

Legislative Analysis



INDEPENDENT CITIZENS REDISTRICTING COMMISSION

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

Senate Bill 728 as reported from committee

Sponsor: Sen. Ed McBroom

House Committee: Oversight

Senate Committee: Oversight

Complete to 12-14-21

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

(Enacted as Public Act 166 of 2021)

SUMMARY:

Senate Bill 728 would amend the Open Meetings Act to add a provision stating that the act does not allow the Independent Citizens Redistricting Commission (ICRC) to meet in a closed session for any purpose.

Independent Citizens Redistricting Commission would mean the Independent Citizens Redistricting Commission for State Legislative and Congressional Districts created in section 6 of Article IV of the state constitution.¹

In an enacting section, the bill would further provide that it is intended to clarify that the ICRC, since its establishment in the state constitution, has been required to conduct all of its business at open meetings, without exception and in a manner that invites wide public participation throughout the state, and that the ICRC continues to be subject to this unqualified open meetings requirement.

MCL 15.268

BACKGROUND:

Open Meetings Act

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. 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 the Home Rule City Act.

¹ <https://www.legislature.mi.gov/documents/mcl/pdf/mcl-Article-IV-6.pdf>

The act allows a public body to meet in a closed session only for the following specified purposes:²

- To consider the dismissal, suspension, or disciplining of; to hear complaints or charges brought against; or to consider periodic personal evaluations of a public officer, employee, staff member, or agent, if requested by the named individual. The request may be rescinded at any time.
- To consider the dismissal, suspension, or disciplining 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, upon request by the student or his or her parent or guardian.
- For strategy and negotiation sessions connected with the negotiation of a collective bargaining agreement, upon request by either party.
- To consider the purchase or lease of real property up to the time an option to purchase or lease the property is obtained.
- To consult with its attorney regarding trial or settlement strategy in connection with specific pending litigation. This only applies if an open meeting would have a detrimental financial effect on the litigating or settlement position of the public body.
- To review and consider contents of employment or appointment applications to a public office if the candidate requests the application to remain confidential. However, candidate interviews must be held in an open meeting. This provision does not apply to the search and selection process for a president of an institution of higher education.
- Partisan caucuses of members of the state legislature.
- To consider material exempt from discussion or disclosure by state or federal statute.
- For a compliance conference conducted under provisions of the Public Health Code before a complaint is issued.
- In the process of searching for and selecting a president of an institution of higher education as specified in the act.
- For a school board to consider security planning to address existing, or prevent potential, threats to the safety of the students and staff.
- For a county veteran services committee to interview a veteran or the veteran's spouse or dependent regarding application for benefits or financial assistance, upon request by the applicant. This provision does not apply to a committee voting on whether to grant or deny an application for benefits or financial assistance.

Independent Citizens Redistricting Commission

On October 27, 2021, the ICRC held a closed meeting, with legal counsel, for the purpose of discussing certain privileged documents pertaining to voting rights entitled *Voting Rights Act* and *The History of Discrimination in the State of Michigan and its Influence on Voting*. After that meeting was held, the ICRC released draft maps online and opened a 45-day public comment period. Subsequently, the chair and minority vice chair of the Senate Oversight committee requested an opinion from the attorney general on the question of

² <https://www.legislature.mi.gov/documents/mcl/pdf/mcl-15-268.pdf>

whether, by entering a closed meeting to discuss those documents, the ICRC violated section 6 of Article IV of the state constitution. (That section, which created and governs the ICRC, provides, “The commission shall conduct all of its business at open meetings.”)

In OAG No. 7317, issued November 22, 2021, the attorney general found that, presuming the October 27 meeting was closed to discuss “memoranda that provided Commission members with certain legal parameters and historical context that should be considered in developing, drafting, and adopting the redistricting plans,” the memoranda were required to be disclosed under the state constitution and the discussion “should have been held at an open meeting.”³

FISCAL IMPACT:

Senate Bill 728 would have no fiscal impact on the state or local units of government.

POSITIONS:

The following organizations indicated support for the bill (12-9-21):

- Michigan Press Association
- Mackinac Center for Public Policy
- Michigan Coalition for Open Government

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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.

³ <https://www.ag.state.mi.us/opinion/datafiles/2020s/op10396.htm>