

HOUSE BILL REPORT

ESHB 1329

As Passed Legislature

Title: An act relating to public meeting accessibility and participation.

Brief Description: Concerning public meeting accessibility and participation.

Sponsors: House Committee on Local Government (originally sponsored by Representatives Wicks, Pollet, Taylor, Ryu, Wylie, Shewmake, Bateman, Lovick, Fey, Morgan, Lekanoff, Harris-Talley and Peterson).

Brief History:

Committee Activity:

Local Government: 1/26/21, 2/15/21 [DPS].

Floor Activity:

Passed House: 2/26/21, 89-6.

Passed House: 1/12/22, 79-16.

Senate Amended.

Passed Senate: 3/3/22, 47-0.

House Concurred.

Passed House: 3/7/22, 87-11.

Passed Legislature.

Brief Summary of Engrossed Substitute Bill

- Requires governing bodies to provide an opportunity for public comment at or before every regular meeting at which final action is taken, except in emergency situations, and allows this requirement to be satisfied by accepting oral testimony, or by providing an opportunity for written testimony to be submitted prior to the meeting.
- Requires governing bodies, upon the request of an individual who will find physical attendance at a meeting difficult, to provide an opportunity for remote oral comment for that individual if doing so feasible and if oral public comment from other members of the public will be accepted

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at the meeting.

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

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 4 members: Representatives Pollet, Chair; Duerr, Vice Chair; Berg and Senn.

Minority Report: Without recommendation. Signed by 3 members: Representatives Goehner, Ranking Minority Member; Griffey, Assistant Ranking Minority Member; Robertson.

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, agencies, commissions, and education institutions created by statute, as well as all counties, cities, school districts, and special purpose districts. A meeting is a gathering of the governing body where the transaction of the official business of the public agency occurs. The transaction of official business includes, but is not limited to, the receipt of public testimony, deliberations, discussions, considerations, reviews, evaluations, and final actions.

The governing body may enter into executive session for deliberations, and exclude the members of the public from the executive session, under certain circumstances. The purpose for excluding the public must be announced at the meeting.

Meetings of the governing body require a physical location for the public to attend.

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.

Governing bodies are required to 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.

When a meeting is adjourned, notice of the adjournment must be conspicuously posted near the door of the place where the meeting was held.

Minutes must be taken at all regular and special meetings, and the minutes must be available for public inspection.

A governing body is not required to take public testimony during a meeting.

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:

Public agencies are encouraged to provide for increased public access and participation in governing body meetings through real-time telephone, Internet, or other readily available means of remote access to the meeting that does not require an additional cost for accessing the meeting. Public agencies are also encouraged to make an audio or video recording of, or to provide a streaming option for, all regular governing body meetings, and to make the recordings of such meetings available online for at least six months.

When the public is excluded from a meeting because a governing body is holding an executive session, the purpose for excluding the public that is announced at the meeting must be entered into the minutes of the meeting.

Except in an emergency situation, the governing body of a public agency must provide an

opportunity for public comment at or before every regular meeting at which final action is taken. Public comment can be taken orally at the meeting, or by providing an opportunity for submitting written comment prior to the meeting. The governing body may set a reasonable deadline for the submission of this written comment before the meeting. Written comment must be distributed to the members of the governing body.

The requirement to accept public comment does not limit the authority of the governing body to deal with interruptions, to put limitations on the time or nature of public comments, or to accept public comment that prevents the orderly conduct of a meeting.

When an individual requests the opportunity to provide oral comment at a meeting remotely because of disability, limited mobility, or another reason that makes physical attendance at a meeting difficult, the governing body shall, when feasible, provide the opportunity if other members of the public will be allowed to provide oral comment at the meeting.

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 remotely, 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 additional cost, outside of the basic cost of the service itself, to access to the meeting. If the public agency has not provided such an option, then no action may be taken at the meeting, though an executive session may be held. Notice provided for a remote meeting or a meeting with limited public attendance must include instructions for how the public may attend remotely.

A governing body that held some of its meeting remotely prior to March 1, 2020, may continue to do so as long as an option for the public to listen to the meeting is provided.

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.

A governing body may impose generally applicable conditions on meeting attendance that it determines to be reasonably necessary to protect public health or safety, or to protect against interruption of the meeting. A governing body may also impose such conditions on 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, city, 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 principal 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. A notice of adjournment does not need to be physically posted when a remote meeting is adjourned.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) During the months of the COVID-19 pandemic, people have been working to ensure that transparency is not a victim of the pandemic. Generally, the efforts of local agencies have been good. Hopefully this can broaden citizen participation and civic engagement in democracy. People with disabilities, and those who have caregiving responsibilities, have a difficult time traveling to meetings. The disability community has learned that making requirements voluntary means that they do not happen. The changes in this bill are meaningful. With this bill, we can guarantee public comment as a right and increase inclusivity of all voices and accountability. Local government officials have supported this bill. Allowing in-person meetings to be eliminated is problematic, as in-person meetings are important. Both in person and virtual options should be offered.

(Opposed) None.

(Other) Recordings are important as they allow a full record of proceedings to be maintained. These recordings should be maintained according to the Public Records Act

retention schedules. Having different requirements under this bill and under the Public Records Act could create confusion. This bill has both positive and negative aspects, and should be making things better, not more confusing. There is worry that the language about impracticability will lead to litigation. Adding remote testimony requirements are beneficial for the disability community and anyone who is travelling from a distance, but the remote option should not replace the in-person option. There is a benefit for elected officials to see their constituents face to face at meetings.

Persons Testifying: (In support) Representative Wicks, prime sponsor; Joe Kunzler; Juli Bunting, Washington Coalition for Open Government; Anna Zivarts, Disability Rights Washington; and Logan Camporeale.

(Other) Mellani McAleenan, Washington State Association of Counties; Rowland Thompson, Allied Daily Newspapers of Washington; and Jennifer Heine-Withee.

Persons Signed In To Testify But Not Testifying: Candice Bock, Association of Washington Cities.