

Legislative Analysis



SOUND RECORDING OF CERTAIN PUBLIC MEETINGS

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House Bill 4705 (H-1) as reported from committee

Sponsor: Rep. Luke Meerman

Committee: Oversight

Complete to 11-4-21

Analysis available at
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BRIEF SUMMARY: House Bill 4705 would amend the Open Meetings Act to require audio recordings to be made at all public meetings of certain state public bodies and require the recordings to be kept for at least a year and to be accessible to the public through Freedom of Information Act (FOIA) requests.

FISCAL IMPACT: House Bill 4705 could result in marginal costs for state government and would have no fiscal impact on local units of government. (See **Fiscal Information**, below, for a detailed discussion.)

THE APPARENT PROBLEM:

According to committee testimony, the impetus for the bill was a citizen's discovery that the state Construction Code Commission stopped recording its public meetings sometime during 2019. For years, interested parties could request transcripts of recorded meetings of various state agencies, boards, and commissions through FOIA. Apparently, the recording of the meeting in question was needed by the citizen in a court case appealing a decision by the commission. Without the detail the recording would have provided, and having to rely on the minutes of the meeting, which lacked the necessary details, the citizen lost the appeal.

It is not clear why the Bureau of Construction Codes stopped making audio recordings of commission meetings, and it is not clear how many state public bodies had been making regular audio recordings and how many continue to do so or have stopped. However, some feel that this situation reveals how access to audio recordings of public meetings could be useful to the public. Legislation addressing the issue has been offered.

THE CONTENT OF THE BILL:

House Bill 4705 would add a new section to the Open Meetings Act to require that every meeting of certain state public bodies be recorded in a manner that allows for the capture of sound, including, but not limited to, in any of the following formats:

- A sound-only recording.
- A video recording with sound and picture.
- A digital or analog broadcast capable of being recorded.

The recording requirement would apply to a meeting of a state licensing board, state commission panel, or state rule-making board, except for a meeting or part of a meeting held in closed session. Recordings would have to be maintained for at least one year from the date of the meeting in a format that can be reproduced upon a request under FOIA.

Proposed MCL 15.269a

BACKGROUND INFORMATION:

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. Additionally, the act allows meetings of a public body to be held electronically or with remote participation under certain circumstances.

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.

Under House Bill 4705, the requirement for governmental entities to record public meetings and make those recordings accessible to the public would be limited to certain entities that have more of a regulatory nature, such as state licensing boards, state commission panels, and state rule-making boards, and would not include closed sessions in which personally sensitive or propriety information would be discussed.

FISCAL INFORMATION:

House Bill 4705 could result in marginal costs for state government and would have no fiscal impact on local units of government. State costs would be related to the costs of acquiring audio recording equipment, if the public bodies do not already have access to it, and minimal costs of storing digital audio recordings. Other potential costs include costs of providing persons with disabilities equal access to recordings upon making a FIOA request to comply with federal and state law such as the Americans with Disabilities Act (ADA) and the Persons with Disabilities Civil Rights Act. The bill’s minimum requirement of an audio recording could necessitate accommodations for deaf and hard of hearing people which may require a transcript of the meeting, American Sign Language translation, braille, or other means. Costs are indeterminate at this time and would depend on the frequency and nature of requests requiring disability accommodation and the resulting state service model to respond to those requests.

ARGUMENTS:

For:

To some, the bill is about greater government transparency and public access to what takes place at various regulatory meetings. Due to work schedules, family needs, concerns related to COVID-19, transportation issues, and so on, a person interested in a particular board or commission meeting may be unable to attend but could benefit if able to listen to an audio recording or order a transcript of the meeting by making a request under FOIA. Technology has advanced regarding the ability to make and store digital recordings at a reasonable cost. For years, before digital recordings became an option, many state entities regularly made cassette tape recordings of meetings. However, some of those entities have stopped. Currently, there is no official policy or statutory requirement for these entities to record their public meetings. The bill would require certain entities with more of a regulatory function, such as

licensing and rule-making boards, to make an audio recording and store it in a format accessible to the public through a FOIA request (requesters typically pay a nominal fee for the service). The bill also would allow an entity to make a video recording with sound and picture or a digital or analog broadcast that could be recorded (examples include Zoom-type meetings and video recordings that many organizations later upload to websites where people can view at their convenience). The point is, technological advances in recording capabilities and digital storage make it possible to expand public access to the business of government. Many feel that such increased awareness and involvement would benefit individuals and their communities.

Against:

Even though the committee-reported version of the bill is narrower in scope than the bill as introduced, the number of entities that would fall under the bill is daunting. For instance, there are at least 147 state boards, with an unknown number of commissions and bureaus. An exact number is not known, as many of these entities are created or eliminated as administrations change. Adding to the difficulty in implementation is that these entities differ in size of membership, size of rooms in which they meet, and frequency of meetings. Some larger, more established entities may already have recording equipment that could satisfy the bill's requirements. But many would not. Besides making a recording, the recording must be capable of capturing public comments as well as comments made by the board, bureau, or commission members in a quality that could be accurately transcribed upon request. In addition, there is the issue of who would bear responsibility for gathering, storing, cataloging, retrieving a requested recording, and then identifying and disposing of recordings that are a year old. Some argue that perhaps the bill's scope could be further scaled back to apply to those meetings that appear to be the most in demand, such as the construction trades-related meetings.

Against:

According to the Department of Civil Rights, whenever a record (including a recording) of a public entity is kept and that record is subject to access by the public under FOIA, equal access to the records must be provided to persons with disabilities under the federal ADA and the state Persons with Disabilities Civil Rights Act even though FOIA does not specifically require such a response. For example, an audio-only recording or video may have to be transcribed into a complete written or braille document or a recording may need American Sign Language added. Not only would each request require a deliberative process to determine how the information could be made accessible, the requests would likely take longer and be more expensive to fulfill. (Although agencies can charge a fee to cover certain expenses in fulfilling a FOIA request, a discount is provided to indigent persons for up to two requests from the same public body in a calendar year.)

POSITIONS:

Representatives of the Department of Technology, Management, and Budget testified in opposition to the bill. (6-17-21)

The Department of Civil Rights indicated opposition to the bill. (6-17-21)

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■ 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.