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Senate Bill 129 (as passed by the Senate)
Sponsor: Senator Sean McCann
Committee: Civil Rights, Judiciary, and Public Safety

Date Completed: 5-2-25

RATIONALE

Generally, meetings subject to the Open Meetings Act must be open and available to the public and members must be present to participate, except for remote participation accommodating members absent due to active military duty. According to testimony before the Senate Committee on Civil Rights, Judiciary, and Public Safety, individuals with disabilities often face barriers to participation, including the need to arrange transportation and lack of accessibility to certain specialized tools that cannot be transported to meetings. It has been suggested to accommodate remote attendance for individuals with disabilities to better allow opportunities to participate in public bodies.

CONTENT

The bill would amend the Open Meetings Act to allow an appointed member of a public body who had a disability to fully participate in a meeting remotely upon request.

"Disability" would mean a determinable physical or mental characteristic of an individual, which may result from disease, injury, congenital condition of birth, or functional disorder, if the characteristic substantially limits one or more of the major life activities of that individual.

"Participate" and "participation" would include, but would not be limited to, discussing, debating, or voting on a motion, proposal, recommendation, resolution, order, ordinance, bill, or any other measure on which a vote by members of the public body is required and by which the public body effectuates or formulates public policy.

The Open Meetings Act requires all meetings of a public body to be open to the public and held in a place available to the public. The Act allows a meeting of a public body to be held, in whole or in part, electronically by telephonic or video conferencing as prescribed by the Act *only in circumstances requiring accommodation of members absent due to military duty*. The Act exempts from this requirement a public body that is an agricultural commodity group, a public body that is responsible for a municipal public employee retirement system, or a public body that is a joint agency formed under Article 3 of the Michigan Energy Employment Act, all of which can accommodate remote meetings under any circumstances.

Under the bill, in addition to accommodating members absent due to military duty and subject to the exemptions for agricultural commodity groups, a public body responsible for a municipal public employee retirement system, or a public body that is a joint agency formed under Article 3 of the Michigan Energy Employment Act, a meeting of a public body could be held, in whole or in part, electronically by telephonic or video conferencing as an accommodation to a member with a disability who requested remote access to fully participate in the meeting. All the following would have to apply for the meeting to be held remotely as provided above:

- The member with a disability would have to be an appointed member of a public body.

- The member with a disability would have to be physically present in the State.
- The member would have to be absent due to a disability.

The bill specifies that members without a disability could not participate or attend electronically. A member seeking an accommodation could not be required to disclose the nature or extent of the disability.

The bill would not apply to a member of a public body that was elected directly by electors to serve on the public body. It also would not apply to a meeting of a State legislative body at which a formal vote was taken. "Formal vote" would mean a vote on a bill, amendment, resolution, motion, proposal, recommendation, or any other measure on which a vote by members of a State legislative body is required and by which the State legislative body effectuates or formulates public policy.

MCL 15.263a

PREVIOUS LEGISLATION

(This section does not provide a comprehensive account of previous legislative efforts on this subject matter.)

The bill is a reintroduction of Senate Bill 870 of the 2023-2024 Legislative Session. Senate Bill 870 passed the Senate and was reported by the House Committee on Government Operations but received no further action.

BACKGROUND

In January 2022, Senator Jeff Irwin and Senator Wayne Schmidt requested an opinion from Attorney General Dana Nessel on how the Open Meeting Act intersects with Federal Laws regarding disability accommodation and participation on a public body, specifically noting that an exemption for virtual participation due to the COVID-19 Pandemic ended in January of that year.¹ Nessel's opinion indicated that nothing in the Open Meetings Act required a public body to accommodate a disabled member of that body or a member of the public with a disability, specifically noting that the Open Meetings Act did not address accommodation. The opinion stated that the Americans with Disabilities Act (ADA) and the Rehabilitation Act require State and local boards, and commissions to provide reasonable accommodations, which may include virtual participation, to qualified individuals with disabilities who request such an accommodation for participation.²

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Allowing remote attendance for members with disabilities is necessary to protect and increase participation in the work of public bodies. Engaging with and serving on public bodies is a fundamental part of good and inclusive governance; however, opportunities for participation are not the same for individuals with disabilities. According to testimony before the Senate Committee on Civil Rights, Judiciary, and Public Safety, many public boards, including those specifically for addressing accessibility such as the Barrier Free Design Board, struggle to meet quorum particularly due to members with disabilities who are unable to secure reliable or cost-effective transportation. Arranging critical needs such as accessibility technology or adequate transportation places an unfair burden on an individual that could prevent that person from participating in a public body. Diverse civic participation allows the works of

¹ Irwin, J & Schmidt, W., "Request for Attorney General Opinion", January 2022.

² OAG No. 7318 (2-4-2022)

public bodies to better serve the mission of that body. Eliminating the barrier of in-person attendance for members with a disability would create equal opportunities for all Michigan residents to participate and serve their communities and State.

Supporting Argument

The bill is necessary to comply with the ADA and Rehabilitation Act. In 2022, Attorney Dana Nessel issued an opinion indicating that the ADA requires public bodies to provide reasonable accommodations to qualified individuals with a disability upon request (see **BACKGROUND**). State law should be modified to reflect this opinion.

Opposing Argument

Allowing virtual participation for members of a public body and prohibiting that body from requiring the member seeking the accommodation from disclosing the nature or extent of the disability could lead to abuse of the system. This abuse ultimately could undermine essential face-to-face interactions in governance. Testimony indicates that remote attendance accommodations could likely be exploited by individuals falsely declaring a disability to avoid in-person attendance. Some believe that the public should have the opportunity for face-to-face interactions with members of public bodies as a fundamental aspect of democratic governance. In-person interactions are important for maintaining trust and accountability in public bodies, and accommodations should be made only when proven necessary.

Legislative Analyst: Eleni Lionas

FISCAL IMPACT

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

Fiscal Analyst: Bobby Canell
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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.