



**House
Legislative
Analysis
Section**

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EXTEND PSC OPEN MEETING EXEMPTION

House Bill 4321 as enrolled
Second Analysis (12-19-89)

RECEIVED

MAR 05 1990

Sponsor: Rep. Alma Stallworth
House Committee: Public Utilities
Senate Committee: Government Operations

Mich. State Law Library

THE APPARENT PROBLEM:

Public Act 158 of 1988, House Bill 5415, exempted the Public Service Commission from the Open Meetings Act when deliberating the merits of a case. (The PSC is a three-member, quasi-judicial body that regulates public utilities providing electricity, telephone, gas, and intrastate transportation services.) The exemption was justified on several grounds. Advocates said that requiring the commissioners to deliberate in public on matters such as rate cases, particularly when sensitive issues were being considered, could affect the financial stability of utilities whose cases were under deliberation. But principally, it was considered unwieldy and absurd that two commissioners (a quorum of the commission) could not meet and discuss a case without issuing a notice of a public hearing and inviting the public to attend. Commissioners were limited to communicating with one another through staff liaisons or in writing. (Some people considered that method itself a violation of the Open Meetings Act.) An exemption from the Open Meetings Act would, it was said, make the PSC's decision-making more efficient and effective. However, because there was uncertainty as to the effect of the Open Meetings exemption on consumer interests (and because there was vigorous opposition to the exemption in some quarters), the exemption legislation carried a sunset date of January 1, 1990, to allow the legislature to evaluate the consequences of permitting the commissioners to meet in closed sessions to discuss cases before them. The commissioners claim that the exemption has proved itself in two recent cases, one a Michigan Consolidated Gas rate case, the other the Consumers Power co-generation case. In a letter to the chair of the House Public Utilities Committee in support of a repeal of the sunset (that is, making the exemption permanent), the three commissioners said:

"Open discussions between Commissioners facilitated decisions regarding complex, competing, and sometimes conflicting issues based on lengthy and intricate case records in both of these cases. The exemption allowed for the expeditious weaving of public policy, legal principles, and economic theory with modern technological advancements, without the burden of dealing through an intermediary. Without the exemption, it is doubtful that the many issues relevant to these cases could have been examined as thoroughly and as quickly as was possible with direct interaction. In addition, the exemption speeds up the initial learning phase of a new Commissioner, allowing the new Commissioner to be more effective more quickly."

THE CONTENT OF THE BILL:

The bill would amend the Open Meetings Act to extend the Public Service Commission's exemption from the act when deliberating the merits of a case until January 1, 1996. (The exemption otherwise would have expired January 1, 1990.)

MCL 15.263

FISCAL IMPLICATIONS:

According to the Senate Fiscal Agency, the bill would have no fiscal impact on state or local government. (5-30-89)

ARGUMENTS:

For:

The PSC's exemption from the Open Meetings Act has already proved a success. In two major cases recently, commissioners were able to do their jobs more effectively and more efficiently as a result of face-to-face deliberations. At the same time, the interests of the consuming public were protected by the usual numerous opportunities to be involved in the many public hearings. Remember that the administrative hearings are entirely open to the public; only the final decision-making phase of a case is closed. While some people would prefer that the exemption be made permanent, the bill would at least continue the exemption for six more years.

Against:

While an extension of the sunset is preferable to an outright repeal, the fact remains that the Public Service Commission should be fully subject to the Open Meetings Act. It is not the purpose of that act to make it easier for public bodies to make their decisions nor to make government more efficient. Rather, it aims at ensuring that the public is aware of what its public officials are doing and at giving the public a voice in public policy decisions. The PSC's responsibility for seeing that essential services are available at reasonable rates sets it apart from the other administrative bodies that are exempt from the Open Meetings Act (such as the Worker's Compensation Appeal Board). The PSC makes far-reaching public policy decisions and ought to do so publicly.

H.B. 4321 (12-19-89)