

HOUSE BILL REPORT

HB 1782

As Reported by House Committee On:
State Government & Tribal Relations

Title: An act relating to public meetings of advisory groups established by local governments and other agencies.

Brief Description: Concerning public meetings of advisory groups established by local governments and other agencies.

Sponsors: Representatives Pollet, Orwall, Wylie, Appleton, Tarleton, Kilduff and Kraft.

Brief History:

Committee Activity:

State Government & Tribal Relations: 2/5/19, 2/22/19 [DPS].

Brief Summary of Substitute Bill

- Extends the scope of the Open Public Meetings Act (OPMA) to include certain advisory boards, committees, or other groups established to provide recommendations or proposals to a governing body.
- Allows advisory groups subject to the OPMA to hold an executive session, and adds a new reason for holding an executive session related to information routinely considered by public hospital districts.
- Clarifies that an entity holds a meeting subject to the OPMA when it decides to make recommendations to a convening agency or receives testimony or comments on which it will report to a governing body or prepare recommendations.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL RELATIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Gregerson, Chair; Pellicciotti, Vice Chair; Appleton, Dolan and Hudgins.

Minority Report: Do not pass. Signed by 4 members: Representatives Walsh, Ranking Minority Member; Goehner, Assistant Ranking Minority Member; Mosbrucker and Smith.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Staff: Jason Zolle (786-7124).

Background:

The Open Public Meetings Act (OPMA) requires certain governmental entities to conduct their meetings in public. Any member of the public is entitled to attend a meeting subject to the OPMA without having to provide a name or fulfill any other condition. Governing bodies may not vote by secret ballot, and minutes of these meetings are open to public inspection.

Scope of the OPMA. The OPMA applies to the meetings of a "public agency" at which a "governing body" takes "action." These words are terms of art under the OPMA:

- A public agency includes state agencies, counties, cities, school districts, special purpose districts, and other political subdivisions, as well as subagencies created by legislative act.
- A governing body is the multimember rulemaking body of a public agency, such as a board, commission, or committee, as well as a subcommittee of the body that acts on its behalf.
- Action means the transaction of official business, such as taking public testimony, reviewing information, deliberating, and reaching a collective decision (through vote or otherwise).

In 2015 the Washington Supreme Court (Court) held in *Citizens Alliance for Property Rights Legal Fund v. San Juan County* that the OPMA does not apply to advisory boards. The Court reasoned that an entity that provides advice or information to a governing body does not act on behalf of the governing body.

The OPMA also does not apply to license revocation hearings, private quasi-judicial matters, and matters governed by the Administrative Procedure Act.

Prior Notice Required for Certain Actions. The OPMA mandates that a governing body may adopt an ordinance, resolution, rule, regulation, order, or directive only in a public meeting with prior notice. Prior notice may be satisfied by an ordinance or other rule that includes the governing body's regular meeting time. Except for agencies with fewer than 10 employees or without a website, the agenda of each regular meeting must be posted online no later than 24 hours in advance of the meeting. Special meetings may be called by the presiding officer, with notice delivered to local media, posted online, and displayed at the main entrance of the agency's principal location. These notice requirements are suspended during an emergency that requires expedited action.

Nonpublic Executive Sessions. Governing bodies are permitted to hold nonpublic executive sessions for limited purposes. These purposes include:

- considering certain matters related to national security or a data security breach;
- considering real estate purchases or sales, when doing so publicly would affect the price;
- reviewing negotiations on publicly bid contracts, when doing so would increase costs;
- evaluating the performance of, or complaints or charges brought against, a public officer or employee;

- evaluating the qualifications of job applicants or candidates to appoint to elective office;
- discussing certain matters with legal counsel related to enforcement actions, litigation, or—in certain circumstances—potential litigation; and
- considering certain grant applications and grant awards.

Enforcement. Members of a governing body must receive training on the OPMA no later than 90 days after assuming duties as a public official, and at least every four years thereafter. Members that attend meetings where action is taken in violation of the OPMA are personally liable for a fine if they know the meeting violates the OPMA. The fine is \$500 for a first-time offense and \$1,000 for any subsequent violation. Any person may institute a civil action to enforce this penalty, and a prevailing plaintiff is awarded all costs and attorneys' fees. Defendants may be awarded costs and attorneys' fees if the judge determines that the lawsuit was frivolous.

Actions taken at meetings that do not comply with the OPMA are null and void.

Summary of Substitute Bill:

The scope of the OPMA is extended to include meetings of certain advisory boards, committees, or other groups established by a state agency or by the governing body of a public agency to provide recommendations or proposals to the agency. Excluded from this definition are:

- intra-agency groups;
- groups composed of public hospital district staff;
- groups established to discuss or review patient health care information; and
- quality improvement committees for the Department of Health or for hospital licensing purposes.

These advisory entities are subject to the OPMA when they take action, which includes:

- a vote or decision to make recommendations to a convening agency; or
- receiving testimony or comments on which the entity will report to the full governing body or prepare a recommendation for action.

Advisory groups subject to the OPMA may hold an executive session for the reasons permitted by statute. A new reason for holding an executive session—for public hospital districts to consider sensitive business, financial, or commercial information that is not customarily provided to business competitors—is created.

An advisory entity established jointly with a federal agency must comply with the OPMA to the extent that federal law does not preempt compliance.

Substitute Bill Compared to Original Bill:

The substitute bill removes the following advisory groups that would be subject to the OPMA under the bill: (1) local government advisory groups that are not established by the

governing body; (2) advisory groups that provide advice, rather than recommendations or proposals; (3) intra-agency advisory groups; and (4) advisory groups related to certain public health information. The substitute bill also permits advisory groups included in the definition of public agency to hold an executive session, and it adds a new reason for holding an executive session related to information routinely considered by public hospital districts.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Washington has supported openness and transparency for all levels of government, and it is expected that local governments, councils, and school boards all meet in public. But while advisory boards are expected to meet in the open, the Washington Supreme Court (Court) has interpreted the OPMA as not requiring that. Advisory boards often craft policy and recommendations and then submit them to governing bodies for a simple up or down vote, so if advisory boards do not have transparency then citizens are left out of the process. Government cannot avoid scrutiny by delegating. This bill closes a loophole in the law.

(Opposed) Public hospital districts have advisory committees that make recommendations to commissioners, but these districts are different than other entities. They deal with patient safety. They also compete with private hospitals, so their planning and strategic discussions may need to remain closed to the public. All they are doing is making recommendations. Their ability to meet in private is not a loophole. These advisory boards have been operating under the Court decision and want to continue that practice.

(Other) Local governments support transparency, but they are concerned with the breadth of this bill. There is a concern that this bill would require public meetings for staff committees established to research a policy issue or buy software, or even that this would apply to staff meetings. Governments want to avoid accidentally violating the law.

Persons Testifying: (In support) Representative Pollett, prime sponsor; Rowland Thompson, Allied Daily Newspapers of Washington; and Arthur West.

(Opposed) Lisa Thatcher, Association of Public Hospital Districts.

(Other) Candice Bock, Association of Washington Cities; and Mellani McAleenan, Washington State Association of Counties.

Persons Signed In To Testify But Not Testifying: None.