

Legislative Analysis



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

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House Bill 5335 (Substitute H-1)
Sponsor: Rep. Richard LeBlanc
Committee: Oversight, Reform, and Ethics

First Analysis (2-14-12)

BRIEF SUMMARY: The bill specifies that a quorum of a public body's open meeting would be constituted only by members who are physically present at a meeting; and further, 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 allow their participation in meetings at which 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.

Legislation has been introduced to amend the Michigan Open Meetings Act, so that a quorum could be constituted only by those who are physically present at a meeting. Further, the legislation would prohibit voting by those who are absent.

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 5335 (H-1) 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."

In addition, the bill would modify the definition of the term "meeting" to mean the convening of a public body at which a quorum is *physically* present for the purpose of deliberating toward or rendering a decision on a public policy, or any meeting of the board of a nonprofit corporation formed by a city under Section 40 of the Home Rule City Act, 1909 PA 279, MCL 117.40.

Further, currently the law specifies that all people shall be permitted to *attend* any meeting of a public body (with some exceptions outlined in the act), and also shall be permitted to *address* a meeting of a public body under its established and recorded rules. House Bill 5335 (H-1) would retain this wording and these provisions. (The original bill would have reworded these provisions.)

Finally, the bill contains an additional amendment, which appears 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, (2) the Employment Security Board; (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 5335 would eliminate (5), above, the arbitration panel selected under Chapter 50A of the Revised Judicature Act. Chapter 50A, which dealt with health care arbitration, has been repealed. 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.

ARGUMENTS:

For:

Proponents of the bill, including the Office of the Attorney General, say the bill is necessary to avoid the possibility of "absentee government." 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 electors adequate interaction, oversight, and accountability. Further, it denies elected officials the opportunity to communicate with electors 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. First, 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."

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POSITIONS:

The Attorney General supports the bill. (2-14-12)

The Michigan Township Association is opposed to the bill. (2-14-12)

The Municipal Employees Retirement System is neutral on the bill. (2-14-12)

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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.