

## OPEN MEETINGS ACT

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<http://www.house.mi.gov/hfa>

**House Bill 6423 as introduced**  
**Sponsor: Rep. Julie Calley**  
**Committee: Rules and Competitiveness**  
**Revised 10-13-22**

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

## SUMMARY:

House Bill 6423 would amend the Open Meetings Act to revise and reorganize several of its provisions. For the most part, the bill would retain current law, but it would restructure and rephrase those provisions for clarity. Those kinds of changes are not described below. The bill also would make some substantive changes to the act, which are described below, along with proposed new provisions based on court decisions or attorney general opinions regarding the current act. Note that those kinds of changes may not always be flagged as such.

Generally speaking, the Open Meetings Act requires all meetings of a **public body** to be held in a place available to the public and requires all decisions of a public body to be made at a meeting open to the public. The act prescribes rules for posting public notices of meetings and for making minutes available to the public. The act allows meetings of a public body to be held remotely under certain circumstances, and also provides conditions under which a public body can meet in a closed session.<sup>1</sup> 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. (These are nonprofit corporations generally formed for economic development purposes.)

### Defined terms

The bill would add or amend definitions for terms that are used throughout the act. It also would move some definitions around to put the terms in alphabetical order.

The bill would newly define **deliberation** as the act of carefully considering issues and options before making a decision or taking some action. (This definition is based on *Black's Law Dictionary* and has been cited by the Michigan Court of Appeals in the context of the Open Meetings Act. It would also apply to the verbs **deliberates**, **deliberating**, etc.)

The bill would newly define **online** as meaning on a portion of a public body's website that is fully accessible to the public, such as a homepage or separate webpage dedicated to public notices or minutes. (This definition is drawn from language now elsewhere in the act regarding current requirements for the online posting of meeting notices.)

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<sup>1</sup> For an overview of the act, see the Attorney General's Open Meetings Act Handbook: [https://www.michigan.gov/-/media/Project/Websites/AG/open-meetings/OMA\\_handbook.pdf](https://www.michigan.gov/-/media/Project/Websites/AG/open-meetings/OMA_handbook.pdf)

The bill would retain the current definition of **public body** (see above) and would add that public body does *not* include any of the following:<sup>2</sup>

- A committee or subcommittee that is merely advisory and is capable only of making recommendations concerning the exercise of governmental authority.
- A single person.
- A private, nonprofit corporation.

The bill would retain the current definition of **closed session** (a meeting or part of a meeting closed to the public) and would newly add that closed session includes a quorum of a public body deliberating by email, text message, or other electronic communication during an open session. (Existing references to “closed hearing” in the act would be changed by the bill to “closed session.”)

The bill also would retain the current definition of **meeting**: The convening of a public body at which a quorum is 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 4o of the Home Rule City Act. (Those nonprofit corporations are generally formed for economic development purposes.) The bill would amend this definition to specify that **meeting** includes both formal and informal convenings of a public body. The bill also would add that **meeting** does not include a social, professional, or chance gathering that is not designed to avoid the act. (This provision is current law now elsewhere in the act.) The bill would newly provide examples of such social, professional, or chance gatherings that are not considered **meetings** under the act:<sup>3</sup>

- Addressing a civic organization.
- Listening to neighborhood concerns.
- Observing demonstrations.
- Attending a workshop, training, seminar, informational gathering, or professional conference as long as the event is designed to convey information about areas of interest common to all participants.

### **Public notices of meetings**

The bill would require public notices to contain the public body’s website and email address, in addition to the currently required name, address, and telephone number.

The bill would delete a provision that now requires a public body to send copies of its meeting notices by first-class mail to any individual, organization, firm, or corporation that requests them and pays an annual fee to cover the costs of printing and mailing them.

A related provision now requires a public body to provide copies of its meeting notices for free to Michigan newspapers, radio stations, and television stations that request them in writing. The bill would refer instead to Michigan “media outlets.”

The bill would add provisions generally requiring public bodies to post meeting notices and minutes online. It would remove a reference to using cable television to post notices, and it

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<sup>2</sup> These exceptions are drawn from court decisions and attorney general opinions.

<sup>3</sup> These examples are drawn from attorney general opinions under which, generally speaking, these events are not considered meetings subject to the act *as long as* members of the public body do not deliberate toward a decision of that body or make such a decision.

would remove a requirement that notice of a meeting held in a residential dwelling must be given in a display advertisement in a local newspaper.

Currently, a public body that is part of a larger institution (such as an agency within a state department or a board within a university) must post its public notices at the principal office of that larger entity in addition to its own principal office. The bill would delete this requirement.

Under the bill, in addition to posting public notices at its principal office, online, and anywhere else the public body considers appropriate, a public body in the legislative branch would have to post its notices in the Capitol building and a public body in the judicial branch would have to post its notices in the Hall of Justice.

The bill also would require a public notice to be accessible to the public until the meeting that is the subject of the notice is completed or canceled. It would delete a provision that says, “A durational requirement for posting a public notice of a meeting under this act is the time that the notice is required to be accessible to the public.”

#### **Rules for addressing a public body**

The act provides that a person must be allowed to address a meeting of a public body under rules established and recorded by the public body. The bill would retain this provision and add that those rules may not be applied to deny a person the right to address the meeting of the public body (such as by limiting all public comment to one hour).<sup>4</sup>

In addition, the act now prohibits excluding a person from a meeting open to the public, except for a breach of the peace committed at the meeting. The bill would additionally allow a person to be excluded for a threat of criminal violence against a member of the public body.

#### **Closed sessions**

Currently, a school-related public body can meet in closed session to consider the dismissal, suspension, or disciplining of a student if the student or the student’s parent or guardian requests a closed hearing. The bill would instead require the public body to meet in closed session unless the student or the student’s parent or guardian requests an open session. The person requesting an open session also could later rescind the request, after which the matter would have to be considered in closed session.

In addition, a public body now may meet in closed session to consider the purchase or lease of real property, up to the time the public body obtains an option to purchase or lease the property. The bill would allow a public body to meet in closed session to consider the *sale*, purchase, or lease of real property, and would retain the requirement that the matter be considered in open session once an option to purchase or lease the property has been obtained.

The bill would require the minutes for a closed session of the public body to show (as do open session minutes) the date, time, place, members present, members absent, decisions, actions, roll call votes, and the reason or reasons for which a closed session is held.<sup>5</sup>

The bill also would newly provide that a majority vote of the members elected or appointed and serving is required to leave a closed session. (The act is currently silent on this matter. The

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<sup>4</sup> This proviso is drawn from an opinion of the attorney general.

<sup>5</sup> Note that a public body cannot make decisions or take actions in a closed session.

Attorney General's Open Meetings Act Handbook suggests as best practice recommending a majority vote of members present to end the closed session.)

### **Venue for suing state public body**

Except for suits that must be brought before the court of appeals, the act now provides that lawsuits brought under the act against a state public body must be filed in the circuit court for Ingham County. The bill would instead require those suits to be brought before the Court of Claims.<sup>6</sup>

### **Frivolous suits**

In two sections that allow a public body to be sued for not complying with the act (to challenge a tainted decision or action of the body or to get a court order addressing the noncompliance), the bill would add a provision saying that if the court finds that the lawsuit was *frivolous*, the court must award to the *prevailing party* reasonable costs and attorney fees.

For purposes of the above provisions, the terms *prevailing party* and *frivolous* would have the meanings given them in section 2591 of the Revised Judicature Act (which generally allows the award of costs and fees to the prevailing party in a civil lawsuit found to be frivolous):

*Prevailing party* would mean a party who wins on the entire record.

*Frivolous* would mean that at least one of the following conditions is met:

- The party's primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the prevailing party.
- The party had no reasonable basis to believe that the facts underlying its legal position were in fact true.
- The party's legal position was devoid of arguable legal merit.

### **Fines and damages**

Currently, a member of a public body who intentionally violates the act is guilty of a misdemeanor punishable by a fine of up to \$1,000. If a member intentionally violates the act more than once in the same term, they are guilty of a misdemeanor punishable by a fine of up to \$2,000 or imprisonment for up to one year, or both. In addition, a member of a public body who intentionally violates the act is personally liable in a civil action for actual and exemplary damages of up to \$500 total, plus *reasonable costs and actual attorney fees*.

The bill would increase all of the above dollar amounts fivefold, as follows:<sup>7</sup>

- Misdemeanor fine for intentional violation: up to \$5,000.
- Misdemeanor fine for second intentional violation in same term: up to \$10,000.
- Personal liability for actual and exemplary damages for intentional violation: up to \$2,500 total. (The bill also would change the description of awardable costs and fees to *reasonable costs and attorney fees*.)

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<sup>6</sup> The Court of Claims generally has jurisdiction over all civil actions brought against the state or its departments or agencies, including constitutional claims, prisoner litigation, tax-related suits, highway defect actions, medical malpractice suits, contract disputes, and other claims for monetary damages. The Michigan Supreme Court assigns four judges of the Court of Appeals to serve on the Court of Claims, where each case is heard by a single judge.

<sup>7</sup> Note that these amounts have not been increased since 1976, when the Open Meetings Act was first enacted. According to the U.S. Bureau of Labor Statistics, \$1,000 in January 1977 has the same buying power as \$5,074 in September 2022. See [https://www.bls.gov/data/inflation\\_calculator.htm](https://www.bls.gov/data/inflation_calculator.htm)

### **The “rule of lenity”**

The bill would add a new provision to prohibit a court from using the “rule of lenity” to interpret the act. The rule of lenity is a principle available for use by courts in interpreting criminal law. The rule provides that when a criminal statute is unclear or could have more than one interpretation, the court should apply it in the way that is most favorable to the person accused of the crime. The bill would prohibit application of this guideline by the courts in interpreting the act.<sup>8</sup>

### **Provisions concerning the legislature**

The bill would remove some current provisions that pertain to the legislature, including those that do the following:

- Allow the legislature or a house of the legislature to limit the right to address the body to prescribed times at hearings and committee meetings.
- Provide an exception from public notice requirements when either house is adjourned or recessed for less than 18 hours.
- Prescribe unique posting requirements for the meeting notices of legislative conference committees.

### **Meetings held electronically or with remote attendance**

The bill does not include the section of the Open Meetings Act that primarily deals with meetings held remotely, and it would remove some provisions addressing that subject from the sections that it does include. According to House committee testimony on October 13, 2022, those remote meeting provisions are addressed in a separate bill in a different committee.

### **Obsolete provisions**

Finally, the bill would remove some provisions from the act that are no longer effective (for example, social distancing requirements that took effect December 22, 2020, and applied only through March 31, 2021).

MCL 15.261 et seq.

## **FISCAL IMPACT:**

House Bill 6423 would have an indeterminate fiscal impact on the state and on local units of government. The number of violations that would occur under provisions of the bill is not known; therefore, it is not possible to estimate the amount of additional revenue that would be collected. Under the bill, penal fines for misdemeanor offenses would be increased from \$1,000 to \$5,000 and from \$2,000 to \$10,000 for a second offense in the same term. Any increase in penal fine revenue would increase funding for public and county law libraries, which are the constitutionally designated recipients of those revenues.

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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.

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<sup>8</sup> This prohibition is drawn from a 1998 decision of the Michigan Court of Appeals that held that the rule of lenity does not apply in interpreting the Open Meetings Act.

## APPENDIX: THE TEXT IF ENACTED

If House Bill 6423 were enacted as introduced, the relevant sections of the Open Meetings Act would read as follows:

Sec. 1. (1) This act may be cited as the "open meetings act".

(2) This act supersedes all local charter provisions, ordinances, or resolutions that relate to requirements for meetings of local public bodies to be open to the public.

(3) A public body may adopt an ordinance, resolution, rule, or charter provision requiring more openness than this act requires.

Sec. 2. As used in this act:

(a) "Closed session" means a meeting or part of a meeting closed to the public. Closed session includes a quorum of a public body deliberating by email, text message, or other electronic communication during an open session.

(b) "Decision" means a determination, action, vote, or disposition upon a motion, proposal, recommendation, resolution, order, ordinance, bill, or measure on which a vote by members of a public body is required and by which a public body effectuates or formulates public policy.

(c) "Deliberation" means the act of carefully considering issues and options before making a decision or taking some action.

(d) "Meeting" means the formal or informal convening of a public body at which a quorum is 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. Meeting does not include a social, professional, or chance gathering not designed to avoid this act. For example, meeting does not include addressing a civic organization, listening to neighborhood concerns, or observing demonstrations; nor does it include attending a workshop, training, seminar, informational gathering, or professional conference if the event is designed to convey information about areas of interest common to all event participants.

(e) "Online" means on a portion of a public body's website that is fully accessible to the public, such as a homepage or separate webpage dedicated to public notices or minutes.

(f) "Public body" means any 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 such a body performing an essential public purpose and function pursuant to the lease agreement; or the board of a nonprofit

corporation formed by a city under section 4o of the home rule city act, 1909 PA 279, MCL 117.4o. Public body does not include any of the following:

- (i) A committee or subcommittee that is merely advisory and is capable only of making recommendations concerning the exercise of governmental authority.
- (ii) A single person.
- (iii) A private, nonprofit corporation.

Sec. 3. (1) All meetings of a public body must be open to the public and must be held in a place available to the general public.

(2) All decisions of a public body must be made at an open session of a meeting.

(3) All persons have the right to attend any meeting except as otherwise provided in this act. That right may not be conditioned on a person providing their name or other information or satisfying any other requirement.

(4) A person's right to attend a meeting includes the right to record or to broadcast live without prior approval the proceedings of the public body at the meeting. However, a public body may establish reasonable rules governing recording or broadcasting to minimize the possibility of disrupting the meeting.

(5) A person has the right to address a meeting under rules duly adopted and recorded by the public body. These rules may not be applied to deny a person the right to address the public body, such as by limiting all public comment to 1 hour.

(6) A person must not be excluded from a meeting except for a breach of the peace committed at the meeting or for a threat of criminal violence against a member of the public body.

(7) This act does not apply to any of the following:

(a) The following public bodies when they deliberate the merits of a case:

(i) The Michigan compensation appellate commission operating as described in either of the following:

(A) Section 274 of the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.274.

(B) Section 34 of the Michigan employment security act, 1936 (Ex Sess) PA 1, 421.34.

(ii) The state tenure commission created in section 1 of article VII of 1937 (Ex Sess) PA 4, MCL 38.131, when acting as a board of review from the decision of a controlling board.

(iii) The employment relations commission or an arbitrator or arbitration panel created or appointed under 1939 PA 176, MCL 423.1 to 423.30.

(iv) The Michigan public service commission created under 1939 PA 3, MCL 460.1 to 460.11.

(b) An association of insurers created under the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302, or other association or facility formed under that act as a nonprofit organization of insurer members.

(c) A committee of a public body that adopts a nonpolicymaking resolution of tribute or memorial, if the resolution is not adopted at a meeting.

(d) The Michigan veterans' trust fund board of trustees or a county or district committee created under 1946 (1st Ex Sess) PA 9, MCL 35.602 to 35.610, when the board of trustees or county or district committee is deliberating the merits of an emergent need. "Emergent need" means a situation that the board of trustees or county or district committee, by rules promulgated under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, determines requires immediate action. The board of trustees or county or district committee shall reconsider an emergent need decision at its next meeting.

Sec. 4. All of the following apply to public notice of meetings:

(a) A public notice must contain the applicable public body's name, telephone number, address, website, and email address.

(b) A public body shall post its public notices in its principal office, online, and anywhere else considered appropriate.

(c) A public body that is part of the legislative branch of state government shall post its public notices in the Capitol.

(d) A public body that is part of the judicial branch of state government shall post its public notices in the Hall of Justice.

(e) A local public body that does not have a principal office shall post its public notices in the office of the county clerk in the county where the local public body serves.

(f) A state public body that does not have a principal office shall post its public notices in the office of the secretary of state.

(g) A public notice must be accessible to the public until the meeting that is the subject of the notice is completed or canceled.

Sec. 5. (1) A public body may hold a meeting only if a person designated by the public body gives public notice as provided in this section.

(2) Within 10 days after a public body's first meeting in a new calendar year or fiscal year, it shall post a public notice stating the dates, times, and places of its regular meetings.



(3) If a public body changes its regular meeting schedule, within 3 days after the meeting at which the change is made, it shall post a public notice stating the new dates, times, and places of its regular meetings.

(4) If a public body reschedules a regular meeting or holds a special meeting, at least 18 hours before the meeting, it shall post a public notice stating the date, time, and place of the meeting. This requirement does not apply to special meetings of subcommittees of a public body or conference committees of the state legislature.

(5) A meeting that is recessed for more than 36 hours may be reconvened only after public notice under subsection (4) has been posted.

(6) A meeting may take place in a residential dwelling only if a nonresidential building within the boundary of the local governmental unit or school system is unavailable without cost to the public body. If a public body meets in a residential dwelling, at least 2 days before the meeting, it shall post a public notice online and anywhere else considered appropriate stating the date, time, and place of the meeting. That public notice must include the following language: "This meeting is open to all members of the public under Michigan's open meetings act."

Sec. 5a. (1) A public body may hold an emergency meeting only if both of the following apply:

(a) There is a severe and imminent threat to the health, safety, or welfare of the public.

(b) Two thirds of the members serving on the public body decide that delay would be detrimental to efforts to lessen or respond to the threat.

(2) If a public body holds an emergency meeting that does not comply with the 18-hour posted notice requirement under section 5, it shall do both of the following:

(a) Make paper copies of the public notice for the emergency meeting available to the public at that meeting.

(b) Before the emergency meeting, post the public notice online.

(3) The public notice must explain the specific circumstances that prevent the public body from complying with the 18-hour posted notice requirement under section 5. Generalized explanations such as "an imminent threat to the health of the public" or "a danger to public welfare and safety" do not satisfy this specificity requirement.

(4) Within 48 hours after any emergency meeting, the public body shall transmit to the board of county commissioners of the county in which the public body is principally located the public notice of that emergency meeting.

(5) Compliance with the public notice requirements for emergency meetings in this section does not create, and must not be construed to create, a legal basis or defense

for failure to comply with other provisions of this act and does not relieve the public body from the duty to comply with any provision of this act.

Sec. 6. A public body shall provide a copy of a public notice to any media outlet in this state that submits a written request. The public body shall provide that copy free of charge and at the same time the public notice is posted.

Sec. 7. (1) A 2/3 roll call vote of members elected or appointed and serving is required to call a closed session, except for the closed sessions permitted under section 8(1)(a), (b), (c), (h), and (i). The roll call vote and the reason or reasons for calling the closed session must be entered into the minutes of the meeting at which the vote is taken.

(2) During the closed session, the public body's clerk or designated secretary shall take separate minutes that comply with section 9(1). These minutes must be retained by the clerk, are not available to the public, and may be disclosed only if required by a civil action filed under section 10, 11, or 13. These minutes may be destroyed 1 year and 1 day after approval of the minutes of the meeting at which the closed session was approved.

(3) A majority vote of the members elected or appointed and serving is required to leave a closed session.

Sec. 8. (1) Except as otherwise provided in subsection (2), a public body may meet in a closed session only for the following reasons:

(a) To consider the dismissal, suspension, or discipline of, or to hear complaints or charges brought against, or to consider a periodic personnel evaluation of, an employee, public officer, staff member, or individual agent, if the named person requests a closed session. A person requesting a closed session may rescind the request at any time, after which the matter must be considered in open sessions.

(b) To consider the dismissal, suspension, or discipline of a student if the public body is part of the school district, intermediate school district, or institution of higher education that the student is attending. A school board considering such dismissal, suspension, or discipline shall meet in closed session unless the student or the student's parent or guardian requests an open session. A person requesting an open session may rescind the request at any time, after which the matter must be considered in closed sessions.

(c) For strategy and negotiation sessions connected with the negotiation of a collective bargaining agreement if either negotiating party requests a closed session.

(d) To consider selling, purchasing, or leasing real property. Once the public body obtains an option to purchase or lease that real property, it must consider the matter in open sessions.

(e) To consult with its attorney regarding trial or settlement strategy in connection with specific pending litigation, but only if an open session would have a detrimental financial effect on the litigating or settlement position of the public body.

(f) To review an application for employment or appointment to a public office if the candidate requests that the application remain confidential. However, all interviews by a public body for employment or appointment to a public office must be held in an open session pursuant to this act. This subdivision does not apply to a public office described in subdivision (i).

(g) To consider material exempt from discussion or disclosure by state or federal statute.

(h) For a compliance conference conducted under section 16231 of the public health code, 1978 PA 368, MCL 333.16231, before a complaint is issued.

(i) In the process of searching for and selecting a president of an institution of higher education established under section 4, 5, or 6 of article VIII of the state constitution of 1963, to review the specific contents of an application, to conduct an interview with a candidate, or to discuss the specific qualifications of a candidate, if the particular process meets all of the following requirements:

(i) The search committee in the process, appointed by the governing board, consists of at least 1 student of the institution, 1 faculty member of the institution, 1 administrator of the institution, 1 alumnus of the institution, and 1 representative of the general public. The search committee also may include 1 or more members of the governing board of the institution, but may not include a quorum of the governing board. None of the groups described in this subparagraph may constitute a majority of the search committee.

(ii) After the search committee recommends the 5 final candidates, the governing board may not take a vote on a final selection for the president until at least 30 days after the search committee publicly identifies those candidates.

(iii) The deliberations and vote of the governing board on selecting the president must take place in open session.

(j) For a school board to consider security planning to address existing threats or prevent potential threats to the safety of the students or staff. As used in this subdivision, "school board" means any of the following:

(i) That term as defined in section 3 of the revised school code, 1976 PA 451, MCL 380.3.

(ii) An intermediate school board as that term is defined in section 4 of the revised school code, 1976 PA 451, MCL 380.4.

(iii) A board of directors of a public school academy as described in section 502 of the revised school code, 1976 PA 451, MCL 380.502.

(iv) The local governing board of a public community or junior college as described in section 7 of article VIII of the state constitution of 1963.

(k) For a county veteran services committee to interview a veteran or a veteran's spouse or dependent regarding that person's application for benefits or financial assistance and to discuss that person's application, if the applicant requests a closed session. This subdivision does not apply to a county veteran services committee voting on whether to grant or deny such an application. As used in this subdivision, "county veteran services committee" means a committee created by a county board of commissioners under section 1 of 1953 PA 192, MCL 35.621, or a soldiers' relief commission created under section 2 of 1899 PA 214, MCL 35.22.

(2) This act does not permit the independent citizens redistricting commission to meet in closed session for any reason. As used in this subsection, "independent citizens redistricting commission" means the independent citizens redistricting commission for state legislative and congressional districts created in section 6 of article IV of the state constitution of 1963.

(3) Partisan caucuses of the state legislature may meet in closed session for any reason.

Sec. 9. (1) Each public body shall keep minutes of each meeting showing the date, time, place, members present, members absent, decisions, actions, roll call votes, and the reason or reasons for which a closed session is held.

(2) The public body shall correct a meeting's minutes at the its next meeting. The public body shall make corrected minutes available by its meeting following the correction. The corrected minutes must show both the original entry and the correction.

(3) Minutes are public records open to public inspection. A public body shall therefore do both of the following:

(a) Make proposed minutes available for public inspection at its principal office and online within 8 business days after the meeting to which the minutes refer.

(b) Make approved minutes available for public inspection at its principal office and online within 5 business days after the meeting at which the minutes are approved.

(4) A public body may recoup reasonable printing and copying costs when providing physical copies of minutes.

(5) A public body shall not include in or with its minutes any personally identifiable information that, if released, would prevent the public body from complying with section 444 of subpart 4 of part C of the general education provisions act, 20 USC 1232g, commonly referred to as the family educational rights and privacy act of 1974.

Sec. 9a. A public body that is a state licensing board, state commission panel, or state rule-making board shall retain an audio or audio-and-video recording of every open session for at least 1 year from the date of the meeting in a format that can be reproduced upon a request under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

Sec. 10. (1) The attorney general, the prosecuting attorney of the county in which the public body serves, or any person may sue in a circuit court to challenge a decision made under this act. A court shall presume that a public body's decisions were adopted in compliance with this act.

(2) A public body's decision may be invalidated if the both of the following apply:

(a) The public body does either of the following:

(i) Makes a decision that does not comply with section 3(1) or (2).

(ii) Fails to give notice in accordance with section 5 and that failure interferes with substantial compliance with section 3(1) and (2).

(b) The court finds that the noncompliance or failure has impaired the rights of the public under this act.

(3) A person must sue under this act within the following time frames:

(a) Within 30 days after the approved minutes are made publicly available if the decision involves approving contracts, receiving or accepting bids, making assessments, adopting or amending procedures for issuing bonds or other evidences of indebtedness, or submitting a borrowing proposal to the electors.

(b) In all other cases, within 60 days after the approved minutes are made publicly available.

(4) A lawsuit filed under this section against a local public body must be filed in the circuit court of a county in which that public body serves or, when against a state public body, the court of claims.

(5) If a lawsuit is filed under subsection (1), the public body may reenact the disputed decision in compliance with this act. A reenacted decision is effective from the date of reenactment. A court may not declare a reenactment invalid because of a deficiency in the initial enactment, nor may it treat the reenactment as an admission contrary to the public body's interest.

(6) If the court finds that a lawsuit filed under this section was frivolous, the court shall award to the prevailing party reasonable costs and attorney fees. As used in this subsection, “frivolous” and “prevailing party” mean those terms as defined in section 2591 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2591.

Sec. 11. (1) If a public body is not complying with this act, the attorney general, prosecuting attorney of the county in which the public body serves, or any person may sue to compel compliance or to enjoin further noncompliance with this act.

(2) A lawsuit filed under subsection (1) against a local public body must be filed in the circuit court of a county in which that public body serves or, when against a state public body, the court of claims.

(3) A person suing under subsection (1) must not be required to post security as a condition for obtaining injunctive relief.

(4) A lawsuit seeking mandamus relief against a public body under this act must be filed in the court of appeals.

(5) If a person suing under subsection (1) or (4) prevails, the court shall award that person reasonable costs and attorney fees.

(6) If the court finds that a lawsuit filed under this section was frivolous, the court shall award to the prevailing party reasonable costs and attorney fees. As used in this subsection, “frivolous” and “prevailing party” mean those terms as defined in section 2591 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2591.

Sec. 12. (1) A member of a public body who intentionally violates this act is guilty of a misdemeanor punishable by a fine of not more than \$5,000.00.

(2) A member of a public body who is convicted of intentionally violating this act for a second time within the same term is guilty of a misdemeanor and may be fined not more than \$10,000.00, or imprisoned for not more than 1 year, or both.

(3) A court may not use the rule of lenity to interpret this act.

Sec. 13. (1) A member of a public body who intentionally violates this act may be personally liable in a civil action for actual and exemplary damages of not more than \$2,500.00 total, plus reasonable costs and attorney fees.

(2) A person may bring only 1 lawsuit under this section for a single meeting. A lawsuit under this section must be filed within 180 days after the date of the alleged violation.

(3) A lawsuit under this section may be joined with a lawsuit under section 11.

Sec. 13a. If the governing board of an institution of higher education established under section 4, 5, or 6 of article VIII of the state constitution of 1963 violates section 8(1)(i), the institution shall pay a civil fine of not more than \$500,000.00. This civil fine is in addition to any other remedy or penalty under this act. To the extent possible, the institution shall pay fines imposed under this section from funds allocated to pay for the travel and expenses of the members of the governing board.