

Legislative Analysis



OPEN MEETINGS EXEMPTION FOR EMPLOYMENT RELATIONS COMMISSION

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House Bill 4772 as introduced
Sponsor: Rep. Deb Kennedy
Committee: Labor

First Analysis (12-17-09)

BRIEF SUMMARY: The bill would create an exemption from the Open Meetings Act for the Michigan Employment Relations Commission only when deliberating the merits of a case.

FISCAL IMPACT: House Bill 4772 will have little or no fiscal impact on the state.

THE APPARENT PROBLEM:

The Michigan Employment Relations Commission resolves labor disputes involving public and private sector employees by appointing mediators, arbitrators, and fact finders; conducting union representation elections; determining appropriate bargaining units; and adjudicating unfair labor practice cases. The commission members has three members who are appointed by the Governor to three-year terms, and no more than two of them can be of the same political party. Supported by the staff of the Bureau of Employment Relations, the commission administers three statutes:

- The Public Employment Relations Act---a labor relations statute which grants all public employees in Michigan (excluding classified civil service employees of the state and federal government) the right to organize and be represented by labor organizations of their choice.
- The Labor Relations and Mediation Act---a statute regulating collective bargaining relationships between private sector unions and small private sector employers not falling within the jurisdiction of the National Labor Relations Act.
- The Compulsory Arbitration Act---a statute providing for compulsory binding arbitration of labor-management disputes involving public safety employees.

Together with the assistance of staff from the Bureau of Employment Relations (located within the Department of Energy, Labor, and Economic Growth) and administrative law judges from the State Office of Administrative Hearings and Rules, the Employment Relations Commission meets monthly to adjudicate alleged statutory violations of labor law, including unfair labor practices, disputes over bargaining unit composition, and other issues related to public employee representation. The commission's decisions are made after an administrative law judge issues a recommended order. Commission decisions are appealed directly to the Michigan Court of Appeals. See *Background Information*.

Under Michigan's Open Meetings Act, the commission's review of the orders rendered by the administrative law judges must be conducted at an open meeting, since the commission is considered to be a "public body" under the act.

Two members of the three-member commission constitute a quorum; so, commissioners are unable to discuss the merits of a pending case with each other, unless they convene a public meeting of all three members. Unlike similar quasi-judicial bodies in state government, such as the Worker's Compensation Appeal Board, the State Tenure Commission, the Michigan Public Service Commission, and even the Employment Relations Commission's own arbitration panels—all of which are exempt from the Open Meetings Act—the Employment Relations Commissioners must take-up all their deliberations in public after providing proper notice for each meeting.

According to a commission spokesman, the Open Meetings Act has had the result of slowing the commission's deliberations and creating long delays in issuing decisions, many of which require timely resolution in order to protect both business and labor interests.

Legislation has been introduced to exempt the Employment Relations Commission from the Open Meetings Act only when deliberating the merits of a case.

THE CONTENT OF THE BILL:

House Bill 4772 would amend the Michigan Open Meetings Act to create an exemption from the act for the Michigan Employment Relations Commission only when deliberating the merits of a case.

The Open Meetings Act exempts certain agencies from the its requirements, including the Worker's Compensation Appeal Board, the Employment Security Board of Review, the State Tenure Commission, an arbitrator or arbitration panel appointed by the Employment Relations Commission, and the Public Service Commission. House Bill 4772 would retain those provisions, and add another: the Employment Relations Commission created under Public Act 176 of 1939.

The bill would also eliminate an outdated provision of the act concerning an exemption for health care arbitration, a provision repealed by Public Act 78 of 1993.

MCL 15.263

BACKGROUND INFORMATION:

For further information of the Michigan Employment Relations Commission, visit:
http://www.michigan.gov/dleg/0,1607,7-154-10576_17485---,00.html

ARGUMENTS:

For:

Proponents of this legislation note that it now takes a year or more for the Michigan Employment Relations Commission to settle a case brought before it. A spokesman for

the commission argues that in the process of their deliberations, the three-member commission needs the opportunity to have full and frank discussions, in order to come to a fair resolution of the disputes before it. The Open Meetings Act, which requires that all the commissioners' deliberations be undertaken in public, often inhibits their discussion.

If the commission were exempt from the Open Meetings Act only when deliberating the merits of a case, it is estimated that the commission's deliberations could be speeded up so that decisions could be made in six months, rather than a year. More timely resolution of some disagreements--for example, a "back pay" dispute--has significant implications both for the employee who goes without compensation, and for the employer who awaits a decision whose monetary value grows if the dispute is prolonged and then upheld. Both parties have everything to gain if decisions can be made more quickly.

Proponents of the bill also note that similar quasi-judicial bodies in state government--such as the Worker's Compensation Appeal Board, the State Tenure Commission, the Michigan Public Service Commission, and even the Employment Relations Commission's own arbitration panels--are exempt from the Open Meetings Act when deliberating the merits of their cases. These quasi-judicial bodies are charged to be neutral in these cases--cases in which the state has no financial or regulatory interest in the outcome--and to resolve the issues fairly between outside parties. The proponents of the bill argue that the Employment Relations Commission is precisely this kind of agency, and it should be treated in the same manner as other quasi-judicial bodies. Indeed, they argue that the bill corrects an apparent oversight by the original drafters of the Open Meetings Act who intended to provide such an exemption.

Against:

Opponents of the legislation argue that the deliberations of all agencies in state government should be open to the public. They note that "transparency" during decision-making allows for accountability. Because the Employment Relations Commission must meet the requirements of the Open Meetings Act, all of Michigan's taxpayers as well as all of the parties bringing disputes--both the businesses owners and their employees--are more fully informed about the commission's dispute resolution processes.

POSITIONS:

The Michigan Employment Relations Commission supports the bill. (12-16-09)

The Department of Energy, Labor, and Economic Growth and the Bureau of Employment Relations support the bill. (12-16-09)

The National Federation of Independent Business opposes the bill. (12-16-09)

The Associated Builders and Contractors oppose the bill. (12-16-09)

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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.