

OGEC Workgroup Recommendations

HB 4159, HB 4161, and HB 4177

PREPARED FOR: House Committee on Rules

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Public Meetings Law

House Bill 4177



Serial Communications (Sections 1, 2, and 5)

Problem

The interpretation of House Bill 2805 (2023) and the definition of deliberate have been broader than under the Handy decision. Officials are unclear about what is allowed or prohibited related to serial communications, including communications with staff, other elected officials, the media, and members of the public. HB 2805 also added serial communications to the definition of “convening” and this has created complications.

Solution

Amend the definition of “convening” to exclude serial communications. Refine the definition of “deliberate” and add types of communications that are excluded from the law to provide more clarity.



Deliberation Definition

Current Law

“Deliberation” means discussion or communication that is part of a decision-making process.

HB 4177 Proposed Language

“Deliberation” means discussion or communication in which the members of a governing body examine, weigh or reflect upon the reasons for or against a decision that is subject to the jurisdiction of the governing body.



Allowed Communications

On procedural matters with no deliberation or decision on the substance of the matter.

Sharing factual or educational information, or the views of someone who is not a member of the governing body, like published articles or constituent letters.

To the news media, constituents, members of the public, or other persons when those persons are not being used by the governing body to deliberate or make decisions.

To gather information related to a decision that the governing body will deliberate on or make.



Training (Section 6)

Problem

Certain public officials must receive training about public meetings laws, yet there is a lack of clarity as to which public officials within a public body are required to take the training and when they should receive this training. In addition, once elected officials take their oath, providing training to the entire governing body creates quorum issues.

Solution

Training should be required for officials who sit on the overall governing body with authority to make decisions for the public body on policy or administration.

Training may be done 3 months before and up to 12 months after taking office.



Enforcement – Grievance Timeline and Cure Process (Section 7)

Problem

Statute requires a complainant to submit a written grievance to the public body “within 30 days of the alleged violation.” There are instances where the public is not even made aware of the situation until after the 30-day period has concluded.

When it receives a written grievance alleging a violation of the public meeting laws, the public body must provide a written response in 21 days. In practice, this is not sufficient time.

Solution

Change 30 days to 90 days.

Require the public body to provide an initial response within 21 days from receipt of the written grievance; expand the response timeline for any curative action to 90 days; and require the public body to respond and take actions in the event of a violation.



Enforcement – OGEC Dismissal & Conflicts of Interest (Section 4)

Problem

Complainants must comply with the written grievance process before submitting a complaint to OGEC. If they fail to follow that process, “the commission shall dismiss” the complaint, which requires OGEC to open a case to dismiss it.

If someone files a complaint for a public meeting laws violation against the members of OGEC, the Commission cannot evaluate those complaints due to a conflict of interest.

Solution

Prohibit OGEC from opening a case when the complaint does not document that the grievance process was satisfied.

Limit enforcement for alleged public meetings law violations by members of OGEC to the circuit courts per ORS 192.680.



Enforcement – Administrative Errors (Sections 8-9)

Problem

When an administrative error occurs (typo on agenda, bad links, notice errors), the public officials that comprise the public body are individually liable to OGEC, even when those public officials were not responsible for the error. OGEC only has authority to hold individuals accountable for violations of the law; it does not have jurisdiction or the ability to levy a fine on a public body.

Solution

Make the public body rather than the public official subject to disciplinary action from OGEC for administrative errors in public meetings law.



-2 Amendment on Administrative Errors

Problem

Proposed language to give OGEC the authority to hold the public body responsible for certain types of violations does not work for OGEC and might require them to open concurrent cases against the public body and members.

Solution

The amendment:

- specifies that the public body is responsible for certain meeting locations, meeting notice, and meeting minutes/recordings requirements.
- adds public body to reflect that it is the subject of the complaint or grievance.



Food and Beverages for Public Officials

House Bill 4161



Food and Beverages

Problem

In certain cases, public bodies want to provide food and beverages to their public officials.

According to the written guidance from OGEC, the public body can only do so by making the food and beverages part of the official “compensation package” for the public official(s).

Solution

Allow public bodies to provide food, beverages, and merchandise to public officials under certain circumstances.



Relating to OGEC

House Bill 4159



OGEC Membership (Section 1)

Problem

There is no requirement that a member of OGEC has experience with local government. This deprives the Commission of those perspectives and insights.

Solution

Add a requirement that the Governor's appointee have local government experience.



Confidentiality of Information (Section 2)

Problem

Privileged information may be provided to OGEC in response to a complaint. For example, there are federal privacy laws for student records and information. School boards discuss these matters in protected executive sessions. When there is a complaint about an alleged executive session violation, school boards are concerned that providing meeting minutes and other information to OGEC in response will violate those laws.

Solution

Attorney-client privilege is not waived when information is provided to OGEC regarding a complaint alleging a violation of government ethics or public meetings law.



Thank you. Questions?

