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FISCAL IMPACT REPORT

ORIGINAL DATE 02/15/11
 SPONSOR Smith, J.E. LAST UPDATED 03/07/11 HB 147/aHCPAC/aHHGAC
 SHORT TITLE Availability of Agendas for Public Meetings SB _____
 ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total	NFI	*	*	*	Recurring	General Fund et al.

(Parenthesis () Indicate Expenditure Decreases)

*It is not possible to quantify the fiscal impact of this bill, so costs are indeterminate, but there will be additional cost and operating expenses. See Fiscal Implications below.

Conflicts with HB 101, HB 195, HB 367, HB 408, SB 164, SB 420, and SB 456.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
 Department of Finance & Administration (DFA)
 Educational Retirement Board (ERB)
 Public Employees Retirement Board (PERA)
 Regulation & Licensing Department (RLD)
 Energy, Minerals & Natural Resources Department (EMNRD)
 Department of Health (DOH)
 Department of Transportation (DOT)
 Public Education Department (PED)
 Highlands University
 Municipal League

SUMMARY

Synopsis of HHGAC Amendment

The House Health and Government Affairs Committee amendment to House Bill 147 requires an agenda be available to the public at least seventy-two hours before a meeting subject to the Open Meetings Act.

Synopsis of HCPAC Amendment

The House Consumer and Public Affairs Committee amendment to House Bill 147 reduces the number of days that an agenda must be available to the public under the Open Meetings Act from the proposed seven days to three business days (current law requires release no later than 24 hours prior to the meeting).

Synopsis of Original Bill

House Bill 147 amends the Open Meetings Act to require, except in an emergency, all state and local public body boards, institutions and commissions make an agenda available to the public at least seven days prior to the meeting. Current law requires release of an agenda 24 hours before a meeting.

FISCAL IMPLICATIONS

This bill impacts all public boards, commissions, and institutions, both at state and local levels. Agencies uniformly anticipate additional meetings to address pressing matters that arise during the seven days between the release of the agenda and the meeting date, additional mileage and per diem expenses, and in some instances additional costs related to preparation of meeting minutes. They are unable to predict with any accuracy how many additional meetings will be required or the amount of additional related costs, other than to state with some certainty that additional meetings will occur and these types of costs will increase.

SIGNIFICANT ISSUES

This bill significantly enlarges the public notice requirement for meeting agendas for policy-making boards and commissions, which agencies report may limit their ability to respond to matters that must be handled quickly.

By statute, notice of the meeting itself must be made in a reasonable manner. The AGO's model open meetings resolution requires 10 days notice for a regular meeting, and three days notice for a special (limited) meeting. In both instances, the agenda is required by existing law to be available at least 24 hours before the meeting, and no item except narrowly defined emergencies may be acted on at the meeting if it is not on that agenda.

Current law allows a public body to make adjustments to its agenda up to the day before the meeting, which accommodates last minute items that crop up between the time a meeting notice is published and 24 hours before the meeting occurs. Many agencies report using every working day before release of an agenda to review agenda items and prepare accompanying documentation and presentations. Many boards only meet once a month, so a 7 day period for agenda will require delaying urgent matters for another month. The only other options are additional special meetings with seven days notice and agenda, or emergency meetings when circumstances dictate, both of which would impose additional costs for notice of the meeting itself, and other related costs such as per diem and mileage. Difficulties in establishing quorums of statewide boards (a number of which have ex officio members whose schedules are typically overcommitted) would likely be exacerbated as well. In order to avoid the need for additional meetings, public bodies may add items to the agenda that end up not being considered, resulting in public attendance at a meeting in anticipation of an item that is then not acted upon.

As an example, the DFA notes the State Board of Finance meets regularly once a month, but three or four times a year must call a special meeting (with 3 days notice and an agenda 24 hours in advance) to enable the Board to fulfill its statutory oversight functions in a timely manner, and allow other entities that need board approval to conduct their own business in a timely manner. One of the Board's responsibilities is allocating emergency funding appropriated to it to state and local public bodies to handle situations that are time-sensitive and must be addressed quickly.

A number of requests for use of this fund may not rise to an "emergency" as that term is narrowly defined under the Open Meetings Act, where minimal to virtually no notice is provided to the public. However, the ability to add these requests to the Board's regular monthly meeting up until 24 hours before the meeting allows those matters to be addressed in a timely manner and the funds put to use when they are most needed.

ERB calls attention to situations where investment opportunities arise that require quick action. Similarly, pending litigation matters may also need immediate response by the board in order for staff to proceed. In both instances, a 7 day agenda requirement could adversely affect investment returns and some litigation as well. PERA raises similar concerns as to time-sensitive matters related to investments and legislative actions.

RLD notes that a license application or complaint against a licensee that is completed between the 7 day agenda and the meeting date could not be added to the agenda, resulting in a delay in processing the application or complaint until the next licensing board meeting.

PERFORMANCE IMPLICATIONS

Agencies note that increasing the amount of time an agenda is available to the public also increases the potential for public attendance and input at open meetings. On the other hand, they foresee difficulties in dealing with time-sensitive items, and anticipate further delays in scheduling additional meetings and establishing quorums.

ADMINISTRATIVE IMPLICATIONS

Public bodies will likely need to amend their open meetings resolutions to ensure seven days' notice of their agendas and other changes necessitated by this change (including redefining special meetings, as applicable). Agencies also express concern that administrative efficiency and effectiveness may also be negatively impacted by this bill.

CONFLICTS

HB 147 conflicts with a number of other bills amending the same section of the Open Meetings Act. HB 147, as amended by the HCPAC, conflicts with HB 367, which would require an agenda to be released to the public seven consecutive days immediately prior to the meeting date. HB 147 also conflicts with HB 195 (Section 16), HB 408 (Section 48), SB 164 (Section 17) and SB 420 (Section 16), all of which add an exception to the public meeting requirement for various state ethics commission meetings. HB 147 also conflicts with HB 101, making changes to the collective bargaining exception to the public meeting requirement, and SB 456 (Section 2), requiring live video and audio transmission of public meetings subject to certain exceptions.

OTHER SUBSTANTIVE ISSUES

A seven-day agenda requirement could result in more public bodies attempting to handle items that are not appropriate in an emergency meeting , resulting in even less notice to the public of the meeting and the subject matter to be addressed than under the 24 hour agenda requirement in existing law.

AMENDMENTS

Some agencies suggest increasing the amount of time an agenda is available to the public from 24 to 48 or even 72 hours, rather than 7 days. Such a change would still encourage public participation by giving additional time to view the agenda and make arrangements to attend meetings, while allowing the public body enough time to include time-sensitive items and reduce the potential for backlog at future meetings.

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