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**October 2017**

# LIBRARY SYSTEM BOARD COMPLIANCE MEMORANDUM



Pursuant to the Administrative Rules of the Illinois State Library, specifically 23 ILAC 3030.265(b)(7), as part of the Annual Application, a certification is required that during the preceding 12 months, the Library System Board of Directors has reviewed and is in compliance with applicable provisions of several, specifically listed statutes. This Memorandum is furnished to the Illinois Heartland Library System Board of Directors to insure compliance with that review and certification. The last page hereof is a checklist for each member to indicate they have reviewed the listed statutes and, to the best of their knowledge, the Library System, Board and staff are in compliance therewith. If in addition to these summaries, any member would like to review the entire statute, with the exception of the federal Americans With Disabilities Act (which is available here: https://www.ada.gov/pubs/ada.htm), each of the other statutes is available in full at: http://www.ilga.gov/legislation/ilcs/ilcs.asp. If desired, secondary sources on each statute can also be provided if any questions arise.

## Illinois Open Meetings Act 5 ILCS 120

The purpose of the Open Meetings Act is to provide the widest access to the deliberations of public bodies for the public. The Act applies to the library system board and "any subsidiary bodies" including but not limited to committees and subcommittees which are supported in part by tax revenues, but does not include staff or employee meetings.

A "meeting" is any gathering of a majority of a quorum of the members of the body. An informal gathering at a social occasion is not a meeting unless it was held for the purpose of discussing business or is conducted as a subterfuge. Contemporaneous interactive communication (like telephones, texting, etc. and possibly emailing) are considered a gathering or meeting for this purpose. Any such “meeting” without proper notice, agenda and minutes is a violation of the Act. The board by policy may permit electronic attendance at meetings. Most bodies are required to have a quorum physically present in one location, but the Act contains a provision for systems of at least 4,500 square miles, that requirement is excused.

The Act does not require the closing of any meeting but does permit certain discussions in "closed" or executive sessions including:

1. Collective bargaining matters;
2. Appointment, employment, compensation, dismissals or hearings on complaints against employees;

3. Consideration for appointment of a member to fill a board vacancy or discipline or removal from office;

4. Consideration of the acquisition or lease of real property or the selling (or leasing) price of real property;

5. Discussion of litigation filed or pending or where there is a specific determination that litigation is probable or imminent (the basis for this must be recorded in the closed meeting minutes);

6. Settlement of claim or establishing reserves for lawsuit defense or discussion of risk management information;

7. When federal statutes or regulations require closed sessions; and

8. Emergency security procedures and personnel or equipment to respond to actual dangers to safety (the basis of the actual danger must be described in the motion to close the meeting).

These exceptions (and the others listed in the Act) are to be narrowly construed and permit closing only when the meeting is "clearly within their scope".

The Act contains very specific requirements concerning the notice and conduct of meetings. Written minutes must be kept of all meetings, including closed ones, and a "verbatim recording" of all closed sessions, typically an audio recording, is also required. The minutes of closed sessions and tapes can be kept confidential until the board acts by vote to "open" or publish them, having determined that confidentiality is no longer required to protect the public interest or individual privacy rights. At a minimum, the minutes of closed sessions must contain the date, the attendees, the vote to close the meeting, the purpose or reason for closing and a general description of the matters proposed and discussed. The board is required to review the collected minutes of closed sessions at least twice a year to determine if any minutes can be released to the general public. That deliberation may be conducted in an executive session. Minutes of open meetings, at a minimum, must include the date, time and place, the attendees and absences, a summary of discussion of all matters and record of any votes. They must be available for public inspection within ten days of their approval, and they must be approved within 30 days or by the body's second subsequent regular meeting whichever is later.

No final action can be taken in a closed session. All final votes must be publicly taken and recorded in public minutes with a public recital explaining the nature of the action being voted to inform the public of the business. Incidentally, any member of the public may record the proceedings at open meetings subject only to reasonable rules (e.g. T.V. lighting).

As for other meeting rules, the Act requires that after the original setting of regular meeting dates for the year and after the posting of the list, if there is a change, a paid newspaper publication of the new dates is required at least l0 days prior to the meeting. The notice must also be posted at the office, the location of the meeting and on the website. Other-wise, paid newspaper notices are not required by this Act. Any news media that have given the board an annual request with an address or telephone number so as to receive notice of meetings must be given the same type of notice (written or phone) of all special, emergency, rescheduled or reconvened meetings the board members are given. A special meeting or rescheduled or reconvened regular meeting must be posted 48 hours before such meeting and the notice should include the agenda. An open meeting reconvened within 24 hours need not have further notice if a public 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 a

bona fide emergency meeting shall be given as soon as practical, but in any event prior to the holding of the meeting.

The Act also requires that all meetings must include an agenda for the meeting and only items, the general subject matter of which are included on that agenda, can be acted upon at the meeting.

There must be a specific public vote to "close" a meeting and the legal justification for closing it must be recorded in the minutes. A majority is required for the motion to pass and only items specified in the justification may be discussed in closed session.

Every meeting of the board and all committees must provide an opportunity for public comment and although the system is authorized to create rules for this, those rules may not violate First Amendment rights of the public or be oppressive in that respect either as too limited in time, or too extended in terms of pre-requirements in order to comment.

The Act requires that within 6 business days of budget approval, the total compensation package of every employee with a package exceeding $75,000 must be posted on the website. At least 6 business days prior to approving a compensation package exceeding $150,000, either the compensation information must be posted on the website or placed at the principal office with posted directions how to access that information.

The Act requires that all board members must successfully complete once each term, the Attorney General's electronic training within 90 days of taking office, and file the certificate of completion with the board Secretary. And the system must designate at least one Open Meetings Act designee who also must annually complete the electronic training.

The penalties under the Act are civil and criminal. Civil penalties include issuance of injunctions that further sessions be open and mandamus ordering a meeting to be opened, declaring any action null and void and assessing attorneys' fees and costs to the prevailing party. The civil charges may be filed by either the State's Attorney or a private person within 60 days after discovering the meeting was improper.

**Freedom of Information Act 5 ILCS 140**

Records relating to the conduct of the business of public libraries are subject to inspection by the Freedom of Information Act. However, "library circulation and other records identifying library users with specific material" are specifically excepted. This exception is consistent with the Library Records Confidentiality Act. The Act is the exclusive state statute on freedom of information except to the extent that special legislation imposes additional obligations or restrictions on disclosure of information to the public such as the Library Records Confidentiality Act.

The underlying philosophy of the Freedom of Information Act is that all records maintained by public bodies are subject to disclosure unless specifically exempted. The Act sets out specific categories of records which are exempt and the exemptions are to be "narrowly construed" in favor of release. Some of the applicable exemptions include:

l. Information that may not be lawfully disclosed, such as records identifying library users;

2. Personal information, especially "private information" maintained with respect to employees, appointees or elected officials;

3. Preliminary drafts or recommendations;

4. Minutes of executive sessions;
5. Confidential communications to and from legal counsel;
6. Collective bargaining documents, except that the final contract is subject to disclosure;
7. Documents relative to real estate negotiations prior to closing;
8. Trade secrets, commercial or financial information where furnished under claims they are of a proprietary nature; and
9. Information related solely to the internal personnel rules and practices.

The Freedom of Information Act sets out specific procedures to be followed. A request for copies of public records must be submitted in writing. It is advisable to have forms available so as to encourage persons desiring records to limit the scope of their request., but the body can not require any form to be used Copies of records are to be furnished within five business days, but the time limit may be extended for five additional working days if more time is reasonably necessary. The person making the request is to be notified by letter of any delays and reasons therefor. Limited copying fees may be collected provided that such fees are related solely to reproduction costs and such fees may be waived in cases in the public interest and not commercial benefit. No search fees are permitted in non-commercial requests and for electronic responses only the cost of the medium used may be charged.

If a request for copies of public records is denied, a notice of denial must be given to the person making the request. The denial notice must include:

l. Reasons for denial.
2. Names and titles of the persons responsible for the denial.
3. A statement of the person's right to appeal such denial to the Public Access Counselor.

Copies of all requests for documents and all notices of denial, together with an index of the type of exemption asserted, are to be maintained. The system is required to have at least one designated FOIA Officer, responsible for receiving and responding to all FOIA requests, and who is required to successfully complete annually the Attorney General's electronic FOIA training.

The system is required to display and provide copies of: a block diagram giving its functional subdivisions, the total amount of its operating budget, the number and location of all of its separate offices, the approximate number of full and part-time employees, the membership of its board and a brief description of the methods whereby the public may request information and public records, a directory designating by titles and addresses those employees to whom requests for public records should be directed and a schedule of any fees.

As to public records prepared or received, the system must maintain and make available for inspection and copying a reasonably current list of all types or categories of records under its control. The list shall be reasonably detailed in order to aid persons in obtaining access to public records. Each district must furnish upon request, in a form comprehensible to persons lacking knowledge of computer language or printout format, a description of the manner in which public records stored by means of electronic data processing may be obtained.

## Illinois Public Labor Relations Act 5 ILCS 315

The purpose and effect of the Public Labor Relations Act is to give public employees the right to organize and collectively bargain their employment relations, and various provisions for dispute resolution. The Act applies to every public employer with 5 or more employees, and where such groups of employees have in one of the permitted ways chosen to organize into a union. Certain managerial, supervisory and confidential employees are not counted in that group, nor are elected or appointed board members.

Once a group of public employees have become certified under the Act as the collective bargaining agent, either by voluntary recognition by the employer or by representation petition and election, then that bargaining unit may enter into good faith bargaining with the employer on the terms and conditions of the employment, Meeting at all reasonable times to negotiate with respect to wages, hours and terms and conditions of employment, except for those matters reserved to the employer under the Act as "management rights" is designed to lead to a collective bargaining agreement to cover this employment for the agreed term. Disputes or failings in such negotiations may lead to what are referred to as "unfair labor practices" such as steps or actions not in good faith, or in violation of the Act but merely refusing to agree with a party's demand in negotiation is not supposed to constitute an unfair labor practice.

The Act has created the Labor Relations Board, that along with its General Counsel, is responsible for the oversight of organization activities, contract negotiation issues as well as contract disputes. Contract disputes can arise in many ways and claims may allege unfair labor practices or other grievances whereby various grievance procedures set forth in the contract may be followed and which may lead eventually to arbitration of such disputes. In general, if strikes are prohibited in Illinois the procedure culminates with binding arbitration as the dispute resolution method. Arbitration awards may be reviewable in the courts, but that is controlled by the Uniform Arbitration Act.

## Illinois Governmental Ethics Act 5 ILCS 420

Any person elected or appointed to public office in a unit of local government and any employee who is a department or division head, supervises contracts of $1,000 or more, supervises 20 or more employees, or has authority to issue rules or regulations must file a "Statement of Economic Interests" with the county clerk. This verbatim form is provided in the statute. The filing is required before May 1 every year, or, for candidates, not later than the end of the filing period for nomination. Extensions are available subject to penalty. Failure to comply with filing requirements results in ineligibility for or forfeiture of the office or employment.

The statement filed is available for examination and copying, but anyone making a request must identify himself and the reason for the examination and the information is sent to the person filing the statement originally.

By February 1 of each year, the secretary of the board must certify to the County Clerk where the principal office is located a list of names and addresses of all employees who are required to file arranged alphabetically. By April 1, the County Clerk is to notify the person of the filing requirement.

## Local Records Act 50 ILCS 205

The major focus of the Illinois Local Records Act are the rules for preservation and destruction of public records. Prior written approval by the local records commission is necessary before any public record can be discarded or destroyed. "Public record" is defined to be:

> "...any book, paper or other official documentary material regardless of physical form or characteristic made, produced, executed or received...pursuant to law, or in connection with the transaction of public business and preserved or appropriate for preservation by such agency or officer...as evidence of the organization, function, policies, discussions, procedures or other activities thereof, or because of the informational data contained therein." [50 ILCS 205/3]

The books and magazines circulated by a library are not considered a public record within this definition. Materials that are acquired and maintained solely for reference or exhibition purposes as well as extra copies of documents simply for convenient reference are specifically exempted by the Act.

The local records commission for all Illinois counties other than Cook can be contacted at the Records and Management Section, Local Records Unit, Illinois State Archives, Springfield, Illinois 62706.

## State Officials and Employees Ethics Act 5 ILCS 430

Under the State Officials and Employees Ethics Act, a local Ordinance or resolution is required for every local government, and the Attorney General's office was required to develop a model ordinance for their use, essentially prohibiting various gifts (replacing the prior "Gift Ban Act") from "prohibited sources" and prohibiting various "political activities" by officials and employees. "Prohibited sources" are basically those persons or firms doing business or seeking to do business with the public body. The "prohibited political activities" although defined and described in great detail in the statute, are basically various described, improper activities related to political campaigns of either candidates or referenda policy questions while on compensated time or while using governmental resources, unless such activity is within the official duties of the body or employee.

## Public Funds Deposit Act 30 ILCS 225

Under the Public Funds Deposit Act, the treasurer is authorized to deposit system funds into demand deposits in state or national banks, savings and loans in accordance with the Public Funds Investment Act. The treasurer may require such banks or savings and loans to deposit with him (or under the regulations of the Federal Reserve Bank to be held there as collateralization) guaranteed securities equal in market value to the amounts by which the system deposits exceed federally insured amounts. No banks or savings and loans are to

receive public funds unless they have complied with the requirements of the Public Funds Investment Act.

**Public Funds Investment Act 30 ILCS 235**

The Public Funds Investment Act authorizes investment by local governments in:

(a) bonds, notes, certificates of indebtedness, treasury bills or other securities guaranteed by the full faith and credit of the United States Government;
(b) interest-bearing savings accounts, certificates of deposit or time deposits or other investments constituting direct obligations of any bank, as defined by the Illinois Banking Act;
(c) short-term obligations of corporations organized in the United States with assets exceeding $500 million if:
1. such obligations are rated at the time of purchase within the three highest classifications established by at least two standard rating services and which mature not later than 180 days from the date of purchase; and
2. such purchases do not exceed 10% of the corporation's outstanding obligations;
(d) in money market mutual funds registered under the Investment Company Act of 1940, provided the portfolio is limited to obligations specified in the statute and to agreements to repurchase such obligations.

Investments may be made only in banks which are insured by the FDIC. Any public agency may invest any public funds in short-term discount obligations of the Federal National Mortgage Association or in shares or other forms of securities issuable by savings and loan associations. Investments may be made only in those savings and loan associations, the shares or certificates of which are insured by the federal government. Any such securities may be purchased at the offering or market price thereof at the time of such purchase. Such securities so purchased shall mature or be redeemable on a date or dates prior to the time when in the judgment of the governing authority, the public funds so invested will be required for expenditure. The expressed judgment of any such governing authority as to when public funds will be required for expenditure or be redeemable is final and conclusive.

Public agencies may invest in the Public Treasurer's Investment Pool (now also known as "Illinois Funds") or in a fund managed, operated and administered by a bank. Public agencies may also invest in repurchase agreements of government securities, subject to the Government Securities Act.

In addition, the Act requires every agency to adopt a written investment policy that addresses the safety of principal, liquidity of funds, return on investment and requires that the investment portfolio be structured in such manner as to provide sufficient liquidity to pay obligations as they become due. The policy must address a rule (such as the "prudent person rule") establishing the standard of care to be maintained by the person investing the funds and it must identify the agency's chief investment officer, responsible for establishing the internal controls and written procedures for the investment program.

**Illinois Municipal Retirement Fund 40 ILCS 5**

The Illinois Municipal Retirement Fund is the primary fund for providing pension benefits to local government employees not including teachers and public safety employees (e.g. police and fire department employees). The pension (retirement annuities), surviving spouse and children benefits, and disability program provided under the Act are constructed and operated by the Municipal Retirement Fund Board of Trustees and the benefits provided are funded by a fixed contribution from eligible employees (i.e. scheduled to work either 1,000 hours each year or 600 hours, dependant on the election of the employer), the employer contribution which is calculated based on actuarial requirements, pursuant to statute, together with income on investments which exceed reserves needed for current operations.

**Public Officer Prohibited Activities Act 50 ILCS 105**

The statute governing conflicts of interest prohibits any public official from having any interest "in any contract or the performance of any work in the making or letting of which such officers may be called upon to act or vote". This provision is not avoided by a board member abstaining from voting, even if he does not attend the meeting at which the contract is considered. If he has an interest in the outcome, he is in violation of the statute. One who violates it, if convicted, forfeits the office and can be sentenced from one to three years in the penitentiary and fined up to $10,000. Such contracts may involve labor, materials, personal property or real property transfers.

The statute also prohibits accepting or offering to receive money or anything of value as a gift, bribe or means of influencing an official's vote or action.

There are exceptions to the rather harsh rules set out including one for small contracts where the member owns less than 7 1/2% of the company seeking to do business with the government, if the contract is less than $2,000 and the aggregate award in the fiscal year is less than $4,000. No violation occurs if the official abstains from voting (though he can be counted for quorum purposes, if there is a majority without his vote) and makes full disclosure of the interest prior to or during the deliberation.

There is a second similar exception if the official has less than a 7 l/2% share in the ownership of the business entity dealing with the agency, but the aggregate amount of contracts shall not exceed $25,000 and the contract must be by sealed bids to the lowest responsible bidder. Again, the official must abstain, a majority of the board must approve the contract and full disclosure is required.

A third major exception exists if the official has less than a 1% ownership interest in the business seeking a contract regardless of the size of the contract, though full, public disclosure of the interest, abstaining from voting and discussion, and passage by a majority vote are all required.

In the event the contract involves the transfer of real property, additional written disclosures under oath of beneficial interests, if the official is entitled to more than 7 ½% of the distributable income from the property, is required.

There is an exception for public utilities although most would be covered by the exceptions above. If the official owns more than 7 l/2% of the public utility, an exception

exists for districts where the population is less than 7500 and the utility rates are approved by the Illinois Commerce Commission.

Finally, there is an exception for financial institutions if the public official is a director, officer, employee or owns less than a 7 l/2% interest. The nature and extent of the interest must be disclosed and the official must abstain from voting.

**Illinois Library System Act 75 ILCS 10**

The Library System Act, because the state recognized that public libraries are vital agencies serving all levels of the educational process, was adopted to establish, develop and operate a network of library systems covering the entire state. Currently, other than Chicago, these are multitype systems meaning their membership is composed of public libraries, school libraries, academic and special libraries.

The Act provides numerous powers to system boards to carry out the spirit and intent of the Act, including: (1) to develop bylaws and the plan of service, subject to the approval of the State Librarian; (2) to have exclusive control of all funds held in the system name; (3) to adopt policies, rules and regulations for its operation as necessary; (4) to purchase or lease real or personal property and buildings for system use; (5) to appoint and fix the compensation of a competent librarian, who has the authority to hire other necessary employees and fix their compensation, and to remove them subject to the approval of the board, and to retain counsel and professional consultants as needed; (6) to contract with any public or private entity or government to provide or receive library services or other acts to carry out the provisions of this Act; (7) to accumulate special reserve funds to acquire improved or unimproved realty; (8) to be a body politic and to sue or be sued, to hold title to property and take any act authorized by law; (9) to undertake programs to encourage annexations to libraries; (10) to join ILA, ALA and other non-profit organizations for the purpose of library development; (11) to hold title to real and personal property; and (12) to borrow funds for system facilities and mortgage up to 75% of value, system owned property.

In order to be State grant eligible, system membership is required, and compliance with system membership criteria being a condition thereof. Among the most critical services or programs of system operation are interlibrary loans and statewide delivery.

**Americans With Disabilities Act 42 USC 12101**

This federal Act provides anti-discrimination protection in employment, public services, public accommodations and telecommunications for Americans with disabilities. "Disability" is a physical or mental impairment that substantially limits one or more major life activities and includes a record of such impairment or being regarded as having an impairment. It does not include a person currently using illegal drugs or who abuses alcohol.

In what is referred to as “Title I” of the Act, employers are prohibited from discriminating against all employees and qualified applicants who are or may become disabled. Throughout the application process, interviewing, and hiring decisions, along with all compensation, promotion and assignment practices, terminations, suspensions, and all other terms, benefits, job training, and conditions of employment, all persons are to be free

from discriminatory treatment based on disability. And "reasonable accommodations" must be provided upon request unless they present an "undue hardship."

Under "Title II" of the Act, by January 26, 1992, all units of state or local government were required to have a designated coordinator of compliance activities, establish a grievance resolution procedure and initiate a self-evaluation survey of current services, policies and procedures. It is a violation to design and construct a new facility for occupancy after January 26, 1993 which is not "readily accessible to and usable by persons with disabilities. . . except where to do so would be structurally impracticable".

Alterations must be accessible. When alterations to primary function areas are made, an accessible path of travel to the altered areas (and the bathrooms, telephones and drinking fountains serving that area) must be provided to the extent that the added accessibility costs are not disproportionate to the overall cost of the alterations.

Physical barriers in existing facilities must be removed if removal is readily achievable (i.e. easily accomplishable and able to be carried out without much difficulty or expense). If not, alternative methods of providing the services must be offered if those methods are readily achievable. Auxiliary aids and services must be provided to individuals with vision or hearing impairments or other individuals with disabilities so that they can have an equal opportunity to participate or benefit unless an undue burden would result.

One manner to shift responsibility for compliance in contracts for new construction or renovation/remodeling of existing facilities is to provide that the architect and contractor are responsible for ADA compliance. The basic standard used for accessibility guidelines under ADA are the guidelines of the Architectural and Transportation Barriers Compliance Board, and the primary enforcement arm is the United States Attorney General acting through the Civil Rights Division of the Department of Justice.

**Illinois Human Rights Act 775 ILCS 5**

The Illinois Human Rights Act prohibits discrimination in Illinois with respect to employment, financial credit, public accommodations, housing and sexual harassment, on the bases of race, color, religion, sex (including sexual harassment), national origin, ancestry, military status, age (40 and over), order of protection status, marital status, sexual orientation (which includes gender-related identity), unfavorable military discharge and physical and mental disability. The Act also prohibits sexual harassment in education, discrimination because of citizenship status and arrest record in employment, and discrimination based on familial status in real estate transactions. A discrimination charge can be initiated by calling, writing or appearing in person at the Department's Chicago or Springfield office within 180 days of the date the alleged discrimination took place in all cases except housing discrimination (one year filing deadline). It is administered by the Illinois Department of Human Rights.

**Compliance List**

Please Check:

_____ Illinois Open Meetings Act 5 ILCS 120

_____ Freedom of Information Act 5 ILCS 140

_____ Illinois Public Labor Relations Act 5 ILCS 315

_____ Illinois Governmental Ethics Act 5 ILCS 420

_____ Local Records Act 50 ILCS 205

_____ State Officials and Employees Ethics Act 5 ILCS 430

_____ Public Funds Deposit Act 30 ILCS 225

_____ Public Funds Investment Act 30 ILCS 235

_____ Illinois Municipal Retirement Fund 40 ILCS 5

_____ Public Officer Prohibited Activities Act 50 ILCS 105

_____ Illinois Library System Act 75 ILCS 10

_____ Americans With Disabilities Act 42 USC 12101

_____ Illinois Human Rights Act 775 ILCS 5

Date: _____ Signed: _____

Member, Board of Directors
Illinois Heartland Library System