

HOUSE BILL REPORT

ESHB 1056

As Passed House:

January 22, 2021

Title: An act relating to open public meeting notice requirements and declared emergencies.

Brief Description: Concerning open public meeting notice requirements and declared emergencies.

Sponsors: House Committee on Local Government (originally sponsored by Representatives Pollet, Goehner, Kloba, Lekanoff, Leavitt, Senn, Callan and Fey).

Brief History:

Committee Activity:

Local Government: 1/13/21, 1/15/21 [DPS].

Floor Activity:

Passed House: 1/22/21, 98-0.

Brief Summary of Engrossed Substitute Bill

- Allows a public agency to hold meetings of its governing body remotely, or with limited in-person attendance, after a declared emergency.
- Requires that the public be allowed to listen in, in real time, to meetings that are held remotely or with limited in-person attendance.
- Requires all public agencies, except for certain special purpose districts, cities, and towns to post agendas online for regular meetings and for special meetings held remotely or with limited in-person attendance.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Pollet, Chair; Duerr, Vice Chair; Goehner, Ranking Minority Member; Griffey, Assistant Ranking Minority Member; Berg, Robertson and

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

Senn.

Staff: Kellen Wright (786-7134).

Background:

The meetings of the governing body of a public agency must, with limited exceptions, be open to the public. Public agencies include all state boards, commissions, and education institutions created by statute, as well as all counties, cities, school districts, and special purpose districts. Any member of the public who wants to attend such a meeting must be permitted to do so, and no conditions, such as requiring the provision of a name or address, may be imposed on attendance. Governing bodies are prohibited from adopting any ordinance, resolution, rule, regulation, order, or directive outside of a meeting that is open to the public, and for which the required notice has been provided. Any action taken at a meeting that violates these requirements is void.

In order to facilitate public involvement, governing bodies must establish a regular meeting time through an ordinance, resolution, bylaw, or other rule, and a schedule of these meetings must be published in the state register. For agencies that have a website or employ 10 or more full-time equivalent employees, agendas of regular meetings must be posted online at least 24 hours in advance of the meeting.

Special meetings outside of the ones regularly scheduled may be held if certain notice requirements are met, including the posting of notice on an agency's website and the prominent display of notice outside of its principal location at least 24 hours prior to the meeting. If the meeting will be held somewhere other than the agency's principal location, then notice must also be posted at that location at least 24 hours prior to the meeting. An agency is not required to post notice of the special meeting on its website if it does not have a website, has fewer than 10 full-time equivalent employees, or does not employ anyone whose job description or contract includes maintaining or updating the website.

During an emergency, the normal notice and meeting location requirements may be suspended under certain circumstances. When an expedited response from a governing body is required to meet an emergency, such as a fire, flood, or earthquake, the governing body may meet at a location other than a regular meeting site, and without first providing notice.

Summary of Engrossed Substitute Bill:

If a public agency determines, after the declaration of an emergency by a local or state government or agency, or by the federal government, that a meeting of the governing body with public in-person attendance cannot be held with reasonable safety, then the governing body may limit public attendance at the meeting or may hold the meeting remotely.

If the meeting is held either with limited public attendance or held remotely, then the public agency must provide an option for the public to listen to the meeting. This may be through the telephone, on a local cable television station, over the Internet, or through some other means. Whatever option is chosen, it cannot require any cost other than the cost for the telephone, cable, Internet, or other service itself. If the public agency has not provided such an option, then no action may be taken at the meeting. Notice provided for a remote meeting or a meeting with limited public attendance must provide instructions for how the public may attend remotely.

When there is a need for expedited action by a public agency to respond to an emergency, the agency may meet at a meeting site other than the regular meeting site, or may meet remotely or with limited public attendance, and the normal notice requirements are suspended during the emergency.

Public agencies may impose generally applicable conditions on meeting attendance that the governing body determines to be reasonably necessary to protect public health or safety, to protect against interruption of the meeting, including in a remote meeting or a meeting with limited in-person attendance.

A public agency may share a website with, or have its website hosted by, another public agency. Most public agencies must post regular meeting agendas online at least 24 hours prior to the scheduled meeting. The only agencies not subject to this requirement are special purpose districts, cities, and towns with less than \$400 million of taxable property and fewer than 3,000 people in the district, city, or town that provide confirmation to the State Auditor that posting notice online would cost more than 0.1 percent of the district's, city's, or town's budget.

Unless a public agency does not have or share a website, notice of a special meeting must be posted on the agency's website if the meeting will be held remotely or with limited in-person attendance due to a declared emergency. Notice of other special meetings must also be posted online, unless the public agency does not have or share a website, has no full-time equivalent employees, or has no personnel whose duty it is to maintain or update the website. Notice of a special meeting does not need to be physically posted at the agency's principle location if the meeting will be held remotely, or with limited in-person attendance due to a declared emergency if notice of the meeting is instead posted on the agency's website. Physical notice does not need to be posted when the posting cannot be done with reasonable safety under the circumstances.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(In support) Public agencies have had to rely on emergency proclamations to allow them to operate with virtual meetings during the pandemic. Public agencies should not be forced to rely on the uncertainty of a proclamation, but should be able to plan ahead and to seamlessly continue operating in an emergency. The Open Public Meetings Act should be updated to make sure that business can be conducted during emergencies, and to update the use of technology in meetings to ensure that the public will still be engaged during emergencies. Agencies have become experienced at operating remotely over the course of the pandemic. The authority in this bill only applies if there is an emergency. Small districts could struggle with the agenda-posting requirements and should be exempted. Public meetings should be recorded for increased access. Recorded meetings could be uploaded to a hosting service to minimize the burden on agencies. It is important that there is notice of special meetings so that concerned citizens can be involved. Public comment is very important, and meetings that have been held since March have silenced the public. Many institutions have halted public comment and the public has been denied its voice.

(Opposed) None.

(Other) There is concern that the bill would not require a recording to be made of the remote meeting. A recording could be the official record of the meeting, and it would be useful to be able to refer back to the official recording held by a government entity.

Persons Testifying: (In support) Representative Gerry Pollet, prime sponsor; Candice Bock, Association of Washington Cities; Joe Kunzler; Mike Hoover, Washington State Association of Counties; Gary Wilson; Ryan Spiller, Washington Fire Commissioners Association; and Victoria Lincoln, Washington Public Ports Association.

(Other) Rowland Thompson, Allied Daily Newspapers of Washington.

Persons Signed In To Testify But Not Testifying: None.