

SENATE BILL No. 396

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-14-1.5.

Synopsis: School board and library board meetings. Requires a school board or library board, 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.

Tomes

January 11, 2022, read first time and referred to Committee on Education and Career Development.



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.

SENATE BILL No. 396

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 5-14-1.5-5.5 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2022]: **Sec. 5.5. (a) This section applies only**
4 **to the governing body of:**
5 (1) a school corporation; or
6 (2) a public library (as defined in IC 36-12-1-5).
7 **(b) This section does not apply to the following:**
8 (1) A quasi-judicial proceeding or a meeting held in executive
9 session.
10 (2) An official act that must be taken to deal with an
11 emergency situation affecting the public health, welfare, or
12 safety, if compliance with this section would cause an
13 unreasonable delay in the ability of the governing body to act.
14 (3) Official acts that are ministerial, including approval of
15 minutes and ceremonial proclamations.
16 **(c) As used in this section, "attende" means a member of the**
17 **public who is physically present at a meeting of a governing body.**



1 The term does not include a person who attends a meeting by
2 electronic communication.

3 (d) The governing body shall provide attendees with a
4 reasonable opportunity to speak to the governing body regarding
5 an agenda item before or during the governing body's discussion
6 or consideration of an agenda item. The opportunity to speak may
7 be at:

8 (1) the same meeting at which the governing body takes
9 official action on the agenda item; or

10 (2) a meeting that is within reasonable proximity in time
11 before the meeting at which the governing body takes the
12 official action.

13 (e) If the governing body determines that there is insufficient
14 meeting time for all attendees to speak on an agenda item at a
15 meeting, the governing body may defer or continue testimony on
16 the agenda item until the governing body's next meeting. However,
17 a governing body may not take final action on any agenda item
18 until after attendees have been provided a reasonable opportunity
19 to speak on the agenda item.

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

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

28 (2) A comment period before or during the governing body's
29 discussion or consideration of an agenda item that provides
30 attendees a reasonable opportunity to speak directly to the
31 governing body on an agenda item.

32 (g) The governing body may adopt reasonable rules or policies
33 governing attendees' testimony, including the following:

34 (1) Reasonable restrictions on the length of time that an
35 attendee may speak on an agenda item. However, the
36 guidelines may not limit an attendee to less than three (3)
37 minutes of testimony on an agenda item, regardless of
38 whether the attendee speaks on behalf of one (1) or more
39 persons.

40 (2) Procedures for allowing group representatives instead of
41 individual group members to address the governing body
42 where there is a large number of attendees at a meeting who



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have indicated a desire to speak.

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

- (A) comment or indicate support, opposition, or neutrality on an agenda item; or**
- (B) designate a representative to speak for the attendee or the attendee's group on an agenda item.**

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

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

SECTION 2. IC 5-14-1.5-7, AS AMENDED BY P.L.134-2012, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 7. (a) An action may be filed by any person in any court of competent jurisdiction to **do one (1) or more of the following:**

- (1) Obtain a declaratory judgment.
- (2) Enjoin continuing, threatened, or future violations of this chapter. ~~or~~
- (3) Declare void any policy, decision, or final action:
 - (A) taken at an executive session in violation of section 3(a) of this chapter;
 - (B) taken at any meeting of which notice is not given in accordance with section 5 of this chapter;
 - (C) that is based in whole or in part upon official action taken at any:
 - (i) executive session in violation of section 3(a) of this chapter;
 - (ii) meeting of which notice is not given in accordance with section 5 of this chapter; or
 - (iii) series of gatherings in violation of section 3.1 of this chapter; or
 - (D) taken at a meeting held in a location in violation of section 8 of this chapter.

(4) This subdivision applies only to a meeting under section 5.5 of this chapter. Declare void any policy, decision, or final action that is based in whole or in part upon:

- (A) official action taken at a meeting for which an agenda is not posted in accordance with sections 4 and 5.5 of this**



- 1 **chapter;**
 2 **(B) official action taken on a subject matter that is not**
 3 **included as an agenda item; or**
 4 **(C) final action taken on an agenda item without providing**
 5 **attendees with a reasonable opportunity to speak directly**
 6 **to the governing body on the agenda item before final**
 7 **action is taken.**
- 8 The plaintiff need not allege or prove special damage different from
 9 that suffered by the public at large.
- 10 (b) Regardless of whether a formal complaint or an informal inquiry
 11 is pending before the public access counselor, any action to declare any
 12 policy, decision, or final action of a governing body void, or to enter an
 13 injunction which would invalidate any policy, decision, or final action
 14 of a governing body, based on violation of this chapter occurring before
 15 the action is commenced, shall be commenced:
- 16 (1) prior to the delivery of any warrants, notes, bonds, or
 17 obligations if the relief sought would have the effect, if granted,
 18 of invalidating the notes, bonds, or obligations; or
 19 (2) with respect to any other subject matter, within thirty (30)
 20 days of either:
- 21 (A) the date of the act or failure to act complained of; or
 22 (B) the date that the plaintiff knew or should have known that
 23 the act or failure to act complained of had occurred;
- 24 whichever is later. If the challenged policy, decision, or final action is
 25 recorded in the memoranda or minutes of a governing body, a plaintiff
 26 is considered to have known that the act or failure to act complained of
 27 had occurred not later than the date that the memoranda or minutes are
 28 first available for public inspection.
- 29 (c) If a court finds that a governing body of a public agency has
 30 violated this chapter, it may not find that the violation was cured by the
 31 governing body by only having taken final action at a meeting that
 32 complies with this chapter.
- 33 (d) In determining whether to declare any policy, decision, or final
 34 action void, a court shall consider the following factors among other
 35 relevant factors:
- 36 (1) The extent to which the violation:
- 37 (A) affected the substance of the policy, decision, or final
 38 action;
 39 (B) denied or impaired access to any meetings that the public
 40 had a right to observe and record; and
 41 (C) prevented or impaired public knowledge or understanding
 42 of the public's business.



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

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

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

9 (B) The prejudice likely to accrue to the public if the policy,
 10 decision, or final action is voided, including the extent to
 11 which persons have relied upon the validity of the challenged
 12 action and the effect declaring the challenged action void
 13 would have on them.

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

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

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

25 (1) the plaintiff prevails; or

26 (2) the defendant prevails and the court finds that the action is
 27 frivolous and vexatious.

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

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

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

40 SECTION 3. IC 5-14-1.5-7.5, AS ADDED BY P.L.134-2012,
 41 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 42 JULY 1, 2022]: Sec. 7.5. (a) This section applies only to an individual



- 1 who is:
- 2 (1) an officer of a public agency; or
- 3 (2) employed in a management level position with a public
- 4 agency.
- 5 (b) If an individual with the specific intent to violate the law fails to
- 6 perform a duty imposed on the individual under this chapter by:
- 7 (1) failing to give proper notice of a regular meeting, special
- 8 meeting, or executive session;
- 9 (2) taking final action outside a regular meeting or special
- 10 meeting;
- 11 (3) participating in a secret ballot during a meeting;
- 12 (4) discussing in an executive session subjects not eligible for
- 13 discussion in an executive session;
- 14 (5) failing to prepare a memorandum of a meeting as required by
- 15 section 4 of this chapter; or
- 16 (6) participating in at least one (1) gathering of a series of
- 17 gatherings under section 3.1 of this chapter; or
- 18 **(7) in the case of a meeting of a governing body under section**
- 19 **5.5 of this chapter:**
- 20 **(A) failing to post a meeting agenda in accordance with**
- 21 **sections 4 and 5.5 of this chapter;**
- 22 **(B) discussing a subject matter that is not included as an**
- 23 **agenda item; or**
- 24 **(C) failing to provide meeting attendees with a reasonable**
- 25 **opportunity to speak directly to the governing body on an**
- 26 **agenda item;**
- 27 the individual and the public agency are subject to a civil penalty under
- 28 subsection (f).
- 29 (c) A civil penalty may only be imposed as part of an action filed
- 30 under section 7 of this chapter. A court may not impose a civil penalty
- 31 under this section unless the public access counselor has issued an
- 32 advisory opinion:
- 33 (1) to the complainant and the public agency;
- 34 (2) that finds that the individual or public agency violated this
- 35 chapter; and
- 36 (3) before the action under section 7 of this chapter is filed.
- 37 Nothing in this section prevents both the complainant and the public
- 38 agency from requesting an advisory opinion from the public access
- 39 counselor.
- 40 (d) It is a defense to the imposition of a civil penalty under this
- 41 section that the individual failed to perform a duty under subsection (b)
- 42 in reliance on either of the following:



- 1 (1) An opinion of the public agency's legal counsel.
 2 (2) An opinion of the attorney general.
 3 (e) Except as provided in subsection (i), in an action filed under
 4 section 7 of this chapter, a court may impose a civil penalty against one
 5 (1) or more of the following:
 6 (1) The individual named as a defendant in the action.
 7 (2) The public agency named as a defendant in the action.
 8 (f) The court may impose against each defendant listed in
 9 subsection (c) the following civil penalties:
 10 (1) Not more than one hundred dollars (\$100) for the first
 11 violation.
 12 (2) Not more than five hundred dollars (\$500) for each additional
 13 violation.
 14 A civil penalty imposed under this section is in addition to any other
 15 civil or criminal penalty imposed. However, in any one (1) action
 16 brought under section 7 of this chapter, a court may impose only one
 17 (1) civil penalty against an individual, even if the court finds that the
 18 individual committed multiple violations. This subsection does not
 19 preclude a court from imposing another civil penalty against an
 20 individual in a separate action, but an individual may not be assessed
 21 more than one (1) civil penalty in any one (1) action brought under this
 22 section.
 23 (g) A court shall distribute monthly to the auditor of state any
 24 penalties collected under this section for deposit in the education fund
 25 established by IC 5-14-4-14.
 26 (h) An individual is personally liable for a civil penalty imposed on
 27 the individual under this section. A civil penalty imposed against a
 28 public agency under this section shall be paid from the public agency's
 29 budget.
 30 (i) If an officer of a public agency directs an individual who is
 31 employed in a management level position to fail to give proper notice
 32 as described in subsection (b)(1), the management level employee is
 33 not subject to civil penalties under subsection (f).

