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FISCAL IMPACT REPORT

SPONSOR Fajardo/McQueen/Mo ORIGINAL DATE 2/1/2021
ores/Gallegos LAST UPDATED _____ HB 158

SHORT TITLE Legislatively Created Task Force Open Meetings SB _____

ANALYST Gaussoin

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Indeterminate but Minimal	Indeterminate but Minimal	Indeterminate but minimal			

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From
Attorney General (NMAG)

SUMMARY

Synopsis of Bill

House Bill 158 adds a new section to the Open Meetings Act (OMA) requiring a task force or advisory or study group created at the request of a House or Senate memorial or joint memorial to conduct its meetings pursuant to the Open Meetings Act.

FISCAL IMPLICATIONS

The bill does not contain an appropriation, and while conducting an open meeting possibly entails additional staff time, these additional responsibilities are unlikely to represent a significant cost.

SIGNIFICANT ISSUES

The Open Meetings Act (OMA), which sets the standards by which policymaking public bodies conduct business in full public view, does not generally apply to purely advisory bodies or task forces unless otherwise specified by the Legislature.

In January 2020, the Attorney General concluded in a formal opinion that a task force with no policymaking authority was not subject to the act. The opinion was requested by three legislators

who asked whether meetings of the Child Protective Services Task of the Children, Youth and Families Department (CYFD) were subject to the act. The letter is available here:

<https://docs.google.com/viewer?a=v&pid=sites&srcid=bm1hZy5nb3Z8cHVibGljLXJlY29yZHMtcHJvamVjdHxneDo3OTBmNjI0NzI2ZGM3MDgz> .

Summarizing that opinion for this analysis, NMAG says:

That opinion distinguished a legislatively requested task force from a policymaking body subject to OMA on the grounds that the task force had no particular number of members, had no policymaking authority of any kind, and was created not by the Legislature itself but only at its request. ... House Bill 158 would address the issue by adding a separate provision to OMA that would require any legislatively requested task force or “similar advisory body or study group” to conduct its meetings in the same manner as would a “policymaking body.” Section 10-15-1(B). The effect of the Bill would be to extend the reach of the Open Meetings Act.

In the conclusion of the opinion, NMAG writes:

In the spirit of transparency, the Task Force could voluntarily choose to abide by OMA. Moreover, the legislature should specify and mandate in its legislation whether they desire for all meetings of any legislatively-created task force to be subject to the requirements of OMA.

The legislation requesting CYFD create the task force, House Joint Memorial 10 from the 2019 legislative session, stated the intent of the task force was to make recommendations to CYFD on improving the safety of children in foster care by improving the relationship between CYFD and foster families.

In news reports about the legislators’ request for a formal opinion from the Attorney General Opinion, foster families said they had been turned away from task force meetings.

OTHER SUBSTANTIVE ISSUES

NMAG notes that, while Section 10-14-3(B) of the Open Meetings Act provides that any provision of the act can be enforced through a civil enforcement action, Section 10-15-1(A) provides only for the invalidation of any actions taken by the public body. Because advisory bodies, such as the task force, do not take formal action, this provision would have no impact. HB158 does not specify an enforcement action against a legislatively requested study group, only that it must meet the same open meeting standards as a policymaking body.

NMAG adds: Similarly, as the bill is currently drafted, the individual members of a legislatively requested task force would not be subject to criminal penalties for violating the statute, which only apply to violations of Sections 10-15-1 and 10-15-2 of OMA.

ALTERNATIVES

NMAG suggests:

If, as it appears, the drafters intend that task forces should comply with all of the provisions of OMA, they could accomplish this goal by including a definition of the term “public body” in Section 10-15-1 and including within that definition a “task force, or a similar advisory body or study group, created at the request of a house or senate memorial or joint memorial.” If this definition were inserted into Section 10-15-1, its existing subsection B should be amended accordingly (by amending it to read “All meetings of a quorum of members of any public body.”

HG/sb/rl