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MADIGAN: TRANSPARENCY LEGISLATION WILL REFORM OPEN GOVERNMENT LAWS IN ILLINOIS

Springfield — Attorney General Lisa Madigan today heralded the passage of transparency reform legislation, calling the Illinois General Assembly's vote a great victory for advocates of open and accountable government at all levels. The bill, Senate Bill 189, which now awaits the governor's signature, will strengthen the state's sunshine laws to make it significantly easier for the public to gain access to the workings of their government. Senator Kwame Raoul (D-Chicago) and Speaker Michael J. Madigan (D-Chicago) sponsored the bill.

Since January, Attorney General Madigan has worked with a coalition of open-government advocates and organizations to draft this legislation, including the Better Government Association, the Citizen Advocacy Center, Illinois Press Association, and Illinois Campaign for Political Reform. The Attorney General's office also worked closely with the Illinois Reform Commission to strengthen and negotiate the bill.

"This bill will drag Illinois out of the Stone Age and into the modern era on transparency and openness," Madigan said. "By creating a Public Access Counselor with binding opinion authority to fight for an open and accountable government, this bill will put Illinois at the forefront nationally and give our taxpayers a greater ability to know what their government is doing."

Making the Sunshine Laws Work for the People of Illinois

Under the current law, when members of the public or the media are shut out of government meetings or denied access to public records, their only recourse to obtain a binding decision granting them access to their government is to file a lawsuit. As a result, governments at all levels often ignore complaints that they have violated the state's sunshine laws - the Open Meetings Act and the Freedom of Information Act (FOIA).

In December 2004, Attorney General Madigan created the position of Public Access Counselor (PAC) with the Attorney General's Office. Since then, the Public Access Counselor has worked with members of the public, the media and government bodies to resolve disputes under the sunshine laws and ensure access to government information. The Public Access Counselor's decisions, however, have not been binding on government bodies, resulting in many instances in which governments continue to deny people access to public records or government meetings.

Senate Bill 189's groundbreaking provisions codify the Public Access Counselor position within the Attorney General's Office and explicitly authorize the PAC to review and determine whether documents must be disclosed under FOIA or whether a government body has violated the Open Meetings Act. The bill gives the PAC authority to subpoena needed information, issue advisory opinions to guide government bodies, issue binding opinions to resolve disputes, and sue to enforce the binding opinions. If SB 189 is signed into law, Illinois will become the fifth state to give the Attorney General's office binding authority to help the public obtain access to government meetings and public records.

When the courts must get involved in a FOIA dispute, the bill puts teeth into this important open government law. Under the current law, courts cannot impose a penalty when a government body willfully fails to comply with FOIA or otherwise acts in bad faith in refusing to disclose a public record. Senate Bill 189 would allow courts to impose civil penalties of \$2,500 to \$5,000 against public bodies that willfully violate the law. Additionally, where the current law permits courts to award attorneys' fees and costs to a plaintiff who successfully sues to obtain a public record, the bill requires that courts award attorneys fees - making it much less burdensome for members of the public to sue to enforce their right to government information.

Strengthening the Freedom of Information Act

The bill also significantly strengthens and clarifies the Freedom of Information Act to make it easier for people to obtain public records. In particular, the bill establishes a "presumption of transparency" that defines all records as public and requires government bodies that want to withhold a document to prove by clear and convincing evidence that the law allows them to do that. Senate Bill 189 also shortens the initial time a government body has to respond to a FOIA request from seven to five business days and also shortens the time for any extension from seven to five business days.

The bill also makes other critical changes to greatly enhance the public's access to documents:

- **Narrows and Clarifies the Personal Privacy Exemption.** Government bodies throughout Illinois often improperly justify withholding public records from the public by claiming that disclosure would violate the personal privacy of the individuals mentioned in the document. Senate Bill 189 significantly limits and defines the personal privacy exemption to make sure that the public can gain access to records.
- **Requires Heightened Scrutiny When Public Bodies Seek to Use the Privacy or Preliminary Draft Exemptions.** Senate Bill 189 contains key provisions to make sure that government bodies cannot improperly withhold public records from disclosure. Specifically, whenever a government body intends to deny access to a record by asserting that disclosure would invade privacy or that the document is simply a draft and exempt from disclosure, the bill requires that the government body notify the Public Access Counselor who can review the assertion of the exemption and deem if it is proper.
- **Limits Copying Charges.** Senate Bill 189 provides that government bodies must respond to a FOIA request for a document by providing the first 50 pages for black and white, letter or legal sized copies for free and limiting the charge for the remaining black and white, letter/legal sized pages to 15 cents per page.
- **Requires Public Bodies to Produce Records in Electronic Format.** To make it easier for the public to obtain records in an electronic format, the bill requires that if a requester asks for a document that is maintained in an electronic format, the government body must furnish it in the electronic format, if feasible.

Further, the bill requires public bodies to designate FOIA officers who will be required to successfully complete attend annual FOIA training prepared by the PAC.

"Through my office's extensive public access work, we have seen that far too often, people are routinely denied access to public documents," Madigan noted. "For the last six years in Illinois government, we experienced a culture of secrecy imposed by the former governor. Among the complaints against the former governor and his administration was that they routinely and blatantly disregarded the sunshine laws and failed to provide the public and the media with access to information. Our experience over these last six years served to emphasize the importance of strong public access laws and the need for a Public Access Counselor with clear authority to step in and ensure compliance with the laws."

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