

ESHB 1056 - S COMM AMD

By Committee on State Government & Elections

NOT CONSIDERED 04/26/2021

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds and declares that,
4 due to technological advances since the 1971 adoption of the open
5 public meetings act, elected officials no longer conduct the public's
6 business solely at in-person meetings, but can and do utilize
7 telephonic and other electronic methods to efficiently conduct the
8 business of state and local government remotely. Further, limitations
9 on public gatherings required as the result of a disaster or
10 emergency, for example, to assist in preventing the spread of
11 infectious diseases, may affirmatively necessitate the use of
12 technology and the avoidance of in-person attendance at public
13 meetings for the conduct of governmental business. It is the policy
14 of the state that a governing body's actions, including
15 deliberations, shall be taken and conducted in the open. When the
16 public cannot observe and participate in person, it may limit
17 participation in democracy. Therefore, this act shall be construed in
18 favor of ensuring access by the public to observe elected officials
19 when they meet pursuant to this act. It is the intent of this act to
20 modernize and update the open public meetings act emergency
21 procedures to reflect technological advances, while maintaining the
22 act's public policy that governing body's actions and deliberations
23 be taken and conducted openly while balancing public safety in
24 emergency conditions. Governing bodies are encouraged to adopt
25 resolutions or ordinances establishing where and how meetings will be
26 held in the event of an emergency, in order to allow the public to
27 more easily learn about and observe public agency action in an
28 emergent situation.

29 NEW SECTION. **Sec. 2.** A new section is added to chapter 42.30
30 RCW to read as follows:

1 (1) If, after the declaration of an emergency by a local or state
2 government or agency, or by the federal government, a public agency
3 determines that it cannot hold a meeting of the governing body with
4 members or public attendance in person with reasonable safety because
5 of the emergency, the public agency may:

6 (a) Hold a remote meeting of the governing body without a
7 physical location; or

8 (b) Hold a meeting of the governing body at which the physical
9 attendance by some or all members of the public is limited due to a
10 declared emergency.

11 (2) During a remote meeting, members of the governing body may
12 appear or attend by phone or by other electronic means that allows
13 real-time verbal communication without being in the same physical
14 location. For a remote meeting or a meeting at which the physical
15 attendance by some or all members of the public is limited due to a
16 declared emergency, the public agency must provide an option for the
17 public to listen to the proceedings telephonically or by using a
18 readily available alternative in real-time that does not require any
19 additional cost for participation. Free readily available options
20 include, but are not limited to, broadcast by the public agency on a
21 locally available cable television station that is available
22 throughout the jurisdiction or other electronic, internet, or other
23 means of remote access that does not require any additional cost for
24 access to the program. The public agency may also allow the other
25 electronic means of remote access.

26 (3) No action may be taken at a remote meeting or a meeting at
27 which the physical attendance by some or all members of the public is
28 limited due to a declared emergency if the public agency has not
29 provided an option for the public to listen to proceedings pursuant
30 to subsection (2) of this section, except for an executive session as
31 authorized in this chapter.

32 (4) Notice of a remote meeting without a physical location or a
33 meeting at which the physical attendance by some or all members of
34 the public is limited due to a declared emergency must be provided in
35 accordance with this chapter and must include instructions on how the
36 public may listen live to proceedings and on how the public may
37 access any other electronic means of remote access offered by the
38 public agency.

39 (5) A remote meeting or a meeting at which the physical
40 attendance by some or all members of the public is limited due to a

1 declared emergency that is held under the provisions of this section
2 shall be considered open and public in compliance with the
3 requirements of this chapter. Nothing in this section alters the
4 ability of public agencies to take action in response to an emergency
5 as provided for in RCW 42.30.070, or to have members of a governing
6 body participate in a meeting remotely with no declared emergency.

7 (6) Notwithstanding any other provision in this section, any
8 governing body of a public agency which held some of its regular
9 meetings remotely prior to March 1, 2020, may continue to hold some
10 of its regular meetings remotely with no declared emergency so long
11 as the public agency provides an option for the public to listen to
12 the proceedings pursuant to subsection (2) of this section.

13 **Sec. 3.** RCW 42.30.040 and 2012 c 117 s 124 are each amended to
14 read as follows:

15 A member of the public shall not be required, as a condition to
16 attendance at a meeting of a governing body, to register his or her
17 name and other information, to complete a questionnaire, or otherwise
18 to fulfill any condition precedent to his or her attendance. This
19 section does not prohibit any generally applicable conditions
20 determined by the governing body to be reasonably necessary to
21 protect the public health or safety, or to protect against
22 interruption of the meeting, including a meeting at which the
23 physical attendance by some or all members of the public is limited
24 due to a declared emergency.

25 **Sec. 4.** RCW 42.30.050 and 1971 ex.s. c 250 s 5 are each amended
26 to read as follows:

27 In the event that any meeting is interrupted by a group or groups
28 of persons so as to render the orderly conduct of such meeting
29 unfeasible and order cannot be restored by the removal of individuals
30 who are interrupting the meeting, the members of the governing body
31 conducting the meeting may order the meeting room cleared and
32 continue in session or may adjourn the meeting and reconvene at
33 another location selected by majority vote of the members. In such a
34 session, final disposition may be taken only on matters appearing on
35 the agenda. Representatives of the press or other news media, except
36 those participating in the disturbance, shall be allowed to attend
37 any session held pursuant to this section. Nothing in this section
38 shall prohibit the governing body from establishing a procedure for

1 readmitting an individual or individuals not responsible for
2 disturbing the orderly conduct of the meeting. Nothing in this
3 section prohibits the governing body from stopping people from
4 speaking to the governing body when not recognized by the governing
5 body to speak.

6 **Sec. 5.** RCW 42.30.070 and 1983 c 155 s 2 are each amended to
7 read as follows:

8 (1) The governing body of a public agency shall provide the time
9 for holding regular meetings by ordinance, resolution, bylaws, or by
10 whatever other rule is required for the conduct of business by that
11 body. Unless otherwise provided for in the act under which the public
12 agency was formed, meetings of the governing body need not be held
13 within the boundaries of the territory over which the public agency
14 exercises jurisdiction. If at any time any regular meeting falls on a
15 holiday, such regular meeting shall be held on the next business day.
16 If, by reason of fire, flood, earthquake, or other emergency, there
17 is a need for expedited action by a governing body to meet the
18 emergency, the presiding officer of the governing body may provide
19 for a meeting site other than the regular meeting site, for a remote
20 meeting without a physical location, or for a meeting at which the
21 physical attendance by some or all members of the public is limited
22 due to a declared emergency, and the notice requirements of this
23 chapter shall be suspended during such emergency. It shall not be a
24 violation of the requirements of this chapter for a majority of the
25 members of a governing body to travel together or gather for purposes
26 other than a regular meeting or a special meeting as these terms are
27 used in this chapter: PROVIDED, That they take no action as defined
28 in this chapter.

29 **Sec. 6.** RCW 42.30.077 and 2014 c 61 s 2 are each amended to read
30 as follows:

31 (1) Public agencies with governing bodies must make the agenda of
32 each regular meeting of the governing body available online no later
33 than (~~twenty-four~~) 24 hours in advance of the published start time
34 of the meeting. An agency subject to provisions of this section (~~is~~
35 ~~not required to post an agenda if it does not have a web site or if~~
36 ~~it employs fewer than ten full-time equivalent employees~~) may share
37 a website with, or have its website hosted by, another public agency
38 to post meeting agendas, minutes, budgets, contact information, and

1 other records, including any resolution or ordinance adopted by the
2 agency establishing where and how the public agency will meet in the
3 event of an emergency. Nothing in this section prohibits subsequent
4 modifications to agendas nor invalidates any otherwise legal action
5 taken at a meeting where the agenda was not posted in accordance with
6 this section. Nothing in this section modifies notice requirements or
7 shall be construed as establishing that a public body or agency's
8 online posting of an agenda as required by this section is sufficient
9 notice to satisfy public notice requirements established under other
10 laws. Failure to post an agenda in accordance with this section shall
11 not provide a basis for awarding attorney fees under RCW 42.30.120 or
12 commencing an action for mandamus or injunction under RCW 42.30.130.

13 (2) A special purpose district, city, or town subject to the
14 provisions of this section is not required to post an agenda online
15 if the district, city, or town:

16 (a) Has an aggregate valuation of the property subject to
17 taxation by the district, city, or town of less than \$400,000,000, as
18 placed on the last completed and balanced tax rolls of the county
19 preceding the date of the most recent tax levy;

20 (b) Has a population within its jurisdiction of under 3,000
21 persons; and

22 (c) Provides confirmation to the state auditor at the time it
23 files its annual reports under RCW 43.09.230 that the cost of posting
24 notices on a website of its own, a shared website, or on the website
25 of the county in which the largest portion of the district's, city's,
26 or town's population resides, would exceed one-tenth of one percent
27 of the district's, city's, or town's budget.

28 **Sec. 7.** RCW 42.30.080 and 2012 c 188 s 1 are each amended to
29 read as follows:

30 (1) A special meeting may be called at any time by the presiding
31 officer of the governing body of a public agency or by a majority of
32 the members of the governing body by delivering written notice
33 personally, by mail, by fax, or by ~~((electronic mail))~~ email to each
34 member of the governing body. Written notice shall be deemed waived
35 in the following circumstances:

36 (a) A member submits a written waiver of notice with the clerk or
37 secretary of the governing body at or prior to the time the meeting
38 convenes. A written waiver may be given by telegram, fax, or
39 ~~((electronic mail))~~ email; or

1 (b) A member is actually present at the time the meeting
2 convenes.

3 (2) Notice of a special meeting called under subsection (1) of
4 this section shall be:

5 (a) Delivered to each local newspaper of general circulation and
6 local radio or television station that has on file with the governing
7 body a written request to be notified of such special meeting or of
8 all special meetings;

9 (b) Posted on the agency's website. An agency is not required to
10 post a special meeting notice on its website if it (~~(i)~~) does not
11 have a website(~~(i)~~) or share a website with another agency.
12 Except in the case of a remote meeting or a meeting at which the
13 physical attendance by some or all members of the public is limited
14 due to a declared emergency as provided for in this chapter, an
15 agency is not required to post a special meeting notice on its
16 website if it employs (~~fewer than ten~~) no full-time equivalent
17 employees(~~(i)~~), or (~~(ii)~~) does not employ personnel whose duty, as
18 defined by a job description or existing contract, is to maintain or
19 update the website; and

20 (c) Prominently displayed at the main entrance of the agency's
21 principal location and the meeting site if it is not held at the
22 agency's principal location and is not held as a remote meeting;
23 except that during a declared emergency which prevents a meeting from
24 being held in-person with reasonable safety an agency that hosts a
25 website or shares a website with another agency may instead post
26 notice of a remote meeting without a physical location on the website
27 hosted or shared by the agency.

28 Such notice must be delivered or posted, as applicable, at least
29 (~~twenty-four~~) 24 hours before the time of such meeting as specified
30 in the notice.

31 (3) The call and notices required under subsections (1) and (2)
32 of this section shall specify the time and place of the special
33 meeting and the business to be transacted. Final disposition shall
34 not be taken on any other matter at such meetings by the governing
35 body.

36 (4) The notices provided in this section may be dispensed with in
37 the event a special meeting is called to deal with an emergency
38 involving injury or damage to persons or property or the likelihood
39 of such injury or damage, when time requirements of such notice would
40 make notice impractical and increase the likelihood of such injury or

1 damage, or when the required notice cannot be posted or displayed
2 with reasonable safety, including but not limited to declared
3 emergencies in which travel to physically post notice is barred or
4 advised against.

5 **Sec. 8.** RCW 42.30.090 and 2012 c 117 s 125 are each amended to
6 read as follows:

7 The governing body of a public agency may adjourn any regular,
8 adjourned regular, special, or adjourned special meeting to a time
9 and place specified in the order of adjournment. Less than a quorum
10 may so adjourn from time to time. If all members are absent from any
11 regular or adjourned regular meeting the clerk or secretary of the
12 governing body may declare the meeting adjourned to a stated time and
13 place. He or she shall cause a written notice of the adjournment to
14 be given in the same manner as provided in RCW 42.30.080 for special
15 meetings, unless such notice is waived as provided for special
16 meetings. ~~((Whenever))~~ Except in the case of remote meetings without
17 a physical location as provided for in this chapter, whenever any
18 meeting is adjourned a copy of the order or notice of adjournment
19 shall be conspicuously posted immediately after the time of the
20 adjournment on or near the door of the place where the regular,
21 adjourned regular, special, or adjourned special meeting was held.
22 When a regular or adjourned regular meeting is adjourned as provided
23 in this section, the resulting adjourned regular meeting is a regular
24 meeting for all purposes. When an order of adjournment of any meeting
25 fails to state the hour at which the adjourned meeting is to be held,
26 it shall be held at the hour specified for regular meetings by
27 ordinance, resolution, bylaw, or other rule.

28 NEW SECTION. **Sec. 9.** This act is necessary for the immediate
29 preservation of the public peace, health, or safety, or support of
30 the state government and its existing public institutions, and takes
31 effect immediately."

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1 On page 1, line 2 of the title, after "emergencies;" strike the
2 remainder of the title and insert "amending RCW 42.30.040, 42.30.050,
3 42.30.070, 42.30.077, 42.30.080, and 42.30.090; adding a new section
4 to chapter 42.30 RCW; creating a new section; and declaring an
5 emergency."

EFFECT: Clarifies that agencies which held at least some public meetings remotely prior to March 1, 2020, may continue to do so with no declared emergency if the agency provides an option for the public to listen to the meeting. Makes other drafting corrections.

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