

Overview of the Michigan Open Meetings Act

1976 PA 267 (MCL 15.261 et seq.)

Basic intent

The basic intent of the Michigan Open Meetings Act (MCL 15.261 et seq.) is to strengthen the right of all Michigan citizens to know what goes on in government by requiring public bodies to conduct nearly all business at open meetings.

Key definitions

“**Public body**” means any state or local legislative or governing body, including a board, commission, committee, subcommittee, authority or council, which is empowered by state constitution, statute, charter, ordinance, resolution or rule to exercise governmental or proprietary authority or perform a governmental or proprietary function, or a lessee thereof performing an essential public purpose and function pursuant to the lease agreement.

“**Meeting**” means the convening of a public body at which a quorum is present for the purpose of deliberating toward or rendering a decision on a public policy.

“**Closed session**” means a meeting or part of a meeting of a public body which is closed to the public.

“**Decision**” means a determination, action, vote or disposition upon a motion, proposal, recommendation, resolution, order, ordinance, bill or measure on which a vote by members of a public body is required and by which a public body effectuates or formulates public policy.

Coverage

The coverage of the law is very broad, including the State Legislature as well as the legislative or governing bodies of all cities, villages, townships, charter townships and all county units of government.

The law also applies to:

- local and intermediate school districts;
- governing boards of community colleges, state colleges and universities;
- special boards and commissions created by law (i.e., public hospital authorities, road commissions, health boards, district library boards and zoning boards, etc.).

The act does not apply to a meeting of a public body which is a social or chance gathering not designed to avoid the law.

Notification of meetings

The law states that within ten days of the first meeting of a public body in each calendar or fiscal year, the body must publicly post a list stating the dates, times and places of all its regular meetings at its principal office.

If a public body does not have a principal office, the notice would be posted in the office of the county clerk for a local public body such as a village council or the office of the Secretary of State for a state public body.

If there is a change in schedule, within three days of the meeting in which the change is made, the public body must post a notice stating the new dates, times and places of regular meetings.

Special and irregular meetings

For special and irregular meetings, public bodies must post a notice indicating the date, time and place at least 18 hours before the meetings.

Note: A regular meeting of a public body, which is recessed for more than 36 hours, can only be reconvened if a notice is posted 18 hours in advance.

Emergency meetings

Public bodies may hold emergency sessions without a written notice or time constraints if the public health, safety or welfare is imminently and severely threatened **and** if two-thirds of the body's members vote to hold the emergency meeting.

Individual notification of meetings by mail

Citizens can request that public bodies put them on a mailing list so that they are notified in advance of all meetings. Section 6 of the law states that:

“Upon the written request of an individual, organization, firm or corporation, and upon the requesting party's payment of a yearly fee of not more than the reasonable estimated cost for printing and postage of such notices, a public body shall send to the requesting party by first-class mail, a copy of any notice required to be posted”

In addition, upon written request, public bodies are required to send free notices of meetings to newspapers, radio and television stations at the same time that they are required to post those notices.

Closed meetings

The law provides for closed meetings in a few specified circumstances. In order for a public body to hold a closed meeting, two-thirds of its members must vote affirmatively in a roll call. Also, the purpose for which the closed meeting is being called must be stated in the meeting when the roll call is taken.

Closed meetings may be called without a two-thirds vote for the following reasons:

- considering the dismissal, suspension or disciplining of, or to hear complaints or charges brought against a public officer, employee, staff member or individual when the person requests a closed hearing;
- considering the dismissal, suspension or disciplining of a student of a public school when the student or guardian requests a closed hearing;
- strategy and negotiation sessions necessary in reaching a collective bargaining

agreement when either party requests a closed hearing; and

- partisan caucuses of the state legislature.

Other reasons a public body may hold a closed meeting, but which in order to call for the closed meeting require a two-thirds vote of all members elected or appointed and serving:

- to consider the purchase or lease of real property;
- to consult with its attorney about trial or settlement strategy in pending litigation, but only when an open meeting would have detrimental financial effect on the public body's position;
- to review the contents of an **application** for employment or appointment to a public office when the candidate requests the application to remain confidential. However, all **interviews** by a public body for employment or appointment to a public office have to be conducted in an open meeting except meetings held in the search process for a president of an institute of higher education under section 4, 5 or 6 of article VIII of the state constitution of 1963 that meet all the requirements of Section 8 (j) of the act; and
- to consider material exempt from discussion or disclosure by state or federal statute.

Minutes of a meeting

Minutes must be kept for all meetings and are required to contain:

- a statement of the time, date and place of the meeting;
- the members present as well as absent;
- a record of any decisions made at the meeting and a record of all roll call votes; and
- an explanation of the purpose(s) if the meeting is a closed session.

Except for minutes taken during a closed session, all minutes are considered public records, open for public inspection, and must be available for review as well as

copying at the address designated on the public notice for the meeting.

Proposed minutes must be available for public inspection within eight business days after a meeting. Approved minutes must be available within five business days after the meeting at which they were approved.

Corrections in the minutes must be made no later than the next meeting after the meeting to which the minutes refer. Corrected minutes must be available no later than the next meeting after the correction and must show both the original entry and the correction.

Explanation of minutes of closed meeting

Minutes of closed meetings must also be taken although they are not available for public inspection and would only be disclosed if required by a civil action. These minutes may be destroyed one year and one day after approval of the minutes of the regular meeting at which the closed session was approved. If an audio-tape is made of a closed meeting, it must also be retained for one year and one day.

Enforcement of the act

Under the law, the attorney general, prosecutor or any citizen can challenge in circuit court the validity of a decision of a public body to meet in closed session made in violation of its provisions. If the body is determined to be in violation of the law and makes a decision, that decision can be invalidated by the court.

In any case where an action has been initiated to invalidate a decision of a public body, the public body may reenact the disputed decision in conformity with the act. A decision reenacted in this manner shall be effective from the date of reenactment and will not be declared invalid by reason of a deficiency in the procedure used for its initial enactment.

Penalties under the act

The first time a public official intentionally breaks this law, he or she can be punished by a maximum fine of \$1,000. For a second offense within the same term of office, the official can be fined up to \$2,000, jailed for a maximum of one year or both. A public official who intentionally violates the act is also personally liable for actual and exemplary damages up to \$500, plus court costs and attorney fees.