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Senate Bill 104 (as introduced 2-7-19)
Sponsor: Senator Jim Runestad
Committee: Judiciary and Public Safety

Date Completed: 2-5-20

CONTENT

The bill would amend the Open Meetings Act to modify the remedies for violations of the Act, and to specify the time frame for commencing certain civil actions against a public body.

Generally, the Act requires meetings of a public body to be open to the public and held in a place available to the general public. Notices generally are required to be posted to the public, and public attendees hold certain rights during meetings.

Section 11 of the Act specifies that if a public body is not complying with the Act, the Attorney General, prosecuting attorney of the county in which the public body serves, or another person may commence a civil action to compel compliance or enjoin further noncompliance with the Act. Instead, under the bill, if a public body did not comply with or was not complying with the Act, the Attorney General, prosecuting attorney of the county in which the public body served, or another person could commence a civil action for any of the following:

- Mandamus or injunctive relief to compel compliance or enjoin further noncompliance with the Act.
- A declaratory judgment that the public body violated or was violating the Act.

A declaratory judgment could be sought only if the violation of the Act occurred before the bill's effective date.

The Act requires an action for injunctive relief against a local public body to be commenced in the circuit court, and venue is proper in any county in which the public body serves. Under the bill, this would apply except for an action for mandamus, which would have to be commenced in the Court of Claims, as is currently required.

The Act also requires an action for injunctive relief against a State public body to 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. Instead, the bill would require a civil action against a State public body to be commenced in the Court of Claims.

Under the Act, if a public body is not complying with the 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, a court must award the person court costs and actual attorney fees for the action. Under the bill, this provision would apply before the bill's effective date.

On or after the bill's effective date, if a public body did not comply or was not complying with the Act, and a person who commenced a civil action against the public body obtained any judicial finding that the public body did not comply or was not complying with the Act, the court would have to award the person court costs and actual attorney fees for the action.

An action under Section 11 would have to be commenced within one year after the date of the violation that gave rise to the cause of action.

The bill would take effect 90 days after its enactment.

MCL 15.271

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

The bill could have an indeterminate fiscal impact on the Department of Attorney General because of any additional civil actions filed by the Department as a result of the bill. The additional costs to the Department are indeterminate and would depend on the number of additional cases undertaken by the Attorney General.

In addition, the bill could have a negative fiscal impact for a local government that faced a civil action under the bill's provisions that it otherwise would not have faced. If a public body were found not to have complied with the Act, it would have to reimburse the plaintiff's court costs and actual attorney fees for the action.

The bill also could have a minimal, negative impact on the State's Court of Claims and an equivalent, positive impact on local county courts. By requiring that all claims under the Act be filed with the Court of Claims, the bill would remove these filings from local courts. Depending on the number of filings, this could increase the workload of the Court of Claims while relieving some work load on local courts. It is not known how many filings are made each year under the Act.

Fiscal Analyst: Ryan Bergan
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