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BILL ANALYSIS

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House Bill 4338 (as reported without amendment)**Sponsor: Representative Roland G. Niederstadt****House Committee: Corrections****Senate Committee: Criminal Justice, Urban Affairs, and Economic Development****Date Completed: 6-8-87****RATIONALE**

Since 1978, the Department of Corrections Act has required that parole board meetings be subject to the Open Meetings Act. The seven-member parole board, however, has followed Public Act 314 of 1982, which amended the Department of Corrections Act to allow the creation of rules for what basically is a closed process of parole review by three-member panels. Under that process, a file is reviewed by two or three members in succession, and a hearing is held only if one of the first two reviewers votes against parole. A prisoner may not be denied parole without an interview.

In September of 1986, a prisoner filed suit seeking to invalidate a denial of parole on the basis that the parole board failed to comply with the Open Meetings Act. The Attorney General concurred that the Open Meetings Act applied and should have been followed, and negotiated a stipulation and order of dismissal in Ingham County Circuit Court in which the Department of Corrections agreed to pay attorney fees, comply with the Open Meetings Act in parole board decisions, and reconsider the parole decision.

The Department of Corrections claims that compliance with the Open Meetings Act delays parole decisions by two to three weeks because of the need to assemble the full panel at an open meeting for which adequate notice was given. The Department argues that the parole board should be exempted from the Open Meetings Act so that it may continue to use the panel procedures enacted by the Legislature in 1982.

CONTENT

House Bill 4338 would amend the Department of Corrections Act to delete a requirement that the business of the parole board be conducted at a public meeting held in compliance with the Open Meetings Act (MCL 15.261-15.275).

MCL 791.202

FISCAL IMPACT

The bill would have an indeterminate impact on State expenditures during FY 1986-87. The bill should result in reduced expenditures over time — but at this time the fiscal implications cannot be estimated.

ARGUMENTS**Supporting Argument**

The bill would enable the parole board to resume the method of review by three-member panels that it has used

successfully in recent years. Without the bill, the panels must comply with the Open Meetings Act, necessitating delays and creating backlogs in parole processing, and reducing the amount of time available for review of files and interviews of prisoners. The bill would serve to expedite the process.

Opposing Argument

The Open Meetings Act requirements are based on the premise that public awareness of and involvement in government proceedings are desirable. The bill would limit the scope of free and open participation.

Response: The bill would not limit input into the parole process by the members of the public who may be concerned about a particular prisoner's parole. The Crime Victims' Rights Act requires the Department of Corrections to notify victims of a prisoner's parole eligibility, any parole hearings, and the time and location of parole, if the victim requests to be informed of such developments. Victims may express their opinions to parole board members and receive information on board decisions, even without implementing the requirements of the Open Meetings Act.

Opposing Argument

The bill may be insufficient to exempt the parole board from the Open Meetings Act. That Act explicitly lists the exceptions to it, and the parole board is not among those exceptions. In order to ensure that the parole board would not have to comply with the Open Meetings Act, that Act should be amended, as well.

Response: The Open Meetings Act is designed to require policy-making to be public, while allowing adjudicative and administrative proceedings to be private. The Act's definition of "meeting" is predicated on "the purpose of deliberating toward or rendering a decision on a public policy". The parole board does not determine "public policy", so its activities should be exempt from the Open Meetings Act. The bill should be sufficient to relieve the parole board of the unnecessary and time-consuming requirements of the Open Meetings Act.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.

H.B. 4338 (6-8-87)