

2010 Session Marked by Secrecy and Closed-door Agreements

Constitutional transparency reforms needed

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Key Findings

1. During the 2010 Session lawmakers routinely waived legislative rules requiring five-day notice before holding a bill hearing; provided inadequate notice of the time, location and topic of public hearings; held hearings on bills with no text; voted on bills the same day details were made publicly available.
2. The rush to vote on the budget and tax bills without allowing meaningful public comment or adequate review time by lawmakers led to mistakes in the bills.
3. WPC recommends permanent constitutional changes: Require 72-hour public notification before any bill could receive a public hearing; Prohibit title-only bills (no public hearing or vote should occur on a "ghost bill"); prohibit votes on final passage until the final version of the bill to be approved has been publicly available for at least 24 hours.

Lawmakers faced many critical decisions during the 2010 Legislative Session. None were more important than how to close a \$2.8 billion budget deficit and the majority's decision to raise nearly \$800 million in taxes. Decisions of this magnitude should have been made in the light of day and with full public involvement. Instead the 2010 Legislative Session was plagued with numerous transparency transgressions which hindered citizens' ability to participate.

The best description of this problem is provided by capitol reporter Jim Camden in his April 18th blog post:

"The public was a loser, at least the public that wanted to weigh in on the final tax package that appeared on the last day of the special session. After spending much of the previous 28 days in backroom discussions about what mix of tax hikes was acceptable to a bare minimum in the House and Senate, Democratic tax leaders rather imperiously released a take it or leave it plan in a 'conference' committee and insisted there was really no need to hold public hearings because everything had been discussed in one form or another at some point or another. No real reason to wait a full day before voting; not like anyone really needs to read it, let alone study it line by line.

The Legislature is so much more open than it was in the bad old days, they insisted, when things really were done in secret. (Apparently in the old days a person needed to have a secret decoder ring to decipher the package and say the secret word before voting – that's about the only way this year's budget could have been more secret.)" ["Looking Back," by Jim Camden, *The Spokesman Review*, April 18, 2010.]

Legislative Transparency Abuses

Among the many abusive actions of the Legislature this year several stand out:

- Routine cancelling of legislative rules requiring five-day notice before holding a hearing on a bill;
- Inadequate notice of the time, room number and subject matter of public hearings;
- Holding public hearings on bills with no text, and;
- Voting on bills the same day details were made publicly available.

Five-Day Public Notice for Hearings Cancelled

One of the first actions of the Legislature is to adopt rules which will govern how business is conducted. Rule 45 says in part:

“At least five days notice shall be given of all public hearings held by any committee other than the rules committee. Such notice shall contain the date, time and place of such hearing together with the title and number of each bill, or identification of the subject matter, to be considered at such hearing. By a majority vote of the committee members present at any committee meeting such notice may be dispensed with. The reason for such action shall be set forth in a written statement preserved in the records of the meeting.”

This common sense requirement is to allow citizens from all corners of the state time to participate intelligently in the legislative process. By providing five days public notice and the details on the bills to be heard, citizens have time to organize their schedules to attend the hearing and to review the details of the bills being heard.

In practice, however, the majority often cancelled this rule.

Inadequate Public Notice

On March 4th the Senate Ways and Means Committee announced it would hold a public hearing that afternoon to consider a substitute bill to create a state income tax (SB 6250).

Not only was the public provided less than five hours notice of this hearing, no details on the substitute bill were available prior to the hearing, except for a blog post written by Senate Majority Leader Lisa Brown.

Another example is the public notification for the March 19th Senate Ways and Means Hearing.

Around 6 p.m. on March 18th a notice went out that there would be a Senate Ways and Means hearing on March 19th. Despite this short notice the real problem was that when it came to the time of the hearing and the location, the notice merely said TBA (To Be Announced).

It was not until the early afternoon of March 19th that the location of the hearing was announced as the Senate Rules room, but the time of the meeting was never announced, except for a brief statement on the floor of the Senate.

Also troubling is the fact that the Senate Rules room is not covered by TVW (the state’s free public access TV channel), meaning only those who managed to learn when the meeting started and attend in person were able to hear the debate on the bills adopted.

This is despite the fact that an agenda on the Electronic Bill Book (though incorrect on the time and location of the meeting) claimed in bold letters across the top that the meeting would be “Broadcast LIVE on TVW.”

The public hearing notification for a \$500 million bonds bill (HB 2561) also suffered from lack of meaningful disclosure.

Around 4:30 p.m. on April 9th notification went out that the Senate Ways and Means Committee would be holding a public hearing on April 11 at 4:30 p.m.

with the agenda TBA. It was not until 5:30 p.m. on April 10th that details on the bills to be considered were made available. This means that people who wanted to comment on the bond proposal had less than 24 hours notice about attending a hearing on a Sunday.

Another example was the less than five hours notice provided for the conference committee meeting on an \$800 million tax increase plan (SB 6143). First notification of the public hearing went out at around 9 a.m. on Saturday April 10th. The hearing was held later that day at 1:30 p.m. The full House then voted on and passed that same 112 page tax bill later that evening, less than one day after it was made available for public comment.

Contrasting this procedure with the transparency requirements placed on local government, Tim Ford, Open Government Ombudsman for the Attorney General noted, “It would be illegal for a local government to provide less than 24 hours notice of a special meeting.” [E-mail communication to the author from Tim Ford, March 4, 2010.]

Hearings on Bills That Do Not Exist

Inadequate public hearing notification was not the only problem this session. At least one bill was heard in a public hearing the day before it officially existed.

SB 6889 was heard by the Senate Ways and Means Committee in a public hearing on March 17th, even though the bill was not officially introduced until the following day.

Despite the fact that numerous government agency lobbyists were prepared to testify on the details of the proposal on March 17th, information on the bill was not given to the public until after the meeting started. The bill was later passed by the Senate Ways and Means Committee on March 19th at a hearing that was not adequately announced to the public (as previously discussed).

After passage by the full Senate on March 20, the rules were suspended in the House and SB 6889 was immediately placed on the second reading calendar. The House adopted the bill on March 22nd.

This means that outside of those government agency lobbyists that somehow knew about the bill before it officially existed, the public was not provided the opportunity to comment.

As noted below, the details on the agenda for that March 17th public hearing were not available until 7:28 p.m. the night before.

Title-Only Bills

Though title-only bills (also known as “ghost bills) are not a new phenomenon, holding hearings and taking action on them is. A title-only bill is just what it says, there is no text to the bill other than its title.

Perhaps the most notorious title-only bill of the 2010 Session was SB 6853. This bill was introduced on February 9th. On the same day it was subject to a public hearing in the Senate Ways and Means Committee (after waiving Rule 45) and was also adopted by the Committee. The bill contained no text, just a blank page below the printed title.

It was not until the bill had already been passed to the Rules Committee for second reading that any actual bill text was posted on the Legislature's website.

In fact, it was not until a work session on March 17th that the bill text was made available in a public meeting. Even then, that text was different than the one posted online while the bill sat in the Rules Committee.

The details on how the March 17th work session was publicly announced are also troubling. The first notice of the meeting occurred at 11:42 a.m. on March 16th. At that time, however, the agenda for the March 17th meeting was blank. It was not until 7:28 p.m. the night before that details on the hearing were available, making it difficult for interested citizens to travel to Olympia to attend.

Although SB 6853 was not ultimately adopted by the Legislature, many of the provisions from the March 17th hearing were incorporated in the budget bill, SB 6444. This means the public was never allowed to comment on the policies adopted.

Another title-only bill was also heard by the House Ways and Means Committee on March 10th. The original agenda for March 10th indicated there would be a public hearing and the committee would take executive action on HB 2365, a bill with no text.

After the hearing began an amendment was introduced. Oddly the amendment was the same as the text of SB 6871, a proposal to increase car insurance fees the Senate had already rejected on March 8th by a vote of 20-26.

Unlike SB 6853, however, the House Ways and Means Committee ultimately did not pass HB 2365 after holding a public hearing on it.

Same-Day Votes on Bills

One of the first actions of the Senate during the 2010 Special Session was to adopt Senate Resolution 8719. The resolution made the following amendment to Rule 45:

"All reports of standing committees must be on the secretary's desk one hour prior to convening of the session in order to be read at said session. During any special session of the legislature, this rule may be suspended by a majority vote" [underlining in original].

By adding the underlined part above to Rule 45, the Senate indicated its willingness to allow a bill that is adopted by a committee to be voted on by the full Senate on the same day instead of making the bill available to Senators and the public for a full 24 hours.

This premeditated decision to allow expedited votes on bills was soon used to vote on a 112-page tax bill (SB 6143) and a 344-page budget bill (SB 6444) on the same day details of these two important bills were first made publicly available.

The rush to vote on these complicated and costly proposals without allowing public comment or adequate review time by lawmakers led to mistakes in the bills. Commenting on her numerous vetoes of parts of SB 6444, Governor Gregoire said she was partly correcting drafting errors. Also, a misunderstanding on the impact of a new soda pop tax contained in SB 6143 led the Speaker of the House, Frank Chopp, to ask the Governor to veto a tax increase he had earlier supported. She declined his request.

Writing about the soda pop tax error, Jim Camden described the effect of rushing bills into law without timely public comment:

“Not to be a nag about the value of public hearings for important stuff government wants to do to us, but legislators’ penchant for closed-door, back-room discussions of the tax plan they passed may have bit them in the posterior...

No one outside the handful of legislators and governor’s staffers negotiating the budget saw the wording of the bill until about noon on the session’s last day, and if they’re honest, some legislators will admit they didn’t read the tax bill before voting on it that night.

By the time the public saw the bill, it was on Gregoire’s desk, awaiting a signature. At that point some of the soda industry’s tax experts studied the language and discovered a problem: The exemption applied to bottlers but not to distributors...

Marty Brown, the director of the Office of Financial Management, said there was a lack of understanding on the state’s part on how the business is structured. The law is written for bottlers in fact, not in name, and distributors don’t qualify for the tax break, the Department of Revenue said.

Gregoire got a last-minute appeal from the industry to fix the problem. But she couldn’t rewrite the legislation or issue a rule to provide the exemption she and the Legislature thought they were giving when the bill passed. Her only option was to veto the pop tax, which she said she couldn’t do because the Legislature took the tough votes on the tax package and she didn’t want to undo that. Instead, they’ll try to fix it when they come back. Next year.” [“Drafting in dark messed up soda tax,” by Jim Camden, *The Spokesman Review*, May 2, 2010.]

Conclusion

When asked about the Session’s lack of transparency and public involvement, Senate Majority Leader Lisa Brown said:

“I think our processes are much more transparent than when I entered the Legislature. I don’t think members are being somehow secluded from outside influence.”

While some legislative leaders believe the recent Session was normal and transparent for lawmakers, it did not allow the public to adequately stay informed about, let alone participate in, the making of the laws under which they are required to live.

Recommendations

There are practical ways lawmakers can provide more transparency and allow greater public input into the legislative process. They could make permanent constitutional changes that would:

- Require 72-hour public notification before any bill could receive a public hearing.
- Prohibit title-only bills. No public hearing or vote should occur on a “ghost bill.”

- Prohibit votes on final passage until the final version of the bill to be approved has been publicly available for at least 24 hours.

If lawmakers are serious about providing transparency, they should adopt common-sense protections that will allow the public to be part of the legislative process in a meaningful way.

To help facilitate the conversation on the type of legislative transparency reforms needed, here is model language for a constitutional amendment to help put the public back into the legislative process. The underlined sentences indicate my proposed additions to the state constitution.

BE IT RESOLVED, BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF WASHINGTON, IN LEGISLATIVE SESSION ASSEMBLED:

THAT, Transparency and public disclosure in the legislative process is vital to a representative democracy. THAT, At the next general election to be held in this state the secretary of state shall submit to the qualified voters of the state for their approval and ratification, or rejection, a new section amending Article 2, an amendment to Article 2, section 19, and an amendment to Article 2, section 22 of the Constitution of the state of Washington to read as follows:

Article II, new section. No bill shall be eligible for a public hearing until 72 hours after introduction. The public shall be provided at least 72 hours notification of the bills to be heard at a public hearing. No bill shall be eligible for legislative action of any kind unless it has first been subject to a public hearing in the same session of consideration. No bill shall be eligible for legislative action on the floor of either house until 72 hours after it has been placed on the floor calendar. This section may be suspended with two-thirds of the members elected to the house in which it is pending suspend this requirement, and every individual consideration of a bill or action suspending the requirement shall be recorded in the journal of the respective house.

Article II, section 19. No bill shall embrace more than one subject, and that shall be expressed in the title. No bill shall be eligible for public hearing or legislative consideration of any kind unless the bill shall lay forth in full the changes to any act or sections of law. Title only bills shall be prohibited.

Article II, section 22. No bill shall be eligible for final passage in either house unless copies of the bill in the form to be passed shall have been made available to the members of that house and the public for at least twenty-four hours, unless two-thirds of the members elected to the house in which it is pending suspend this requirement, and every individual consideration of a bill or action suspending the requirement shall be recorded in the journal of the respective house. No bill shall become a law unless on its final passage the vote be taken by yeas and nays, the names of the members voting for and against the same be entered on the journal of each house, and a majority of the members elected to each house be recorded thereon as voting in its favor.

BE IT FURTHER RESOLVED, That the secretary of state shall cause notice of this constitutional amendment to be published at least four times during the four weeks next preceding the election in every legal newspaper in the state.

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