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BILL ANALYSIS

Senate Fiscal Agency

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House Bill 4321 (Substitute H-2 as reported with amendments)

Sponsor: Representative Alma Stallworth

House Committee: Public Utilities

Senate Committee: Government Operations

Date Completed: 5-30-89

**RATIONALE**

Public Act 158 of 1988 exempted the Public Service Commission (PSC) from the Open Meetings Act when the PSC is deliberating the merits of a case. (The PSC is a three-member, quasi-judicial body that regulates public utilities providing electricity, telephone, gas, and intrastate transportation services.) The exemption was justified on several grounds. Advocates said that requiring the commissioners to deliberate in public on matters such as rate cases, particularly when sensitive issues were being considered, could affect the financial stability of utilities whose cases were under deliberation. Principally, however, it was considered impractical and absurd that two commissioners (a quorum of the Commission) could not meet and discuss a cause without issuing a notice of a public hearing and inviting the public to attend. Commissioners were limited to communicating with one another through staff liaisons or in writing. An exemption from the Open Meetings Act would, it was argued, make the PSC's decision-making more efficient and effective. Because there was uncertainty as to the effect of the Open Meetings Act exemption on consumer interests (and because there was vigorous opposition to the exemption in some quarters), Public Act 158 carried a sunset date of January 1, 1990, to allow the Legislature to evaluate the consequences of permitting the commissioners to meet in closed sessions to discuss cases before them.

The commissioners claim that the exemption has proved itself in two recent cases, one a Michigan Consolidated Gas rate case, the other the Consumers Power co-generation case. In a letter to the chair of the House Public Utilities Committee in support of a repeal of

the sunset (that is, making the exemption permanent), the three commissioners said: "Open discussions between Commissioners facilitated decisions regarding complex, competing, and sometimes conflicting issues based on lengthy and intricate case records in both of these cases. The exemption allowed for the expeditious weaving of public policy, legal principles, and economic theory with modern technological advancements, without the burden of dealing through an intermediary. Without the exemption, it is doubtful that the many issues relevant to these cases could have been examined as thoroughly and as quickly as possible with direct interaction. In addition, the exemption speeds up the initial learning phase of a new Commissioner, allowing the new Commissioner to be more effective more quickly." It has been suggested that the exemption be made permanent.

**CONTENT**

The bill would amend the Open Meetings Act to repeal a section of the Act that provides that as of January 1, 1990, the Public Service Commission will no longer be exempt from the Open Meetings Act when the PSC deliberates the merits of a case before it.

MCL 15.263

**SENATE COMMITTEE ACTION**

As reported by the House, the bill would have extended the sunset for one year. The Senate Government Operations Committee adopted an amendment to repeal the sunset provision, thus making permanent the PSC exemption from the Open Meetings Act.

H.B. 4321 (5-30-89)

## **FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

## **ARGUMENTS**

### **Supporting Argument**

The PSC's exemption from the Open Meetings Act has already proved a success. In two major cases recently, commissioners were able to do their jobs more effectively and more efficiently as a result of face-to-face deliberations. At the same time, the interests of the consuming public were protected by the usual numerous opportunities to be involved in the many public hearings. It must be remembered that the administrative hearings are entirely open to the public; only the final decision-making phase of a case is closed.

### **Opposing Argument**

The Public Service Commission should be fully subject to the Open Meetings Act. It is not the purpose of that Act to make it easier for public bodies to make their decision nor to make government more efficient. Rather, it aims at ensuring that the public is aware of what its public officials are doing and at giving the public a voice in public policy decisions. The PSC's responsibility for seeing that essential services are available at reasonable rates sets it apart from the other administrative bodies that are exempt from the Open Meetings Act (such as the Worker's Compensation Appeal Board). The PSC makes far-reaching public policy decisions and ought to do so publicly. The sunset should be extended instead of repealed. Extending the sunset at least would make it more likely that the effects of the exemption could be evaluated in the future.

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