H-2028.1

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SUBSTITUTE HOUSE BILL 1782**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**State of Washington 66th Legislature 2019 Regular Session**

**By** House State Government & Tribal Relations (originally sponsored by Representatives Pollet, Orwall, Wylie, Appleton, Tarleton, Kilduff, and Kraft)

AN ACT Relating to public meetings of advisory groups established by local governments and other agencies; amending RCW 42.30.020 and 42.30.110; adding a new section to chapter 42.30 RCW; and creating a new section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  The intent of Initiative Measure No. 276, which established the state's open government laws, requires that governmental functions are conducted in the open, including both meetings and public access to information relating to those governmental functions.

The legislature finds that trust in government is damaged, and fundamental rights to observe governmental actions are impacted, if advisory committees established by a governmental agency to provide advice to that agency do not meet in the open pursuant to chapter 42.30 RCW.

The legislature finds further that the functional equivalency test, adopted in *Telford v. Thurston County Board of Commissioners*, 95 Wn. App. 149 (1999), provides a useful framework for defining when an entity performing a governmental function delegated to it by a governmental agency should be regarded as a public agency for purposes of open meetings, disclosure, and transparency. The legislature finds that the public interest includes the right to observe deliberations and action of such governmental functions.

The legislature intends to specify that "action" taken by an advisory board or similar entity includes taking testimony or comment and deliberating or voting to make recommendations, even though that conduct is already included in the broader definition of "action" applicable to all public agencies.

**Sec.**  RCW 42.30.020 and 1985 c 366 s 1 are each amended to read as follows:

As used in this chapter unless the context indicates otherwise:

(1) "Public agency" means:

(a) Any state board, commission, committee, department, educational institution, or other state agency which is created by or pursuant to statute, other than courts and the legislature;

(b) Any county, city, school district, special purpose district, or other municipal corporation or political subdivision of the state of Washington;

(c) Any subagency of a public agency which is created by or pursuant to statute, ordinance, or other legislative act, including but not limited to planning commissions, library or park boards, commissions, and agencies;

(d) Any policy group whose membership includes representatives of publicly owned utilities formed by or pursuant to the laws of this state when meeting together as or on behalf of participants who have contracted for the output of generating plants being planned or built by an operating agency;

(e) An advisory board, committee, or other group established by a state agency or the governing body of a public agency to provide recommendations to the state agency or governing body regarding final action, or to propose a motion, proposal, resolution, order, or ordinance on which the state agency or governing body may take final action, except for:

(i) A group whose membership is composed exclusively of employees of or volunteers for the public agency that established it;

(ii) A group whose membership is composed exclusively of employees, governing board members, volunteers, or medical staff members of one or more public hospital districts;

(iii) A group established to discuss or review "health care information" as defined in RCW 70.02.010(17); or

(iv) A quality improvement committee established under RCW 4.24.250, 43.70.510, or 70.41.200.

(2) "Governing body" means the multimember board, commission, committee, council, or other policy or rule-making body of a public agency, or any committee thereof when the committee acts on behalf of the governing body, conducts hearings, or takes testimony or public comment.

(3) "Action" means the transaction of the official business of a public agency by a governing body including but not limited to receipt of public testimony, deliberations, discussions, considerations, reviews, evaluations, and final actions. "Final action" means a collective positive or negative decision, or an actual vote by a majority of the members of a governing body when sitting as a body or entity, upon a motion, proposal, resolution, order, or ordinance. For public agencies under subsection (1)(e) and (f) of this section, "action" includes any vote or decision to make recommendations to a convening agency or agencies or receiving testimony or comments on which the entity will report to the full governing body or prepare a recommendation for action.

(4) "Meeting" means meetings at which action is taken.

NEW SECTION. **Sec.**  A new section is added to chapter 42.30 RCW to read as follows:

Any advisory board, committee, or other entity established jointly by a public agency and a federal agency, including any advisory body recognized in any consent agreement or order as providing advice to any state agency, must comply with this chapter to the extent that federal law does not preempt compliance.

**Sec.**  RCW 42.30.110 and 2017 c 137 s 1 are each amended to read as follows:

(1) Nothing contained in this chapter may be construed to prevent a governing body or a public agency as defined in RCW 42.30.020(1)(e) from holding an executive session during a regular or special meeting:

(a)(i) To consider matters affecting national security;

(ii) To consider, if in compliance with any required data security breach disclosure under RCW 19.255.010 and 42.56.590, and with legal counsel available, information regarding the infrastructure and security of computer and telecommunications networks, security and service recovery plans, security risk assessments and security test results to the extent that they identify specific system vulnerabilities, and other information that if made public may increase the risk to the confidentiality, integrity, or availability of agency security or to information technology infrastructure or assets;

(b) To consider the selection of a site or the acquisition of real estate by lease or purchase when public knowledge regarding such consideration would cause a likelihood of increased price;

(c) To consider the minimum price at which real estate will be offered for sale or lease when public knowledge regarding such consideration would cause a likelihood of decreased price. However, final action selling or leasing public property shall be taken in a meeting open to the public;

(d) To review negotiations on the performance of publicly bid contracts when public knowledge regarding such consideration would cause a likelihood of increased costs;

(e) To consider, in the case of an export trading company, financial and commercial information supplied by private persons to the export trading company;

(f) To receive and evaluate complaints or charges brought against a public officer or employee. However, upon the request of such officer or employee, a public hearing or a meeting open to the public shall be conducted upon such complaint or charge;

(g) To evaluate the qualifications of an applicant for public employment or to review the performance of a public employee. However, subject to RCW 42.30.140(4), discussion by a governing body of salaries, wages, and other conditions of employment to be generally applied within the agency shall occur in a meeting open to the public, and when a governing body elects to take final action hiring, setting the salary of an individual employee or class of employees, or discharging or disciplining an employee, that action shall be taken in a meeting open to the public;

(h) To evaluate the qualifications of a candidate for appointment to elective office. However, any interview of such candidate and final action appointing a candidate to elective office shall be in a meeting open to the public;

(i) To discuss with legal counsel representing the agency matters relating to agency enforcement actions, or to discuss with legal counsel representing the agency litigation or potential litigation to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party, when public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the agency.

This subsection (1)(i) does not permit a governing body to hold an executive session solely because an attorney representing the agency is present. For purposes of this subsection (1)(i), "potential litigation" means matters protected by RPC 1.6 or RCW 5.60.060(2)(a) concerning:

(i) Litigation that has been specifically threatened to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party;

(ii) Litigation that the agency reasonably believes may be commenced by or against the agency, the governing body, or a member acting in an official capacity; or

(iii) Litigation or legal risks of a proposed action or current practice that the agency has identified when public discussion of the litigation or legal risks is likely to result in an adverse legal or financial consequence to the agency;

(j) To consider, in the case of the state library commission or its advisory bodies, western library network prices, products, equipment, and services, when such discussion would be likely to adversely affect the network's ability to conduct business in a competitive economic climate. However, final action on these matters shall be taken in a meeting open to the public;

(k) To consider, in the case of the state investment board, financial and commercial information when the information relates to the investment of public trust or retirement funds and when public knowledge regarding the discussion would result in loss to such funds or in private loss to the providers of this information;

(l) To consider proprietary or confidential nonpublished information related to the development, acquisition, or implementation of state purchased health care services as provided in RCW 41.05.026;

(m) To consider in the case of the life sciences discovery fund authority, the substance of grant applications and grant awards when public knowledge regarding the discussion would reasonably be expected to result in private loss to the providers of this information;

(n) To consider in the case of a health sciences and services authority, the substance of grant applications and grant awards when public knowledge regarding the discussion would reasonably be expected to result in private loss to the providers of this information;

(o) To discuss, in the case of public hospital districts, sensitive business, financial, or commercial information relating to the public hospital district that is not customarily provided to business competitors.

(2) Before convening in executive session, the presiding officer of a governing body shall publicly announce the purpose for excluding the public from the meeting place, and the time when the executive session will be concluded. The executive session may be extended to a stated later time by announcement of the presiding officer.

**--- END ---**