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# OPEN MEETINGS ACT

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## I. INTRODUCTION.

- A. The Open Meetings Act ("OMA"), MCLA 15.261, et seq., became effective March 31, 1977. (It's been around for 26 years. I think it's here to stay.)
- B. The primary purpose of the OMA is to promote openness in government.
- C. The OMA is pro-openness.
  - 1. It is to be construed broadly in favor of openness and exceptions should be construed narrowly.
  - 2. A public body bears the burden of proving an exemption from the OMA. *Manning v City of East Tawas*, 234 Mich App 244 (1999).

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## II. APPLICABILITY OF THE ACT.

- A. In general, all meetings of a public body must be open to the public unless an exception specifically permitted by law applies.
- B. Key Definitions.
1. The OMA applies to a "public body" which is defined as any state or local legislative or governing body, including a board, commission, committee, 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. MCLA 15.262(a).
  2. The OMA defines "meeting" as a 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. MCLA 15.262(b).
  3. "Decision" is defined as 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. MCLA 15.262(d).
- C. All meetings of a public body shall be open to the public and shall be held in a place available to the general public. MCLA 15.263(1).
- D. All decisions of a public body shall be made at a meeting open to the public. MCL 15.263(2). All deliberations of a public body constituting a quorum of its member shall take place at a meeting open to the public unless the deliberations can be justifiably held in a closed session. MCLA 15.263(3). 1977 OAG 5183.

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E. Lobbying

Interpretations of the OMA do not prohibit members of a public body from lobbying one another on issues that may come before the body. A member may contact other members in an effort to persuade them to vote a particular way. A member of a public body may conduct an informal canvas of the other members to find out where the votes will be on a particular issue if the intent is not to circumvent the requirements of the OMA. *St. Aubin v Ishpeming*, 197 Mich App 100 (1992).

F. EXAMPLES OF PERMISSIBLE GATHERINGS.

1. Social Gatherings. MCLA 15.263(10); 1977 OAG 5183.
2. Conferences and Work Shops. 1982 OAG 6074.
3. Presentation By Groups. 1978 OAG 5364; 1982 OAG 6074.

III. RIGHTS OF THE PUBLIC AT OPEN MEETINGS.

- A. Section 3(1) of the OMA sets forth the "guts" of the Act by establishing the public's right to be present at meetings of a public body. This provision provides:

All meetings of a public body shall be open to the public and shall be held in a place available to the general public. All persons shall be permitted to attend any meeting except as otherwise provided in this act. The right of a person to attend a meeting of a public body includes the right to tape-record, to videotape, to broadcast live on radio, and to telecast live on television the proceedings of a public body at a public meeting. The exercise of this right shall not be dependent upon the prior approval of the public body. However, a public body may establish reasonable rules and regulations in order to minimize the possibility of disrupting the meeting. MCLA 15.263(1).

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B. ATTENDANCE.

- Any person, regardless of age, residency or affiliation, must be permitted to attend an open meeting. No person can be excluded from a public meeting, except for a breach of peace actually committed at the meeting. MCLA 15.263(6); 1977 OAG 5183.

C. BREACH OF PEACE.

- The OMA does not define the term "breach of peace." The Attorney General has noted that it must be assumed that the legislature adopted the commonly understood meaning of the term and has cited a dictionary definition of breach of the peace to mean "disorderly conduct that disturbs the public peace." 1979 OAG 6358.

IV. RULES FOR PUBLIC PARTICIPATION.

A. While every person attending an open meeting of a public body is entitled to address the body during the public participation portion of the meeting, public bodies may establish rules to insure the orderly conduct of meetings.

B. The rules must be adopted by the public body and recorded in the minutes. MCLA 15.263(5); 1978 OAG 5183.

- The established rules must be flexible and should be designed to encourage public participation and attendance rather than discourage it. 1979 OAG 5183.
- The rules should be printed and available at every open meeting so that people attending the meeting and those desiring to address the public body are informed about their responsibilities and the public bodies' procedures.

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- PERMISSIBLE PROVISIONS.
    1. Designated Time for Comments. 1980 OAG 5716.
    2. Length of Comment. 1978 OAG 5332.
    3. Identification of Speaker. MCLA 15.263(4).
    4. Designation of Spokesperson. 1978 OAG 5332.
    5. Common Courtesy.
    6. Recording Equipment. 1988 OAG 6499.
  
  - IMPERMISSIBLE PROVISIONS
    1. Residency. 1978 OAG 5332.
    2. Denial of the right to speak. 1978 OAG 5332.
    3. Speaker's Affiliation. 1977 OAG 528.
    4. Restrictions on Content. 1977 OAG 5218.
    5. Personal attacks. 1978 OAG 5332.

V. PLACE OF MEETING.

- A. A public body must hold its meetings at a location "available" to the public, . . .
- B. Within the boundaries of the governmental unit "whenever possible." 1979 OAG 5560.
- C. A public body has a duty to exercise "sincere efforts" to accommodate all the people who attend meetings. 1979 OAG 5614.

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VI. NOTICE OF MEETINGS.

A. The OMA requires a public body to provide notice of its meetings. MCLA 15.265(1).

B. A public body must officially designate a person responsible for implementing the public notice requirements of the OMA. 1977 OAG 5183.

C. NOTICE REQUIREMENTS.

1. Every public notice must contain the name of the public body, its telephone number and its address. MCLA 15.264(a).

2. Public notice is required to be posted at the public body's principal office and any other locations considered appropriate by the public body. Cable television may also be utilized for purposes of posting public notice. MCLA 15.264(v).

3. If a public body is part of a political subdivision (a county), a public notice shall also be posted in the principal office of the political subdivision (courthouse). Where the public body has its own principal office and is a component of another department of government, it is required to have two notices – one at its own office and another at the office of its parent department. 1977 OAG 5183.

4. If a public body does not have a principal office, the required public notice for the local public body is required to be posted in the office of the county clerk. MCLA 15.264(d).

D. TIMING OF NOTICE.

1. Public bodies which have a regular meeting schedule must post the schedule of their meetings for the following calendar or fiscal year within ten (10) days after the first meeting of the public body in that calendar year or fiscal year. MCLA 15.265(2).

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2. The notice is required to state the dates, times and places of the regular meetings in addition to the name of the public body, its telephone number and its address. *Id.*
  3. If there is a change in the schedule of regular meetings of a public body, there is required to be posted within three (3) days after the meeting at which the change is made, a public notice stating the new dates, times and places of its regular meetings. MCLA 15.265(3).

E. RESCHEDULED REGULAR OR SPECIAL MEETINGS OF A PUBLIC BODY.

1. When a regular meeting is rescheduled or if a special meeting is called, a public notice stating the time, date and place of the meeting is required to be posted at least 18 hours before the meeting. MCLA 15.265(4).

F. RECONVENED OR RECESSED MEETINGS AND EMERGENCY MEETINGS.

1. If a public body recesses a meeting for more than 36 hours, the meeting may only be reconvened if notice has been posted at least 18 hours before the meeting. MCLA 15.265(5).
2. The OMA expressly allows a public body to meet in an emergency session without complying with the notice requirements in the event of a severe and imminent threat to the health, safety, or welfare of the public when 2/3 of the members serving on the body decide that the delay would be detrimental to the efforts to lessen or respond to the threat. *Id.*; 1977 OAG 5183.

G. REQUEST FOR COPIES OF NOTICE.

1. Upon the written request of an individual, organization, firm or corporation, and upon the requesting party's payment of a yearly fee to cover the cost of printing and mailing, a public body shall send to the requesting party, by first class mail, a copy of any notice required by the OMA. MCLA 15.266(1).

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2. A newspaper, radio or television station may, upon written request, receive mailed copies of public notices without charge. MCLA 15.266(2).

VII. MINUTES OF MEETINGS.

A. Each public body is required to keep minutes of each meeting, whether open or closed, and the minutes must include the following:

1. Date
2. Time
3. Place
4. Members present and absent
5. Every decision made
6. All roll call votes
7. A record of other votes
8. Purpose of any closed session and corrections (if any).

MCLA 15.267(2), 15.269(1).

B. Corrections to minutes of public meetings are required to be made not later than the next meeting after the meeting to which the minutes refer. MCLA 15.269(1).

Minutes are public records open to public inspection and are required to be available at the address designated on posted notices. MCLA 15.269(2).

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VIII. CLOSED SESSIONS.

- A. The OMA permits public bodies to hold closed sessions in a few specified circumstances. MCLA 15.268. Under Michigan law the terms "closed meeting", "closed session", and "executive session" are synonymous.
- B. Even when a public body is permitted to conduct a closed meeting, the law prohibits taking any action during the closed meeting (i.e., making a "decision").
- C. Once legitimately in closed session, a public body may deliberate on the specific topic for which the closed session was called, but all decisions related to that topic must be made in open session.
- D. During the closed session, a separate set of minutes is required to be taken. MCLA 15.267(2).
1. The minutes are required to be retained by the clerk of the public body and are not to be made available to the public and shall only be disclosed as required by a civil action.
  2. The minutes are permitted to be destroyed one year and one day after approval of the minutes of the regular meeting at which the closed session was approved.
- E. CALLING A CLOSED SESSION.
1. The decision to hold any portion of a meeting as a closed session must be made in an open meeting. 1979 OAG 5436.
  2. Upon a 2/3 roll call vote with the members of a public body elected or appointed and serving, a public body may meet in closed session for any of the following reasons:
    - a. The purchase or lease of real property.

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- b. To consult with its attorneys regarding trial or settlement strategy in connection with specific pending litigation, but only if an open meeting would have a detrimental financial effect on the litigating or settlement position of the public body. MCLA 15.268(e). *People v Whitney*, 228 Mich App 230, 252 (1998).
  - c. To review and consider the contents of an application for employment or appointment to a public office if the candidate requests that the application remain confidential. All interviews of a public body for employment or appointment to a public office shall be held in an open meeting pursuant to the OMA. MCLA 15.268(f).
  - d. To consider material exempt from discussion or disclosure by state or federal statute. MCLA 15.268(h).
    - 1. Attorney/client privilege.
    - 2. This situation could arise in deliberations regarding a medical care facility resident. The Public Health Code provides that a patient's clinical record shall be treated confidentially and that the patient's provider shall not divulge or disclosure the contents of a record in a manner which identifies a patient. This would likely trigger the closed meeting allowance.
  - 3. Closed sessions may also be held by public bodies for the following reasons without a 2/3 roll call vote:
    - a. To consider the dismissal, suspension or disciplining of, or to hear complaints or charges brought against or to consider a periodic personnel evaluation of a public officer, employee, staff member or individual agent, if the named person requests a closed hearing. MCLA 15.268(a).

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- b. To consider the dismissal, suspension, or disciplining of a student if the student or the student's parent or guardian requests a closed hearing. MCLA 15.268(d).
  - c. For strategy and negotiation sessions connected with the negotiation of a collective bargaining agreement if either negotiating party requests a closed hearing. MCLA 15.268(c).
  - d. Partisan caucuses of members of the state legislature. MCLA 15.268(g).

IX. COMMITTEE MEETINGS.

- A. The OMA includes committees within the definition of "public body." MCLA 15.262(a). For a long time, members of a public body believed that a committee was subject to the OMA only when a quorum was present because the definition of "meeting" refers to the presence of a quorum of the members of a public body. However, in recent years, courts have given greater equal emphasis to committee functions and activities. Consequently, a committee may be subject to open meeting requirements, even if the committee membership consists of less than a quorum of the full board.
- B. The Michigan Supreme Court has ruled that if a public body creates a committee and empowers the committee to carry out a governmental function on behalf of the public body, then the committee is also a "public body" within the meeting of the OMA. This interpretation applies to committees comprised of less than a quorum of the members of the public body and even one person committees. *Booth Newspapers, Inc. v Board of Regents of the University of Michigan*, 444 Mich 211 (1993).
- C. In essence, a public body cannot violate the Act by doing indirectly what is prohibited from doing directly. 1980 OAG 5788. A public body is in violation of the OMA when its acts through sham committees which constructively constitute a quorum of the public body. *Id.*

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X. ENFORCEMENT AND PENALTIES.

A. INVALIDATION.

1. If a violation has been committed, a circuit court has the power to invalidate the public body's decision.
2. A decision may be invalidated if the court finds the non-compliance or failure has impaired the rights of the public. 1977 OAG 5183.

B. CIVIL LIABILITIES.

A public official who intentionally violates the OMA is personally liable in a civil case for damages up to a maximum of \$500 plus court costs and attorney's fees to a person or group of persons bringing the lawsuit. MCLA 15.273(1).

C. CRIMINAL PENALTIES

1. A public official who intentionally violates that Act also may be guilty of a criminal misdemeanor. MCLA 15.272(1).
2. The maximum penalty for a first offense is a fine of \$1,000. *Id.*

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## OPEN MEETINGS ACT RECENT CASELAW UPDATE

### 1. MORRISON V. CITY OF EAST LANSING, [FEBRUARY 28, 2003].

- The City of East Lansing bought the Hannah School building to convert it to a community center. They appointed a committee to make recommendations regarding the development of the center. The committee met 19 separate times over a two year period. Only three of these meetings were "noticed" to the public and minutes of these meetings were sporadically taken.
- The plaintiffs opposed the site plan eventually approved by the East Lansing City Commission. They sued arguing that the committee was a "public body" and therefore that it met in violation of the Open Meetings Act. The City said it was simply a subcommittee helping the staff.
- The court found this committee to be a "public body" because it was created by the City to perform certain governmental functions.
- However, the court refused to invalidate the development plan because, even though the Open Meetings Act had been violated, there was no showing that the rights of the public had been impaired. You can't simply allege an impairment; you must make specific allegations which prove the impairment.
- Rule to remember: "No harm, no foul"!

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**2. FIN V. FLINT SCHOOL DISTRICT, [DECEMBER 20, 2002].**

- Discussions by the Flint School District President with individual members of the School Board about the Superintendent's desire to terminate his contract did not constitute a violation of the Open Meetings Act.
- Informal discussions among members of a public body regarding an issue before the body do not violate the OMA if no decision is made during the discussions and the intent of the discussions is not to violate the OMA.

**3. FEDERATED PUBLICATIONS V. LANSING CITY COUNCIL, [OCTOBER 10, 2002].**

- City Council members selected the final candidates to interview for City Clerk and City Council member positions by each circling three names on a piece of paper. The City Council later convened and each member publicly indicated the candidates whom he or she had selected earlier.
- The Court held that the re-enactment of the challenged decision removed any basis for invalidating the earlier actions of the Council. The decision was allowed to stand even though there may have been a procedural deficiency.

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#### 4. KITCHEN V. FERNDALE CITY COUNCIL, [SEPTEMBER 20, 2002].

- The Ferndale Police Chief, Fire Chief, and City Clerk sued the City following a closed session of the City Commission to conduct a periodic personnel evaluation for each of those appointed officials. The plaintiffs requested a closed session and the Mayor tape-recorded it. The plaintiffs alleged that this violated the Open Meetings Act.
- The Court found that a tape recording of a closed session is a part of the minutes of the closed session. As a result, the tape must be retained for one year and one day by the City Clerk, after which it may be destroyed.
- The Court also found that when a violation of the Open Meetings Act is found, costs and attorneys fees are mandatory.

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**OPEN MEETINGS ACT**  
**Act 267 of 1976**

AN ACT to require certain meetings of certain public bodies to be open to the public; to require notice and the keeping of minutes of meetings; to provide for enforcement; to provide for invalidation of governmental decisions under certain circumstances; to provide penalties; and to repeal certain acts and parts of acts.

**History:** 1976, Act 267, Eff. Mar. 31, 1977.

*The People of the State of Michigan enact:*

**15.261 Short title; effect of act on certain charter provisions, ordinances, or resolutions.**

Sec. 1. (1) This act shall be known and may be cited as the "Open meetings act".

(2) This act shall supersede all local charter provisions, ordinances, or resolutions which relate to requirements for meetings of local public bodies to be open to the public.

(3) After the effective date of this act, nothing in this act shall prohibit a public body from adopting an ordinance, resolution, rule, or charter provision which would require a greater degree of openness relative to meetings of public bodies than the standards provided for in this act.

**History:** 1976, Act 267, Eff. Mar. 31, 1977.

**15.262 Definitions.**

Sec. 2. As used in this act:

(a) "Public body" means any 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 such a body performing an essential public purpose and function pursuant to the lease agreement; or the board of a nonprofit corporation formed by a city under section 4o of the home rule city act, 1909 PA 279, MCL 117.4o.

(b) "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, or any meeting of the board of a nonprofit corporation formed by a city under section 4o of the home rule city act, 1909 PA 279, MCL 117.4o.

(c) "Closed session" means a meeting or part of a meeting of a public body that is closed to the public.

(d) "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.

**History:** 1976, Act 267, Eff. Mar. 31, 1977;—Am. 2001, Act 38, Imd. Eff. July 11, 2001.

**15.263 Meetings, decisions, and deliberations of public body; requirements; attending or addressing meeting of public body; tape-recording, videotaping, broadcasting, and telecasting proceedings; rules and regulations; exclusion from meeting; exemptions.**

Sec. 3. (1) All meetings of a public body shall be open to the public and shall be held in a place available to the general public. All persons shall be permitted to attend any meeting except as otherwise provided in this act. The right of a person to attend a meeting of a public body includes the right to tape-record, to videotape, to broadcast live on radio, and to telecast live on television the proceedings of a public body at a public meeting. The exercise of this right shall not be dependent upon the prior approval of the public body. However, a public body may establish reasonable rules and regulations in order to minimize the possibility of disrupting the meeting.

(2) All decisions of a public body shall be made at a meeting open to the public.

(3) All deliberations of a public body constituting a quorum of its members shall take place at a meeting open to the public except as provided in this section and sections 7 and 8.

(4) A person shall not be required as a condition of attendance at a meeting of a public body to register or otherwise provide his or her name or other information or otherwise to fulfill a condition precedent to attendance.

(5) A person shall be permitted to address a meeting of a public body under rules established and recorded by the public body. The legislature or a house of the legislature may provide by rule that the right to address may be limited to prescribed times at hearings and committee meetings only.

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(6) A person shall not be excluded from a meeting otherwise open to the public except for a breach of the peace actually committed at the meeting.

(7) This act does not apply to the following public bodies only when deliberating the merits of a case:

(a) The worker's compensation appeal board created under the worker's disability compensation act of 1969, Act No. 317 of the Public Acts of 1969, as amended, being sections 418.101 to 418.941 of the Michigan Compiled Laws.

(b) The employment security board of review created under the Michigan employment security act, Act No. 1 of the Public Acts of the Extra Session of 1936, as amended, being sections 421.1 to 421.73 of the Michigan Compiled Laws.

(c) The state tenure commission created under Act No. 4 of the Public Acts of the Extra Session of 1937, as amended, being sections 38.71 to 38.191 of the Michigan Compiled Laws, when acting as a board of review from the decision of a controlling board.

(d) An arbitrator or arbitration panel appointed by the employment relations commission under the authority given the commission by Act No. 176 of the Public Acts of 1939, as amended, being sections 423.1 to 423.30 of the Michigan Compiled Laws.

(e) An arbitration panel selected under chapter 50A of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being sections 600.5040 to 600.5065 of the Michigan Compiled Laws.

(f) The Michigan public service commission created under Act No. 3 of the Public Acts of 1939, being sections 460.1 to 460.8 of the Michigan Compiled Laws.

(8) This act does not apply to an association of insurers created under the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being sections 500.100 to 500.8302 of the Michigan Compiled Laws, or other association or facility formed under Act No. 218 of the Public Acts of 1956 as a nonprofit organization of insurer members.

(9) This act does not apply to a committee of a public body which adopts a nonpolicymaking resolution of tribute or memorial which resolution is not adopted at a meeting.

(10) This act does not apply to a meeting which is a social or chance gathering or conference not designed to avoid this act.

(11) This act shall not apply to the Michigan veterans' trust fund board of trustees or a county or district committee created under Act No. 9 of the Public Acts of the first extra session of 1946, being sections 35.601 to 35.610 of the Michigan Compiled Laws, when the board of trustees or county or district committee is deliberating the merits of an emergent need. A decision of the board of trustees or county or district committee made under this subsection shall be reconsidered by the board or committee at its next regular or special meeting consistent with the requirements of this act. "Emergent need" means a situation which the board of trustees, by rules promulgated under the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.328 of the Michigan Compiled Laws, determines requires immediate action.

**History:** 1976, Act 267, Eff. Mar. 31, 1977;—Am. 1981, Act 161, Imd. Eff. Nov. 30, 1981;—Am. 1986, Act 269, Imd. Eff. Dec. 19, 1986;—Am. 1988, Act 158, Imd. Eff. June 14, 1988;—Am. 1988, Act 278, Imd. Eff. July 27, 1988.

**Administrative rules:** R 35.621 of the Michigan Administrative Code.

### 15.264 Public notice of meetings generally; contents; places of posting.

Sec. 4. The following provisions shall apply with respect to public notice of meetings:

(a) A public notice shall always contain the name of the public body to which the notice applies, its telephone number if one exists, and its address.

(b) A public notice for a public body shall always be posted at its principal office and any other locations considered appropriate by the public body. Cable television may also be utilized for purposes of posting public notice.

(c) If a public body is a part of a state department, part of the legislative or judicial branch of state government, part of an institution of higher education, or part of a political subdivision or school district, a public notice shall also be posted in the respective principal office of the state department, the institution of higher education, clerk of the house of representatives, secretary of the state senate, clerk of the supreme court, or political subdivision or school district.

(d) If a public body does not have a principal office, the required public notice for a local public body shall be posted in the office of the county clerk in which the public body serves and the required public notice for a state public body shall be posted in the office of the secretary of state.

**History:** 1976, Act 267, Eff. Mar. 31, 1977;—Am. 1984, Act 87, Imd. Eff. Apr. 19, 1984.

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### **15.265 Public notice of regular meetings, change in schedule of regular meetings, rescheduled regular meetings, or special meetings; time for posting; statement of date, time, and place; applicability of subsection (4); recess or adjournment; emergency sessions; meeting in residential dwelling; notice.**

Sec. 5. (1) A meeting of a public body shall not be held unless public notice is given as provided in this section by a person designated by the public body.

(2) For regular meetings of a public body, there shall be posted within 10 days after the first meeting of the public body in each calendar or fiscal year a public notice stating the dates, times, and places of its regular meetings.

(3) If there is a change in the schedule of regular meetings of a public body, there shall be posted within 3 days after the meeting at which the change is made, a public notice stating the new dates, times, and places of its regular meetings.

(4) Except as provided in this subsection or in subsection (6), for a rescheduled regular or a special meeting of a public body, a public notice stating the date, time, and place of the meeting shall be posted at least 18 hours before the meeting. The requirement of 18-hour notice shall not apply to special meetings of subcommittees of a public body or conference committees of the state legislature. A conference committee shall give a 6-hour notice. A second conference committee shall give a 1-hour notice. Notice of a conference committee meeting shall include written notice to each member of the conference committee and the majority and minority leader of each house indicating time and place of the meeting. This subsection does not apply to a public meeting held pursuant to section 4(2) to (5) of Act No. 239 of the Public Acts of 1955, as amended, being section 200.304 of the Michigan Compiled Laws.

(5) A meeting of a public body which is recessed for more than 36 hours shall be reconvened only after public notice, which is equivalent to that required under subsection (4), has been posted. If either house of the state legislature is adjourned or recessed for less than 18 hours, the notice provisions of subsection (4) are not applicable. Nothing in this section shall bar a public body from meeting in emergency session in the event of a severe and imminent threat to the health, safety, or welfare of the public when 2/3 of the members serving on the body decide that delay would be detrimental to efforts to lessen or respond to the threat.

(6) A meeting of a public body may only take place in a residential dwelling if a nonresidential building within the boundary of the local governmental unit or school system is not available without cost to the public body. For a meeting of a public body which is held in a residential dwelling, notice of the meeting shall be published as a display advertisement in a newspaper of general circulation in the city or township in which the meeting is to be held. The notice shall be published not less than 2 days before the day on which the meeting is held, and shall state the date, time, and place of the meeting. The notice, which shall be at the bottom of the display advertisement and which shall be set off in a conspicuous manner, shall include the following language: "This meeting is open to all members of the public under Michigan's open meetings act".

*History:* 1976, Act 267, Eff. Mar. 31, 1977;—Am. 1978, Act 256, Imd. Eff. June 21, 1978;—Am. 1982, Act 134, Imd. Eff. Apr. 22, 1982;—Am. 1984, Act 167, Imd. Eff. June 29, 1984.

### **15.266 Providing copies of public notice on written request; fee.**

Sec. 6. (1) 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 pursuant to section 5(2) to (5).

(2) Upon written request, a public body, at the same time a public notice of a meeting is posted pursuant to section 5, shall provide a copy of the public notice of that meeting to any newspaper published in the state and to any radio and television station located in the state, free of charge.

*History:* 1976, Act 267, Eff. Mar. 31, 1977.

### **15.267 Closed sessions; roll call vote; separate set of minutes.**

Sec. 7. (1) A 2/3 roll call vote of members elected or appointed and serving is required to call a closed session, except for the closed sessions permitted under section 8(a), (b), (c), (g), (i), and (j). The roll call vote and the purpose or purposes for calling the closed session shall be entered into the minutes of the meeting at which the vote is taken.

(2) A separate set of minutes shall be taken by the clerk or the designated secretary of the public body at the closed session. These minutes shall be retained by the clerk of the public body, are not available to the public, and shall only be disclosed if required by a civil action filed under section 10, 11, or 13. These minutes may be

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destroyed 1 year and 1 day after approval of the minutes of the regular meeting at which the closed session was approved.

**History:** 1976, Act 267, Eff. Mar. 31, 1977;—Am. 1993, Act 81, Eff. Apr. 1, 1994;—Am. 1996, Act 464, Imd. Eff. Dec. 26, 1996.

### 15.268 Closed sessions; permissible purposes.

Sec. 8. A public body may meet in a closed session only for the following purposes:

(a) To consider the dismissal, suspension, or disciplining of, or to hear complaints or charges brought against, or to consider a periodic personnel evaluation of, a public officer, employee, staff member, or individual agent, if the named person requests a closed hearing. A person requesting a closed hearing may rescind the request at any time, in which case the matter at issue shall be considered after the rescission only in open sessions.

(b) 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, and if the student or the student's parent or guardian requests a closed hearing.

(c) For strategy and negotiation sessions connected with the negotiation of a collective bargaining agreement if either negotiating party requests a closed hearing.

(d) To consider the purchase or lease of real property up to the time an option to purchase or lease that real property is obtained.

(e) To consult with its attorney regarding trial or settlement strategy in connection with specific pending litigation, but only if an open meeting would have a detrimental financial effect on the litigating or settlement position of the public body.

(f) To review and consider the contents of an application for employment or appointment to a public office if the candidate requests that the application remain confidential. However, except as otherwise provided in this subdivision, all interviews by a public body for employment or appointment to a public office shall be held in an open meeting pursuant to this act. This subdivision does not apply to a public office described in subdivision (j).

(g) Partisan caucuses of members of the state legislature.

(h) To consider material exempt from discussion or disclosure by state or federal statute.

(i) For a compliance conference conducted by the department of commerce under section 16231 of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.16231 of the Michigan Compiled Laws, before a complaint is issued.

(j) In the process of searching for and selecting a president of an institution of higher education established under section 4, 5, or 6 of article VIII of the state constitution of 1963, to review the specific contents of an application, to conduct an interview with a candidate, or to discuss the specific qualifications of a candidate if the particular process of searching for and selecting a president of an institution of higher education meets all of the following requirements:

(i) The search committee in the process, appointed by the governing board, consists of at least 1 student of the institution, 1 faculty member of the institution, 1 administrator of the institution, 1 alumnus of the institution, and 1 representative of the general public. The search committee also may include 1 or more members of the governing board of the institution, but the number shall not constitute a quorum of the governing board. However, the search committee shall not be constituted in such a way that any 1 of the groups described in this subparagraph constitutes a majority of the search committee.

(ii) After the search committee recommends the 5 final candidates, the governing board does not take a vote on a final selection for the president until at least 30 days after the 5 final candidates have been publicly identified by the search committee.

(iii) The deliberations and vote of the governing board of the institution on selecting the president take place in an open session of the governing board.

**History:** 1976, Act 267, Eff. Mar. 31, 1977;—Am. 1984, Act 202, Imd. Eff. July 3, 1984;—Am. 1993, Act 81, Eff. Apr. 1, 1994;—Am. 1996, Act 464, Imd. Eff. Dec. 26, 1996.

### 15.269 Minutes generally.

Sec. 9. (1) Each public body shall keep minutes of each meeting showing the date, time, place, members present, members absent, any decisions made at a meeting open to the public, and the purpose or purposes for which a closed session is held. The minutes shall include all roll call votes taken at the meeting. Corrections in the minutes shall be made not later than the next meeting after the meeting to which the minutes refer. Corrected minutes shall be available no later than the next subsequent meeting after correction. The corrected minutes shall show both the original entry and the correction.

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(2) Minutes shall be public records open to public inspection and shall be available at the address designated on posted public notices pursuant to section 4. Copies of the minutes shall be available to the public at the reasonable estimated cost for printing and copying.

(3) Proposed minutes shall be available for public inspection not more than 8 business days after the meeting to which the minutes refer. Approved minutes shall be available for public inspection not later than 5 business days after the meeting at which the minutes are approved by the public body.

**History:** 1976, Act 267, Eff. Mar. 31, 1977;—Am. 1982, Act 130, Imd. Eff. Apr. 20, 1982.

### **15.270 Decisions of public body; presumption; civil action to invalidate; jurisdiction; venue; reenactment of disputed decision.**

Sec. 10. (1) Decisions of a public body shall be presumed to have been adopted in compliance with the requirements of this act. The attorney general, the prosecuting attorney of the county in which the public body serves, or any person may commence a civil action in the circuit court to challenge the validity of a decision of a public body made in violation of this act.

(2) A decision made by a public body may be invalidated if the public body has not complied with the requirements of section 3(1), (2), and (3) in making the decision or if failure to give notice in accordance with section 5 has interfered with substantial compliance with section 3(1), (2), and (3) and the court finds that the noncompliance or failure has impaired the rights of the public under this act.

(3) The circuit court shall not have jurisdiction to invalidate a decision of a public body for a violation of this act unless an action is commenced pursuant to this section within the following specified period of time:

(a) Within 60 days after the approved minutes are made available to the public by the public body except as otherwise provided in subdivision (b).

(b) If the decision involves the approval of contracts, the receipt or acceptance of bids, the making of assessments, the procedures pertaining to the issuance of bonds or other evidences of indebtedness, or the submission of a borrowing proposal to the electors, within 30 days after the approved minutes are made available to the public pursuant to that decision.

(4) Venue for an action under this section shall be any county in which a local public body serves or, if the decision of a state public body is at issue, in Ingham county.

(5) In any case where an action has been initiated to invalidate a decision of a public body on the ground that it was not taken in conformity with the requirements of this act, the public body may, without being deemed to make any admission contrary to its interest, reenact the disputed decision in conformity with this act. A decision reenacted in this manner shall be effective from the date of reenactment and shall not be declared invalid by reason of a deficiency in the procedure used for its initial enactment.

**History:** 1976, Act 267, Eff. Mar. 31, 1977.

### **15.271 Civil action to compel compliance or enjoin noncompliance; commencement; venue; security not required; commencement of action for mandamus; court costs and attorney fees.**

Sec. 11. (1) If a public body is not complying with this act, the attorney general, prosecuting attorney of the county in which the public body serves, or a person may commence a civil action to compel compliance or to enjoin further noncompliance with this act.

(2) An action for injunctive relief against a local public body shall be commenced in the circuit court, and venue is proper in any county in which the public body serves. An action for an injunction against a state public body shall be commenced in the circuit court and venue is proper in any county in which the public body has its principal office, or in Ingham county. If a person commences an action for injunctive relief, that person shall not be required to post security as a condition for obtaining a preliminary injunction or a temporary restraining order.

(3) An action for mandamus against a public body under this act shall be commenced in the court of appeals.

(4) If a public body is not complying with this act, and a person commences a civil action against the public body for injunctive relief to compel compliance or to enjoin further noncompliance with the act and succeeds in obtaining relief in the action, the person shall recover court costs and actual attorney fees for the action.

**History:** 1976, Act 267, Eff. Mar. 31, 1977.

### **15.272 Violation as misdemeanor; penalty.**

Sec. 12. (1) A public official who intentionally violates this act is guilty of a misdemeanor punishable by a fine of not more than \$1,000.00.

(2) A public official who is convicted of intentionally violating a provision of this act for a second time within

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the same term shall be guilty of a misdemeanor and shall be fined not more than \$2,000.00, or imprisoned for not more than 1 year, or both.

**History:** 1976, Act 267, Eff. Mar. 31, 1977.

### **15.273 Violation; liability.**

Sec. 13. (1) A public official who intentionally violates this act shall be personally liable in a civil action for actual and exemplary damages of not more than \$500.00 total, plus court costs and actual attorney fees to a person or group of persons bringing the action.

(2) Not more than 1 action under this section shall be brought against a public official for a single meeting. An action under this section shall be commenced within 180 days after the date of the violation which gives rise to the cause of action.

(3) An action for damages under this section may be joined with an action for injunctive or exemplary relief under section 11.

**History:** 1976, Act 267, Eff. Mar. 31, 1977.

### **15.273a Selection of president by governing board of higher education institution; violation; civil fine.**

Sec. 13a. If the governing board of an institution of higher education established under section 4, 5, or 6 of article VIII of the state constitution of 1963 violates this act with respect to the process of selecting a president of the institution at any time after the recommendation of final candidates to the governing board, as described in section 8(j), the institution is responsible for the payment of a civil fine of not more than \$500,000.00. This civil fine is in addition to any other remedy or penalty under this act. To the extent possible, any payment of fines imposed under this section shall be paid from funds allocated by the institution of higher education to pay for the travel and expenses of the members of the governing board.

**History:** Add. 1996, Act 464, Imd. Eff. Dec. 26, 1996.

### **15.274 Repeal of §§ 15.251 to 15.253.**

Sec. 14. Act No. 261 of the Public Acts of 1968, being sections 15.251 to 15.253 of the Compiled Laws of 1970, is repealed.

**History:** 1976, Act 267, Eff. Mar. 31, 1977.

### **15.275 Effective date.**

Sec. 15. This act shall take effect January 1, 1977.

**History:** 1976, Act 267, Eff. Mar. 31, 1977.

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## TOP TEN LIST OF IMPORTANT THINGS TO REMEMBER

10. If you get sued for failing to turn over a public record under the Freedom of Information Act, the court can order you to pay attorney's fees and costs along with damages in the amount of \$500. (Make sure it matters.)
9. If you intentionally violate the open meetings act, you can be personally liable for \$500., attorney's fees, costs, as well as being guilty of a criminal misdemeanor punishable by a fine of \$1,000. (Make sure it matters.)
8. You don't have to refuse to turn records over just because there is an exemption. (It says, you may exempt, not you must exempt.) (Make sure it matters.)
7. You don't have to meet in private, just because it is allowed. (It says you may meet in closed session, not you must meet in closed session.) (Make sure it matters.)
6. Don't listen to the speakers, lest you become so enraged that you consider having them arrested. (blah, blah, blah) (Make sure it matters.)
5. Remember, courts may invalidate decisions you make while violating the act. (This hardly ever happens, but it makes a good argument for compliance.) (Make sure it matters.)
4. Since you don't have to charge them for records, usually don't. (Make sure it matters.)
3. If it doesn't really matter, invite them to your meetings or give them the public records they want. (Make sure it matters.)
2. If it really matters, call your lawyer. (Make sure it matters.)
1. It hardly ever really matters.