
**State Government & Tribal Relations
Committee**

HB 1782

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 Summary of Bill

- Extends the scope of the Open Public Meetings Act (OPMA) to include advisory boards, committees, or other entities established to provide advice or recommendations to a governing body or to conduct official business delegated by a governing body or executive.
- 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.

Hearing Date: 2/5/19

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.

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.

- 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 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 \$1000 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 Bill:

The scope of the OPMA is extended to include meetings of advisory boards, committees, or other entities established by a public agency to provide advice or recommendations to the agency. The OPMA is also extended to include advisory boards, committees, or other entities to which action has been delegated by a governing body, director of a public agency, or chief executive of a municipal entity.

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.

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

Appropriation: None.

Fiscal Note: Not requested.

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