

SENATE BILL REPORT

SHB 1384

As Reported By Senate Committee On:
State & Local Government, March 26, 2001

Title: An act relating to clarifying the circumstances under which the governing body of a public agency may hold an executive session to discuss litigation.

Brief Description: Clarifying the circumstances under which the governing body of a public agency may hold an executive session to discuss litigation.

Sponsors: By House Committee on State Government (originally sponsored by Representatives Romero, McMorris, Simpson, Conway, Miloscia, Haigh, D. Schmidt, Clements, Delvin, Hunt, Lambert, Benson and Schindler; by request of State Auditor).

Brief History:

Committee Activity: State & Local Government: 3/22/01, 3/26/01 [DPA].

SENATE COMMITTEE ON STATE & LOCAL GOVERNMENT

Majority Report: Do pass as amended.

Signed by Senators Patterson, Chair; Fairley, Vice Chair; Gardner, Hale, Horn, McCaslin, T. Sheldon and Swecker.

Staff: Aaron Jennings (786-7445)

Background: The governing body of a public agency may hold an executive session during a regular or special meeting in certain circumstances. These circumstances are to review: (1) matters of national security; (2) the selection, sale, or rental of real estate if public knowledge would increase the price or rent paid for the property or decrease the value of property to be sold or rented; (3) negotiations on a bid if public knowledge could lead to increased costs; (4) private information supplied to an export trading company; (5) complaints or charges against a public officer or employee; (6) the qualifications of an applicant for public employment, a candidate for public office or the performance of a public employee; (7) with legal counsel actual or potential litigation; (8) potential purchases of library supplies or equipment; (9) financial or commercial information when it relates to the investment of public trust or retirement funds.

Summary of Amended Bill: A public body may not hold an executive session under the "potential litigation" exception simply because an attorney is present or is consulted on a matter. "Potential litigation" is defined to mean matters protected by the attorney client privilege concerning:

- Litigation that has been specifically threatened;
- Litigation that the public body reasonably believes may be commenced by or against the body; or

- Litigation or legal risks of a proposed action or current practice that the public body has identified when public discussion of the litigation or legal risks is likely to result in an adverse legal or financial consequence.

The Attorney General's Office may provide information, technical assistance, and training on the provisions of the Open Public Meetings Act.

Amended Bill Compared to Original Bill: The amended version replaced the State Auditor's Office with the Attorney General's Office.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: The bill defines what the term potential litigations– means, thus giving local government more certainty about when they can hold an executive session.

Testimony Against: None.

Testified: Representative Romero, prime sponsor; Brian Sonntag, State Auditor's Office; Bill Vogler, WA State Assn. of Counties; Dave Horn, Attorney General's Office; Rowland Thompson, Allied Daily Newspapers.