

HOUSE BILL REPORT

SHB 1648

As Passed House:

March 11, 2005

Title: An act relating to increasing the penalty for intercepting, recording, or divulging private communications in executive sessions.

Brief Description: Increasing the penalty for intercepting, recording, or divulging private communications in executive sessions.

Sponsors: By House Committee on Criminal Justice & Corrections (originally sponsored by Representatives B. Sullivan, Appleton, Orcutt, Lovick, Campbell, Strow and Hinkle).

Brief History:

Committee Activity:

Criminal Justice & Corrections: 2/15/05, 2/22/05 [DPS].

Floor Activity:

Passed House: 3/11/05, 92-1.

Brief Summary of Substitute Bill

- Relocates the bill from the privacy (wire-tap) statute to the open public meetings act statute.
- Makes it a class C felony to intercept or record communications or conversations that take place during an executive session held by a public agency at a public meeting.

HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives O'Brien, Chair; Darneille, Vice Chair; Pearson, Ranking Minority Member; Ahern, Assistant Ranking Minority Member; Kagi, Kirby and Strow.

Staff: Kathryn Leathers (786-7114).

Background:

Meetings of the governing bodies of public agencies are required by statute to be open and public to all persons. "Meeting" is defined as any meeting during which official business of the agency is transacted. An executive session is distinguished from a meeting, in part, in that

an executive session is not open to the public. A public agency may convene an executive session during an open, public meeting after publicly announcing the purpose for excluding the public from the meeting place.

A "public agency" means 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. It also means any county, city, school district, special purpose district, or other municipal corporation or political subdivision of the state.

It is unlawful to intercept or record private communications or conversations that take place during a public hearing without the consent of all parties who participate in the private communication or conversation. However, it is permissible for communications of an emergency nature or which relate to certain criminal acts to be recorded with the consent of only one-party to the communication. A violation of this statute is a gross misdemeanor.

The term "private" is not defined by statute. "Executive sessions" are not defined by statute as "private communications or conversations."

Summary of Substitute Bill:

The bill makes it an unranked class C felony to intercept or record communications or conversations that take place during an executive session held by a public agency at a public meeting. It clarifies that nothing in this act prohibits a person from exercising his or her right to record communications and conversations that take place during an open and public meeting. Further, it relocates the bill from the privacy (wire-tap) statute to the open public meetings act statute and defines "executive session."

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect on July 1, 2005.

Testimony For: The current penalty for recording conversations in an executive session is grossly inadequate. Public agencies doing public business during an executive session should be protected from such criminal acts. In one case, the prosecuting attorney decided that it was not worth doing anything about the violation and the violator got off scott-free. This bill rectifies that situation.

(Concerns) Although sympathetic to the problem trying to be addressed, this bill is both excessive and misplaced. The bill ties together the problem of people recording executive sessions without the consent of the parties into an inappropriate statute – that is, the bill ties this crime to the wire-tapping statute. This crime is better placed in the open public meeting act statute. The language of the bill is ambiguous, and it is unclear whether people who

discuss what was said (at the meeting) after the meeting is over would be held liable for violating the act.

Testimony Against: None.

Persons Testifying: (In support) Representative B. Sullivan, prime sponsor; Mike Echelbarger, Lynnwood Public Facility District.

(Concerns) Rowland Thompson, Allied Daily Newspapers.

Persons Signed In To Testify But Not Testifying: None.