

State House committee considers exceptions to open meetings law

By Tim Richard
staff writer

A committee in the Michigan House of Representatives is looking for a compromise way to let local governing boards close the doors when they evaluate city managers, school superintendents and college presidents.

"Is there any room for accommodation?" asked state Rep. Francis (Bus) Spaniolis, D-Corunna, as the House Towns and Counties Committee wrestled with several amendments to the state Open Meetings Act.

Chairman Richard Fitzpatrick, D-Battle Creek, is sponsor of a bill to allow governing boards to conduct annual performance evaluations of key employees in closed meetings if the employee requests it.

Since it was adopted in 1976, the Open Meetings Act has required open evaluations, allowing only disciplinary matters and charges to be taken up behind closed doors.

FITZPATRICK'S amendment was supported last week by spokesmen for the Michigan Association of School Boards, the Michigan Municipal League, the Michigan Community College Association, the Michigan Association of Counties and the Michigan Townships Association.

Opposing it were Rep. David Hollister, D-Lansing, and newspaper spokesmen.

Fitzpatrick halted the meeting last week when time ran out, saying the committee would take up his HB 5219 at 9 a.m. Tuesday. Also on the agenda are two other bills to amend the Open Meetings Act.

HB 4849 would allow a board to close the doors to consult with an attorney

any time a lawsuit is threatened. HB 4850 would allow governmental boards to meet in private homes provided the meeting is properly posted. Both are sponsored by Rep. Willis Bulard, R-Milford.

The committee last week reported out by a 10-0 vote, a bill by Rep. Ruth McNamee, R-Birmingham, which would allow local boards to place no record on cable television.

"It does not relieve the burden of notice," she said, adding that local governments were seeking specific statutory authority to place notices on the new electronic medium.

MIKE BLOLOS, representing the Michigan Association of School Boards, supported the Fitzpatrick bill because he said school board members "are reluctant to comment on the negative side or provide constructive criticism" when the press, cable TV and the public are present at a meeting.

"We are not suggesting going away with public evaluations," said Bolos.

George Garver, superintendent of Livonia Public Schools, said it's possible for the criticism of an individual board member to be mistaken for the will of the group during an open evaluation.

Garver said he has a delicate problem when school board members ask, during his open evaluation, how he has evaluated a subordinate during an executive-level review. The subordinate's review is protected by law from public scrutiny, yet the superintendent's handling of that review is not, Garver said.

MARY MATTHEWS, a Jackson city commissioner, said the committee evaluates five key employees — the city manager, attorney, clerk, assessor and income tax administrator — while

all others are reviewed administratively.

"Our meetings are broadcast live over a cable television station," Matthews complained, supporting the Fitzpatrick bill.

Jim Callaghan, representing the Michigan Association of Counties, saw no harm in closing the doors on a review as long as the final evaluation report is made public.

Tom Bernthal of the Michigan Community Colleges Association said the Fitzpatrick bill "is consistent with personnel policies."

Gene Thornton of the Michigan Townships Association said an open meeting "tends to curtail the constructive criticism. The best evaluation is when there is a free exchange of views."

HOLLISTER, who drafted the Open Meetings Act in 1975 with a group of non-lawyer civic activists, asked for no changes in it.

"As a freshman member of the Ingham County Board of Commissioners meeting on Tuesday nights, it appeared to me that the decisions had been made elsewhere — at the Red Coach Bar in Mason on Monday nights. I was offended by that process."

While the Michigan statute allows eight sections of exceptions where

closed meetings may be held, Hollister said the Florida "sunshine law" allows no exceptions and county officials have been labled for closed meetings.

"By expanding the exceptions, you take away the public's right to know," Hollister said. "Just the fact that you close a meeting creates suspicion."

BUT THERE was clear support for the Fitzpatrick bill among some Towns and Counties Committee members.

"There are some instances where the public is better protected by privacy," said Rep. McNamee. The Birmingham representative said some discussion at governmental board meetings "is almost at the gossip level."

Rep. John Cherry, D-Cllo, said, "I wonder if these evaluations aren't discipline in disguise."

Rep. James Docherty, D-Port Huron, said there should be a difference in the treatment of elected officials and appointed ones. "When you're elected to office, you're really exposed," he said. But he felt that the same treatment for appointive officials "in a public forum is more harmful than helpful."

Hollister replied: "If there is discipline or a charge, there's a chance (in the existing law) for closing the meeting. . . . Evaluation is the norm. Charges and firings are the exception."

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