



Updates to OPMA Effective June 2022

Disclaimer: This document is for the purpose of legal information and awareness. Please consult with your own district attorney for all legal advice.

Since 2020, the operation of school board meetings in Washington has been impacted by the 20-28 series of the Governor's Emergency Proclamations.¹ Proclamation 20-28.14 required that meetings subject to the Open Public Meetings Act (OPMA) have a remote option for participation and attendance (for school directors as well as for the public).

On April 29, 2022, Governor Inslee terminated and rescinded Proclamation 20-28.14, with the termination effective 12:01 AM on June 1, 2022. However, when that happens, the laws governing Washington's OPMA do not revert to their pre-pandemic version. Instead, there will be a few changes based on the passage of House Bill (HB) 1329, which will become the controlling law after the proclamation terminates. Please note that sections 5 through 11 of HB 1329 take effect June 9, 2022, but the remaining sections will be effective immediately on June 1, 2022.

Although HB 1329 revises the OPMA, none of these changes will be onerous to implement. Many of the provisions in HB 1329 merely codify existing practice. Some of the provisions are more accurately described as clarifications rather than changes, and other provisions are recommended, but not required.

Some Noteworthy Changes

Physical Location

As revised by HB 1329, meetings subject to the OPMA must have a physical location where the public can attend the meeting, with two exceptions. The first exception is when a local, state, or federal emergency has been declared,² and your school board determines it cannot hold an in-person meeting. Depending on the specifics of the emergency, your school board can either limit or fully prohibit in-person public attendance at the meeting. If an emergency creates a limitation or prohibition on the public's in-person attendance, the school district must provide a cost-free option for the public to attend in real-time, either by telephone or another readily

¹ The original Proclamation 20-28 was issued on March 24, 2020. Proclamation 20-28.14 was extended by Proclamation 20-28.15. Proclamation 20-28.16 rescinds the series of proclamations.

² Governor's Emergency Proclamation 20-05 declared all Washington counties in a state of emergency. As of May 10, 2022, Emergency Proclamation 20-05 is still in effect.

available alternative. Additionally, if your school board determines to limit or prohibit in-person attendance based on a declared emergency, be sure to document your reasoning.

The second exception to the requirement that meetings have a physical location where the public can attend is if your school district held some of its regular meetings remotely prior to March 1, 2020. Please note that this date *precedes* Proclamation 20-28, meaning that your district must have been holding remote meetings before the pandemic required you to do so. If this exception applies, your district may continue to hold these meetings remotely (even though there is no declared emergency) so long as the public may also attend remotely.

Unless one of these two exceptions limits public in-person attendance, the OPMA encourages but does not require an option for the public to attend remotely. However, please see the information below about public comment when someone has difficulty attending in person.

The codified requirement for a physical location for the meeting does not mean that some or all the school directors must attend the board meeting in person. The OPMA now specifically permits members of the governing body to attend the meeting by phone or other electronic means that allows for real-time verbal communication.

Public Comment

Previously, the OPMA did not require public comment periods, yet most school boards allotted time for public comment to hear from their community and for legal reasons other than the OPMA. Effective June 9, 2022, Washington's OPMA requires an opportunity for public comment at regular board meetings where final action is taken.

School boards can meet this requirement by permitting members of the public to comment verbally at the meeting or by submitting written comment before the meeting. However, if an individual who has difficulty³ attending an in-person meeting requests an opportunity to provide verbal comment remotely, your school board *must* provide this opportunity *when feasible*. The OPMA does not define "feasible." Your school district will need to review your technology and meeting spaces and consider whether a reasonable person would conclude that it was or was not feasible for you to provide a remote option for verbal comment when requested. Written public comment must be distributed to the board. The board may set a reasonable deadline for submission of written comments before the meeting. During the pandemic, some boards implemented a practice of reading written public comment aloud at the meeting for a set time. Nothing in the OPMA, previously or as revised by HB 1329, requires this practice. HB 1329 does not require public comment period in emergency situations or at special meetings, even when final action is taken.

³ The statute states, "[...] any individual who will have difficulty attending a meeting of the governing body of a public agency by reason of disability, limited mobility, or for any other reason that makes physical attendance at a meeting difficult [...]"

Remember, the OPMA is not the only legal consideration connected to public comment periods. Public comment periods have First Amendment protections. Additionally, HB 1329 does not alter RCW 28A.320.015, which states that opportunity for public comment—both oral and written—is required before the board adopts or amends a policy that is not expressly or by implication authorized under state or federal law, but which will promote the education of K-12 students, or will promote the effective, efficient, or safe management and operation of the district.

Purpose of Executive Sessions

Effective June 9, 2022, the OPMA requires the announced purpose of the executive session be entered into the meeting minutes.

Recording Meetings

Effective June 9, 2022, the OPMA encourages, but does not require, agencies to make an audio or video recording of the regular meetings and make those recordings available online for a minimum of six months.

Online Posting of Regular Meeting Agendas

Generally, public agencies must post their regular meeting agendas online no later than 24 hours in advance of the governing body's meeting. Previously, the OPMA allowed a public agency that did not have a website or had fewer than 10 full-time employees an exception to this requirement. With the passage of HB 1329, this exception is more limited. Specifically, the exemption to 24 hours' notice of the agenda is available only to a "special purpose" district, city, or town that has an aggregate valuation of the property subject to taxation of less than \$400,000,000; has a population of under 3,000; and provides confirmation to the state auditor that the cost of posting notices on its website or a shared website would exceed one-tenth of 1% of the local government's budget.

Posting of Special Meeting Notice

Special meetings include any school board meeting that is not a regular meeting. The notice requirements for special meetings have changed slightly. As revised, special meeting notice is not required for a special meeting called to deal with an emergency involving injury or damage to persons or property or the likelihood of such injury or damage when time requirements of such notice would make notice impractical and increase the likelihood of such injury or damage; or when the notice cannot be posted or displayed with reasonable safety.

However special meeting notice is required to be posted on the agency website for any special meetings that are being held remotely due to a declared emergency or where public attendance must be restricted, regardless of the number of employees or whether the agency employs personnel whose duty it is to update or maintain the website.

Updates to WSSDA's Open Public Meetings Guide

WSSDA's 2016 Open Public Meetings Guide provides more comprehensive information about the OPMA than this document. However, HB 1329 impacts the information in the Open Public Meetings Guide, so WSSDA will be updating and revising it soon. Until then, please use this document as a companion to that guide and contact your school district's attorney with legal questions specific to your district.

Q & A on OPMA Updates

Q: Are districts required to provide a remote option for attendance?

A: Generally, school districts are *not required* to provide a remote option for attending board meetings, but there are two exceptions, both of which occur when the school district is limiting or prohibiting in-person attendance at a board meeting.

- (1) Under the new revisions, when an emergency has been declared *and* your school board determines it cannot hold an in-person meeting or must limit attendance at the in-person meeting, then your school district must provide a remote option for attendance.
- (2) The second exception applies only for those school districts that held some of their regular meetings remotely *prior* to being required to do so based on the pandemic (before March 2020). For those school districts, they can continue to hold some meeting remotely (despite no declaration of emergency), but they must provide a remote option for attendance.

There is one more "wrinkle" to this answer, which we'll cover next in conjunction with public comment.

Q: Are districts required to offer opportunity for public comment?

A: Yes. Under the new OPMA revisions, school districts are required to provide opportunity for public comment at regular board meetings where final action takes place. This means that under the OPMA, public comment period is not required at special meetings, including at "study sessions," or "retreats." School boards can meet the OPMA public comment requirement by permitting written comment before the meeting or verbal public comment at the meeting. However, the "wrinkle" noted above is that if an individual who has difficulty attending an in-person meeting requests an opportunity to provide verbal comment remotely, your school board must provide this opportunity when feasible.

Q: So, can districts choose to provide opportunity only for written comments before the meeting or only for verbal comments at the meeting?

A: Under the revised OPMA, school districts can choose one method or the other. However, note that the OPMA is not the only legal consideration connected to public comment periods. Public comment periods have First Amendment protections. Additionally, RCW 28A.320.015 requires opportunity for public comment—both oral and written— before the board adopts or amends "a policy that is not expressly or by implication authorized under state or federal law, but which will promote the education of K-12 students, or will promote the effective, efficient, or safe management and operation of the district."

Q: Are districts required to record meetings and maintain recordings?

A: No. HB 1229 encourages but does not require districts to record meetings or maintain the recordings.

Q: Are school directors required to be at board meetings in person?

A: No. Individual school directors and even the whole board can participate in board meetings by phone or other electronic means that allows for real-time verbal communication.

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