

## ELECTRONIC MEETINGS OF CERTAIN PUBLIC BODIES

Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

**House Bill 5292 as reported from committee**

**Sponsor: Rep. Bradley Slagh**

**Committee: Energy**

**Complete to 1-20-22**

Analysis available at  
<http://www.legislature.mi.gov>

### SUMMARY:

House Bill 5292 would amend the Open Meetings Act to allow electronic meetings to be held by a public body that is a joint agency formed under Article 3 of the Michigan Energy Employment Act, including the board of commissioners and any committee of the agency.

**The Open Meetings Act** generally requires all meetings of a public body to be open to the public and held in a place available to the public, and all decisions of a public body must be made at a meeting open to the public. The act defines “public body” as any of the following:

- A state or local legislative or governing body, including a board, commission, committee, subcommittee, authority, or council, that is empowered by state constitution, statute, charter, ordinance, resolution, or rule to exercise governmental or proprietary authority or perform a governmental or proprietary function.
- A lessee of a body described above that is performing an essential public purpose and function under the lease agreement.
- The board of a nonprofit corporation formed by a city under section 40 of the Home Rule City Act.

Except for an agricultural commodity group, which can hold a meeting electronically (in whole or in part) for any reason,<sup>1</sup> the act allows meetings of a public body to be held electronically or with remote participation only to accommodate the absence of one of its members due to military duty, and then only that member may participate remotely.

**Under the bill**, a public body that is a joint agency formed under Article 3 of the Michigan Energy Employment Act, including the board of commissioners and any committee of the joint agency, could hold a meeting electronically due to any circumstances.

The Michigan Energy Employment Act allows two or more municipalities to form a joint agency for the planning, financing, development, acquisition, construction, improvement, enlargement, operation, or maintenance of a joint project or projects to supply electric power and energy. Eligible municipalities include cities, counties, incorporated villages, townships, and metropolitan districts. A municipal unit or other political subdivision of another state or a Canadian province also may become a member or associate member of a joint agency under certain circumstances.

The Michigan Public Power Agency and the Michigan South Central Power Agency are joint agencies to which these provisions would apply.<sup>2</sup>

MCL 15.263a

<sup>1</sup> See <https://www.legislature.mi.gov/documents/2021-2022/billanalysis/House/pdf/2021-HLA-4603-FA690029.pdf>

<sup>2</sup> See <http://www.mpower.org/> and <http://www.mscca.net/>

## **BACKGROUND:**

In addition to other requirements for meetings held under the Open Meetings Act, meetings held electronically must be conducted in a way that allows for two-way communication so that members of the public body can hear one another, public participants can hear the members, and the members of the public body and other public participants can hear public participants during a public comment period. A public body can use technology to allow for typed comments to be submitted by public participants and read to or shared with the members of the public body and other public participants. A public body cannot require a person to register or provide his or her name or other information as a condition of participating in or attending an electronic meeting, except for mechanisms established and required by the public body that are necessary to allow the person to participate in a public comment period.

The public body must post advance notice of a meeting held electronically in a publicly accessible place on its website, if it has an active official internet presence, at least 18 hours before the meeting starts. The notice must include explanations of why the public body is meeting electronically and how members of the public can participate in the meeting, how members of the public can contact members of the public body, and how persons with disabilities can participate in the meeting. If there is an agenda for the meeting, it must be made available to the public at least two hours before the start of the meeting.

## **BRIEF DISCUSSION:**

For many years the Open Meetings Act was interpreted as allowing a member of a public body to participate in a public meeting remotely, such as by telephone, as long as a quorum had been established by members who were physically present. An *Open Meetings Act Handbook* issued by Attorney General Bill Schuette further implied that an absent member could vote remotely, in a provision stating that “if you have board members participating by teleconference, a roll call will permit the secretary to accurately record the entire vote.”

Under those interpretations, board commissioners representing municipal electric utilities that are members of joint action agencies (JAAs) were able to attend JAA board and committee meetings electronically as long as a physical quorum was established. However, legislation enacted in 2018 and 2020 greatly limited the circumstances under which a member’s remote participation was deemed to be in compliance with the Open Meetings Act.<sup>3</sup>

Reportedly, the legislative changes have been particularly burdensome to those municipal electric utilities whose service areas are located a great distance from where the utilities’ JAA board and committee meetings are held. For example, a commissioner representing a municipal electric utility in Marquette now must drive to Lansing to attend monthly meetings instead of being able to participate remotely, a trip that requires the commissioner to be away from the utility for three days, overnight lodging, and added costs for food and gasoline.

The bill would create an exception from the current in-person requirements of the Open Meetings Act for a public body that is a joint agency formed under Article 3 of the Michigan

---

<sup>3</sup> 2018 PA 485 restricted remote participation only to members of a public body absent due to military duty, and 2020 PA 254 temporarily allowed remote participation by a member if absent due to a medical condition or during a local state of emergency or state of disaster under certain conditions.

Energy Employment Act. The exception would be similar to one established for agricultural commodity groups under 2021 PA 54 (Enrolled House Bill 4603). Under House Bill 5292, members of a JAA could hold a public meeting electronically by telephone or video conferencing in any circumstances without violating the act. Although the bill would allow a meeting to be conducted entirely electronically, it is believed that most commissioners and customers of a municipal electric utility would continue to attend JJA board and committee meetings in person because their member communities are near the regular meeting location.

According to written testimony submitted by the Michigan Public Power Agency, the bill could save local taxpayers by reducing the costs associated with travel to the meeting location, particularly for those communities located farthest from their JAA meeting location. The bill also would shorten the time a commissioner would be away from his or her duties at the utility. Further, meetings held electronically could make it easier for interested customers of a member utility to attend and participate in meetings by reducing their time away from work or sparing them from incurring travel expenses. Many policy decisions relating to services provided by the municipal electric utilities are discussed at JAA public meetings on subjects of interest to customers that include generation, purchasing of power, portfolio changes, and green energy. Enabling easier public access to meetings through an electronic option could encourage more involvement by customers and provide more transparency in the decision-making process.

#### **FISCAL IMPACT:**

The bill would have no fiscal impact on the state or on local units of government.

#### **POSITIONS:**

Representatives of the following entities testified in support of the bill (11-10-21):

- Michigan Public Power Agency (MPPA)
- Michigan Municipal Electric Association (MMEA)

The Southeast Michigan Council of Governments (SEMCOG) indicated support for the bill. (11-10-21)

Legislative Analysts: Susan Stutzky  
Rick Yuille  
Emily S. Smith  
Fiscal Analyst: Michael Clossen

---

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