



## Iowa League of Cities'

# New Laws of Interest to Cities

June 2012

**Reminder:**

Unless otherwise noted, the effective date of the legislation is July 1, 2012.

The text of each bill is accessible from the General Assembly's Web site:

<https://www.legis.iowa.gov/Legislation/Find/findLegislation.aspx>

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The second session of the 84th General Assembly ended on May 9, 2012, after running three weeks over the 100 days originally scheduled. This was a particularly involved session for local governments, and we saw legislation on many of the League's priority issues as well as what seemed like an unprecedented number of other bills directed at cities.

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## League Legislative Priorities

### Responsible Property Tax Reform

The session was dominated by city issues, most notably the debate over property tax. The League supported a tax credit approach to property tax reform and worked extensively to explain the negative impact that the numerous other proposals would have on local governments. No agreement between the chambers and the governor could be reached, so a property tax reform bill did not pass.

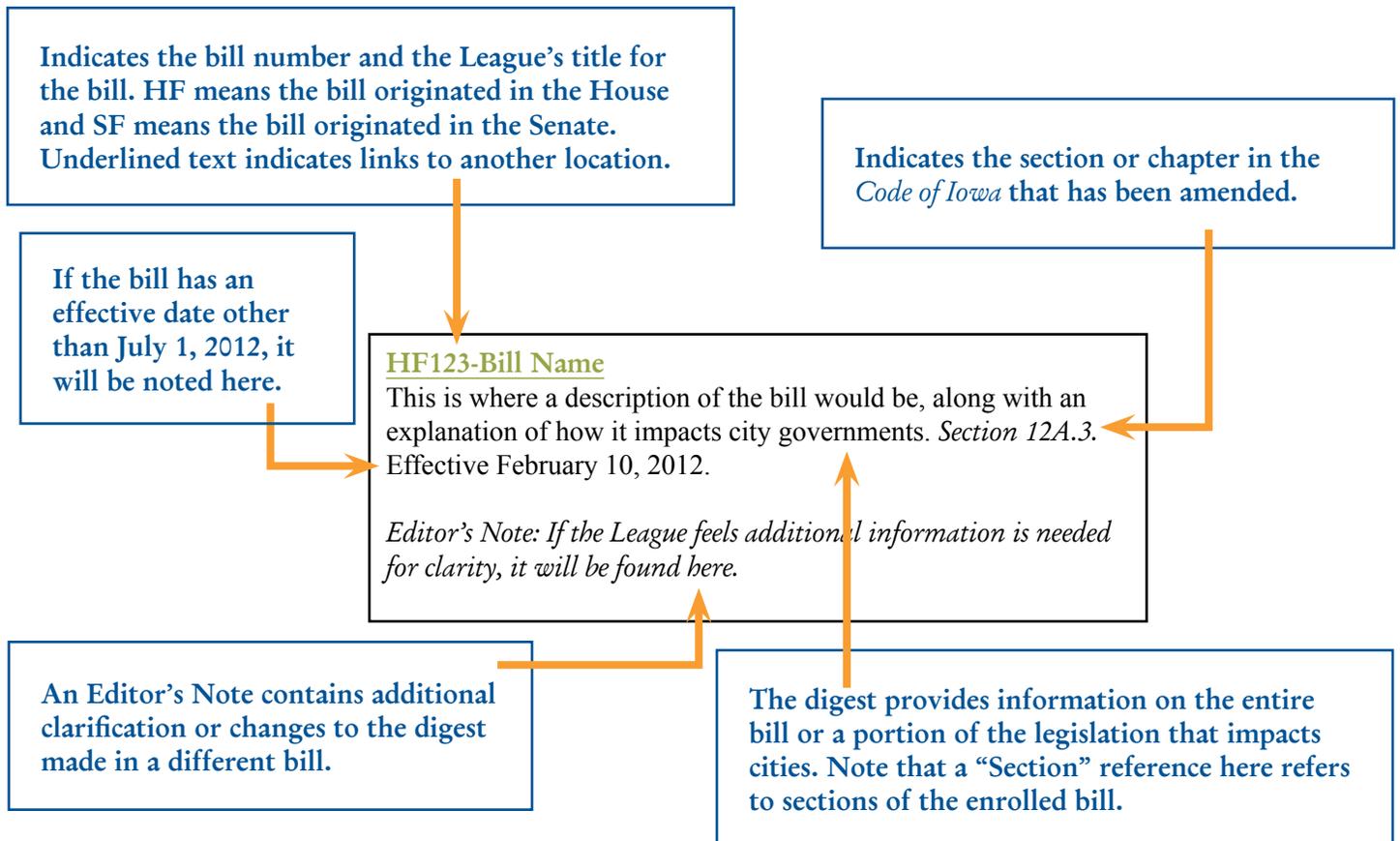
### Protect Economic Development Tools

The League worked with a coalition of business and chamber groups to temper extreme proposals for Tax Increment Finance (TIF) reform this session. Although earlier proposals would have seriously hindered the ability of cities to use TIF as a flexible, nimble economic development tool, the TIF bill that ultimately passed contained provisions that the League supported and helped to craft. These include transparency, reporting and anti-piracy measures.

## Reader's Guide to New Laws Summaries

This Special Report outlines legislation passed during the 2012 session that affects cities and is categorized in subject areas for easier reading. The sample entry below explains what type of information this report contains.

*Editor's Note: The report is intended as a reference guide to new laws that may interest your community. This report should not act as a substitute for the actual final enrolled legislation, nor should it substitute for advice from an attorney.*



### **Increase Transportation and Infrastructure Funding**

The League strongly supported proposals to increase revenues in the TIME-21 fund by raising the gas tax and implementing new fees, which were on the table as session began. Two bills were introduced to try to address an estimated \$215 million annual shortfall to meet critical road and bridge needs. Despite the endorsement of an 8-10 cent gas tax increase by the Governor's Transportation 2020 Citizen Advisory Committee, the proposals did not move forward.

### **Remove Unfunded Mandates**

The League met with party leadership and the governor's office before session began and continued to meet frequently throughout session to discuss city mandates and cost drivers. Through these discussions, we succeeded in raising awareness of rising costs that cities cannot control. We pointed out costs that burden small cities differently than large cities. We highlighted these costs particularly in the face of the property tax debate and suggested alternative revenue options to help address these costs. Although a bill was introduced to address smaller mandates on cities, no legislation on mandate reform passed this session.

### **Reform and Maintain Strong Pension Systems**

Despite this being an official "pension year," when the Legislature traditionally tackles changes to the state's pension systems, no major pension reforms were considered this session. The League provided testimony at the pension interim committee hearing to encourage new legislation; however, the committee did not agree on any recommendations. A provision to allocate a one-time appropriation of \$5 million in state dollars which would help temporarily lower city contribution rates was placed in the Senate standings bill, but this appropriation was stripped during negotiations with the House.

## **Administration**

### **HF2231 – Residency Qualifications for Memorial Hospital Commissioners**

Changes residency requirements for memorial hospital commissioners from the county in which the hospital is located to a resident of this state and within the memorial hospital's service area. *Section 37.10.*

### **HF2264 – Interment Rights of Veterans and Their Spouses**

Allows any veteran who purchases an interment space within a cemetery to purchase an interment space for the veteran's spouse and allows the surviving spouse of a veteran interred within a cemetery to purchase an interment space and be interred there; applies to cemeteries owned or operated by a governmental subdivision if space is available. *Section 523I.304.*

### **HF2370 – Lis Pendens Action Notification Requirements**

Severs the interest of a person or entity which claims to have an interest in real estate which has not been filed of record, if a petition or municipal infraction citation affecting the real estate has been properly indexed in the lis pendens docket, unless the claimant (1) intervenes in the lawsuit – which would typically be a nuisance abatement or municipal infraction lawsuit – before a court judgment is entered, or (2) files an application to reopen and proves that the city had actual notice of the claim of interest and identity of the claimant before the city indexed its petition or municipal infraction citation (must be filed within 90 days after the entry of judgment in such a case). *Section 617.11.*

### HF2399 – Scrap Metal Transaction Requirements

Requires persons selling scrap metal to a scrap metal dealer to provide certain information and forms of identification. Requires scrap metal dealers to keep a log of each transaction. Exempts certain scrap metal transactions. Provides that the new state law requirements supersede all city ordinances. *Sections 714.27 and 805.8C.*

### SF2265 – Revised Uniform Law on Notarial Acts

Provides that “(I)f a notarial act relates to a statement made in or a signature executed on a record, the individual making the statement or executing the signature shall appear personally before the notarial officer”; establishes several means for determining “satisfactory evidence of identity”; provides for the use of “electronic signatures” as now defined, and defines “stamping device” to include “(A)n electronic device or process capable of attaching to or logically associating with an electronic record an official stamp”; provides that the Secretary of State is to maintain an electronic database of notaries public that will identify notaries who will be performing notarial acts on electronic records; makes changes to the short form certificates of notarial acts. *Repeals Chapter 9E of the Code of Iowa and enacts in its place new Chapter 9B, Revised Uniform Law on Notarial Acts. Makes coordinating amendments to various Sections of the Code of Iowa.*

## **Economic Development**

### HF2460 – Tax Increment Finance Reform

Makes changes to Iowa’s TIF laws for cities and counties, including new auditing requirements, reporting requirements, transparency measures and anti-piracy provisions. *Various Sections.*

*Editor’s Note: See Appendix A.*

### HF2473 – Economic Development Authority Program Changes

Changes various definitions in the High Quality Jobs program and related assistance and programs. Clarifies limitations on providing assistance to a business which is moving operations within Iowa. Changes the calculation of a fiscal impact ratio. Amends the definition of a “qualifying wage threshold” to a “laborshed wage” as defined in the bill. Adds new requirements to the agreement required between a business seeking financial assistance and the economic development authority. Makes other various changes to the existing targeted industries program dealing with advanced manufacturing, biosciences and information technology. *Various Sections in Chapters 15, 15E, 266 and 455B.*

### SF2212 – Economic Development Authority Policy Changes

Clarifies that for purposes of the targeted jobs tax credits withholding eligibility under *Code of Iowa* Section 403.19A, government entities will not be considered a “business” under the program. Extends the ability of cities to apply to create Enterprise Zones, under *Code of Iowa* Section 15E.192, to July 1, 2014. Amends *Code of Iowa* Section 455I.2 defining an “environmental response project” to include a plan or work performed for flood control. *Various Sections.*

*Editor’s note: Current law and the bill exempt environmental covenants (meeting the requirements of Code of Iowa Chapter 544I) from the requirement that certain conveyances containing land use restrictions be renewed every 21 years. Under the bill, an environmental covenant containing flood control restrictions (“flood control covenant”) can be exempted if a grantor or holder or any party to or beneficiary of the flood control covenant, who is named in the document creating the flood control covenant, files a written statement that is duly acknowledged and*

*definitely describes the real estate involved in the original recorded flood control covenant and describes the originally recorded flood control covenant. The written statement must also declare that the flood control covenant is an environmental covenant for purposes of Code of Iowa Chapter 455I.*

*Applies retroactively to eligible flood control covenants entered into on or after July 1, 1992, and before the effective date.*

### **SF2217 – Flood Mitigation Program**

Creates a flood mitigation board for the purposes of approving flood mitigation project plans proposed by cities. Projects can be funded by capturing growth in local sales tax revenues, up to 70 percent or \$15 million, or the use of monies from a new state flood fund. Cities must:

- Competitively bid contracts.
- Receive 20 percent or \$30 million, whichever is less, in federal matching funds specifically for hazard mitigation.
- Have their project plan approved by the state flood board.
- Adopt a resolution approving the use of sales tax increment, if using it as the funding source for the project.
- Come up with local matching funds amounting to at least 50 percent of the total cost of the project.
- Demonstrate that the project will result in nonpublic investment in the city of an amount equal to 50 percent of the total cost of the project.

Cities can submit project plans to the board until July 1, 2016. *Various Sections in Chapters 29C.8, 418.4, 418.8, 418.10, and 418.12.*

## ***Finance***

### **HF524 – Increase in Levy for Maintenance of Office of Assessor; Administration of Assessment Expense Fund by Conference Board**

Increases allowable property tax levy for maintenance of the office of assessor from 40.5 cents per thousand dollars of assessed value to 67.5 cents; eliminates “special appraiser’s fund” under Section 441.50 of the *Code of Iowa* and authorizes in its place an “assessment expense fund” under Section 441.16; provides that within 10 days of the effective date of this act (July 1, 2012), the conference board of a city shall transfer funds remaining in the special appraiser’s fund to the assessment expense fund. *Sections 421.30, 441.16, 441.50.*

### **HF2168 – Deposit of Public Funds**

Expands the current authorized public deposits program to include insured deposits. Expands a current program that allows Iowa banks to participate in a national program in which, with the consent of the public body, 100 percent of the public bodies’ deposit can be fully insured by the Federal Deposit Insurance Corporation (FDIC) in Certificates of Deposit in \$250,000 increments. Addition of the fully insured money market account (MMA) product allows the public body the use of their funds while it is held in the account. *Sections 12B.10, 12C.22 and 12C.23A.*

### HF2455 – Small City Oversight

Eliminates four-year audits for cities between 700 and 2,000 in population, and creates a new “pool” for cities less than 2,000 in population or less than \$1 million in annual budgeted gross expenditures to be subject to periodic examination by the auditor. Cities in the examination pool will pay an annual fee to the auditor. Cities fewer than 2,000 in population but greater than \$1 million in budgeted gross expenditures will not pay the examination fee but will be required to pay the full cost of an examination. A city must rise above \$1 million in annual budgeted gross expenditures for two consecutive years in order to be subject to a full cost of examination in the second year. Cities must be examined at least once during an eight-year period. The total annual fees the auditor can collect are capped at \$375,000 and any amount collected in excess must go toward finance training for local officials. *Section 11.6.*

*Editor’s Note: Fees will be determined by the auditor through rulemaking on a sliding-scale based on the city’s budgeted gross expenditures and cannot be charged until Fiscal Year 2014. Rules will be promulgated by the auditor to determine the scope of an “examination,” which is currently defined as something less than an audit. Any city that conducts a full audit and pays the audit filing fee will not be subject to an examination fee in that year. Once the auditor’s rulemaking process is complete, the League will issue a special report.*

## **Open Meetings & Open Records**

### SF430 – Open Meetings and Open Records

Adds confidential records protection for tentative, preliminary, draft or research materials prior to completion in form submitted for use. Creates the Iowa Public Information Board, a nine-member board appointed by the governor. Provides the board with broad authority to investigate and impose penalties where violations of Chapters 21 and 22 are found, issue informal advice, provide training and make recommendations to the General Assembly. *Section 22.7(65) and Various Sections in New Chapter 23.*

*Editor’s Note: See Appendix B.*

## **Public Safety**

### SF413 – Funding of Emergency Management Commissions

Requires cities to fund emergency management commissions. Requires mayors to attend all meetings in which the budget is discussed, but allows the mayor to designate an alternate for other meetings. Allows cities to use other funding sources allowed by law to fund the commission. *Sections 29C.9 and 29C.17.*

### SF2332 – Enhanced 911 Emergency Communications Systems

Makes changes to laws relating to enhanced 911 emergency telephone systems. Includes changes to various definitions and changes to surcharges and to the allocation of 911 surcharges. Establishes an E911 task force to consider and offer recommendations regarding needed upgrades and enhancements to the state’s E911 programs, which must report to the General Assembly by December 1, 2012. *Sections 34A.2-3, 34A.6-6A, 34A.7-7A-7B, and 34A.15.*

## Utilities

### HF2144 – Ownership of Electric Transmission Facilities by Cities

Allows a city or electric power agency to acquire ownership interest in a transmission facility, including ownership of capacity, within this state or in any other state for the purpose of participating with other utilities in transmission to be operated by a regional transmission organization or an independent transmission operator. *Sections 390.1 and 390.8A.*

### HF2323 – Landlord Exemption from Lien for Delinquent Utility Charges

Exempts residential rental property from a lien for delinquent rates or charges for services of water systems, sewer systems, storm water drainage systems, sewage treatment, solid waste collection and solid waste disposal which are paid to the city utility or enterprise by the tenant, if the landlord gives written notice to the city utility or enterprise that the property is a residential rental property and that the tenant is liable for the rates or charges. (This provision formerly applied only to delinquent charges for water services.) Extends from 10 to 30 days the time within which the owner or landlord of a residential rental property is required to give written notice of a change in the ownership of the residential rental property to the city utility or enterprise. Requires that a request by a tenant account holder to change the name for service under the account must be sent to the owner or landlord of the property if the owner or landlord has requested notice of change of the name on the account. *Section 384.84.*

### SF2058 – City Utility Customer Privacy Requirements

Exempts private customer information of a city utility or enterprise, identifying a specific customer and any record of a customer account from examination and copying under Chapter 22 of the *Code of Iowa*, the open records law. *Section 388.9A.*

### SF2328 – Notice Requirements for Franchise Fees and Annexation/Severance

Requires a city to notify the Department of Revenue if the city adopts, amends or repeals an ordinance imposing a franchise fee. Requires a city to provide written notification including a map of the annexed or severed territory and other information to all public utilities operating in the affected area and to the Department of Revenue. *Sections 364.2(f)(2) and 368.24.*

### SF2342 – Tax Credits for Car Washes

Provides for a sales tax exemption for water and electricity used in car washes. *Section 423.3(96).* Effective May 25, 2012.

*Editor’s Note: In advance of formal rulemaking, the Department of Revenue has issued the following guidance:*

- *For stand-alone vehicle wash and wax facilities (“car washes”), the Department’s presumption is that 100 percent of the electricity and water purchased will be used for the exempt vehicle wash and wax service.*
- *For other businesses that provide vehicle wash and wax services (convenience stores, gas stations, automobile dealerships, etc.), the Department’s presumption is that less than 100 percent of the water and electricity purchased will be used in the vehicle wash and wax service. The best solution would be to have separate meters for the water and electricity used in the vehicle wash and wax service. If that is not possible, the retailer should determine and document a reasonable basis for the exempt percentage of water and electricity. That amount should be affirmatively communicated to the local water and electricity carriers so that they may bill appropriately.*
- *The exemption for water and electricity is effective for billing dates on or after May 25, 2012.*

## Appendix A: Tax Increment Financing (TIF) Reform

TIF bills underwent major changes throughout the session, with the League leading the way to strip out harmful provisions that would have fundamentally impaired TIF as we know it. The League was successful in creating a compromise in three key areas that can help protect TIF as an effective economic development tool in the future: reporting, transparency and anti-piracy. HF2460 also contains other provisions of which to be aware, dealing with the instructional support levy and Local Option Sales Tax -TIF (LOST-TIF).

### Auditing

Section 3 creates a new auditing requirement that when cities are audited under *Code of Iowa* Chapter 11, they must now show they have complied with new TIF reporting requirements in the bill. Section 22 creates a new section which provides that each municipality that has established an urban renewal area that utilizes, or plans to utilize, TIF revenues must make an annual certification of compliance with reporting requirements and any other information required by the state auditor by rules the auditor will establish. Provides that for any year in which the municipality is audited the certification will be audited as part of the city's audit.

### Reporting

Section 12 prescribes new reporting requirements for TIF. Cities with an urban renewal area must approve the report and file it electronically with the Department of Management by December 1 each year or their budgets will not be certified. Section 25 of the bill stipulates that the penalty for not meeting reporting requirements does not apply to the December 1, 2012, filing. Prior to filing the city council must approve the report by a majority. The DOM will publish the reports online in a searchable database. The reporting requirements are outlined in Section 12 of the bill. DOM is in the process of developing the reporting form, which will be available later this year. Once the rulemaking process has been completed, the League will issue a special report on the new requirements.

### Transparency — Public Buildings

Under current law a city must mail a copy of the proposed urban renewal plan and hold a consultation with the other affected taxing entities prior to approval. Section 25 stipulates that if the proposed urban renewal plan or proposed urban renewal project within the urban renewal area includes the use of TIF dollars for a public building, including but not limited to:

- a police station
- fire station
- administration building
- swimming pool
- hospital
- library
- recreational building
- city hall or
- other public building that is exempt from taxation, including the grounds of, and the erection, equipment, remodeling, or reconstruction of, and additions or extensions to, such a building

then, the city must include an analysis of alternative development options and funding for the urban renewal area or urban renewal project and the reasons such options would be less feasible than the proposed urban renewal plan or proposed urban renewal project with the proposed plan notification.

A copy of the analysis must also be included with the urban renewal report and filed by December 1 following adoption of the urban renewal plan or project.

### **Transparency — Project-Based New Public Hearing and Amendment to Plan**

Section 14 requires that when a city approves an urban renewal project within an urban renewal area, a hearing must be held and the plan must be amended. The city's planning and zoning commission need not be consulted in this process. Also requires that once an urban renewal area is designated as a slum, blight or economic development area, the area cannot be redesignated.

### **Definition Change — Affected Taxing Entities**

Section 15 removes community college from the definition of "affected taxing entities," leaving cities, counties and schools as remaining affected taxing entities.

### **Use of Instructional Support Levy**

Section 16 provides that, going forward, cities will no longer be able to use the instructional support levy as part of the increment in an urban renewal area. The provisions intend to exclude the loss of the levy to pay off any debt issued prior to April 24, 2012.

a) If the bonds or indebtedness were issued or incurred on or before April 24, 2012, all or a portion of the taxes for the instructional support program levy of a school district shall be paid by the school district to the city if the auditor certifies to the school district by July 1 the amount of the levy that is necessary to pay the principal and interest on bonds issued or other indebtedness incurred by the city to finance an urban renewal project.

b) In lieu of payment to a municipality under that provision, a school district may by resolution of the board of directors of the school district approve at a regular meeting of the board of directors the payment of all or a portion of the instructional support program property tax revenue excluded under paragraph "a", to the municipality for the payment of principal and interest on such bonds issued or such other indebtedness incurred by the municipality before, on or after April 24, 2012.

Section 26 specifies the provisions regarding the instructional support levy apply to property taxes due and payable in fiscal years beginning on or after July 1, 2013.

### **Anti-Piracy**

Section 19, the "anti-piracy" section, provides that on or after the effective date of this bill, no TIF dollars can be used on an urban renewal project which includes the relocation of a commercial or industrial enterprise not presently located within the municipality, unless one of the following occurs:

(1) The local governing body of the municipality where the commercial or industrial enterprise is currently located and the local governing body of the municipality where the commercial or industrial enterprise is proposing to relocate have either entered into a written agreement concerning the relocation of the commercial or industrial enterprise or have entered into a written agreement concerning the general use of economic incentives to attract commercial or industrial development within those municipalities.

(2) The local governing body of the municipality where the commercial or industrial enterprise is proposing to relocate finds that the use of deposits into the special fund for an urban renewal project that includes such a relocation is in the public interest. A local governing body's finding that an urban renewal project that includes a commercial or industrial enterprise relocation is in the public interest must include written verification from the commercial or industrial enterprise that the enterprise is actively considering moving all or a part of its operations to a location

outside the state and a specific finding that such an out-of-state move would result in a significant reduction in either the enterprise's total employment in the state or in the total amount of wages earned by employees of the enterprise in the state.

"Relocation" means the closure or substantial reduction of an enterprise's existing operations in one area of the state and the initiation of substantially the same operation in the same county or a contiguous county in the state. Does not prohibit an enterprise from expanding its operations in another area of the state provided that existing operations of a similar nature are not closed or substantially reduced.

### **LOST-TIF County Sign-off**

Section 23 provides that a city cannot adopt a Local Option Sales Tax-TIF ordinance unless the county board of supervisors in each county where the urban renewal area from which local sales and services tax revenues are to be collected and used to fund urban renewal projects is located first adopts a resolution approving the collection and use of the local sales and services tax revenues. Section 27 makes this section effective upon enactment.

## **Appendix B: Open Meetings & Open Records**

Over the past five years, the Iowa Legislature has considered many versions of legislation concerning open meetings and open record laws. In 2011, SF289 was enacted which made a number of changes to both open meetings and open records laws, including the enhancement of damages which can be assessed for violations of such laws.

This year, SF430 was signed into law on May 3. All provisions except the section establishing transition provisions for the newly created Iowa Public Information Board will take effect on July 1, 2013.

### **Iowa Public Information Board:**

- Created in new Chapter 23 of the *Code of Iowa*.
- The Board will consist of nine members appointed by the governor.
  - No more than three members shall be representatives from the media.
  - No more than three members shall be representatives of cities, counties and other political subdivisions.
  - The initial members of the Iowa Public Information Board shall be appointed by September 1, 2012.
- The board shall employ one person, who shall be an attorney, to serve as executive director of the board. The executive director shall not be hired prior to July 1, 2013.

### **Purpose and Jurisdiction:**

- The purpose of the board is to provide an alternative means to secure compliance with the open meetings and open records law and a cost effective process for resolving disputes.
- Aggrieved persons, including any taxpayer or citizen of Iowa, the attorney general or any county attorney may seek enforcement of the open meetings or open records laws by filing a lawsuit or a complaint with the board.
- The Iowa Public Information Board does not have jurisdiction over the judicial or legislative branches of state government or the governor's office.

**Powers of the Board:**

- Adopt rules calculated to implement, enforce and interpret the requirements of *Code of Iowa* Chapters 21 and 22 and implement the authority delegated to the board.
- Issue declaratory orders with the force of law determining the applicability of Chapters 21 or 22 to specified fact situations and to issue informal advice to any person concerning the applicability of Chapters 21 and 22.
- Receive complaints alleging violations of Chapters 21 and 22, seek resolution through information assistance or mediation, formally investigate such complaints, determine whether there is probable cause to believe that a violation of Chapter 21 or 22 has occurred and, if probable cause is found, to prosecute the case before the board in a contested case proceeding.
- Request assistance and information from a governmental body.
- Examine a record of a governmental body that is the subject matter of a complaint, including any record that is confidential by law.
- Issue subpoenas for the purpose of investigating complaints and to facilitate prosecution.
- Issue orders with the force of law determining whether there has been a violation of Chapter 21 or 22, requiring compliance, imposing civil penalties and other appropriate remedies calculated to declare, terminate or remediate any violation of those chapters.
- Make training opportunities available and require persons who have responsibilities in relation to Chapters 21 and 22 to receive periodic training approved by the board.
- Make recommendations to the governor and the General Assembly proposing legislation relating to public access to government information.

**Confidential Records Protection**

- Adds confidential records protection for tentative, preliminary, draft or research materials prior to completion in form submitted for use or used in the actual formulation, recommendation, adoption or execution of any official policy or action by a public official. *Section 22.7(65)*

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