

Appendix 2: Overview of the Michigan Open Meetings Act (1976 PA 267)

Basic Intent

The basic intent of the Michigan Open Meetings Act 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; and
- 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 10 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 meeting in a prominent and conspicuous place at both the public body's principal office and, if the public body directly or indirectly maintains an official internet presence that includes monthly or more frequent updates of the public meeting agendas or minutes, on a portion of the website that is fully accessible to the public.

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.

Closed Meetings

The basic intent of the OMA is to ensure that public business is conducted in public. The act states "all meetings of a public body shall be open to the public and shall be held in a place available to the general public" (MCL 15.263). However, the act does provide for closed meetings in a few specified circumstances.

For instance, a closed meeting **may** be called by a **2/3 roll call vote** of members elected or appointed and serving for the following purposes:

- to consider the purchase or lease of real property up to the time an option to purchase or lease that real property is obtained;
- 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 if 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 pursuant to this act; and
- to consider material exempt from discussion or disclosure by state or federal statute.

In addition, a closed meeting **may** be called by a **majority vote** of members elected or appointed and serving for these purposes:

- to consider the dismissal, suspension or disciplining of, or to hear complaints or charges brought against a public officer, employee, staff member or individual if the person requests a closed hearing;
- for strategy and negotiation sessions necessary in reaching a collective bargaining agreement if either party requests a closed hearing. The purpose for which a closed meeting is being called must be entered into the minutes at the meeting at which the vote was taken.

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 recorded 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.

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.