

Legislative Analysis



OPEN MEETINGS ACT: REQUIRE CERTAIN MEETINGS TO BE RECORDED

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

House Bill 4148 as referred to second committee
Sponsor: Rep. John D. Cherry
1st Committee: Oversight
2nd Committee: Ways and Means
Complete to 5-5-19

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

BRIEF SUMMARY: House Bill 4148 would require state entities with rule-making authority to record all public meetings and make the audio or audio and video recordings available on state department websites.

FISCAL IMPACT: The bill would have no significant fiscal impact on state or local units of government.

THE APPARENT PROBLEM:

Almost 100 agencies, boards, and commissions within state government have authority to promulgate rules that have the effect of law. Though the meetings are public, many people might not be able to attend due to conflicts with employment, family responsibilities, health, transportation, or distance. If the meetings were recorded, interested persons could access a video or audio recording of the meeting. This would enable greater access and participation by citizens in the adoption of regulations that impact their personal or professional lives. Legislation addressing this concern has been offered.

THE CONTENT OF THE BILL:

House Bill 4148 would add a new section to the Open Meetings Act to require a public body that is a rule-making agency under the Administrative Procedures Act to produce recordings of all of its meetings that are required to be open to the public. The recordings, which could be audio or an audio and video recording, would have to be made available to the public on the entity's website. If the entity had no website, the recordings would have to be posted on the website of the state department in which the entity is located.

Proposed MCL 15.269a

BACKGROUND INFORMATION:

"Agency" is defined under the Administrative Procedures Act to mean a state department, bureau, division, section, board, commission, trustee, authority, or officer created by the constitution, statute, or agency action. The term does not include an agency in the legislative or judicial branch of state government, the governor, an agency having direct governing control over an institution of higher education, the state civil service commission, or an association of insurers created under the Insurance Code or other association or facility formed under that act as a nonprofit organization of insurer members.

State agencies write rules under authority granted by state statute, the Administrative Procedures Act, the state constitution, and applicable federal law. In addition to the state departments, offices or commissions within the departments may also have some statutory authority to promulgate rules. Examples include health profession boards, the Liquor Control Commission, the Parole Board, and the Michigan Beef Industry Commission, to name a few.

The Administrative Procedures Act defines “rule” to mean an agency regulation, statement, standard, ruling, or instruction of general applicability that implements or applies law enforced or administered by the agency or that prescribes the organization, procedure, or practice of the agency. This includes the amendment, suspension, or rescission of the law enforced or administered by the agency.

ARGUMENTS:

For:

Many regulations impacting the personal and professional lives of Michigan residents and visitors are created by various state agencies, boards, and commissions. Statutes often provide a framework, while an administrative rule may contain the details needed to fully implement the statute. Although public hearings are a required part of the rule-making process, many people may not be able to attend for personal, professional, or employment-related reasons, or may simply live too far away for attendance to be practical. Though a person may send concerns in writing to the rule-making entity, the person is not able to hear the discussion concerning the rule under consideration. If state entities with rule-making authority were required to record all public meetings and post the audio or video recordings on the appropriate state department website, interested members of the public could listen to or view the recordings at a more convenient time. Doing so would not only create greater transparency, it would provide for greater participation and input, which may lead to better and fairer administrative rules.

Against:

Local boards and commissions also do important work. Perhaps they should also be required to record and post the recordings of meetings. Expanding the bill’s applicability could aid in making local agencies more transparent and accessible to citizens.

Response:

Unless a funding mechanism were added, expanding the applicability of the bill to local governments would result in an unfunded mandate on municipalities and result in a violation of the Headlee amendment to the state constitution, which requires the state to pay for any new responsibilities it requires of local governments. Further, local meetings are generally more accessible, or at least closer, to the citizens impacted by the policies adopted than are meetings conducted by state entities that have statewide implications.

POSITIONS:

The Mackinac Center for Public Policy indicated support for the bill. (5-2-19)

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