



**House  
Legislative  
Analysis  
Section**

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**REPEAL SUNSET ON PSC'S OPEN  
MEETINGS EXEMPTION**

**House Bill 5402 as introduced  
First Analysis (11-29-95)**

**Sponsor: Rep. Barbara Dobb  
Committee: Public Utilities**

***THE APPARENT PROBLEM:***

The Public Service Commission (PSC) is a three-member quasi-judicial body that regulates public utilities in Michigan. The three-member body meets to deliberate cases involving providers of public utilities. Because the PSC is a public body which decides issues that often directly affect the public, it was originally subject to the Open Meetings Act. As a result, any discussion of matters before the commission by any two members of the commission (which would constitute a quorum) was required to meet public notice requirements and be an open meeting in compliance with the Open Meetings Act. Because of the quasi-judicial nature of the PSC and the fact that any conversation between any two commissioners would constitute a commission meeting, the Open Meetings Act interfered with the commission's ability to deliberate cases and lead to significant delays in the decision making process.

To resolve these problems legislation was passed to exempt the PSC from the provisions of the Open Meetings Act. However, the legislation contained a sunset provision to repeal the exemption as of January 1, 1990, which was later extended until January 1, 1996. Prior to the time the PSC was granted the exemption from the provisions of the Open Meetings Act, the PSC had over 100 cases that were more than nine months old. After the exemption was granted in 1989, the backlog had been reduced to zero by 1992 and has continued to remain quite low ever since. Furthermore, during the time the commission was subject to the Open Meetings Act, the commission developed a system of carrying out deliberations through staff members, rather than direct contact between the commissioners themselves. As a result staff members were placed in the position of having to interpret commissioner's intentions and much of the decision-making process was placed in the hands of the staff members.

Legislation has been introduced which would remove the sunset provision and allow the PSC's exemption to continue unabated.

***THE CONTENT OF THE BILL:***

The bill would repeal enacting section 2 of Public Act 158 of 1988. Among other things, Public Act 158 of 1988 amended the Open Meetings Act to include the Public Service Commission in the list of public bodies exempted from the open meetings requirements when deliberating the merits of a case. Enacting section 2 originally provided that the provisions of P.A. 158 of 1988 would expire on January 1, 1990; it was extended in 1989 until January 1, 1996. The bill would repeal only the sunset provision, leaving the exemption in place indefinitely.

MCL 15.263

***FISCAL IMPLICATIONS:***

According to the Department of Commerce, the bill would have no fiscal impact. (11-28-95)

***ARGUMENTS:***

***For:***

The PSC is composed of three members who meet to publicly deliberate the merits of cases involving public utilities. When a utility wishes to raise its rates, it must present its case for a rate hike to the commission which then considers whether to grant the request. The commission's decision must consider a number of things, such as the effect a rate change could have on ratepayers, on the utility itself, or on the number of jobs - statewide - that might be affected by the

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decision. Requiring the three commissioners to publicly deliberate, particularly when sensitive issues are being considered, before a final decision has been reached, could affect the financial stability of all utilities by causing unnecessary fluctuations in financial markets. Furthermore, requiring the commissioners to hold a public meeting every time they wish to discuss matters related to a case slows the deliberation process. The bill would continue to allow the PSC to meet in closed session when deliberating the merits of a case and, thus, would continue to allow cases to be processed more efficiently and effectively while assuring a more stable economic environment for both businesses and individuals.

If the PSC's exemption is allowed to sunset under the current law it is likely to cause a recurrence of the practices which lead to significant delay in the PSC's decision making process prior to the exemption. Furthermore, requiring the commission to conduct its decision making process in open meetings could have adverse affects on financial markets. The decisions of the commission can effect the stock and bond prices for the utility companies involved, and indirectly effect financial markets for state utilities, customers, and the credit standing of the State of Michigan. Conducting the decision-making process in open meetings would lead increased market fluctuation and instability.

***Against:***

Government bodies that meet to deliberate on issues which directly affect the public are subject to the provisions of the Open Meetings Act for a reason: to give the public a voice in such deliberations.

***Response:***

The public is not prevented from presenting testimony and evidence regarding a case before the commission. The PSC is required to base its decision upon evidence in the public record. If any party to a case - including the public - feels that the commission's decision is not based on the evidence found in the public record, the PSC's decision could be appealed to the state court of appeals. The only thing the bill does is continue to allow the commission members to discuss a case among themselves without having to call a public meeting in the same fashion as other quasi-judicial bodies are allowed to do.

***POSITIONS:***

The Public Service Commission supports the bill. (11-28-95)

The Department of Commerce supports the bill. (11-28-95)

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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.