

CERTIFICATION OF ENROLLMENT  
**SECOND SUBSTITUTE SENATE BILL 5532**

67th Legislature  
2022 Regular Session

Passed by the Senate March 7, 2022  
Yeas 28 Nays 20

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**President of the Senate**

Passed by the House March 2, 2022  
Yeas 57 Nays 39

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**Speaker of the House of  
Representatives**

Approved

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**Governor of the State of Washington**

CERTIFICATE

I, Sarah Bannister, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SECOND SUBSTITUTE SENATE BILL 5532** as passed by the Senate and the House of Representatives on the dates hereon set forth.

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**Secretary**

FILED

**Secretary of State  
State of Washington**

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**SECOND SUBSTITUTE SENATE BILL 5532**

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AS AMENDED BY THE HOUSE

Passed Legislature - 2022 Regular Session

**State of Washington**

**67th Legislature**

**2022 Regular Session**

**By** Senate Ways & Means (originally sponsored by Senators Keiser, Robinson, Conway, Hasegawa, Nobles, Pedersen, Randall, Stanford, and C. Wilson)

READ FIRST TIME 02/07/22.

1 AN ACT Relating to establishing a prescription drug affordability  
2 board; amending RCW 43.71C.100 and 42.30.110; adding a new section to  
3 chapter 48.43 RCW; adding a new chapter to Title 70 RCW; and creating  
4 a new section.

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

6 NEW SECTION. **Sec. 1.** DEFINITIONS. The definitions in this  
7 section apply throughout this chapter unless the context clearly  
8 requires otherwise.

9 (1) "Authority" means the health care authority.

10 (2) "Biological product" has the same meaning as in 42 U.S.C.  
11 Sec. 262(i)(1).

12 (3) "Biosimilar" has the same meaning as in 42 U.S.C. Sec.  
13 262(i)(2).

14 (4) "Board" means the prescription drug affordability board.

15 (5) "Excess costs" means:

16 (a) Costs of appropriate utilization of a prescription drug that  
17 exceed the therapeutic benefit relative to other alternative  
18 treatments; or

19 (b) Costs of appropriate utilization of a prescription drug that  
20 are not sustainable to public and private health care systems over a  
21 10-year time frame.

1 (6) "Generic drug" has the same meaning as in RCW 69.48.020.

2 (7) "Health carrier" or "carrier" has the same meaning as in RCW  
3 48.43.005.

4 (8) "Manufacturer" means a person, corporation, or other entity  
5 engaged in the manufacture of prescription drugs sold in or into  
6 Washington state. "Manufacturer" does not include a private label  
7 distributor or retail pharmacy that sells a drug under the retail  
8 pharmacy's store, or a prescription drug repackager.

9 (9) "Prescription drug" means a drug regulated under chapter  
10 69.41 or 69.50 RCW, including generic, brand name, specialty drugs,  
11 and biological products.

12 NEW SECTION. **Sec. 2.** PRESCRIPTION DRUG AFFORDABILITY BOARD. (1)

13 The prescription drug affordability board is established, to include  
14 five members who have expertise in health care economics or clinical  
15 medicine appointed by the governor.

16 (2) Board members shall serve for a term of five years and  
17 members may be reappointed by the governor for additional terms.

18 (3) No board member or advisory group member may be an employee  
19 of, a board member of, or consultant to a prescription drug  
20 manufacturer, pharmacy benefit manager, health carrier, prescription  
21 drug wholesale distributor, or related trade association, except that  
22 a representative from the prescription drug industry serving on an  
23 advisory group may be an employee, consultant, or board member of a  
24 prescription drug manufacturer or related trade association and shall  
25 not be deemed to have a conflict of interest pursuant to subsection  
26 (4) of this section.

27 (4)(a) Board members, advisory group members, staff members, and  
28 contractors providing services on behalf of the board shall recuse  
29 themselves from any board activity in any case in which they have a  
30 conflict of interest.

31 (b) For the purposes of this section, a conflict of interest  
32 means an association, including a financial or personal association,  
33 that has the potential to bias or appear to bias an individual's  
34 decisions in matters related to the board or the activities of the  
35 board.

36 (5) The board shall establish advisory groups consisting of  
37 relevant stakeholders, including but not limited to patients and  
38 patient advocates for the condition treated by the drug and one  
39 member who is a representative of the prescription drug industry, for

1 each drug affordability review conducted by the board pursuant to  
2 section 4 of this act. Advisory group members are immune from civil  
3 liability for any official act performed in good faith as a member of  
4 the group.

5 (6) The authority shall provide administrative support to the  
6 board and any advisory group of the board and shall adopt rules  
7 governing their operation that shall include how and when the board  
8 will use and discuss confidential information that is exempt from  
9 public disclosure. The rules adopted under this subsection may not go  
10 into effect until at least 90 days after the next regular legislative  
11 session.

12 (7) Board members shall be compensated for participation in the  
13 work of the board in accordance with a personal services contract to  
14 be executed after appointment and before commencement of activities  
15 related to the work of the board.

16 (8) A simple majority of the board's membership constitutes a  
17 quorum for the purpose of conducting business.

18 (9) All meetings of the board must be open and public, except  
19 that the board may hold executive sessions to the extent permitted by  
20 chapter 42.30 RCW.

21 (10) The board may not hold its first meeting until at least one  
22 year after the authority publishes its first report on the impact  
23 that drug costs, rebates, and other discounts have on health care  
24 premiums pursuant to RCW 43.71C.100.

25 (11) The board must coordinate and collaborate with the  
26 authority, other boards, work groups, and commissions related to  
27 prescription drug costs and emerging therapies, including but not  
28 limited to the health care cost transparency board established in  
29 chapter 70.390 RCW, and the universal health care commission  
30 established in RCW 41.05.840. All coordination and collaboration by  
31 the board pursuant to this subsection must comply with chapter 42.30  
32 RCW, the open public meetings act.

33 (12) The board may collaborate with prescription drug  
34 affordability boards established in other states.

35 NEW SECTION. **Sec. 3.** AUTHORITY TO REVIEW DRUG PRICES. By June  
36 30, 2023, and annually thereafter, utilizing data collected pursuant  
37 to chapter 43.71C RCW, the all-payer health care claims database, or  
38 other data deemed relevant by the board, the board must identify  
39 prescription drugs that have been on the market for at least seven

1 years, are dispensed at a retail, specialty, or mail-order pharmacy,  
2 are not designated by the United States food and drug administration  
3 under 21 U.S.C. Sec. 360bb as a drug solely for the treatment of a  
4 rare disease or condition, and meet the following thresholds:

5 (1) Brand name prescription drugs and biologic products that:

6 (a) Have a wholesale acquisition cost of \$60,000 or more per year  
7 or course of treatment lasting less than one year; or

8 (b) Have a price increase of 15 percent or more in any 12-month  
9 period or for a course of treatment lasting less than 12 months, or a  
10 50 percent cumulative increase over three years;

11 (2) A biosimilar product with an initial wholesale acquisition  
12 cost that is not at least 15 percent lower than the reference  
13 biological product; and

14 (3) Generic drugs with a wholesale acquisition cost of \$100 or  
15 more for a 30-day supply or less that has increased in price by 200  
16 percent or more in the preceding 12 months.

17 NEW SECTION. **Sec. 4.** AFFORDABILITY REVIEWS. (1) The board may  
18 choose to conduct an affordability review of up to 24 prescription  
19 drugs per year identified pursuant to section 3 of this act. When  
20 deciding whether to conduct a review, the board shall consider:

21 (a) The class of the prescription drug and whether any  
22 therapeutically equivalent prescription drugs are available for sale;

23 (b) Input from relevant advisory groups established pursuant to  
24 section 2 of this act; and

25 (c) The average patient's out-of-pocket cost for the drug.

26 (2) For prescription drugs chosen for an affordability review,  
27 the board must determine whether the prescription drug has led or  
28 will lead to excess costs to patients. The board may examine publicly  
29 available information as well as collect confidential and proprietary  
30 information from the prescription drug manufacturer and other  
31 relevant sources.

32 (3) A manufacturer must submit all requested information to the  
33 board within 30 days of the request.

34 (4) The authority may assess a fine of up to \$100,000 against a  
35 manufacturer for each failure to comply with an information request  
36 from the board. The process for the assessment of a fine under this  
37 subsection shall be established by the authority in rule and is  
38 subject to review under the administrative procedure act, chapter  
39 34.05 RCW. The rules adopted under this subsection may not go into

1 effect until at least 90 days after the next regular legislative  
2 session.

3 (5) When conducting a review, the board shall consider:

4 (a) The relevant factors contributing to the price paid for the  
5 prescription drug, including the wholesale acquisition cost,  
6 discounts, rebates, or other price concessions;

7 (b) The average patient copay or other cost sharing for the drug;

8 (c) The effect of the price on consumers' access to the drug in  
9 the state;

10 (d) Orphan drug status;

11 (e) The dollar value and accessibility of patient assistance  
12 programs offered by the manufacturer for the drug;

13 (f) The price and availability of therapeutic alternatives;

14 (g) Input from:

15 (i) Patients affected by the condition or disease treated by the  
16 drug; and

17 (ii) Individuals with medical or scientific expertise related to  
18 the condition or disease treated by the drug;

19 (h) Any other information the drug manufacturer or other relevant  
20 entity chooses to provide;

21 (i) The impact of pharmacy benefit manager policies on the price  
22 consumers pay for the drug; and

23 (j) Any other relevant factors as determined by the board.

24 (6) In performing an affordability review of a drug the board may  
25 consider the following factors:

26 (a) Life-cycle management;

27 (b) The average cost of the drug in the state;

28 (c) Market competition and context;

29 (d) Projected revenue;

30 (e) Off-label usage of the drug; and

31 (f) Any additional factors identified by the board.

32 (7) All information collected by the board pursuant to this  
33 section is confidential and not subject to public disclosure under  
34 chapter 42.56 RCW.

35 (8) The board shall publicize which prescription drugs are  
36 subject to an affordability review before the review begins.

37 NEW SECTION. **Sec. 5.** UPPER PAYMENT LIMITS. (1) The authority  
38 must adopt rules setting forth a methodology established by the board  
39 for setting upper payment limits for prescription drugs the board has

1 determined have led or will lead to excess costs based on its  
2 affordability review. The rules adopted under this subsection may not  
3 go into effect until at least 90 days after the next regular  
4 legislative session. Each year, the board may set an upper payment  
5 limit for up to 12 prescription drugs.

6 (2) The methodology must take into consideration:

7 (a) The cost of administering the drug;

8 (b) The cost of delivering the drug to patients;

9 (c) The status of the drug on the drug shortage list published by  
10 the United States food and drug administration; and

11 (d) Other relevant administrative costs related to the production  
12 and delivery of the drug.

13 (3) The methodology determined by the board must not use quality-  
14 adjusted life years that take into account a patient's age or  
15 severity of illness or disability to identify subpopulations for  
16 which a prescription drug would be less cost-effective. For any  
17 prescription drug that extends life, the board's analysis of cost-  
18 effectiveness may not employ a measure or metric which assigns a  
19 reduced value to the life extension provided by a treatment based on  
20 a preexisting disability or chronic health condition of the  
21 individuals whom the treatment would benefit.

22 (4) Before setting an upper payment limit for a drug, the board  
23 must post notice of the proposed upper payment limit on the  
24 authority's website, including an explanation of the factors  
25 considered when setting the proposed limit and instructions to submit  
26 written comment. The board must provide 30 days to submit public  
27 comment.

28 (5) The board must monitor the supply of drugs for which it sets  
29 an upper payment limit and may suspend that limit if there is a  
30 shortage of the drug in the state.

31 (6) An upper payment limit for a prescription drug established by  
32 the board applies to all purchases of the drug by any entity and  
33 reimbursements for a claim for the drug by a health carrier, or a  
34 health plan offered under chapter 41.05 RCW, when the drug is  
35 dispensed or administered to an individual in the state in person, by  
36 mail, or by other means.

37 (7) An employer-sponsored self-funded plan may elect to be  
38 subject to the upper payment limits as established by the board.

39 (8) The board must establish an effective date for each upper  
40 payment limit, provided that the upper payment limit may not go into

1 effect until at least 90 days after the next regular legislative  
2 session and that the date is at least six months after the adoption  
3 of the upper payment limit and applies only to purchases, contracts,  
4 and plans that are issued on or renewed after the effective date.

5 (9) Any entity affected by a decision of the board may request an  
6 appeal within 30 days of the board's decision, and the board must  
7 rule on the appeal within 60 days. Board rulings are subject to  
8 judicial review pursuant to chapter 34.05 RCW.

9 (10) For any upper payment limit set by the board, the board must  
10 notify the manufacturer of the drug and the manufacturer must inform  
11 the board if it is able to make the drug available for sale in the  
12 state and include a rationale for its decision. The board must  
13 annually report to the relevant committees of the legislature  
14 detailing the manufacturers' responses.

15 (11) The board may reassess the upper payment limit for any drug  
16 annually based on current economic factors.

17 (12) The board may not establish an upper payment limit for any  
18 prescription drug before January 1, 2027.

19 (13)(a) Any individual denied coverage by a health carrier for a  
20 prescription drug because the drug was unavailable due to an upper  
21 payment limit established by the board, may seek review of the denial  
22 pursuant to RCW 48.43.530 and 48.43.535.

23 (b) If it is determined that the prescription drug should be  
24 covered based on medical necessity, the carrier may disregard the  
25 upper payment limit and must provide coverage for the drug.

26 NEW SECTION. **Sec. 6.** USE OF SAVINGS. (1) Any savings generated  
27 for a health plan, as defined in RCW 48.43.005, or a health plan  
28 offered under chapter 41.05 RCW that are attributable to the  
29 establishment of an upper payment limit established by the board must  
30 be used to reduce costs to consumers, prioritizing the reduction of  
31 out-of-pocket costs for prescription drugs.

32 (2) By January 1, 2024, the board must establish a formula for  
33 calculating savings for the purpose of complying with this section.

34 (3) By March 1st of the year following the effective date of the  
35 first upper payment limit, and annually thereafter, each state agency  
36 and health carrier issuing a health plan in the state must submit a  
37 report to the board describing the savings in the previous calendar  
38 year that were attributable to upper payment limits set by the board

1 and how the savings were used to satisfy the requirements of  
2 subsection (1) of this section.

3 NEW SECTION. **Sec. 7.** MANUFACTURER WITHDRAWAL FROM THE MARKET.

4 (1) Any manufacturer that intends to withdraw a prescription drug  
5 from sale or distribution within the state because the board has  
6 established an upper payment limit for that drug shall provide a  
7 notice of withdrawal in writing indicating the drug will be withdrawn  
8 because of the establishment of the upper payment limit at least 180  
9 days before the withdrawal to the office of the insurance  
10 commissioner, the authority, and any entity in the state with which  
11 the manufacturer has a contract for the sale or distribution of the  
12 drug.

13 (2) If a manufacturer chooses to withdraw the prescription drug  
14 from the state, it shall be prohibited from selling that drug in the  
15 state for a period of three years.

16 (3) A manufacturer that has withdrawn a drug from the market may  
17 petition the authority, in a form and manner determined by the  
18 authority in rule, to reenter the market before the expiration of the  
19 three-year ban if it agrees to make the drug available for sale in  
20 compliance with the upper payment limit.

21 (4) The rules adopted under this section may not go into effect  
22 until at least 90 days after the next regular legislative session.

23 NEW SECTION. **Sec. 8.** By December 15, 2022, and annually  
24 thereafter, the board shall provide a comprehensive report to the  
25 legislature detailing all actions the board has taken in the past  
26 year, including any rules adopted by the authority pursuant to this  
27 act, establishing any processes, such as the methodology for the  
28 upper payment limit, the list of drugs identified in section 3 of  
29 this act, the drugs the board completed an affordability review of  
30 and any determinations of whether the drug had led or will lead to  
31 excess costs, and the establishment of any upper payment limits.

32 NEW SECTION. **Sec. 9.** RULE MAKING. The authority may adopt any  
33 rules necessary to implement this chapter. The rules adopted under  
34 this section may not go into effect until at least 90 days after the  
35 next regular legislative session.

1        NEW SECTION.    **Sec. 10.**    A new section is added to chapter 48.43  
2    RCW to read as follows:

3        (1) For health plans issued or renewed on or after January 1,  
4    2024, if the prescription drug affordability board, as established in  
5    chapter 70.--- RCW (the new chapter created in section 12 of this  
6    act), establishes an upper payment limit for a prescription drug  
7    pursuant to section 5 of this act, a carrier must provide sufficient  
8    information, as determined by the commissioner, to indicate that  
9    reimbursement for a claim for that prescription drug will not exceed  
10   the upper payment limit for the drug established by the board.

11        (2) The commissioner may adopt any rules necessary to implement  
12   this section.

13        **Sec. 11.**    RCW 43.71C.100 and 2019 c 334 s 10 are each amended to  
14   read as follows:

15        (1) The authority shall compile and analyze the data submitted by  
16   health carriers, pharmacy benefit managers, manufacturers, and  
17   pharmacy services administrative organizations pursuant to this  
18   chapter and prepare an annual report for the public and the  
19   legislature synthesizing the data to demonstrate the overall impact  
20   that drug costs, rebates, and other discounts have on health care  
21   premiums.

22        (2) The data in the report must be aggregated and must not reveal  
23   information specific to individual health carriers, pharmacy benefit  
24   managers, pharmacy services administrative organizations, individual  
25   prescription drugs, individual classes of prescription drugs,  
26   individual manufacturers, or discount amounts paid in connection with  
27   individual prescription drugs.

28        (3) Beginning January 1, 2021, and by each January 1st  
29   thereafter, the authority must publish the report on its web site.

30        (4) Except for the report, and as provided in subsection (5) of  
31   this section, the authority shall keep confidential all data  
32   submitted pursuant to RCW 43.71C.020 through 43.71C.080.

33        (5) For purposes of public policy, upon request of a legislator,  
34   the authority must provide all data provided pursuant to RCW  
35   43.71C.020 through 43.71C.080 and any analysis prepared by the  
36   authority. Any information provided pursuant to this subsection must  
37   be kept confidential within the legislature and may not be publicly  
38   released.

1       (6) For the purpose of reviewing drug prices and conducting  
2 affordability reviews, the prescription drug affordability board, as  
3 established in chapter 70.--- RCW (the new chapter created in section  
4 12 of this act), and the health care cost transparency board,  
5 established in chapter 70.390 RCW, may access all data collected  
6 pursuant to RCW 43.71C.020 through 43.71C.080 and any analysis  
7 prepared by the authority.

8       (7) The data collected pursuant to this chapter is not subject to  
9 public disclosure under chapter 42.56 RCW. Any information provided  
10 pursuant to this section must be kept confidential and may not be  
11 publicly released. Recipients of data under subsection (6) of this  
12 section shall:

13       (a) Follow all rules adopted by the authority regarding  
14 appropriate data use and protection; and

15       (b) Acknowledge that the recipient is responsible for any  
16 liability arising from misuse of the data and that the recipient does  
17 not have any conflicts under the ethics in public service act that  
18 would prevent the recipient from accessing or using the data.

19       NEW SECTION.       **Sec. 12.** Sections 1 through 9 of this act  
20 constitute a new chapter in Title 70 RCW.

21       **Sec. 13.** RCW 42.30.110 and 2019 c 162 s 2 are each amended to  
22 read as follows:

23       (1) Nothing contained in this chapter may be construed to prevent  
24 a governing body from holding an executive session during a regular  
25 or special meeting:

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

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

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

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

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

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

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

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

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

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

39 This subsection (1)(i) does not permit a governing body to hold  
40 an executive session solely because an attorney representing the

1 agency is present. For purposes of this subsection (1)(i), "potential  
2 litigation" means matters protected by RPC 1.6 or RCW 5.60.060(2)(a)  
3 concerning:

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

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

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

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

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

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

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

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

39 (o) To consider information regarding staff privileges or quality  
40 improvement committees under RCW 70.41.205;

1       (p) To consider proprietary or confidential data collected or  
2 analyzed pursuant to chapter 70.--- RCW (the new chapter created in  
3 section 12 of this act).

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

9       NEW SECTION. Sec. 14. If specific funding for the purposes of  
10 this act, referencing this act by bill or chapter number, is not  
11 provided by June 30, 2022, in the omnibus appropriations act, this  
12 act is null and void.

--- END ---