

**HEALTH FACILITIES PLANNING BOARD
NEW BOARD MEMBER ORIENTATION MEETING
AUGUST 18, 2003**

AGENDA

- 1) Call To Order
- 2) Introductions
 - a) Board Members
 - b) Executive Secretary
 - c) Agency Staff
 - d) Legal counsel
- 3) Review and Discussion of Relevant Statutes
 - a) Open Meetings Act
 - b) Ethics
 - c) Gift Ban Act
 - d) Ex-Parte Communication (Section 4.2 of the Health Facilities Planning Act)
- 4) Illinois Health Facilities Planning Act
- 5) Certificate of Need / Certificate of Exemption Process
 - a) Transactions Subject to the Planning Act
 - b) Application Procedures
 - c) Review Functions
 - d) Board Actions
 - e) Compliance Activities
- 6) General Administrative Activities
 - a) Travel Vouchers
 - b) Board Member Polling
- 7) Executive Session

Discussion During Orientation

Transactions Subject to the Planning Act

- 1) Construction / modification of health care facilities as indicated by the following:
 - A) Transactions in excess of the Capital Expenditure minimum
 - B) Establishment of new health care facilities (regardless of cost)
 - C) Substantial increase in the number of beds at health care facilities
 - D) Changes in scope or functional operation of health care facilities.
 - E) Establishment of a category of service.
 - F) Discontinuation of a category of service.
 - G) Health and fitness centers developed by health care facilities costing in excess of \$
- 2) Acquisition of major medical equipment by any person (sort of moot)
- 3) Certain types of construction or modification are now exempt regardless of cost:
 - A) non-clinical areas
 - B) Sheltered care facilities and any project for the development of assisted living facilities or beds licensed under the Assisted Living and Shared Housing Act.

Permit / Exemption Process

- 2) CON Permits
 - A) Pre-application conference with potential applicants
 - B) CON application submitted to HFPB; completeness review by IDPH; assessment of fee.
 - C) Public Comment and Hearing offered by IDPH.
 - D) IDPH issues State Agency Report on evaluation of application for conformance with proscribed HFPB standards and review criteria. IDPH never recommends the approval or denial of an application; only certifies findings.
 - E) HFPB consideration: 5 votes required for approval; cannot deny an application on first consideration, but can approve.
 - F) HFPB can issue an Intent-to-Deny; often there are modification made to an application if this is issued.
 - G) HFPB reconsideration and decision to approve or deny.
 - H) Administrative hearing
 - I) Judicial Review
- 3) Post permit requirements
 - A) Assurances, conditions or performance measures
 - B) Obligation, proceed with due diligence
 - C) annual progress reports
 - D) permit renewals, final cost reports and project completion

- 4) Exemptions
 - A) CHOW application; if notice and other prescribed requirements are met the Chairman or Board must approval; there is no discretion.
 - B) Exemption for the addition of dialysis stations to an existing facility.

- 5) Compliance Activities
 - A) Non-compliance with provisions of Act subjects persons to imposition of fines, injunction, loss of reimbursement from State agencies.



Rod R. Blagojevich, Governor
Eric E. Whitaker, M.D., M.P.H., Director

TO: 525-535 ~~Members, Health Facilities Planning Board~~ is 62761-0001 • www.idph.state.il.us

THROUGH: Jeffrey Mark, Executive Secretary

FROM: Anne M. Murphy, Board Counsel *AMM*

DATE: August 8, 2003

RE: Open Meetings Act (5 ILCS 120)

I. General Rules

- A. Strong public policy to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly.
- B. Each public body must: (1) conduct open meetings, subject to narrowly construed exceptions; (2) furnished advance notice of all meetings; and (3) maintain written minutes of all meetings.

II. Definitions

- A. "Meeting" means any gathering of a majority of a quorum of the members of a public body held for the purpose of conducting public business.
- B. "Public body" includes, among other things, all administrative or advisory bodies of the state. The State Board of Health is a "public body".

III. Requirements

A. Conduct Open Meetings

- 1. General rule is that all meetings of a public body must be open to the public.
- 2. Twenty-three exceptions to the open meeting requirement are listed in the Act, but are to be strictly construed and therefore extended only to subjects clearly within their scope.
- 3. As a general proposition, the exceptions apply to matters involving confidential information. Examples include:

Improving public health. One community at a time.

- a. Security procedures and the use of personnel and equipment to respond to an actual or threatened, or a reasonably potential danger to the safety of employees, students, staff or public property.
 - b. Pending, probable or imminent litigation affecting the public body.
 - c. Professional ethics or performance when considered by an advisory body appointed to advise a licensing or regulatory agency on matters germane to the advisory body's field of competence.
 - d. Review or discussion of applications received under the Experimental Organ Transplantation Procedure Act.
4. A meeting (or portion of a meeting) may be closed to the public, upon a majority vote of a quorum present at an open meeting. At any such public meeting, a public body may vote immediately to go into a closed meeting. The minutes must identify how each member voted and the citation to the specific statutory basis for closing the meeting.
 5. No final action can be taken at a closed meeting.
 6. Public meetings shall be held at specified times and places which are convenient and open to the public. Cannot hold public meetings on a legal holiday unless a regular meeting date falls on that holiday.
 7. As a general rule, any person may record the proceedings of an open meeting by tape, film or other means subject to the reasonable rules of the public body. Limited statutory exceptions protect the rights of certain witnesses.

B. Furnish Advance Notice of All Meetings (Whether Open or Closed to the Public)

1. Each public body must give public notice of the schedule of regular meetings at the beginning of each calendar or fiscal year, which shall state the regular dates, times and places of such meetings.
 - a. Ten days' notice of any changes in the regular meeting dates be: (i) published in a newspaper of general circulation in the area in which such body functions; (ii) posted at the principal office of the public body; and (iii) supplied to those news media which have filed an annual request for such notice.

- b. An agenda for each regular meeting must be posted at the principal office of the public body and at the location where the meeting is to be held, at least forty-eight hours in advance of the meeting. Items not on the agenda can be considered.
2. Public notice of any special meeting (except a meeting held in the event of a bona fide emergency), any rescheduled regular meeting, or any reconvened meeting, must be given at least forty-eight hours in advance of such meeting.
 - a. Generally speaking, public notice must be given at the principal office of the public body, and must be supplied to any news media that have filed an annual request for such notice.
 - b. Notice must include the agenda, but actions can be taken at the meeting which are germane to subjects on the agenda even if the particular action is not specified on the agenda.
 - c. Limited exception to notice requirement for a public meeting to be reconvened within twenty-four hours, where an announcement is made at the original meeting and there is no change in the agenda.
 - d. Notice of an emergency meeting must be given as soon as practicable, but in any event in advance of the meeting, to any news medium that has filed an annual request for such notice.

C. Keep Written Minutes

1. Written minutes must be kept of all meetings, whether open or closed.
2. Minutes must include, at a minimum: (a) date, time and place of the meeting; (b) members present or absent; and (c) a summary of discussion on all matters proposed, deliberated or decided, and a record of votes taken.
3. Minutes of open meetings must be available for public inspection within seven days of approval by the public body.
4. Minutes of closed meetings shall be available only after the public body determines that it is no longer necessary to protect the public interest or the privacy of an individual by keeping them confidential. Minutes of closed meetings must be reviewed at least semi-annually to determine whether such continuing need for confidentiality still exists.

IV. Enforcement and Penalties

- A. Public or private right of action when there has been a violation, or there is probable cause to believe there will be violation of the Act.
- B. Court has available broad remedies, including without limitation mandamus, injunction and invalidation of actions taken at an improperly closed meeting.
- C. Attorneys' fees may be assessed against losing party (except a State's Attorney).
- D. Violation of the Act is a Class C misdemeanor.

A copy of the Open Meetings Act is attached to this memorandum. You are encouraged to review the Act in its entirety.

Questions regarding this memorandum or the Open Meetings Act should be directed to the Board's Counsel, Anne Murphy, at (312)814-1100.

Illinois Compiled Statutes
General Provisions
Open Meetings Act
5 ILCS 120/

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(5 ILCS 120/)

(5 ILCS 120/1)

Sec. 1. Policy. It is the public policy of this State that public bodies exist to aid in the conduct of the people's business and that the people have a right to be informed as to the conduct of their business. In order that the people shall be informed, the General Assembly finds and declares that it is the intent of this Act to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly.

The General Assembly further declares it to be the public policy of this State that its citizens shall be given advance notice of and the right to attend all meetings at which any business of a public body is discussed or acted upon in any way. Exceptions to the public's right to attend exist only in those limited circumstances where the General Assembly has specifically determined that the public interest would be clearly endangered or the personal privacy or guaranteed rights of individuals would be clearly in danger of unwarranted invasion.

To implement this policy, the General Assembly declares:

(1) It is the intent of this Act to protect the citizen's right to know; and

(2) The provisions for exceptions to the open meeting requirements shall be strictly construed against closed meetings.

(Source: P.A. 88-621, eff. 1-1-95.)

(5 ILCS 120/1.01)

Sec. 1.01. This Act shall be known and may be cited as the Open Meetings Act.

(Source: P.A. 82-378.)

(5 ILCS 120/1.02)

Sec. 1.02. For the purposes of this Act:

"Meeting" means any gathering of a majority of a quorum of the members of a public body held for the purpose of discussing public business.

"Public body" includes all legislative, executive, administrative or advisory bodies of the State, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees or commissions of this State, and any subsidiary bodies of any of the foregoing including but not limited to committees and subcommittees which are supported in whole or in part by tax revenue, or which expend tax revenue, except the General Assembly and committees or commissions thereof. "Public body" includes tourism boards and convention or civic center boards located in counties that are contiguous to the Mississippi River with populations of more than 250,000 but less than 300,000. "Public body" includes the Health

Facilities Planning Board. "public body" does not include a child death review team or the Illinois Child Death Review Teams Executive Council established under the Child Death Review Team Act or an ethics commission, ethics officer, or ultimate jurisdictional authority acting under the State Gift Ban Act as provided by Section 80 of that Act. (Source: P.A. 91-782, eff. 6-9-00; 92-468, eff. 8-22-01.)

(5 ILCS 120/2)

Sec. 2. Open meetings.

(a) Openness required. All meetings of public bodies shall be open to the public unless excepted in subsection (c) and closed in accordance with Section 2a.

(b) Construction of exceptions. The exceptions contained in subsection (c) are in derogation of the requirement that public bodies meet in the open, and therefore, the exceptions are to be strictly construed, extending only to subjects clearly within their scope. The exceptions authorize but do not require the holding of a closed meeting to discuss a subject included within an enumerated exception.

(c) Exceptions. A public body may hold closed meetings to consider the following subjects:

(1) The appointment, employment, compensation, discipline, performance, or dismissal of specific employees of the public body, including hearing testimony on a complaint lodged against an employee to determine its validity.

(2) Collective negotiating matters between the public body and its employees or their representatives, or deliberations concerning salary schedules for one or more classes of employees.

(3) The selection of a person to fill a public office, as defined in this Act, including a vacancy in a public office, when the public body is given power to appoint under law or ordinance, or the discipline, performance or removal of the occupant of a public office, when the public body is given power to remove the occupant under law or ordinance.

(4) Evidence or testimony presented in open hearing, or in closed hearing where specifically authorized by law, to a quasi-adjudicative body, as defined in this Act, provided that the body prepares and makes available for public inspection a written decision setting forth its determinative reasoning.

(5) The purchase or lease of real property for the use of the public body, including meetings held for the purpose of discussing whether a particular parcel should be acquired.

(6) The setting of a price for sale or lease of property owned by the public body.

(7) The sale or purchase of securities, investments, or investment contracts.

(8) Security procedures and the use of personnel and equipment to respond to an actual, a threatened, or a reasonably potential danger to the safety of employees, students, staff or public property.

(9) Student disciplinary cases.

(10) The placement of individual students in special education programs and other matters relating to individual students.

(11) Litigation, when an action against, affecting or on behalf of the particular public body has been filed and is pending before a court or administrative tribunal, or when the public body finds that an action is probable or imminent, in which case the basis for the finding shall be recorded and entered into the minutes of the closed meeting.

(12) The establishment of reserves or settlement of claims as provided in the Local Governmental and Governmental Employees Tort

Immunity Act, if otherwise the disposition of a claim or potential claim might be prejudiced, or the review or discussion of claims, loss or risk management information, records, data, advice or communications from or with respect to any insurer of the public body or any intergovernmental risk management association or self insurance pool of which the public body is a member.

(13) Conciliation of complaints of discrimination in the sale or rental of housing, when closed meetings are authorized by the law or ordinance prescribing fair housing practices and creating a commission or administrative agency for their enforcement.

(14) Informant sources, the hiring or assignment of undercover personnel or equipment, or ongoing, prior or future criminal investigations, when discussed by a public body with criminal investigatory responsibilities.

(15) Professional ethics or performance when considered by an advisory body appointed to advise a licensing or regulatory agency on matters germane to the advisory body's field of competence.

(16) Self evaluation, practices and procedures or professional ethics, when meeting with a representative of a statewide association of which the public body is a member.

(17) The recruitment, credentialing, discipline or formal peer review of physicians or other health care professionals for a hospital, or other institution providing medical care, that is operated by the public body.

(18) Deliberations for decisions of the Prisoner Review Board.

(19) Review or discussion of applications received under the Experimental Organ Transplantation Procedures Act.

(20) The classification and discussion of matters classified as confidential or continued confidential by the State Employees Suggestion Award Board.

(21) Discussion of minutes of meetings lawfully closed under this Act, whether for purposes of approval by the body of the minutes or semi-annual review of the minutes as mandated by Section 2.06.

(22) Deliberations for decisions of the State Emergency Medical Services Disciplinary Review Board.

(23) The operation by a municipality of a municipal utility or the operation of a municipal power agency or municipal natural gas agency when the discussion involves (i) contracts relating to the purchase, sale, or delivery of electricity or natural gas or (ii) the results or conclusions of load forecast studies.

(d) Definitions. For purposes of this Section:

"Employee" means a person employed by a public body whose relationship with the public body constitutes an employer-employee relationship under the usual common law rules, and who is not an independent contractor.

"Public office" means a position created by or under the Constitution or laws of this State, the occupant of which is charged with the exercise of some portion of the sovereign power of this State. The term "public office" shall include members of the public body, but it shall not include organizational positions filled by members thereof, whether established by law or by a public body itself, that exist to assist the body in the conduct of its business.

"Quasi-adjudicative body" means an administrative body charged by law or ordinance with the responsibility to conduct hearings, receive evidence or testimony and make determinations based thereon, but does not include local electoral boards when such bodies are considering petition challenges.

(e) Final action. No final action may be taken at a closed

meeting. Final action shall be preceded by a public recital of the nature of the matter being considered and other information that will inform the public of the business being conducted.

(Source: P.A. 90-144, eff. 7-23-97; 91-730, eff. 1-1-01.)

(5 ILCS 120/2.01)

Sec. 2.01. All meetings required by this Act to be public shall be held at specified times and places which are convenient and open to the public. No meeting required by this Act to be public shall be held on a legal holiday unless the regular meeting day falls on that holiday.

(Source: P.A. 88-621, eff. 1-1-95.)

(5 ILCS 120/2.02)

Sec. 2.02. Public notice of all meetings, whether open or closed to the public, shall be given as follows:

(a) Every public body shall give public notice of the schedule of regular meetings at the beginning of each calendar or fiscal year and shall state the regular dates, times, and places of such meetings. An agenda for each regular meeting shall be posted at the principal office of the public body and at the location where the meeting is to be held at least 48 hours in advance of the holding of the meeting. The requirement of a regular meeting agenda shall not preclude the consideration of items not specifically set forth in the agenda. Public notice of any special meeting except a meeting held in the event of a bona fide emergency, or of any rescheduled regular meeting, or of any reconvened meeting, shall be given at least 48 hours before such meeting, which notice shall also include the agenda for the special, rescheduled, or reconvened meeting, but the validity of any action taken by the public body which is germane to a subject on the agenda shall not be affected by other errors or omissions in the agenda. The requirement of public notice of reconvened meetings does not apply to any case where the meeting was open to the public and (1) it is to be reconvened within 24 hours, or (2) an announcement of the time and place of the reconvened meeting was made at the original meeting and there is no change in the agenda. Notice of an emergency meeting shall be given as soon as practicable, but in any event prior to the holding of such meeting, to any news medium which has filed an annual request for notice under subsection (b) of this Section.

(b) Public notice shall be given by posting a copy of the notice at the principal office of the body holding the meeting or, if no such office exists, at the building in which the meeting is to be held. The body shall supply copies of the notice of its regular meetings, and of the notice of any special, emergency, rescheduled or reconvened meeting, to any news medium that has filed an annual request for such notice. Any such news medium shall also be given the same notice of all special, emergency, rescheduled or reconvened meetings in the same manner as is given to members of the body provided such news medium has given the public body an address or telephone number within the territorial jurisdiction of the public body at which such notice may be given.

(Source: P.A. 88-621, eff. 1-1-95; 89-86, eff. 6-30-95.)

(5 ILCS 120/2.03)

Sec. 2.03. In addition to the notice required by Section 2.02, each body subject to this Act must, at the beginning of each calendar or fiscal year, prepare and make available a schedule of all its regular meetings for such calendar or fiscal year, listing the times and places of such meetings.

If a change is made in regular meeting dates, at least 10 days' notice of such change shall be given by publication in a newspaper of general circulation in the area in which such body functions. However,

in the case of bodies of local governmental units with a population of less than 500 in which no newspaper is published, such 10 days' notice may be given by posting a notice of such change in at least 3 prominent places within the governmental unit. Notice of such change shall also be posted at the principal office of the public body or, if no such office exists, at the building in which the meeting is to be held. Notice of such change shall also be supplied to those news media which have filed an annual request for notice as provided in paragraph (b) of Section 2.02.

(Source: Laws 1967, p. 1960.)

(5 ILCS 120/2.04)

Sec. 2.04. The notice requirements of this Act are in addition to, and not in substitution of, any other notice required by law. Failure of any news medium to receive a notice provided for by this Act shall not invalidate any meeting provided notice was in fact given in accordance with this Act.

(Source: Laws 1967, p. 1960.)

(5 ILCS 120/2.05)

Sec. 2.05. Subject to the provisions of "An Act in relation to the rights of witnesses at proceedings conducted by a court, commission, administrative agency or other tribunal in this State which are televised or broadcast or at which motion pictures are taken", approved July 14, 1953, as amended, any person may record the proceedings at meetings required to be open by this Act by tape, film or other means. The authority holding the meeting shall prescribe reasonable rules to govern the right to make such recordings.

If a witness at any meeting required to be open by this Act which is conducted by a commission, administrative agency or other tribunal, refuses to testify on the grounds that he may not be compelled to testify if any portion of his testimony is to be broadcast or televised or if motion pictures are to be taken of him while he is testifying, the authority holding the meeting shall prohibit such recording during the testimony of the witness. Nothing in this Section shall be construed to extend the right to refuse to testify at any meeting not subject to the provisions of "An Act in relation to the rights of witnesses at proceedings conducted by a court, commission, administrative agency or other tribunal in this State which are televised or broadcast or at which motion pictures are taken", approved July 14, 1953, as amended.

(Source: P.A. 82-378.)

(5 ILCS 120/2.06)

Sec. 2.06. (a) All public bodies shall keep written minutes of all their meetings, whether open or closed. Such minutes shall include, but need not be limited to:

- (1) the date, time and place of the meeting;
- (2) the members of the public body recorded as either present or absent; and
- (3) a summary of discussion on all matters proposed, deliberated, or decided, and a record of any votes taken.

(b) The minutes of meetings open to the public shall be available for public inspection within 7 days of the approval of such minutes by the public body. Minutes of meetings closed to the public shall be available only after the public body determines that it is no longer necessary to protect the public interest or the privacy of an individual by keeping them confidential.

(c) Each public body shall periodically, but no less than semi-annually, meet to review minutes of all closed meetings. At such meetings a determination shall be made, and reported in an open session

that (1) the need for confidentiality still exists as to all or part of those minutes or (2) that the minutes or portions thereof no longer require confidential treatment and are available for public inspection. (Source: P.A. 88-621, eff. 1-1-95.)

(5 ILCS 120/2a)

Sec. 2a. A public body may hold a meeting closed to the public, or close a portion of a meeting to the public, upon a majority vote of a quorum present, taken at a meeting open to the public for which notice has been given as required by this Act. A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, provided each meeting in such series involves the same particular matters and is scheduled to be held within no more than 3 months of the vote. The vote of each member on the question of holding a meeting closed to the public and a citation to the specific exception contained in Section 2 of this Act which authorizes the closing of the meeting to the public shall be publicly disclosed at the time of the vote and shall be recorded and entered into the minutes of the meeting. Nothing in this Section or this Act shall be construed to require that any meeting be closed to the public.

At any open meeting of a public body for which proper notice under this Act has been given, the body may, without additional notice under Section 2.02, hold a closed meeting in accordance with this Act. Only topics specified in the vote to close under this Section may be considered during the closed meeting.

(Source: P.A. 88-621, eff. 1-1-95; 89-86, eff. 6-30-95.)

(5 ILCS 120/2b)

Sec. 2b. (Repealed).

(Source: Repealed by P.A. 88-621, eff. 1-1-95.)

(5 ILCS 120/3)

Sec. 3. (a) Where the provisions of this Act are not complied with, or where there is probable cause to believe that the provisions of this Act will not be complied with, any person, including the State's Attorney of the county in which such noncompliance may occur, may bring a civil action in the circuit court for the judicial circuit in which the alleged noncompliance has occurred or is about to occur, or in which the affected public body has its principal office, prior to or within 60 days of the meeting alleged to be in violation of this Act or, if facts concerning the meeting are not discovered within the 60-day period, within 60 days of the discovery of a violation by the State's Attorney.

(b) In deciding such a case the court may examine in camera any portion of the minutes of a meeting at which a violation of the Act is alleged to have occurred, and may take such additional evidence as it deems necessary.

(c) The court, having due regard for orderly administration and the public interest, as well as for the interests of the parties, may grant such relief as it deems appropriate, including granting a relief by mandamus requiring that a meeting be open to the public, granting an injunction against future violations of this Act, ordering the public body to make available to the public such portion of the minutes of a meeting as is not authorized to be kept confidential under this Act, or declaring null and void any final action taken at a closed meeting in violation of this Act.

(d) The court may assess against any party, except a State's Attorney, reasonable attorney's fees and other litigation costs reasonably incurred by any other party who substantially prevails in any action brought in accordance with this Section, provided that costs may be assessed against any private party or parties bringing an action

pursuant to this Section only upon the court's determination that the action is malicious or frivolous in nature.

(Source: P.A. 88-621, eff. 1-1-95.)

(5 ILCS 120/4)

Sec. 4.

Any person violating any of the provisions of this Act shall be guilty of a Class C misdemeanor.

(Source: P. A. 77-2549.)

(5 ILCS 120/5)

Sec. 5. If any provision of this Act, or the application of this Act to any particular meeting or type of meeting is held invalid or unconstitutional, such decision shall not affect the validity of the remaining provisions or the other applications of this Act.

(Source: Laws 1957, p. 2892.)

(5 ILCS 120/6)

Sec. 6. The provisions of this Act constitute minimum requirements for home rule units; any home rule unit may enact an ordinance prescribing more stringent requirements binding upon itself which would serve to give further notice to the public and facilitate public access to meetings.

(Source: P.A. 78-448.)

[TOP]



Rod R. Blagojevich, Governor
Eric E. Whitaker, M.D., M.P.H., Director

525-535 West Jefferson Street • Springfield, Illinois 62761-0001 • www.idph.state.il.us

TO: Members, Health Facilities Planning Board

THROUGH: Jeffrey Mark, Executive Secretary

FROM: Anne M. Murphy, Board Counsel 

DATE: August 8, 2003

RE: Ethical Guidelines for Board Members

The purpose of this statement of policy is to establish general guidelines for use by Members of the Health Facilities Planning Board to assist in determining whether a particular situation constitutes a conflict of interest which would require temporary or permanent disqualification of a Member from participation in Board activities.

In general, ethical guidelines for Board Members exist to assure that issues coming before the Board are determined on the merits and in accordance with legal requirements, and that a record of the Board's determinations is created sufficient to allow meaningful judicial review.

These ethical guidelines are not definitive, and are not intended to be all-inclusive of situations that might constitute a conflict of interest. The facts and circumstances of each particular situation must be considered before a determination can be made whether a Member is eligible to participate in particular Board activities. For situations not expressly covered by these guidelines, Members should consider:

- (1) Whether a situation threatens the independent exercise of judgment; or
- (2) Whether continued participation by a Member would jeopardize public confidence in the integrity of the decisions of the Board.

An affirmative answer to either question would indicate that the Board Member should decline participation in a particular activity. When in doubt about ethical obligations, the Member should contact Board Counsel.

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Guidelines

1. A Member should not act as a representative, agent, consultant or employee of any person or entity regarding matters that are subject to the Board's jurisdiction; a Member, or any law firm or other consultant of which the Member is a partner or principal, should not act as a representative in any matter upon which the Board may be called upon to vote.
2. A Member should not accept, or offer to accept, either directly or indirectly, any economic opportunity or thing of value, if a substantial possibility exists that the opportunity or thing of value is made available to the Member for the purpose of influencing an official action.
3. A Member should not solicit, accept or agree to accept, directly or indirectly, anything of value from any person having an interest in any matter which is pending before the Board, under circumstances from which it might reasonably be inferred that the donor's purpose is to influence an official action, or as otherwise prohibited by the State Gift Ban Act (5 ILCS 425/1 et seq.).
4. A Member should not use or disclose confidential information acquired in the course of official duties, except as is necessary for the performance of duties as a Member and permitted by law.
5. A Member should not accept compensation, except as provided by law, for the performance of official duties.
6. A Member shall disqualify himself or herself from the consideration of any application for a permit or exemption in which the Member or the Member's spouse parent or child:
(a) has an economic interest in the matter; or (b) is employed by, serves as a consultant for or is a member of the governing board of the applicant or part opposing the applicant.
7. A Member should not participate in any Board action in which the Member is likely to be called to give testimony as a material witness.
8. A Member should not participate in any Board action in which the Member has a personal bias or prejudice concerning a pending matter or in which the Member's impartiality might otherwise reasonably be questioned.
9. A Member should not communicate with any party in support of, or opposed to, a matter pending before the Board or with the representative of any such party concerning such matter, except as a matter of official record. See also Memo from Board Counsel dated August 11, 2003, regarding Prohibition on Improper Communications.

Questions regarding this memorandum should be directed to the Board's Counsel, Anne Murphy, at (312) 814-1100.



Rod R. Blagojevich, Governor
Eric E. Whitaker, M.D., M.P.H., Director

TO: 525-535 West Jefferson Street • Springfield, Illinois 62761-0001 • www.idph.state.il.us
Members, Health Facilities Planning Board

THROUGH: Jeffrey Mark, Executive Secretary

FROM: Anne M. Murphy, Board Counsel *AMM*

DATE: August 8, 2003

RE: State Gift Ban Act (5 ILCS 425/1 et seq.)

I. General Prohibition

- A. No member, officer, employee or judge shall solicit or accept any gift from any prohibited source or in violation of any federal or state statute, rule or regulation. The ban applies to spouses and immediate family living with the member, officer, employee or judge.
- B. "Employee" includes all appointed officials. Members of the State Board of Health are employees subject to the Act.
- C. "Gift" includes any gratuity, discount, entertainment, hospitality, loan, forbearance or other tangible or intangible item having monetary value. Includes cash, food and drink, and honoraria for speaking engagements relating to the official position.
- D. "Prohibited source" includes any person or entity who:
 - 1. as it relates to an employee, is seeking official action by the employee or by the member, officer, judge, governmental entity or other employee directing the employee;
 - 2. in the case of an employee, does business or seeks to do business with the employee or with the member, officer, judge, governmental entity, or other employee directing the employee;

3. in the case of an employee, conducts activities regulated by the employee or by the member, officer, judge, governmental entity, or other employee directing the employee;
4. has interests that may be substantially affected by the performance or non-performance of the official duties of the employee; or
5. is registered or required to be registered with the Secretary of State under the Lobbyist Registration Act.

E. "Governmental Entity" includes without limitation each board of the executive branch. The State Board of Health is a "governmental entity".

II Exceptions

A. The Act includes twenty-three exceptions.

B. Examples of exceptions include:

1. Anything for which the employee pays market value, or anything not used and promptly disposed of through return or by giving the item or an amount equal to its value to an appropriate charity.
2. A gift from a relative (see detailed enumeration in Act) (includes in-laws and fiancé or fiancée).
3. A gift made by an individual on the basis of a personal friendship, unless the employee has reason to believe that under the circumstances, the gift was provided because of official position (see factors in the Act).
4. A commercially reasonable loan.
5. Intra-office and inter-office gifts (see detailed definition in Act).
6. Certain food, lodging, transportation and other benefits: (a) resulting from outside business or employment activities, if the benefits have not been offered or enhanced because of the official position and are customarily provided to others in similar circumstances; (b) customarily furnished by a prospective employer; or (c) provided by a political organization in connection with a fund-raising or campaign event sponsored by that organization.

7. Pension and other benefits from continued participation in a former employer's benefit plan.
8. Informational materials sent to the office, including without limitation books and videotapes.
9. Training (including food and refreshment integral to the program and provided to all attendees), if the training is in the interest of the governmental entity.
10. Certain domestic or foreign educational missions.
11. A gift of personal hospitality of an individual (by other than a registered lobbyist or agent of a foreign principal), at the personal residence of that individual or family or on property or facilities owned by that individual or the individual's family.
12. Golf or tennis; food or refreshments of nominal value and catered food or refreshments; meals or beverages consumed on the premises from which they were purchased.
13. Any item or items from any one prohibited source during any calendar year having a cumulative total value of less than \$100.00.

III. Attendance at Events

- A. An employee may accept an offer of free attendance at a widely attended convention, conference, symposium, dinner, reception, or similar event, provided by the sponsor of the event, if:
 - (1) the employee participates as a speaker or a panel participant by presenting information or performing a ceremonial function; or
 - (2) attendance at the event is appropriate to the performance of civic affairs in Illinois or official duties.
- B. May accept an unsolicited offer of free attendance at the above event for an accompanying individual.
- C. May accept a sponsor's unsolicited offer of free attendance at a charity event, except that reimbursement for transportation and lodging cannot be accepted.
- D. Limitations in Act on what is permitted "free attendance".

IV. Ethics Officer

The head of each governmental entity should designate an ethics officer.

V. Ethics Commissions

Various ethics commissions exist, including one for the Governor.

1. Powers and duties are described in the Act.
2. There is a procedure for complaints to be filed.

VI. Enforcement and Penalties

- A. Commissions can recommend disciplinary action.
- B. The "ultimate jurisdictional authority" can take disciplinary action (Governor).
- C. Knowing violation is a business offence and subject to a fine of up to \$5000.00.
- D. Per P.A. 92-0853, a violation for "solicitation misconduct" has been added for knowing solicitation or receipt of election contributions from a person engaged in a business or activity over which the person has regulatory authority. Violation is a Class A misdemeanor.

A copy of the State Gift Ban Act is attached to this memorandum. You are encouraged to review the Act in its entirety.

Questions regarding this memorandum or the State Gift Ban Act should be directed to the Board's Counsel, Anne Murphy, at (312) 814-1100.

(4) For State employees who are employees of the legislative support services agencies, the Joint Committee on Legislative Support Services.

(5) For judges, the Chief Justice of the Supreme Court.

(6) For State employees of the judicial branch, the Administrative Office of the Illinois Courts.

(7) For State employees of an executive branch constitutional officer, the appropriate executive branch constitutional officer.

(8) For State employees not under the jurisdiction of paragraph (1), (2), (3), (4), (5), (6), or (7), the Governor.

(9) For officers, the General Assembly.

P.A. 90-737, § 5, eff. Jan. 1, 1999. Amended by P.A. 91-782, § 10, eff. June 9, 2000.

125 ILCS 170/1 et seq.

Validity of Act

In the Circuit Court of the Twelfth Judicial Circuit, Will County, Judge Thomas Ewert ruled the entire State Gift Ban Act invalid in the case of Patrick J. Flynn and Dennis J. Jacobs vs. George H. Ryan and James Ryan, 99 CH 340, filed September 8, 2000, reversed on other grounds, Flynn v. Ryan, 199 Ill.2d 430, 771 N.E.2d 414, 264 Ill. Dec. 710.

425/10. Gift ban

§ 10. Gift ban. Except as otherwise provided in this Act, no member, officer, employee, or judge shall solicit or accept any gift from any prohibited source or in violation of any federal or State statute, rule, or regulation. This ban applies to and includes spouses of and immediate family living with the member, officer, employee, or judge. No prohibited source shall offer or make a gift that violates this Section.

P.A. 90-737, § 10, eff. Jan. 1, 1999.

Validity of Act

In the Circuit Court of the Twelfth Judicial Circuit, Will County, Judge Thomas Ewert ruled the entire State Gift Ban Act invalid in the case of Patrick J. Flynn and Dennis J. Jacobs vs. George H. Ryan and James Ryan, 99 CH 340, filed September 8, 2000, reversed on other grounds, Flynn v. Ryan, 199 Ill.2d 430, 771 N.E.2d 414, 264 Ill. Dec. 710.

425/15. Exceptions

§ 15. Exceptions. The restriction in Section 10 does not apply to the following:

(1) Anything for which the member, officer, employee, or judge pays the market value or anything not used and promptly disposed of as provided in Section 25.

(2) A contribution, as defined in Article 9 of the Election Code¹ that is lawfully made under that Act² or attendance at a fundraising event sponsored by a political organization.

(3) A gift from a relative, meaning those people related to the individual as father, mother, son, daughter, brother, sister, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, step-sister, half brother, half sister, and including the father,

mother, grandfather, or grandmother of the individual's spouse and the individual's fiancé or fiancée.

(4) Anything provided by an individual on the basis of a personal friendship unless the member, officer, employee, or judge has reason to believe that, under the circumstances, the gift was provided because of the official position or employment of the member, officer, employee, or judge and not because of the personal friendship.

In determining whether a gift is provided on the basis of personal friendship, the member, officer, employee, or judge shall consider the circumstances under which the gift was offered, such as:

(i) the history of the relationship between the individual giving the gift and the recipient of the gift, including any previous exchange of gifts between those individuals;

(ii) whether to the actual knowledge of the member, officer, employee, or judge the individual who gave the gift personally paid for the gift or sought a tax deduction or business reimbursement for the gift; and

(iii) whether to the actual knowledge of the member, officer, employee, or judge the individual who gave the gift also at the same time gave the same or similar gifts to other members, officers, employees, or judges.

(5) A commercially reasonable loan evidenced in writing with repayment due by a date certain made in the ordinary course of the lender's business.

(6) A contribution or other payments to a legal defense fund established for the benefit of a member, officer, employee, or judge that is otherwise lawfully made.

(7) Intra-office and inter-office gifts. For the purpose of this Act, "intra-office gifts" means:

(i) any gift given to a member or employee of the legislative branch from another member or employee of the legislative branch;

(ii) any gift given to a judge or employee of the judicial branch from another judge or employee of the judicial branch;

(iii) any gift given to an officer or employee of the executive branch from another officer or employee of the executive branch;

(iv) any gift given to an officer or employee of a unit of local government, home rule unit, or school district, from another employee of that unit of local government, home rule unit, or school district;

(v) any gift given to an officer or employee of any other governmental entity not included in item (i), (ii), (iii), or (iv), from another employee of that governmental entity; or

(vi) any gift given to a member or employee of the legislative branch, a judge or employee of the judicial branch, an officer or employee of the executive branch, an officer or employee of a unit of local government, home rule unit, or school district, or an officer or employee of any other governmental entity not included in item (i), (ii), (iii), or (iv) from a member or employee of the legislative branch, a judge or employee of the judicial branch, an officer or employee of the executive branch, an officer or employee of a unit of local government, home rule unit, or school district, or an officer or employee of any other governmental entity.

(8) Food, refreshments, lodging, transportation, and other benefits:

(i) resulting from the outside business or employment activities (or outside activities that are not connected to the

ACT 425. STATE GIFT BAN ACT

Section	Short title.
425/1.	Definitions.
425/5.	Gift ban.
425/10.	Exceptions.
425/15.	Attendance at events.
425/20.	Disposition of gifts.
425/25.	Reimbursement.
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425/50.	Powers and duties.
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425/85.	Effect on Executive Order or similar rule.
425/95.	Repealer.
425/215.	Repealer.
425/225.	Severability.
425/990.	Effective date.

Validity of Act

In the Circuit Court of the Twelfth Judicial Circuit, Will County, Judge Thomas Ewert ruled the entire State Gift Ban Act invalid in the case of Patrick J. Flynn and Dennis J. Jacobs vs. George H. Ryan and James Ryan, 99 CH 340, filed September 8, 2000, reversed on other grounds, Flynn v. Ryan, 199 Ill.2d 430, 771 N.E.2d 414, 264 Ill. Dec. 710.

425/1. Short title

§ 1. Short title. This Act may be cited as the State Gift Ban Act.
P.A. 90-737, § 1, eff. Jan. 1, 1999.

Validity of Act

In the Circuit Court of the Twelfth Judicial Circuit, Will County, Judge Thomas Ewert ruled the entire State Gift Ban Act invalid in the case of Patrick J. Flynn and Dennis J. Jacobs vs. George H. Ryan and James Ryan, 99 CH 340, filed September 8, 2000, reversed on other grounds, Flynn v. Ryan, 199 Ill.2d 430, 771 N.E.2d 414, 264 Ill. Dec. 710.

Title of Act:

An Act concerning governmental ethics. P.A. 90-737, approved Aug. 12, 1998, eff. Jan. 1, 1999.

425/5. Definitions

§ 5. Definitions. As used in this Act:

"Commission" means an ethics commission created by this Act.

"Employee" means all full-time, part-time, and contractual employees, appointed and elected officials, and directors of a governmental entity.

"Gift" means any gratuity, discount, entertainment, hospitality, loan, forbearance, or other tangible or intangible item

having monetary value including, but not limited to, cash, food and drink, and honoraria for speaking engagements related to or attributable to government employment or the official position of an employee, member, officer, or judge.

"Governmental entity" means each office, board, commission, agency, department, authority, institution, university, body politic and corporate, administrative unit, and corporate outgrowth of the executive, legislative, and judicial branches of State government, whether created by the Illinois Constitution, by or in accordance with statute, or by executive order of the Governor. "Governmental entity" includes the Health Facilities Planning Board.

"Judge" means judges and associate judges of the Supreme Court, Appellate Courts, and Circuit Courts.

"Member" means a member of the General Assembly.

"Officer" means a State constitutional officer.

"Political organization" means a party, committee, association, fund, or other organization (whether or not incorporated) organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures, or both, for the function of influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any federal, state, or local public office or office in a political organization, or the election of Presidential or Vice-Presidential electors, whether or not the individual or electors are selected, nominated, elected, or appointed. The term includes the making of expenditures relating to an office described in the preceding sentence that, if incurred by the individual, would be allowable as a federal income tax deduction for trade or business expenses.

"Prohibited source" means any person or entity who:

(1) is seeking official action (i) by the member, officer, or judge or (ii) in the case of an employee, by the employee or by the member, officer, judge, governmental entity, or other employee directing the employee;

(2) does business or seeks to do business (i) with the member, officer, or judge or (ii) in the case of an employee, with the employee or with the member, officer, judge, governmental entity, or other employee directing the employee;

(3) conducts activities regulated (i) by the member, officer, or judge or (ii) in the case of an employee, by the employee or by the member, officer, judge, governmental entity, or other employee directing the employee;

(4) has interests that may be substantially affected by the performance or non-performance of the official duties of the member, officer, employee, or judge; or

(5) is registered or required to be registered with the Secretary of State under the Lobbyist Registration Act.¹

"Ultimate jurisdictional authority" means the following:

(1) For members, partisan staff, and their secretaries, the appropriate legislative leader: President of the Senate, Minority Leader of the Senate, Speaker of the House of Representatives, or Minority Leader of the House of Representatives.

(2) For State employees who are professional staff or employees of the Senate and not covered under item (1), the Senate Operations Commission.

(3) For State employees who are professional staff or employees of the House of Representatives and not covered under item (1), the Speaker of the House of Representatives.

(d) For purposes of this Section, the term "free attendance" may include waiver of all or part of a conference or other fee, the provision of transportation, or the provision of food, refreshments, entertainment, and instructional materials furnished to all attendees as an integral part of the event. The term does not include entertainment collateral to the event, nor does it include food or refreshments taken other than in a group setting with all or substantially all other attendees, except as authorized under subsection (21) of Section 15.

P.A. 90-737, § 20, eff. Jan. 1, 1999.

Validity of Act

In the Circuit Court of the Twelfth Judicial Circuit, Will County, Judge Thomas Ewert ruled the entire State Gift Ban Act invalid in the case of Patrick J. Flynn and Dennis J. Jacobs vs. George H. Ryan and James Ryan, 99 CH 340, filed September 8, 2000, reversed on other grounds, Flynn v. Ryan, 199 Ill.2d 430, 771 N.E.2d 414, 264 Ill. Dec. 710.

425/25. Disposition of gifts

§ 25. Disposition of gifts. The recipient of a gift that is given in violation of this Act may, at his or her discretion, return the item to the donor or give the item or an amount equal to its value to an appropriate charity.

P.A. 90-737, § 25, eff. Jan. 1, 1999.

Validity of Act

In the Circuit Court of the Twelfth Judicial Circuit, Will County, Judge Thomas Ewert ruled the entire State Gift Ban Act invalid in the case of Patrick J. Flynn and Dennis J. Jacobs vs. George H. Ryan and James Ryan, 99 CH 340, filed September 8, 2000, reversed on other grounds, Flynn v. Ryan, 199 Ill.2d 430, 771 N.E.2d 414, 264 Ill. Dec. 710.

425/30. Reimbursement

§ 30. Reimbursement.

(a) A reimbursement (including payment in kind) to a member, officer, employee, or judge from a private source other than a registered lobbyist or agent of a foreign principal for necessary transportation, lodging, and related expenses for travel to a meeting, speaking engagement, fact finding trip, or similar event in connection with the duties of the member, officer, employee, or judge as an office holder or employee shall be deemed to be a reimbursement to the governmental entity and not a gift prohibited by this Act if the member, officer, employee, or judge:

(1) discloses the expenses reimbursed or to be reimbursed and the authorization to the Clerk of the House of Representatives, the Secretary of the Senate, the State Comptroller, fiscal officer, or similar authority as appropriate, within 30 days after the travel is completed; and

(2) in the case of an employee, receives advance authorization, from the member, officer, judge, or other employee under whose direct supervision the employee works to accept reimbursement.

(b) For purposes of subsection (a), events, the activities of which are substantially recreational in nature, shall not be considered to be in connection with the duties of a member, officer, employee, or judge as an office holder or employee.

(c) Each advance authorization to accept reimbursement shall be signed by the member, officer, judge, or other employee under whose direct supervision the employee works and shall include:

(1) the name of the employee;

(2) the name of the person who will make the reimbursement;

(3) the time, place, and purpose of the travel; and

(4) a determination that the travel is in connection with the duties of the employee as an employee and would not create the appearance that the employee is using public employment for private gain.

(d) Each disclosure made under subsection (a) of expenses reimbursed or to be reimbursed shall be signed by the member, officer, or judge (in the case of travel by the member, officer, or judge) or by the member, officer, judge, or other employee under whose direct supervision the employee works (in the case of travel by an employee) and shall include:

(1) a good faith estimate of total transportation expenses reimbursed or to be reimbursed;

(2) a good faith estimate of total lodging expenses reimbursed or to be reimbursed;

(3) a good faith estimate of total meal expenses reimbursed or to be reimbursed;

(4) a good faith estimate of the total of other expenses reimbursed or to be reimbursed; and

(5) a determination that all those expenses are necessary transportation, lodging, and related expenses.

P.A. 90-737, § 30, eff. Jan. 1, 1999.

Validity of Act

In the Circuit Court of the Twelfth Judicial Circuit, Will County, Judge Thomas Ewert ruled the entire State Gift Ban Act invalid in the case of Patrick J. Flynn and Dennis J. Jacobs vs. George H. Ryan and James Ryan, 99 CH 340, filed September 8, 2000, reversed on other grounds, Flynn v. Ryan, 199 Ill.2d 430, 771 N.E.2d 414, 264 Ill. Dec. 710.

425/35. Ethics Officer

§ 35. Ethics Officer. Each officer and the head of each governmental entity shall designate an Ethics Officer for the office or governmental entity. For the legislative branch, the President and Minority Leader of the Senate and the Speaker and Minority Leader of the House of Representatives shall each appoint an ethics officer for the legislative members of their political party. Ethics Officers shall:

(1) review statements of economic interest and disclosure forms of members, officers, judges, senior employees, and contract monitors before they are filed with the Secretary of State; and

(2) provide guidance to members, officers, employees, and judges in the interpretation and implementation of this Act.

P.A. 90-737, § 35, eff. Jan. 1, 1999.

Validity of Act

In the Circuit Court of the Twelfth Judicial Circuit, Will County, Judge Thomas Ewert ruled the entire State Gift Ban Act invalid in the case of Patrick J. Flynn and Dennis J. Jacobs vs. George

responsibility, or on a basis that favors those of higher rank or rate of pay;

(v) in the form of loans from banks and other financial institutions on terms generally available to the public; or

(vi) in the form of reduced membership or other fees for participation in organization activities offered to all government employees by professional organizations if the only restrictions on membership relate to professional qualifications.

(20) A plaque, trophy, or other item that is substantially commemorative in nature and that is extended for presentation.

(21) Golf or tennis; food or refreshments of nominal value and catered food or refreshments; meals or beverages consumed on the premises from which they were purchased.

(22) Donations of products from an Illinois company that are intended primarily for promotional purposes, such as display or free distribution, and are of minimal value to any individual recipient.

(23) Any item or items from any one prohibited source during any calendar year having a cumulative total value of less than \$100.

P.A. 90-737, § 15, eff. Jan. 1, 1999. Amended by P.A. 92-853, § 3, eff. Aug. 28, 2002.

110 ILCS 5/9-1 et seq.

210 ILCS 5/1-1 et seq.

Validity of Act

In the Circuit Court of the Twelfth Judicial Circuit, Will County, Judge Thomas Ewert ruled the entire State Gift Ban Act invalid in the case of Patrick J. Flynn and Dennis J. Jacobs vs. George H. Ryan and James Ryan, 99 CH 340, filed September 8, 2000, reversed on other grounds, Flynn v. Ryan, 199 Ill.2d 430, 771 N.E.2d 414, 264 Ill. Dec. 710.

425/20. Attendance at events

§ 20. Attendance at events.

(a) A member, officer, employee, or judge may accept an offer of free attendance at a widely attended convention, conference, symposium, forum, panel discussion, dinner, viewing, reception, or similar event, provided by the sponsor of the event, if:

(1) the member, officer, employee, or judge participates in the event as a speaker or a panel participant, by presenting information related to government, or by performing a ceremonial function appropriate to the member's, officer's, employee's, or judge's official position or employment; or

(2) attendance at the event is appropriate to the performance of civic affairs in Illinois or the official duties or representative function of the member, officer, employee, or judge.

(b) A member, officer, employee, or judge who attends an event described in subsection (a) may accept a sponsor's unsolicited offer of free attendance at the event for an accompanying individual.

(c) A member, officer, employee, or judge, or the spouse or dependent thereof, may accept a sponsor's unsolicited offer of free attendance at a charity event, except that reimbursement for transportation and lodging may not be accepted in connection with the event.

duties of the member, officer, employee, or judge, as an office holder or employee) of the member, officer, employee, judge, or the spouse of the member, officer, employee, or judge, if the benefits have not been offered or enhanced because of the official position or employment of the member, officer, employee, or judge and are customarily provided to others in similar circumstances;

(ii) customarily provided by a prospective employer in connection with bona fide employment discussions; or

(iii) provided by a political organization in connection with a fundraising or campaign event sponsored by that organization.

(9) Pension and other benefits resulting from continued participation in an employee welfare and benefits plan maintained by a former employer.

(10) Informational materials that are sent to the office of the member, officer, employee, or judge in the form of books, articles, periodicals, other written materials, audiotapes, videotapes, or other forms of communication.

(11) Awards or prizes that are given to competitors in contests or events open to the public, including random drawings.

(12) Honorary degrees (and associated travel, food, refreshments, and entertainment provided in the presentation of degrees and awards).

(13) Training (including food and refreshments furnished to all attendees as an integral part of the training) provided to a member, officer, employee, or judge, if the training is in the interest of the governmental entity.

(14) Educational missions, including meetings with government officials either foreign or domestic, intended to educate public officials on matters of public policy, to which the member, officer, employee, or judge may be invited to participate along with other federal, state, or local public officials and community leaders.

(15) Bequests, inheritances, and other transfers at death.

(16) Anything that is paid for by the federal government, the State, or a governmental entity, or secured by the government or governmental entity under a government contract.

(17) A gift of personal hospitality of an individual other than a registered lobbyist or agent of a foreign principal, including hospitality extended for a nonbusiness purpose by an individual, not a corporation or organization, at the personal residence of that individual or the individual's family or on property or facilities owned by that individual or the individual's family.

(18) Free attendance at a widely attended event permitted under Section 20.

(19) Opportunities and benefits that are:

(i) available to the public or to a class consisting of all employees, officers, members, or judges, whether or not restricted on the basis of geographic consideration;

(ii) offered to members of a group or class in which membership is unrelated to employment or official position;

(iii) offered to members of an organization such as an employee's association or credit union, in which membership is related to employment or official position and similar opportunities are available to large segments of the public through organizations of similar size;

(iv) offered to any group or class that is not defined in a manner that specifically discriminates among government employees on the basis of branch of government or type of

425/55. Powers and duties

§ 55. Powers and duties. Each commission shall have the following powers and duties:

- (1) To promulgate procedures and rules governing the performance of its duties and the exercise of its powers.
- (2) Upon receipt of a signed, notarized, written complaint, to investigate, conduct research, conduct closed hearings and deliberations, issue recommendations, and impose a fine.
- (3) To act only upon the receipt of a written complaint alleging a violation of this Act and not upon its own prerogative.
- (4) To receive information from the public pertaining to its investigations and to require additional information and documents from persons who may have violated this Act.
- (5) To subpoena witnesses and compel the production of books and papers pertinent to an investigation authorized by this Act.
- (6) To request that the Attorney General provide legal advice without charge to the commission.
- (7) To prepare and publish manuals and guides explaining the duties of individuals covered by this Act.
- (8) To prepare public information materials to facilitate compliance, implementation, and enforcement of this Act.
- (9) To submit to each commissioner's respective appointing authority or authorities an annual statistical report for each year consisting of (i) the number of complaints filed, (ii) the number of complaints deemed to sufficiently allege a violation of this Act, (iii) the recommendation, fine, or decision issued for each complaint, (iv) the number of complaints resolved, and (v) the status of pending complaints.

The powers and duties of a commission are limited to matters clearly within the purview of this Act.
P.A. 90-737, § 55, eff. Jan. 1, 1999.

Validity of Act

In the Circuit Court of the Twelfth Judicial Circuit, Will County, Judge Thomas Ewert ruled the entire State Gift Ban Act invalid in the case of Patrick J. Flynn and Dennis J. Jacobs vs. George H. Ryan and James Ryan, 99 CH 340, filed September 8, 2000, reversed on other grounds, Flynn v. Ryan, 199 Ill.2d 430, 771 N.E.2d 414, 264 Ill. Dec. 710.

425/60. Complaint procedure

§ 60. Complaint procedure.

(a) Complaints alleging the violation of this Act shall be filed with the appropriate ethics commission as follows:

- (1) If the complaint alleges a violation by an officer or employee of the executive branch of State government, then the complaint shall be filed with the appropriate ethics commission within the executive branch.
- (2) If the complaint alleges a violation by a judge or employee of the judicial branch of government, then the complaint shall be filed with the judicial ethics commission.
- (3) If the complaint alleges a violation by a member or employee of the legislative branch of State government or any employee not included within paragraphs (1) or (2), then the complaint shall be filed with the legislative ethics commission.

Any complaint received by or incident reported to a member, officer, employee, judge, or governmental entity alleging the violation of this Act shall be forwarded to the appropriate

commission. The complaint shall not be properly filed until submitted to the appropriate commission.

(b) Within 3 business days after the receipt of an ethics complaint, the commission shall send by certified mail, return receipt requested, a notice to the respondent that a complaint has been filed against him or her and a copy of the complaint. The commission shall send by certified mail, return receipt requested, a confirmation of the receipt of the complaint to the complainant within 3 business days after the submittal to the commission. The notices to the respondent and the complainant shall also advise them of the date, time, and place of the meeting on the sufficiency of the complaint and probable cause.

(c) Upon at least 24 hours' public notice of the session, the commission shall meet in a closed session to review the sufficiency of the complaint and, if the complaint is deemed to sufficiently allege a violation of this Act, to determine if there is probable cause, based on evidence presented by the complainant, to proceed. The commission shall issue notice to the complainant and the respondent of the commission's ruling on the sufficiency of the complaint and, if necessary, on probable cause within 7 business days after receiving the complaint. If the complaint is deemed to sufficiently allege a violation of this Act and there is a determination of probable cause, then the commission's notice to the parties shall include a hearing date scheduled within 4 weeks after the complainant's receipt. If the complaint is deemed not to sufficiently allege a violation or if there is no determination of probable cause, then the commission shall send by certified mail, return receipt requested, a notice to the parties of the decision to dismiss the complaint, and that notice shall be made public.

(d) On the scheduled date and upon at least 24 hours' public notice of the meeting, the commission shall conduct a closed meeting on the complaint and allow both parties the opportunity to present testimony and evidence.

(e) Within 6 weeks after the complaint's receipt, the commission shall (i) dismiss the complaint or (ii) issue a preliminary recommendation to the alleged violator and to the violator's ultimate jurisdictional authority or impose a fine upon the violator, or both. The particular findings in the instant case, the preliminary recommendation, and any fine shall be made public.

(f) Within 7 business days after the issuance of the preliminary recommendation or imposition of a fine, or both, the respondent may file a written demand for a public hearing on the complaint. The filing of the demand shall stay the enforcement of the preliminary recommendation or fine. Within 2 weeks after receiving the demand, the commission shall conduct a public hearing on the complaint after at least 24 hours' public notice of the hearing and allow both parties the opportunity to present testimony and evidence. Within 5 business days, the commission shall publicly issue a final recommendation to the alleged violator and to the violator's ultimate jurisdictional authority or impose a fine upon the violator, or both.

(g) If a complaint is filed during the 60 days preceding the date of any election at which the respondent is a candidate, the commission shall render its decision as required under subsection (e) within 7 days after the complaint is filed, and during the 7 days preceding that election, the commission shall render such decision before the date of that election, if possible.

(h) A commission may levy a fine of up to \$5,000 against any person who knowingly files a frivolous complaint alleging a violation of this Act.

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H. Ryan and James Ryan, 99 CH 340, filed September 8, 2000, reversed on other grounds, Flynn v. Ryan, 199 Ill.2d 430, 771 N.E.2d 414, 264 Ill. Dec. 710.

425/40. Further restrictions

§ 40. Further restrictions. A governmental entity may adopt or maintain policies that are more restrictive than those set forth in this Act and shall continue to follow any existing policies, statutes, or regulations that are more restrictive or are in addition to those set forth in this Act. P.A. 90-737, § 40, eff. Jan. 1, 1999.

Validity of Act

In the Circuit Court of the Twelfth Judicial Circuit, Will County, Judge Thomas Ewert ruled the entire State Gift Ban Act invalid in the case of Patrick J. Flynn and Dennis J. Jacobs vs. George H. Ryan and James Ryan, 99 CH 340, filed September 8, 2000, reversed on other grounds, Flynn v. Ryan, 199 Ill.2d 430, 771 N.E.2d 414, 264 Ill. Dec. 710.

425/45. Ethics Commissions

§ 45. Ethics Commissions.

(a) Ethics Commissions are created for the branches of government as provided in this Section. The initial appointments to each commission shall be made within 60 days after the effective date of this Act. The appointing authorities shall appoint commissioners who have experience holding governmental office or employment and shall appoint commissioners from the general public or from within the appointing authority's branch of government. With respect to each of the ethics commissions designated in items (1), (2), (3), (4), and (5), no more than 4 of the 7 appointees shall be of the same political party. The appointee shall establish his or her political party affiliation by his or her last record of voting in a party primary election.

(1) For the ethics commission of the Governor there shall be 7 commissioners appointed by the Governor. This ethics commission shall have jurisdiction over all of the executive branch of State government except the officers specified in items (2), (3), (4), and (5) and their employees.

(2) For the ethics commission of the Attorney General there shall be 7 commissioners appointed by the Attorney General.

(3) For the ethics commission of the Secretary of State there shall be 7 commissioners appointed by the Secretary of State.

(4) For the ethics commission of the Comptroller there shall be 7 commissioners appointed by the Comptroller.

(5) For the ethics commission of the Treasurer there shall be 7 commissioners appointed by the Treasurer.

(6) For the ethics commission of the legislative branch there shall be 8 commissioners. The Speaker and the Minority Leader of the House of Representatives and the President and the Minority Leader of the Senate shall each appoint 2 commissioners.

(7) For the ethics commission of the judicial branch there shall be 6 commissioners. The Chief Justice of the Supreme Court shall appoint the commissioners with the concurrence of 3 other Supreme Court Judges.

(b) At the first meeting of each commission, the initial appointees shall draw lots to divide into 2 groups. Commis-

sioners of the first group shall serve 2-year terms, and commissioners of the second group shall serve one-year terms. Thereafter commissioners shall be appointed to 2-year terms. Commissioners may be reappointed to serve subsequent terms.

(c) The respective appointing authority or authorities may remove a commissioner appointed by that authority or those authorities in case of incompetency, neglect of duty, or malfeasance in office after service on the commissioner by certified mail, return receipt requested, of a copy of the written charges against the commissioner and an opportunity to be heard in person or by counsel upon not less than 10 days' notice. Vacancies shall be filled by the appropriate appointing authority or authorities.

(d) Each commission shall meet as often as necessary to perform its duties. Except for the ethics commission for the legislative branch, at the first meeting of each commission the commissioners shall choose a chairperson from their number. For the ethics commission for the legislative branch, the President of the Senate and whichever of the Speaker or Minority Leader of the House is of the same political party as the President shall jointly designate one member as co-chair; the other 2 legislative leaders shall jointly designate the other co-chair. Meetings shall be held at the call of the chairperson or any 2 commissioners. Official action by the commission shall require the affirmative vote of the number of commissioners provided in this subsection, and a quorum shall consist of the number of commissioners provided in this subsection. The number of commissioners required for a quorum and the affirmative vote of each ethics commission shall be as follows: for the Governor, 4; for the Attorney General, 4; for the Secretary of State, 4; for the Treasurer, 4; for the Comptroller, 4; for the legislative branch, 5; for the judicial branch, 4. Commissioners may be reimbursed for their reasonable expenses actually incurred in the performance of their duties.

P.A. 90-737, § 45, eff. Jan. 1, 1999.

Validity of Act

In the Circuit Court of the Twelfth Judicial Circuit, Will County, Judge Thomas Ewert ruled the entire State Gift Ban Act invalid in the case of Patrick J. Flynn and Dennis J. Jacobs vs. George H. Ryan and James Ryan, 99 CH 340, filed September 8, 2000, reversed on other grounds, Flynn v. Ryan, 199 Ill.2d 430, 771 N.E.2d 414, 264 Ill. Dec. 710.

425/50. Staff

§ 50. Staff. Each commission may employ necessary staff persons and may contract for services that cannot be satisfactorily performed by the staff.

P.A. 90-737, § 50, eff. Jan. 1, 1999.

Validity of Act

In the Circuit Court of the Twelfth Judicial Circuit, Will County, Judge Thomas Ewert ruled the entire State Gift Ban Act invalid in the case of Patrick J. Flynn and Dennis J. Jacobs vs. George H. Ryan and James Ryan, 99 CH 340, filed September 8, 2000, reversed on other grounds, Flynn v. Ryan, 199 Ill.2d 430, 771 N.E.2d 414, 264 Ill. Dec. 710.

425/85. Home rule preemption

§ 85. Home rule preemption. A home rule unit may not regulate the prohibition of gifts to members, officers, employees, or judges or the enforcement of these provisions in a manner inconsistent with this Act. This Section is a limitation under subsection (i) of Section 6 of Article VII of the Illinois Constitution on the concurrent exercise by home rule units of powers and functions exercised by the State.

P.A. 90-737, § 85, eff. Jan. 1, 1999.

Validity of Act

In the Circuit Court of the Twelfth Judicial Circuit, Will County, Judge Thomas Ewert ruled the entire State Gift Ban Act invalid in the case of Patrick J. Flynn and Dennis J. Jacobs vs. George H. Ryan and James Ryan, 99 CH 340, filed September 8, 2000, reversed on other grounds, Flynn v. Ryan, 199 Ill.2d 430, 771 N.E.2d 414, 264 Ill. Dec. 710.

425/95. Effect on Executive Order or similar rule

§ 95. Effect on Executive Order or similar rule. This Act supersedes the ethics reforms provided for in (i) Part I (Ban On Gifts To State Employees From Prohibited Sources) contained in Executive Order No. 2 (1997) and (ii) any other executive, administrative, or similar order, policy, or rule promulgated by an officer, member, judge, employee, or governmental entity that conflicts with or is less restrictive than this Act.

P.A. 90-737, § 95, eff. Jan. 1, 1999.

Validity of Act

In the Circuit Court of the Twelfth Judicial Circuit, Will County, Judge Thomas Ewert ruled the entire State Gift Ban Act invalid in the case of Patrick J. Flynn and Dennis J. Jacobs vs. George H. Ryan and James Ryan, 99 CH 340, filed September 8, 2000, reversed on other grounds, Flynn v. Ryan, 199 Ill.2d 430, 771 N.E.2d 414, 264 Ill. Dec. 710.

425/215. Repealer

§ 215. The Illinois Governmental Ethics Act is amended by repealing Section 3-101.¹

P.A. 90-737, § 215, eff. Jan. 1, 1999.

¹ 5 ILCS 420/3-101 (repealed).

Validity of Act

In the Circuit Court of the Twelfth Judicial Circuit, Will County, Judge Thomas Ewert ruled the entire State Gift Ban Act invalid in the case of Patrick J. Flynn and Dennis J. Jacobs vs. George H. Ryan and James Ryan, 99 CH 340, filed September 8, 2000, reversed on other grounds, Flynn v. Ryan, 199 Ill.2d 430, 771 N.E.2d 414, 264 Ill. Dec. 710.

425/225. Repealer

§ 225. The Election Code is amended by repealing Section 29-14.¹

P.A. 90-737, § 225, eff. Jan. 1, 1999.

¹ 10 ILCS 5/29-14 (repealed).

Validity of Act

In the Circuit Court of the Twelfth Judicial Circuit, Will County, Judge Thomas Ewert ruled the entire State Gift Ban Act invalid in the case of Patrick J. Flynn and Dennis J. Jacobs vs. George H. Ryan and James Ryan, 99 CH 340, filed September 8, 2000, reversed on other grounds, Flynn v. Ryan, 199 Ill.2d 430, 771 N.E.2d 414, 264 Ill. Dec. 710.

425/990. Severability

§ 990. Severability. The provisions of this Act are severable under Section 1.31 of the Statute on Statutes.¹

P.A. 90-737, § 990, eff. Jan. 1, 1999.

¹ 5 ILCS 70/1.31.

Validity of Act

In the Circuit Court of the Twelfth Judicial Circuit, Will County, Judge Thomas Ewert ruled the entire State Gift Ban Act invalid in the case of Patrick J. Flynn and Dennis J. Jacobs vs. George H. Ryan and James Ryan, 99 CH 340, filed September 8, 2000, reversed on other grounds, Flynn v. Ryan, 199 Ill.2d 430, 771 N.E.2d 414, 264 Ill. Dec. 710.

425/999. Effective date

§ 999. Effective date. This Act takes effect January 1, 1999.

P.A. 90-737, § 999, eff. Jan. 1, 1999.

Validity of Act

In the Circuit Court of the Twelfth Judicial Circuit, Will County, Judge Thomas Ewert ruled the entire State Gift Ban Act invalid in the case of Patrick J. Flynn and Dennis J. Jacobs vs. George H. Ryan and James Ryan, 99 CH 340, filed September 8, 2000, reversed on other grounds, Flynn v. Ryan, 199 Ill.2d 430, 771 N.E.2d 414, 264 Ill. Dec. 710.

TIME STANDARDIZATION**ACT 440. TIME STANDARDIZATION ACT****Section**

- 440/0.01. Short title.
- 440/1. Establishment—Construction.
- 440/2. Political subdivisions—Limitation of powers.
- 440/3. Violations of provisions of Act.
- 440/4. Severability clause.

440/0.01. Short title

§ 0.01. Short title. This Act may be cited as the Time Standardization Act.

Laws 1959, p. 124, § 0.01, added by P.A. 86-1324, § 34, eff. Sept. 6, 1990.

Formerly Ill.Rev.Stat.1991, ch. 1, ¶ 3200.

Title of Act:

An Act to provide for the standardization of time and providing penalties for violations thereof. Laws 1959, p. 124, approved April 29, 1959, eff. July 1, 1959.

(i) A complaint alleging the violation of this Act must be filed within one year after the alleged violation.
P.A. 90-737, § 60, eff. Jan. 1, 1999.

Validity of Act

In the Circuit Court of the Twelfth Judicial Circuit, Will County, Judge Thomas Ewert ruled the entire State Gift Ban Act invalid in the case of Patrick J. Flynn and Dennis J. Jacobs vs. George H. Ryan and James Ryan, 99 CH 340, filed September 8, 2000, reversed on other grounds, Flynn v. Ryan, 199 Ill.2d 430, 771 N.E.2d 414, 264 Ill. Dec. 710.

425/65. Enforcement

§ 65. Enforcement.

(a) A commission may recommend to a person's ultimate jurisdictional authority disciplinary action against the person if it determines to be in violation of this Act. The recommendation may prescribe the following courses of action:

- (1) A reprimand.
- (2) To cease and desist the offensive action.
- (3) A return or refund of money or other items, or an amount of restitution for services, received in violation of this Act.
- (4) Dismissal, removal from office, impeachment, or expulsion.
- (5) Donation to a charity of an amount equal to the gift.

(b) A commission may impose a fine of up to \$1,000 per violation to be deposited into the General Revenue Fund.

(c) The ultimate jurisdictional authority of a person who violates an ethics provision may take disciplinary action against the person as recommended by a commission or as it deems appropriate, to the extent it is constitutionally permissible for the ultimate jurisdictional authority to take that action. The ultimate jurisdictional authority shall make its action, or determination to take no action, available to the public.

(d) If after a hearing the commission finds no violation of this Act, the commission shall dismiss the complaint.

P.A. 90-737, § 65, eff. Jan. 1, 1999.

Validity of Act

In the Circuit Court of the Twelfth Judicial Circuit, Will County, Judge Thomas Ewert ruled the entire State Gift Ban Act invalid in the case of Patrick J. Flynn and Dennis J. Jacobs vs. George H. Ryan and James Ryan, 99 CH 340, filed September 8, 2000, reversed on other grounds, Flynn v. Ryan, 199 Ill.2d 430, 771 N.E.2d 414, 264 Ill. Dec. 710.

425/70. Penalty

§ 70. Penalty. An individual who knowingly violates this Act is guilty of a business offense and subject to a fine of up to \$5,000.

P.A. 90-737, § 70, eff. Jan. 1, 1999.

Validity of Act

In the Circuit Court of the Twelfth Judicial Circuit, Will County, Judge Thomas Ewert ruled the entire State Gift Ban Act invalid in the case of Patrick J. Flynn and Dennis J. Jacobs vs. George

H. Ryan and James Ryan, 99 CH 340, filed September 8, 2000, reversed on other grounds, Flynn v. Ryan, 199 Ill.2d 430, 771 N.E.2d 414, 264 Ill. Dec. 710.

425/75. Review

§ 75. Review. A commission's decision to dismiss a complaint or its recommendation is not a final administrative decision, but its imposition of a fine is a final administrative decision subject to judicial review under the Administrative Review Law of the Code of Civil Procedure.¹

P.A. 90-737, § 75, eff. Jan. 1, 1999.

1 735 ILCS 5/3-101 et seq.

Validity of Act

In the Circuit Court of the Twelfth Judicial Circuit, Will County, Judge Thomas Ewert ruled the entire State Gift Ban Act invalid in the case of Patrick J. Flynn and Dennis J. Jacobs vs. George H. Ryan and James Ryan, 99 CH 340, filed September 8, 2000, reversed on other grounds, Flynn v. Ryan, 199 Ill.2d 430, 771 N.E.2d 414, 264 Ill. Dec. 710.

425/80. Exemption

§ 80. Exemption. The proceedings conducted and documents generated under this Act are exempt from the provisions of the Open Meetings Act¹ and the Freedom of Information Act.²

P.A. 90-737, § 80, eff. Jan. 1, 1999.

1 5 ILCS 120/1 et seq.

2 5 ILCS 140/1 et seq.

Validity of Act

In the Circuit Court of the Twelfth Judicial Circuit, Will County, Judge Thomas Ewert ruled the entire State Gift Ban Act invalid in the case of Patrick J. Flynn and Dennis J. Jacobs vs. George H. Ryan and James Ryan, 99 CH 340, filed September 8, 2000, reversed on other grounds, Flynn v. Ryan, 199 Ill.2d 430, 771 N.E.2d 414, 264 Ill. Dec. 710.

425/83. Units of local government; school districts

§ 83. Units of local government; school districts. Within 6 months after the effective date of this Act, units of local government, home rule units, and school districts shall prohibit the solicitation and acceptance of gifts, and shall enforce those prohibitions, in a manner substantially in accordance with the requirements of this Act and shall adopt provisions no less restrictive than the provisions of this Act. Non-salaried appointed or elected officials may be exempted.

P.A. 90-737, § 83, eff. Jan. 1, 1999.

Validity of Act

In the Circuit Court of the Twelfth Judicial Circuit, Will County, Judge Thomas Ewert ruled the entire State Gift Ban Act invalid in the case of Patrick J. Flynn and Dennis J. Jacobs vs. George H. Ryan and James Ryan, 99 CH 340, filed September 8, 2000, reversed on other grounds, Flynn v. Ryan, 199 Ill.2d 430, 771 N.E.2d 414, 264 Ill. Dec. 710.

officer, employee, or judge the individual who gave the gift personally paid for the gift or sought a tax deduction or business reimbursement for the gift; and

(iii) whether to the actual knowledge of the member, officer, employee, or judge the individual who gave the gift also at the same time gave the same or similar gifts to other members, officers, employees, or judges.

(5) A commercially reasonable loan evidenced in writing with repayment due by a date certain made in the ordinary course of the lender's business.

(6) A contribution or other payments to a legal defense fund established for the benefit of a member, officer, employee, or judge that is otherwise lawfully made.

(7) Intra-office and inter-office gifts. For the purpose of this Act, "intra-office gifts" means:

(i) any gift given to a member or employee of the legislative branch from another member or employee of the legislative branch;

(ii) any gift given to a judge or employee of the judicial branch from another judge or employee of the judicial branch;

(iii) any gift given to an officer or employee of the executive branch from another officer or employee of the executive branch;

(iv) any gift given to an officer or employee of a unit of local government, home rule unit, or school district, from another employee of that unit of local government, home rule unit, or school district;

(v) any gift given to an officer or employee of any other governmental entity not included in item (i), (ii), (iii), or (iv), from another employee of that governmental entity; or

(vi) any gift given to a member or employee of the legislative branch, a judge or employee of the judicial branch, an officer or employee of the executive branch, an officer or employee of a unit of local government, home rule unit, or school district, or an officer or employee of any other governmental entity not included in item (i), (ii), (iii), or (iv) from a member or employee of the legislative branch, a judge or employee of the judicial branch, an officer or employee of the executive branch, an officer or employee of a unit of local government, home rule unit, or school district, or an officer or employee of any other governmental entity.

(8) Food, refreshments, lodging, transportation, and other benefits:

(i) resulting from the outside business or employment activities (or outside activities that are not connected to the duties of the member, officer, employee, or judge, as an office holder or employee) of the member, officer, employee, judge, or the spouse of the member, officer, employee, or judge, if the benefits have not been offered or enhanced because of the official position or employment of the member, officer, employee, or judge and are customarily provided to others in similar circumstances;

(ii) customarily provided by a prospective employer in connection with bona fide employment discussions; or

(iii) provided by a political organization in

State of Illinois
Public Acts
92nd General Assembly

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Public Act 92-0853

HB4680 Enrolled

LRB9213122JMmb

AN ACT in relation to elections.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 3. The State Gift Ban Act is amended by changing Section 15 as follows:

(5 ILCS 425/15)

Sec. 15. Exceptions. The restriction in Section 10 does not apply to the following:

(1) Anything for which the member, officer, employee, or judge pays the market value or anything not used and promptly disposed of as provided in Section 25.

(2) A contribution, as defined in Article 9 of the Election Code that is lawfully made under that Act or attendance at a fundraising event sponsored by a political organization.

(3) A gift from a relative, meaning those people related to the individual as father, mother, son, daughter, brother, sister, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, and including the father, mother, grandfather, or grandmother of the individual's spouse and the individual's fiance or fiancee.

(4) Anything provided by an individual on the basis of a personal friendship unless the member, officer, employee, or judge has reason to believe that, under the circumstances, the gift was provided because of the official position or employment of the member, officer, employee, or judge and not because of the personal friendship.

In determining whether a gift is provided on the basis of personal friendship, the member, officer, employee, or judge shall consider the circumstances under which the gift was offered, such as:

(i) the history of the relationship between the individual giving the gift and the recipient of the gift, including any previous exchange of gifts between those individuals;

(ii) whether to the actual knowledge of the member,

financial institutions on terms generally available to the public; or

(vi) in the form of reduced membership or other fees for participation in organization activities offered to all government employees by professional organizations if the only restrictions on membership relate to professional qualifications.

(20) A plaque, trophy, or other item that is substantially commemorative in nature and that is extended for presentation.

(21) Golf or tennis; food or refreshments of nominal value and catered food or refreshments; meals or beverages consumed on the premises from which they were purchased.

(22) Donations of products from an Illinois company that are intended primarily for promotional purposes, such as display or free distribution, and are of minimal value to any individual recipient.

(23) Any item or items from any one prohibited source during any calendar year having a cumulative total value of less than \$100. An item of nominal value such as a greeting card, baseball cap, or T-shirt.

(Source: P.A. 90-737, eff. 1-1-99.)

Section 5. The Election Code is amended by adding Section 9-25.2 as follows:

(10 ILCS 5/9-25.2 new)

Sec. 9-25.2. Contributions; candidate or treasurer of political committee.

(a) No candidate may knowingly receive any contribution solicited or received in violation of Section 33-3.1 or Section 33-3.2 of the Criminal Code of 1961.

(b) The receipt of political contributions in violation of this Section shall constitute a Class A misdemeanor.

The appropriate State's Attorney or the Attorney General shall bring actions in the name of the people of the State of Illinois.

Section 10. The Criminal Code of 1961 is amended by adding Sections 33-3.1 and 33-3.2 as follows:

(720 ILCS 5/33-3.1 new)

Sec. 33-3.1. Solicitation misconduct (State government).

(a) An employee of an executive branch constitutional officer commits solicitation misconduct (State government) when, at any time, he or she knowingly solicits or receives contributions, as that term is defined in Section 9-1.4 of the Election Code, from a person engaged in a business or activity over which the person has regulatory authority.

(b) For the purpose of this Section, "employee of an executive branch constitutional officer" means a full-time or part-time salaried employee, full-time or part-time salaried appointee, or any contractual employee of any office, board, commission, agency, department, authority, administrative unit, or corporate outgrowth under the jurisdiction of an executive branch constitutional officer; and "regulatory authority" means having the responsibility to investigate, inspect, license, or enforce regulatory measures necessary to the requirements of any State or federal statute or regulation relating to the business or activity.

connection with a fundraising or campaign event sponsored by that organization.

(9) Pension and other benefits resulting from continued participation in an employee welfare and benefits plan maintained by a former employer.

(10) Informational materials that are sent to the office of the member, officer, employee, or judge in the form of books, articles, periodicals, other written materials, audiotapes, videotapes, or other forms of communication.

(11) Awards or prizes that are given to competitors in contests or events open to the public, including random drawings.

(12) Honorary degrees (and associated travel, food, refreshments, and entertainment provided in the presentation of degrees and awards).

(13) Training (including food and refreshments furnished to all attendees as an integral part of the training) provided to a member, officer, employee, or judge, if the training is in the interest of the governmental entity.

(14) Educational missions, including meetings with government officials either foreign or domestic, intended to educate public officials on matters of public policy, to which the member, officer, employee, or judge may be invited to participate along with other federal, state, or local public officials and community leaders.

(15) Bequests, inheritances, and other transfers at death.

(16) Anything that is paid for by the federal government, the State, or a governmental entity, or secured by the government or governmental entity under a government contract.

(17) A gift of personal hospitality of an individual other than a registered lobbyist or agent of a foreign

principal, including hospitality extended for a nonbusiness purpose by an individual, not a corporation or organization, at the personal residence of that individual or the individual's family or on property or facilities owned by that individual or the individual's family.

(18) Free attendance at a widely attended event permitted under Section 20.

(19) Opportunities and benefits that are:

(i) available to the public or to a class consisting of all employees, officers, members, or judges, whether or not restricted on the basis of geographic consideration;

(ii) offered to members of a group or class in which membership is unrelated to employment or official position;

(iii) offered to members of an organization such as an employee's association or credit union, in which membership is related to employment or official position and similar opportunities are available to large segments of the public through organizations of similar size;

(iv) offered to any group or class that is not defined in a manner that specifically discriminates among government employees on the basis of branch of government or type of responsibility, or on a basis that favors those of higher rank or rate of pay;

(v) in the form of loans from banks and other

officer of a local government convicted of committing solicitation misconduct (local government) forfeits his or her employment.

(e) An employee of a chief executive officer of a local government who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee or on behalf of the employee or others in furtherance of the enforcement of this Section shall be entitled to all relief necessary to make the employee whole.

(f) Any person who knowingly makes a false report of solicitation misconduct (local government) to the State Police, the Attorney General, a State's Attorney, or any law enforcement official is guilty of a Class C misdemeanor.

Section 99. Effective date. This Act takes effect upon becoming law.

Passed in the General Assembly June 02, 2002.

Approved August 28, 2002.

Effective August 28, 2002.

[Top]

(c) An employee of an executive branch constitutional officer, including one who does not have regulatory authority, commits a violation of this Section if that employee knowingly acts in concert with an employee of an executive branch constitutional officer who does have regulatory authority to solicit or receive contributions in violation of this Section.

(d) Solicitation misconduct (State government) is a Class A misdemeanor. An employee of an executive branch constitutional officer convicted of committing solicitation misconduct (State government) forfeits his or her employment.

(e) An employee of an executive branch constitutional officer who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee or on behalf of the employee or others in furtherance of the enforcement of this Section shall be entitled to all relief necessary to make the employee whole.

(f) Any person who knowingly makes a false report of solicitation misconduct (State government) to the State Police, the Attorney General, a State's Attorney, or any law enforcement official is guilty of a Class C misdemeanor.

(720 ILCS 5/33-3.2 new)

Sec. 33-3.2. Solicitation misconduct (local government).

(a) An employee of a chief executive officer of a local government commits solicitation misconduct (local government) when, at any time, he or she knowingly solicits or receives contributions, as that term is defined in Section 9-1.4 of the Election Code, from a person engaged in a business or activity over which the person has regulatory authority.

(b) For the purpose of this Section, "chief executive officer of a local government" means an executive officer of a county, township or municipal government or any administrative subdivision under jurisdiction of the county, township, or municipal government including but not limited to: chairman or president of a county board or commission, mayor or village president, township supervisor, county executive, municipal manager, assessor, auditor, clerk, coroner, recorder, sheriff or State's Attorney; "employee of a chief executive officer of a local government" means a full-time or part-time salaried employee, full-time or part-time salaried appointee, or any contractual employee of any office, board, commission, agency, department, authority, administrative unit, or corporate outgrowth under the jurisdiction of a chief executive officer of a local government; and "regulatory authority" means having the responsibility to investigate, inspect, license, or enforce regulatory measures necessary to the requirements of any State, local, or federal statute or regulation relating to the business or activity.

(c) An employee of a chief executive officer of a local government, including one who does not have regulatory authority, commits a violation of this Section if that employee knowingly acts in concert with an employee of a chief executive officer of a local government who does have regulatory authority to solicit or receive contributions in violation of this Section.

(d) Solicitation misconduct (local government) is a Class A misdemeanor. An employee of a chief executive



Rod R. Blagojevich, Governor
Eric E. Whitaker, M.D., M.P.H., Director

TO: 525-535 West Jefferson Street, Springfield, Illinois 62761-0001 • www.idph.state.il.us
Members, Health Facilities Planning Board

THROUGH: Jeffrey Mark, Executive Secretary

FROM: Anne M. Murphy, Board Counsel

A handwritten signature in black ink, appearing to read "AMM", enclosed within a hand-drawn circle.

DATE: August 8, 2003

RE: **Prohibition on Improper Communications**

Public Act 91-782, effective June 9, 2000, amended the Illinois Health Facilities Planning Act ("Act") to include an express prohibition on ex parte communications. This statutory amendment enacted a policy established by the Board in 1992. The purpose of that policy statement was to assist Board members and Agency (IDPH) staff in determining what communications regarding Board matters were not permitted because they might jeopardize the validity of subsequent Board actions.

In general, both the earlier Board policy statement and its present statutory counterpart seek to assure that projects coming before the Board are determined on the merits of a public record, sufficient to assure full access by the general public and to permit meaningful judicial review.

Section 4.2 of the Act (20 ILCS 39060/4.2) generally prohibits communications between the Board, a Board member, employee or hearing officer, and any other person, regarding the substance of a pending application for a permit and that takes place outside of the record. "Ex parte communication" means a communication between a person who is not a Board Member or employee and a Board Member or employee, that reflects on the substance of a pending Board proceeding and that takes place outside the record of that proceeding.

The prohibition does not include: (1) communications between or among Board members, staff, legal counsel or their personal assistants; (2) communications regarding matters other than permit applications, such as rule-making, applications for exemptions, declaratory rulings, or applications concerning the administration of the Health Care Worker Self-Referral Act; (3) communications regarding matters of procedure and practice, including the status of an application; or (4) communications by employees constituting technical assistance that is "not intended to influence any decision on the application," and is documented in writing within 10 business days. Note however, that the Board is subject to the Open Meetings Act. (20 ILCS 3960/4.1).

For the purposes of this prohibition, "employee" includes any person the Board or Agency employs on a full-time, part-time, contract or intern basis.

Ex parte communications "shall be made a part of the record of the pending matter, including all
improving public health. One community at a time.

written communications, all written responses to the communications, and a memorandum stating the substance of all oral communications and all responses made and the identity of each person from who the ex parte communication was received." (Section 20 ILCS 3960/4.2(c)) Board members receiving ex parte communications should immediately report the occurrence to the Executive Secretary or Board Counsel.

Subsection (f) provides that in the event an ex parte communication occurs, appropriate and necessary action must be taken by the Board member or hearing officer to ensure that the violation does not prejudice any party or adversely affect the fairness of the proceedings.

It should be noted that, based upon the legislative floor debates regarding this provision, neither the incorporation within the record of the application nor the curative actions required under subsection (f) remove the "ex parte" character of the communication.

The final version of this amendatory legislation failed to provide a penalty for violation of the prohibition.

Questions regarding this memorandum may be directed to the Board's Counsel, Anne Murphy, at (312) 814-1100

A copy of Section 4.2 of the Act is attached to this Memorandum.

Repeal of Act

For repeal of Act, see 20 ILCS 3960/19.6.

3960/4.2. Ex parte communications

§ 4.2. Ex parte communications.

(a) Except in the disposition of matters that agencies are authorized by law to entertain or dispose of on an ex parte basis including, but not limited to rule making, the State Board, any State Board member, employee, or a hearing officer shall not engage in ex parte communication, after an application for a permit is received, in connection with the substance of any application for a permit with any person or party or the representative of any party.

(b) A State Board member or employee may communicate with other members or employees and any State Board member or hearing officer may have the aid and advice of one or more personal assistants.

(c) An ex parte communication received by the State Board, any State Board member, employee, or a hearing officer shall be made a part of the record of the pending matter, including all written communications, all written responses to the communications, and a memorandum stating the substance of all oral communications and all responses made and the identity of each person from whom the ex parte communication was received.

(d) "Ex parte communication" means a communication between a person who is not a State Board member or employee and State Board member or employee that reflects on the substance of a pending State Board proceeding and that takes place outside the record of the proceeding. Communications regarding matters of procedure and practice, such as the format of pleading, number of copies required, manner of service, and status of proceedings, are not considered ex parte communications. Technical assistance with respect to an application, not intended to influence any decision on the application, may be provided by employees to the applicant. Any assistance shall be documented in writing

by the applicant and employees within 10 business days after the assistance is provided.

(e) For purposes of this Section, "employee" means a person the State Board or the Agency employs on a full-time, part-time, contract, or intern basis.

(f) The State Board, State Board member, or hearing examiner presiding over the proceeding, in the event of a violation of this Section, must take whatever action is necessary to ensure that the violation does not prejudice any party or adversely affect the fairness of the proceedings.

(g) Nothing in this Section shall be construed to prevent the State Board or any member of the State Board from consulting with the attorney for the State Board.

P.A. 78-1156, § 4.2, added by P.A. 91-782, § 15, eff. June 9, 2000.