

Back-room politics?

More secrecy sought for public bodies

By Tim Richard
staff writer

A state House of Representatives committee has approved and sent to the House floor two bills to allow governing boards more privacy under the Open Meetings Act.

The House Towns and Counties Committee last week gave 8-0 approval to House Bill 5219, allowing closed-door performance evaluations of such hired officials as city managers, school superintendents and college presidents. It is sponsored by the committee chairman, Rep. Richard Fitzpatrick, D-Battle Creek.

The committee also gave 8-0 approval to House Bill 4850, which allows governing boards to meet in private homes as long as they advertise the meeting as open to the public.

The bill was sponsored by Rep. Willis Bullard, R-Milford. He said some upper peninsula townships shut down their meeting halls for the winter. The bill, if it becomes law, would apply statewide.

NO ACTION was taken yet on the most controversial of a package of Open Meetings Act amendments — House Bill 4849 by Bullard allowing governing boards to hold closed-door meetings with their attorneys whenever

or a lawsuit is threatened.

Current law allows closed-door meetings only when a lawsuit has actually been filed and where open discussion might have a detrimental financial effect on its settlement.

Bullard said his Milford Township was spending \$80,000 a year on attorneys' fees, 90 percent in zoning cases, but many could have been settled quickly if closed meetings were allowed early in the proceedings.

His view was supported by Michael Karwowski of the State Bar Association. "Once pleadings have been filed, parties have a tendency to become intransigent," said Karwowski.

But Rep. John Cherry, D-Clio, said allowing closed-door sessions for "threatened" lawsuits would "open the floodgates for private sessions."

Other committee questions and remarks indicated members were unlikely to approve HB 4849 as easily as the other bills were reported out.

Three committee members were absent from the session, including Rep. Ruth McNamee, R-Birmingham, the only member from the Observer & Eccentric area.

SPOKESPERSONS for local government organizations lobbied hard for HB 5219, allowing closed-door per-

formance evaluations of hired officials.

The current law allows closed-door sessions only for charges or disciplinary proceedings. A state Court of Appeals ruling against the board of Henry Ford Community College said a performance evaluation is far different from a disciplinary proceeding and must be done in open session because of the public interest.

Fitzpatrick's bill would wipe out the effect of the court ruling. A 1980 version of the bill was vetoed by then-Gov. William G. Milliken. A 1982 version was passed by the state Senate but stalled in the House.

Tom Bernthal, representing the Michigan Association of School Boards, said "performance evaluations would be more meaningful" if done in closed sessions.

Kathleen Straus, representing the Michigan Association of School Boards, said closed-door sessions "make it possible for us to do a better job . . . The discussion can be more open and honest" than the written report, which would still have to be made public.

Rep. Jelt Sletsema, D-Grand Rapids, said, "I don't see where there's a problem. I don't think school boards are running the district. They are 'yes' persons for the administration. The administration runs the district."

But Sletsema reversed himself on the vote, supporting the bill.

THOMAS NORDBERG, a Lansing attorney for various local governing boards, said the problem for school boards is, "When does an evaluation become a complaint?"

Nordberg said boards are torn by the requirement, on one side, to protect an employee's rights and on the other by the open meetings requirement.

"It's cheaper to do it in closed session than to violate the employee's rights," Nordberg said.

Under questioning by a committee member, Nordberg said a school board member's comment that a superintendent shouldn't have called a "snow day" should be construed as a complaint and dealt with in closed session.

"You don't have open and frank discussion in public meetings," Nordberg said.

Bradford G. White, editor of Michigan All Media News, a Lansing newsletter, said passage of HB 5219 would make the Open Meetings Act "more than 50 percent ineffective." White said that as exceptions allowing closed meetings are added to the law, the number of topics discussed in closed sessions "tends to increase in a geometric progression."

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