
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)

READ FIRST TIME 02/22/19.

1 AN ACT Relating to public meetings of advisory groups established
2 by local governments and other agencies; amending RCW 42.30.020 and
3 42.30.110; adding a new section to chapter 42.30 RCW; and creating a
4 new section.

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

6 NEW SECTION. **Sec. 1.** The intent of Initiative Measure No. 276,
7 which established the state's open government laws, requires that
8 governmental functions are conducted in the open, including both
9 meetings and public access to information relating to those
10 governmental functions.

11 The legislature finds that trust in government is damaged, and
12 fundamental rights to observe governmental actions are impacted, if
13 advisory committees established by a governmental agency to provide
14 advice to that agency do not meet in the open pursuant to chapter
15 42.30 RCW.

16 The legislature finds further that the functional equivalency
17 test, adopted in *Telford v. Thurston County Board of Commissioners*,
18 95 Wn. App. 149 (1999), provides a useful framework for defining when
19 an entity performing a governmental function delegated to it by a
20 governmental agency should be regarded as a public agency for
21 purposes of open meetings, disclosure, and transparency. The

1 legislature finds that the public interest includes the right to
2 observe deliberations and action of such governmental functions.

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

8 **Sec. 2.** RCW 42.30.020 and 1985 c 366 s 1 are each amended to
9 read as follows:

10 As used in this chapter unless the context indicates otherwise:

11 (1) "Public agency" means:

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

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

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

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

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

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

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

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

1 (iv) A quality improvement committee established under RCW
2 4.24.250, 43.70.510, or 70.41.200.

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

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

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

21 NEW SECTION. Sec. 3. A new section is added to chapter 42.30
22 RCW to read as follows:

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

28 **Sec. 4.** RCW 42.30.110 and 2017 c 137 s 1 are each amended to
29 read as follows:

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

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

35 (ii) To consider, if in compliance with any required data
36 security breach disclosure under RCW 19.255.010 and 42.56.590, and
37 with legal counsel available, information regarding the
38 infrastructure and security of computer and telecommunications

1 networks, security and service recovery plans, security risk
2 assessments and security test results to the extent that they
3 identify specific system vulnerabilities, and other information that
4 if made public may increase the risk to the confidentiality,
5 integrity, or availability of agency security or to information
6 technology infrastructure or assets;

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

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

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

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

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

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

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

38 (i) To discuss with legal counsel representing the agency matters
39 relating to agency enforcement actions, or to discuss with legal
40 counsel representing the agency litigation or potential litigation to

1 which the agency, the governing body, or a member acting in an
2 official capacity is, or is likely to become, a party, when public
3 knowledge regarding the discussion is likely to result in an adverse
4 legal or financial consequence to the agency.

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

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

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

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

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

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

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

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

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

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

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

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