

The Legislature Amends the Open Public Meetings Act to Address How to Hold Meetings Remotely

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In large part due to the COVID-19 pandemic and recognition of how public meetings have changed and evolved over the last 50 years, the Washington State Legislature recently amended the Washington State Open Public Meetings Act (“OPMA”). Most of the changes to the OPMA take effect on June 9, 2022, except for certain changes that took effect when Governor Inslee signed the bill on March 24, 2022. The most significant changes relate to how public agencies may conduct meetings remotely and/or limit physical attendance at meetings, while still ensuring opportunity for public participation. Given the ongoing COVID-19 emergency, public agencies are currently still required to offer a remote option and are permitted to offer an in person option for public meetings. This is because the Governor’s proclamation waiving certain OPMA requirements due to the COVID-19 crisis remains in effect until the Governor ends the state of emergency or until rescinded. As a result, the guidance we previously provided on this topic ([here](#)) still applies.

OPMA Amendments

The Legislature made several significant changes to the OPMA during the 2022 legislative session, some of which are highlighted below. The changes include both the addition of new provisions to the OPMA and revisions to existing provisions. For a review of all of the changes, the full bill is available at [Engrossed Substitute House Bill 1329](#) (“ESHB 1329”).

New provisions

Consistent with the Washington State Attorney General’s Office (“AGO”) guidance, the Legislature clarified that, except in limited circumstances, the OPMA requires meetings to be held at a physical location.¹ Under the new section 5 of the OPMA,² public agencies may hold remote meetings without a physical location or limit physical attendance at a meeting only if a local, state, or federal government has declared an emergency and the public agency has determined that in person meetings cannot be held safely. Additionally, a public agency that previously held some of its regular meetings remotely prior to March 1, 2020 may continue to hold some of its meetings remotely with no declared emergency. In either instance, the public agency is required to provide an option for the public to listen to the meeting in real time without additional cost, such as through telephone, television broadcast, or internet streaming. If the public agency fails to provide such an option, the public agency may not take action at the meeting.

¹ The AGO Guidance is available [here](#).

² This provision took effect on March 24, 2022 but as explained above, the Governor’s proclamation declaring a state of emergency due to the COVID-19 crisis remains in effect.

Another significant addition to the OPMA is section 13, which requires public agencies to provide an opportunity for public comment at every regular meeting where action is taken except in emergencies. The public comment may be taken orally at the meeting or may be submitted in written form and distributed to the public agency before the meeting. If requested and feasible to implement, public agencies must also provide an opportunity for remote oral comment from an individual that has difficulty attending the meeting in person.

Also of note is a new section encouraging public agencies to make audio or video recordings of regular meetings available online for a minimum of six months.³

Amendments to existing provisions

Other notable changes to existing provisions of the OPMA include: allowing for general restrictions on meetings to protect the public health or safety or to protect against the interruption of a meeting (.040); allowing public agencies to stop individuals from speaking when not recognized (.050); requiring all but small public agencies to post agendas and meeting materials online (.077); and requiring public agencies to enter the announced purpose of excluding the public from an executive session into the meeting minutes (.110).

OPMA Meetings During the COVID-19 State of Emergency

For advice on how to conduct a public meeting subject to the OPMA while the Governor's state of emergency is still in effect, see our [previous guidance](#) on the topic, which (1) addresses the requirement that public agencies offer a remote option for all meetings and provide the public with an opportunity to participate in the proceedings through, at a minimum, telephone access that affords the ability for all persons attending the meeting to hear each other simultaneously; (2) explains the option for public agencies to offer an in person component for meetings; and (3) provides practical advice as to how to hold a remote meeting.⁴

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³ The provision related to the public comment requirement (section 13) as well as the provision encouraging recordings (section 4) will take effect June 9, 2022.

⁴ The Governor extended and amended the proclamations a number of times and the requirements have not changed since we last issued our guidance. Compare [Proclamation 20-28.12](#), with [Proclamation 20-28.15](#) (merely noting the state of emergency continues to exist throughout Washington and extending the OPMA waivers and suspensions in previous proclamations). Masking guidance at the time we issued our previous advice was also similar to the current masking guidance, as masking requirements were being lifted in July 2021 and statewide mask requirements transitioned to mask recommendations for many Washington state indoor settings as of March 11, 2022. See [Secretary of Health's Masking Order](#).

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