

Legislative Analysis



OPEN MEETINGS: A MEMBER OF A PUBLIC BODY MUST BE PHYSICALLY PRESENT TO VOTE

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House Bill 4363 (reported with committee amendments)

Sponsor: Rep. Amanda Price

Committee: Oversight

First Analysis (5-8-13)

BRIEF SUMMARY: The bill would change the Open Meetings Act--which requires that all decisions of a public body be made at a meeting open to the public--to say that "a meeting is not open to the public if a member of the public body casts a vote without being physically present at the meeting."

FISCAL IMPACT: The bill does not appear to have any fiscal impact on the state.

THE APPARENT PROBLEM:

Some elected officials in local units of government have, from time to time, used telecommunications technology to participate in meetings when they could not be physically present. The practice is not widespread, and it is legal under case law and attorney general opinion.

In *Goode vs Michigan Department of Social Services*, 143 Mich App 756 (1985), the court held that the purpose of the Open Meetings Act is to provide openness to the public of meetings and hearings, and that proceeding through teleconference calls with speaker phones audible to all in the meeting room, and with the ability of the public to attend at all locations involved in the teleconferencing, fully complies with the Open Meetings Act. The court ruled, "While we recognize that to actually see and observe all the witnesses and the hearing officer is desirable, we do not find it necessary."

Further, Michigan Attorney General Opinion #6835 of February 13, 1995, addressed whether an intermediate school district could hold its annual budget meeting by means of interactive television, since some ISDs in northern Michigan cover many counties. In this instance, the attorney general concluded that a representative did not have to be physically present at the meeting but could be present through interactive television and comply with the Open Meetings Act. In the opinion, the attorney general cited the *Goode* case (above), and concluded that interactive television was even more desirable than the teleconferencing sanctioned in that case.

Following these rulings establishing the legality of teleconferencing, public bodies have increasingly availed themselves of this option. For example, it has been reported that in February 2012, when the University of Michigan Board of Regents held an emergency meeting in the early morning hours to formally debate legislation that banned graduate research assistants from forming unions, the regents and university president participated by teleconference.

Legislation has been introduced to amend the Michigan Open Meetings Act to specify that a meeting would not be considered open to the public--and therefore in violation of the act--if a member of the public body cast a vote without being physically present at the meeting.

THE CONTENT OF THE BILL:

Under the Open Meetings Act, all decisions of a public body must be made at a meeting that is open to the public. House Bill 4363, as amended, would say that "a meeting is not open to the public if a member of the public body casts his or her vote on a decision without being physically present at the meeting."

Current language in law says "all deliberations of a public body constituting a quorum of its members shall take place at a meeting open to the public." The bill, as amended, would retain this provision without modifying it.

The bill also contains an additional set of amendments, which appear to be technical in nature. The Open Meetings Act now specifies that its provisions do not apply to several deliberative public bodies, including: (1) the Worker's Compensation Appeal Board (now the Michigan Compensation Appellate Commission), (2) the Employment Security Board (now the Michigan Compensation Appellate Commission), (3) the State Tenure Commission, (4) an arbitrator or arbitration panel appointed by the Employment Relations Commission, (5) an arbitration panel selected under Chapter 50A of the Revised Judicature Act, and (6) the Michigan Public Service Commission. House Bill 4363 would modify three of these provisions by eliminating references to the Worker's Compensation Appeal Board and the Employment Security Board [noted in (1) and (2) above], and substituting instead the Michigan Compensation Appellate Commission. In addition, the bill would eliminate in its entirety (5) above, so that the act would no longer refer to an arbitration panel selected under Chapter 50A of the Revised Judicature Act. Chapter 50A, which dealt with health care arbitration, has been repealed.

Under the bill, as now, these public bodies are only exempt from the Open Meetings Act when deliberating the merits of a case. The bill would alter the wording to say that the act does not apply to the listed public bodies, but only when deliberating the merits of a case. The underlined word is added by the bill.

Finally, House Bill 4363, as amended, specifies that it would take effect 90 days after being enacted into law.

ARGUMENTS:

For:

Proponents of the bill, say the bill is necessary to avoid the possibility of "absentee government." (During the previous legislative session when a substantially similar bill, House Bill 5335, was passed by a vote of 94 to 11 in the Michigan House of Representatives, proponents included the Office of the Attorney General.)

They argue that the electorate has a right to observe, and to offer opinions to, the people they have elected to represent them, and further they should be able to hold their elected representatives accountable firsthand, and in person. Connecting to a meeting from abroad, perhaps via Skype, does not allow citizens adequate interaction, oversight, and accountability.

Further, it denies elected officials the opportunity to communicate with citizens before and after meetings. In sum, if officials aren't physically present at public meetings, the meeting lacks openness and interaction. Both of these are key characteristics of a broadly participatory democracy in which citizens are fully informed.

Against:

Opponents of the bill point out that people conduct business all over the world every day using telecommunications technology such as Skype (which has a two-way audio and video capability). They argue that people in the public sector should be free to do the same.

Further, opponents of the bill, including the Michigan Townships Association, note that both the Michigan Court of Appeals and the Michigan Attorney General (among others) have issued opinions allowing government officials to participate in meetings and hearings via teleconference calls and interactive television. They argue that the proper use of telecommunication tools--most especially in this era of virtual learning--does not eliminate public participation and openness of public action. They also note that they do not recommend the widespread or general use of telecommunication practices, but observe that advanced telecommunications options, such as Skype, can help busy, mobile officials attend to public business more effectively and efficiently.

Opponents cite two cases that support this argument. As noted earlier, the Michigan Court of Appeals held in *Goode vs Michigan Department of Social Services* (1985), that the purpose of the Open Meetings Act is to provide openness to the public of meetings and hearings, and that proceeding through teleconference calls with speaker phones audible to all in the meeting room, and with the ability of the public to attend at all locations involved in the teleconferencing, fully complies with the Open Meetings Act. The court ruled, "While we recognize that to actually see and observe all the witnesses and the hearing officer is desirable, we do not find it necessary."

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Finally, opponents of the bill from Michigan's Upper Peninsula say that teleconferencing allows intergovernmental bodies to conduct public meetings rather than cancel during

times of inclement weather when it is unsafe to drive. This option is especially helpful to public authorities whose boards comprise representatives from several counties, such as the Gogebic County Community Mental Health Authority.

POSITIONS:

The Michigan Department of Civil Rights is neutral on the bill. (5-7-13)

The Michigan Townships Association opposes the bill. (4-30-13)

The Gogebic County Community Mental Health Authority opposes the bill. (5-7-13)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.