



**State of Washington**  
**PUBLIC DISCLOSURE COMMISSION**

711 Capitol Way Rm. 206, PO Box 40908 • Olympia, Washington 98504-0908

(360) 753-1111 • FAX (360) 753-1112

**Toll Free 1-877-601-2828 • E-mail: [pdc@pdc.wa.gov](mailto:pdc@pdc.wa.gov) • Website: [www.pdc.wa.gov](http://www.pdc.wa.gov)**

## **Memo**

To: Commissioners  
From: Sean Flynn, General Counsel  
Date: September 19, 2024  
Re: APA Rulemaking Petition re Public Comment

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The petitioner, Conner Edwards, submitted a rulemaking petition on August 5, 2024. The petition requests the Commission to adopt a rule that would require the Commission to designate a 10-minute public comment period at the beginning of every regular Commission meeting.

Under the Administrative Procedure Act (APA), a person may petition an agency requesting the adoption, repeal, or amendment of a rule. Within 60 days of the submission of a petition, the agency must either deny the petition, or initiate the rulemaking process. If the Commission denies the petition, it must state its reasons for the denial, addressing the concerns raised and alternative means of addressing the concerns, where appropriate.

PDC Commission meeting procedures are conducted pursuant to the Open Public Meetings Act (chapter 42.30 RCW) the Administrative Procedure Act (chapter 34.05 RCW), and Sturgis Standard Code of Parliamentary Procedure. *See* WAC 390-12-010. The OPMA was recently amended in 2022 to require public agencies to provide the opportunity for public comment at regular meetings. *See* RCW 42.30.240; and see HB 1329 (2022). Specifically, public comment “may may be taken orally at a public meeting, or by providing an opportunity for written testimony to be submitted before or at the meeting.” There is no requirement that public comment must be scheduled at the beginning of a meeting, or that oral comment must be allowed at all. In fact, the bill provides agencies the discretion in how public comment is administered.<sup>1</sup>

The APA also ensures the opportunity for public comment in public hearings on rulemaking RCW 34.05.325. In adjudicatory proceedings, including brief adjudicatory proceedings, parties to the proceeding have a right to participate. Hearings are open for public observation, but members of the public do not have a right to participate, and arguably such participation by non-parties could infringe upon the due process rights of a party. *See* RCW 34.05.449 & .485.

The petitioner does not cite to these existing laws much less offer any argument as to why the existing laws are insufficient in specificity, or how the PDC stands in a unique position as to

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<sup>1</sup> The policy in HB 1329 was supported in the legislature by the Coalition for Open Government, The Washington State Association of Counties, and the Association of Washington Cities, among others. *See* legislative record available at <https://app.leg.wa.gov/bills/summary?BillNumber=1329&Year=2021&Initiative=false>

necessitate a more prescriptive approach for offering public comment, beyond the general policies applied to all other agencies. Indeed, the Commission has maintained a long-standing policy to accept *both* writing and oral comment for its regular meetings, and the petitioner regularly takes advantage of such opportunity. For these reasons, staff recommends that rulemaking on this topic is not warranted.