal inquiry
 35 is pending before the public access counselor, any action to declare any
 36 policy, decision, or final action of a governing body void, or to enter an
 37 injunction which would invalidate any policy, decision, or final action
 38 of a governing body, based on violation of this chapter occurring before
 39 the action is commenced, shall be commenced:
 40 (1) prior to the delivery of any warrants, notes, bonds, or
 41 obligations if the relief sought would have the effect, if granted,
 42 of invalidating the notes, bonds, or obligations; or



- 1 (2) with respect to any other subject matter, within thirty (30)
 2 days of either:
 3 (A) the date of the act or failure to act complained of; or
 4 (B) the date that the plaintiff knew or should have known that
 5 the act or failure to act complained of had occurred;
 6 whichever is later. If the challenged policy, decision, or final action is
 7 recorded in the memoranda or minutes of a governing body, a plaintiff
 8 is considered to have known that the act or failure to act complained of
 9 had occurred not later than the date that the memoranda or minutes are
 10 first available for public inspection.
- 11 (c) If a court finds that a governing body of a public agency has
 12 violated this chapter, it may not find that the violation was cured by the
 13 governing body by only having taken final action at a meeting that
 14 complies with this chapter.
- 15 (d) In determining whether to declare any policy, decision, or final
 16 action void, a court shall consider the following factors among other
 17 relevant factors:
- 18 (1) The extent to which the violation:
 19 (A) affected the substance of the policy, decision, or final
 20 action;
 21 (B) denied or impaired access to any meetings that the public
 22 had a right to observe and record; and
 23 (C) prevented or impaired public knowledge or understanding
 24 of the public's business.
- 25 (2) Whether voiding of the policy, decision, or final action is a
 26 necessary prerequisite to a substantial reconsideration of the
 27 subject matter.
- 28 (3) Whether the public interest will be served by voiding the
 29 policy, decision, or final action by determining which of the
 30 following factors outweighs the other:
 31 (A) The remedial benefits gained by effectuating the public
 32 policy of the state declared in section 1 of this chapter.
 33 (B) The prejudice likely to accrue to the public if the policy,
 34 decision, or final action is voided, including the extent to
 35 which persons have relied upon the validity of the challenged
 36 action and the effect declaring the challenged action void
 37 would have on them.
- 38 (4) Whether the defendant acted in compliance with an informal
 39 inquiry response or advisory opinion issued by the public access
 40 counselor concerning the violation.
- 41 (e) If a court declares a policy, decision, or final action of a
 42 governing body of a public agency void, the court may enjoin the



1 governing body from subsequently acting upon the subject matter of
 2 the voided act until it has been given substantial reconsideration at a
 3 meeting or meetings that comply with this chapter.

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

7 (1) the plaintiff prevails; or

8 (2) the defendant prevails and the court finds that the action is
 9 frivolous and vexatious.

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

16 (g) A court may assess a civil penalty under section 7.5 of this
 17 chapter only if the plaintiff obtained an advisory opinion from the
 18 public access counselor before filing an action under this section as set
 19 forth in section 7.5 of this chapter.

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

22 SECTION 5. IC 5-14-1.5-7.5, AS ADDED BY P.L.134-2012,
 23 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 24 JULY 1, 2022]: Sec. 7.5. (a) This section applies only to an individual
 25 who is:

26 (1) an officer of a public agency; or

27 (2) employed in a management level position with a public
 28 agency.

29 (b) If an individual with the specific intent to violate the law fails to
 30 perform a duty imposed on the individual under this chapter by:

31 (1) failing to give proper notice of a regular meeting, special
 32 meeting, or executive session;

33 (2) taking final action outside a regular meeting or special
 34 meeting;

35 (3) participating in a secret ballot during a meeting;

36 (4) discussing in an executive session subjects not eligible for
 37 discussion in an executive session;

38 (5) failing to prepare a memorandum of a meeting as required by
 39 section 4 of this chapter; or

40 (6) participating in at least one (1) gathering of a series of
 41 gatherings under section 3.1 of this chapter;

42 (7) **failing to post a meeting agenda in accordance with**



- 1 **sections 4 and 5.5 of this chapter;**
 2 **(8) discussing a subject matter that is not included as an**
 3 **agenda item;**
 4 **(9) failing to provide meeting attendees with a reasonable**
 5 **opportunity to speak directly to the governing body on an**
 6 **agenda item; or**
 7 **(10) failing to provide attendees and any other member of the**
 8 **public a reasonable opportunity to submit data, views, or**
 9 **arguments, in writing, on any agenda item in accordance with**
 10 **section 5.5(h) of this chapter;**

11 the individual and the public agency are subject to a civil penalty under
 12 subsection (f).

13 (c) A civil penalty may only be imposed as part of an action filed
 14 under section 7 of this chapter. A court may not impose a civil penalty
 15 under this section unless the public access counselor has issued an
 16 advisory opinion:

- 17 (1) to the complainant and the public agency;
 18 (2) that finds that the individual or public agency violated this
 19 chapter; and
 20 (3) before the action under section 7 of this chapter is filed.

21 Nothing in this section prevents both the complainant and the public
 22 agency from requesting an advisory opinion from the public access
 23 counselor.

24 (d) It is a defense to the imposition of a civil penalty under this
 25 section that the individual failed to perform a duty under subsection (b)
 26 in reliance on either of the following:

- 27 (1) An opinion of the public agency's legal counsel.
 28 (2) An opinion of the attorney general.

29 (e) Except as provided in subsection (i), in an action filed under
 30 section 7 of this chapter, a court may impose a civil penalty against one
 31 (1) or more of the following:

- 32 (1) The individual named as a defendant in the action.
 33 (2) The public agency named as a defendant in the action.

34 (f) The court may impose against each defendant listed in
 35 subsection (c) the following civil penalties:

- 36 (1) Not more than one hundred dollars (\$100) for the first
 37 violation.
 38 (2) Not more than five hundred dollars (\$500) for each additional
 39 violation.

40 A civil penalty imposed under this section is in addition to any other
 41 civil or criminal penalty imposed. However, in any one (1) action
 42 brought under section 7 of this chapter, a court may impose only one



1 (1) civil penalty against an individual, even if the court finds that the
2 individual committed multiple violations. This subsection does not
3 preclude a court from imposing another civil penalty against an
4 individual in a separate action, but an individual may not be assessed
5 more than one (1) civil penalty in any one (1) action brought under this
6 section.

7 (g) A court shall distribute monthly to the auditor of state any
8 penalties collected under this section for deposit in the education fund
9 established by IC 5-14-4-14.

10 (h) An individual is personally liable for a civil penalty imposed on
11 the individual under this section. A civil penalty imposed against a
12 public agency under this section shall be paid from the public agency's
13 budget.

14 (i) If an officer of a public agency directs an individual who is
15 employed in a management level position to fail to give proper notice
16 as described in subsection (b)(1), the management level employee is
17 not subject to civil penalties under subsection (f).

