

David Mead

From: politicog <politicog@yahoo.com>
Sent: Tuesday, February 07, 2012 11:41 AM
To: David Mead; tomcmillan@house.mi.gov
Cc: Rep. Brad Jacobsen; tombledsoe@house.mi.gov; Rep. LeBlanc (District 18); Rep. Brandon Dillon
Subject: House Bill No. 5335 URGENT

Mr. Mead and Mr. Chair McMillan: I would like to testify on House Bill No. 5335, however, since the meeting was scheduled for today, which I believe is less than a week since the bill's original introduction, certainly did not leave enough time to rearrange my schedule and be in Lansing for today's hearing. I wish to be recorded as being in opposition to the bill in its current form. I am an elected member of the Board of Library Commissioners of the City of Grand Rapids, and serve on the Board's legislative committee. I have asked my Board colleagues on the committee to discuss this legislation at our next committee meeting and it was just approved to add this matter to our legislative committee's agenda last night. Since then, we have not had the opportunity to meet in the legislative committee or the full board to discuss the matter. I must emphasize that I am commenting on this bill in my capacity as an individual, and I do not speak on behalf of the Board of Library Commissioners. The part of the bill that concerns me is the new sentence added to subsection (2) of section 3 of the OMA, MCL 15.263, and the change from "shall be permitted to" to "may" in subsections (1) and (5). The new sentence added to subsection (2) of section 3 would read as follows: "A meeting is not open to the public if a member of the public body is permitted to cast his or her vote on a decision of the public body without being physically present at the meeting." At the last meeting of our Library Board, we received the attendance record of Board members for last year. That report showed that there was only one case during the entire year in which one of the Board members participated by conference phone call. At the minutes for that meeting, that person was nevertheless still recorded as being absent. One of the co-sponsors of this bill is my Representative, Brandon Dillon, and before being elected to the Legislature, he was a member of the Kent County Board of Commissioners. During his four years on that board, no member of the Board ever participated other than by being physically present. So I think in the first place that the practice is not as widespread as is commonly believed amongst some of the cosponsors. Next, I think the Legislature could accomplish its goals by stating that if a member of a public body is participating by means other than being physically present (skype, webcam, conference phone, etc.), that they will not be counted towards quorum and will not be able to vote. Thirdly, it can be placed in a different section of the OMA. By placing it in section 3, that means that decisions made will be subject to invalidation by the courts under the provisions of section 10 (MCL 15.270) and the procedures for injunctive relief or mandamus under section 11 (MCL 15.271). I would also submit that since the House seemed to be poised to act on this matter so quickly, I would urge that if the committee passes the bill, that it does not recommend immediate effect, to allow public bodies time to meet and adjust their rules, if necessary, accordingly. Finally, I am in full agreement with the aims of the Open Meetings Act. In fact, in 2000, when I was running for the Kent County Board of Commissioners, I asked that they make it explicit that the OMA applied to their subcommittees and task forces. When that did not work through the Board's internal processes, I then took the matter to the Kent Circuit Court, and the judge in that case ruled that the Kent County Board had violated the OMA. Then, in 2011, when the County Board was revising its rules of procedure, I brought this matter to their attention again, and they finally changed their rules to allow public participation in their sub-quorum subcommittees and task forces. I think that qualifies my credentials with respect to the OMA. In summary, I am opposed to House Bill No. 5335 in its current form, because I think that the problem it intends to remedy can be accomplished through other means. I would also ask that the committee plan other hearings on this bill before sending it to the House floor, to give public bodies and their professional associations time to make statements on the bill and how it could affect their operating procedures. I also ask that the bill, if passed, not be granted immediate effect. ROGER MCCLARY Library Commissioner, City of