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## BILL ANALYSIS

Telephone: (517) 373-5383  
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Senate Bill 728 (as introduced 11-10-21)  
Sponsor: Senator Ed McBroom  
Committee: Oversight

*(enacted version)*

Date Completed: 12-1-21

### **CONTENT**

**The bill would amend the Open Meetings Act to specify that the Act would not permit the Independent Citizens Redistricting Commission to meet in a closed session for any purpose.**

The Act allows a public body to meet in a closed session (i.e., a meeting or part of a meeting of a public body that is closed to the public) only for certain specified purposes. ("Public body" means any State or local legislative or governing body, including a board, commission, committee, subcommittee, authority, or council, that is empowered by the Michigan Constitution, statute, charter, ordinance, resolution, or rule to exercise governmental or proprietary authority or perform a governmental or proprietary function.)

Under the bill, the Act would not permit the Commission to meet in a closed session for any purpose.

The bill states that it is intended to clarify that the Independent Citizens Redistricting Commission for State legislative and congressional districts, since its establishment under Article 4, Section 6 of the Michigan 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, as provided in Article 4, Section 6(10) of the Michigan Constitution, and that the Commission continues to be subject to this unqualified open meetings requirement.

MCL 15.268

### **BACKGROUND**

In 2018, Michigan voters approved Proposal 18-2, which amended Article 4, Section 6 of the Michigan Constitution to create the Independent Citizens Redistricting Commission. The Commission is responsible for proposing and adopting the State's legislative and congressional districts. Under Article 4, Section 6(10), the Commission must conduct all of its business at open meetings.

On October 27, 2021, the Commission entered a closed session with legal counsel "for the purposes of discussing the privileged and confidential memoranda titled Voting Rights Act of October 14, 2021, and The History of Discrimination in the State of Michigan and its Influence on Voting of October 26, 2021".<sup>1</sup>

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<sup>1</sup> OAG No. 7317 (11-22-21).

On October 28, 2021, Senators McBroom and Irwin sent a letter to Attorney General Dana Nessel asking her to render a legal opinion as to whether the Commission violated the Constitution by entering into the closed session on October 27.

In her opinion, Nessel concluded that presuming the closed session "was held 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, then the memoranda must be disclosed under Const 1963, art 4, § 6(9) and the discussion should have been held at an open meeting".<sup>2</sup>

Legislative Analyst: Stephen Jackson

### **FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Joe Carrasco

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<sup>2</sup> *Id.*

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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.