

HOUSE BILL REPORT

HB 1105

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

Title: An act relating to requiring public agencies to provide notice for public comment that includes the last date by which such public comment must be submitted.

Brief Description: Requiring public agencies to provide notice for public comment that includes the last date by which such public comment must be submitted.

Sponsors: Representatives Kloba, Abbarno and Thai.

Brief History:

Committee Activity:

State Government & Tribal Relations: 1/11/23, 1/31/23 [DPS].

Brief Summary of Substitute Bill

- Mandates a public agency that is required to solicit public comment for a statutorily specified period of time, and to provide notice that it is soliciting public comment, to include in the notice the last day by which written public comment may be submitted.
- Makes an agency that violates the requirement to include in a notice for public comment the last day by which written comment may be submitted subject to a civil penalty of \$500 for the first violation and \$1000 for any subsequent violation.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL RELATIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Ramos, Chair; Stearns, Vice Chair; Abbarno, Ranking Minority Member; Christian, Assistant Ranking Minority Member; Gregerson, Low and Mena.

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.

Staff: Desiree Omli (786-7105).

Background:

Open Public Meetings Act.

The Open Public Meetings Act (OPMA) requires access for the public to attend all meetings of the governing body of a public agency that involves the transaction of official business, including but not limited to receipt of public testimony, deliberations, discussions, considerations, reviews, evaluations, and final actions. A "public agency" means:

- any state board, commission, committee, department, educational institution, or other state agency which is created by or pursuant to statute, other than courts and the Legislature, except for a comprehensive cancer center participating in a collaborative arrangement;
- any county, city, school district, special purpose district, or other municipal corporation or political subdivision of the state of Washington;
- any subagency of a public agency which is created by or pursuant to statute, ordinance, or other legislative act, including but not limited to planning commissions, library or park boards, commissions, and agencies; or
- any policy group whose membership includes representatives of publicly owned utilities formed by or pursuant to the laws of this state when meeting together as or on behalf of participants who have contracted for the output of generating plants being planned or built by an operating agency.

Any law, rule, regulation, or directive adopted by a governing body must occur at an open meeting. However, a governing body may exclude the public from executive sessions to consider certain topics specified in statute. The member of a governing body who attends a meeting in violation of any provision of the OPMA with knowledge of the violation may be charged a civil penalty of \$500 for the first violation and \$1000 for any subsequent violation, assessed by a superior court judge. Any person may bring an action to enforce such a penalty.

Public Comment Notices.

Various statutes mandate an agency to provide notice when the agency is required to solicit public comment. For example, under the Administrative Procedures Act (APA), an agency must provide notice in the State Register before the rule-making hearing at which the agency receives public comment regarding adoption of a rule. The APA also specifies that an agency must accept written comment about a proposed rule if it is received no later than the time and date specified in the notice. In addition, the Project Review Committee, established by the Capital Projects Advisory Review Board to review and approve public works projects, must provide notice of its public meetings and receive both written and oral comments at the public meeting. Further, prior to adopting or amending guidelines adopted pursuant to the Shoreline Management Act, the Department of Ecology must hold public hearings, provide notice of the hearings, and accept written comments during the 60-day period before, and 7-day period after, the public hearing.

Summary of Substitute Bill:

When a public agency, as defined under the OPMA, is required to solicit public comment for a statutorily specified period of time and to provide notice that it is soliciting public comment, the agency must include the last date by which such public comment may be submitted. An agency that does not provide the required notice specifying the last day by which written public comment may be submitted is subject to a civil penalty of \$500 for the first violation and \$1000 for any subsequent violation. Although the provisions are codified under the OPMA, the requirements under the act are not limited only to situations in which the OPMA apply.

Substitute Bill Compared to Original Bill:

The substitute bill removes the personal civil liability for an individual responsible for issuing a notice for public comment that does not specify the last day by which written comment may be submitted, and instead makes the public agency civilly liable. The act is now applicable to agencies that are required to solicit public comment for a statutorily specified period of time and to provide notice that it is soliciting public comment, rather than making the act only applicable to agencies that are required by law to provide notice that it is soliciting written comment specifically.

Appropriation: None.

Fiscal Note: Not requested.

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) This policy creates transparency and enables individuals who want to engage with decision-making bodies to share their opinion and knowledge in the are of the policy being considered. There is some confusion about when the deadline is for submission of public comment. For example, when an agency is required to hold a 30-day public comment period, it is not clear to the public whether that period includes weekends, holidays, or whether the first and last day count as part of the 30-day period. Having advance notice of the exact date by which public comment must be submitted is important because it gives the public notice of how much time they have to research a topic and draft their comment in a thoughtful way. This policy prevents the stifling of public participation and the enforcement mechanism parallels the penalty imposed under the OPMA.

(Opposed) None.

(Other) The term "public comment" should be defined to clarify the type of public comment this policy addresses because sometimes public comment is taken informally or at a formal meeting. The penalties imposed should be changed to be assessed on the agency rather than assessed on the individual. Some counties have one clerk with no resources, and despite them trying their best, sometimes things get missed and they should not be held personally liable.

Persons Testifying: (In support) Representative Shelley Kloba, prime sponsor; and Joe Kunzler.

(Other) Candice Bock, Association of Washington Cities.

Persons Signed In To Testify But Not Testifying: None.