

ESHB 1329 - S COMM AMD

By Committee on State Government & Elections

ADOPTED AND ENGROSSED 3/3/2022

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 The legislature further finds people participating in their  
30 government, especially through public comment, is an essential part  
31 of developing public policy. The legislature finds that there are  
32 numerous developing technologies that can be used to facilitate

1 public comment, especially for those with disabilities, underserved  
2 communities, and those who face time or distance challenges when  
3 traveling to public meetings. Therefore, the legislature intends to  
4 encourage public agencies to make use of remote access tools as fully  
5 as practicable to encourage public engagement and better serve their  
6 communities.

7 **Sec. 2.** RCW 42.30.010 and 1971 ex.s. c 250 s 1 are each amended  
8 to read as follows:

9 The legislature finds and declares that all public commissions,  
10 boards, councils, committees, subcommittees, departments, divisions,  
11 offices, and all other public agencies of this state and subdivisions  
12 thereof exist to aid in the conduct of the people's business. It is  
13 the intent of this chapter that their actions be taken openly and  
14 that their deliberations be conducted openly.

15 The people of this state do not yield their sovereignty to the  
16 agencies which serve them. The people, in delegating authority, do  
17 not give their public servants the right to decide what is good for  
18 the people to know and what is not good for them to know. The people  
19 insist on remaining informed and informing the people's public  
20 servants of their views so that they may retain control over the  
21 instruments they have created. For these reasons, even when not  
22 required by law, public agencies are encouraged to incorporate and  
23 accept public comment during their decision-making process.

24 **Sec. 3.** RCW 42.30.030 and 1971 ex.s. c 250 s 3 are each amended  
25 to read as follows:

26 (1) All meetings of the governing body of a public agency shall  
27 be open and public and all persons shall be permitted to attend any  
28 meeting of the governing body of a public agency, except as otherwise  
29 provided in this chapter.

30 (2) Public agencies are encouraged to provide for the increased  
31 ability of the public to observe and participate in the meetings of  
32 governing bodies through real-time telephonic, electronic, internet,  
33 or other readily available means of remote access that do not require  
34 an additional cost to access the meeting.

35 NEW SECTION. **Sec. 4.** A new section is added to chapter 42.30  
36 RCW to read as follows:

1 (1) Public agencies are encouraged to make an audio or video  
2 recording of, or to provide an online streaming option for, all  
3 regular meetings of its governing body, and to make recordings of  
4 these meetings available online for a minimum of six months.

5 (2) This section does not alter a local government's  
6 recordkeeping requirements under chapter 42.56 RCW.

7 NEW SECTION. **Sec. 5.** A new section is added to chapter 42.30  
8 RCW to read as follows:

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

14 (a) Hold a remote meeting of the governing body without a  
15 physical location; or

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

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

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

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

8 (5) A remote meeting or a meeting at which the physical  
9 attendance by some or all members of the public is limited due to a  
10 declared emergency that is held under the provisions of this section  
11 shall be considered open and public in compliance with the  
12 requirements of this chapter. Nothing in this section alters the  
13 ability of public agencies to take action in response to an emergency  
14 as provided for in RCW 42.30.070, or to have members of a governing  
15 body participate in a meeting remotely with no declared emergency.

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

22 **Sec. 6.** RCW 42.30.040 and 2012 c 117 s 124 are each amended to  
23 read as follows:

24 A member of the public shall not be required, as a condition to  
25 attendance at a meeting of a governing body, to register his or her  
26 name and other information, to complete a questionnaire, or otherwise  
27 to fulfill any condition precedent to his or her attendance. This  
28 section does not prohibit any generally applicable conditions  
29 determined by the governing body to be reasonably necessary to  
30 protect the public health or safety, or to protect against  
31 interruption of the meeting, including a meeting at which the  
32 physical attendance by some or all members of the public is limited  
33 due to a declared emergency.

34 **Sec. 7.** RCW 42.30.050 and 1971 ex.s. c 250 s 5 are each amended  
35 to read as follows:

36 In the event that any meeting is interrupted by a group or groups  
37 of persons so as to render the orderly conduct of such meeting  
38 unfeasible and order cannot be restored by the removal of individuals

1 who are interrupting the meeting, the members of the governing body  
2 conducting the meeting may order the meeting room cleared and  
3 continue in session or may adjourn the meeting and reconvene at  
4 another location selected by majority vote of the members. In such a  
5 session, final disposition may be taken only on matters appearing on  
6 the agenda. Representatives of the press or other news media, except  
7 those participating in the disturbance, shall be allowed to attend  
8 any session held pursuant to this section. Nothing in this section  
9 shall prohibit the governing body from establishing a procedure for  
10 readmitting an individual or individuals not responsible for  
11 disturbing the orderly conduct of the meeting. Nothing in this  
12 section prohibits the governing body from stopping people from  
13 speaking to the governing body when not recognized by the governing  
14 body to speak.

15 **Sec. 8.** RCW 42.30.070 and 1983 c 155 s 2 are each amended to  
16 read as follows:

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

1       **Sec. 9.** RCW 42.30.077 and 2014 c 61 s 2 are each amended to read  
2 as follows:

3       (1) Public agencies with governing bodies must make the agenda of  
4 each regular meeting of the governing body available online no later  
5 than (~~twenty-four~~) 24 hours in advance of the published start time  
6 of the meeting. An agency subject to provisions of this section (~~is~~  
7 not required to post an agenda if it does not have a website or if it  
8 employs fewer than ten full-time equivalent employees)) may share a  
9 website with, or have its website hosted by, another public agency to  
10 post meeting agendas, minutes, budgets, contact information, and  
11 other records, including any resolution or ordinance adopted by the  
12 agency establishing where and how the public agency will meet in the  
13 event of an emergency. Nothing in this section prohibits subsequent  
14 modifications to agendas nor invalidates any otherwise legal action  
15 taken at a meeting where the agenda was not posted in accordance with  
16 this section. Nothing in this section modifies notice requirements or  
17 shall be construed as establishing that a public body or agency's  
18 online posting of an agenda as required by this section is sufficient  
19 notice to satisfy public notice requirements established under other  
20 laws. Failure to post an agenda in accordance with this section shall  
21 not provide a basis for awarding attorney fees under RCW 42.30.120 or  
22 commencing an action for mandamus or injunction under RCW 42.30.130.

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

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

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

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

38       **Sec. 10.** RCW 42.30.080 and 2012 c 188 s 1 are each amended to  
39 read as follows:

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

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

11 (b) A member is actually present at the time the meeting  
12 convenes.

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

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

19 (b) Posted on the agency's website. An agency is not required to  
20 post a special meeting notice on its website if it ~~((i))~~ does not  
21 have a website ~~((i))~~ or share a website with another agency.  
22 Except in the case of a remote meeting or a meeting at which the  
23 physical attendance by some or all members of the public is limited  
24 due to a declared emergency as provided for in this chapter, an  
25 agency is not required to post a special meeting notice on its  
26 website if it employs ~~((fewer than ten))~~ no full-time equivalent  
27 employees ~~((i))~~, or ~~((iii))~~ does not employ personnel whose duty, as  
28 defined by a job description or existing contract, is to maintain or  
29 update the website; and

30 (c) Prominently displayed at the main entrance of the agency's  
31 principal location and the meeting site if it is not held at the  
32 agency's principal location and is not held as a remote meeting;  
33 except that during a declared emergency which prevents a meeting from  
34 being held in-person with reasonable safety an agency that hosts a  
35 website or shares a website with another agency may instead post  
36 notice of a remote meeting without a physical location on the website  
37 hosted or shared by the agency.

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

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

6 (4) The notices provided in this section may be dispensed with in  
7 the event a special meeting is called to deal with an emergency  
8 involving injury or damage to persons or property or the likelihood  
9 of such injury or damage, when time requirements of such notice would  
10 make notice impractical and increase the likelihood of such injury or  
11 damage, or when the required notice cannot be posted or displayed  
12 with reasonable safety, including but not limited to declared  
13 emergencies in which travel to physically post notice is barred or  
14 advised against.

15 **Sec. 11.** RCW 42.30.090 and 2012 c 117 s 125 are each amended to  
16 read as follows:

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

1       **Sec. 12.** RCW 42.30.110 and 2019 c 162 s 2 are each amended to  
2 read as follows:

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

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

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

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

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

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

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

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

35       (g) To evaluate the qualifications of an applicant for public  
36 employment or to review the performance of a public employee.  
37 However, subject to RCW 42.30.140(4), discussion by a governing body  
38 of salaries, wages, and other conditions of employment to be  
39 generally applied within the agency shall occur in a meeting open to  
40 the public, and when a governing body elects to take final action

1 hiring, setting the salary of an individual employee or class of  
2 employees, or discharging or disciplining an employee, that action  
3 shall be taken in a meeting open to the public;

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

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

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

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

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

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

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

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

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

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

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

15 (o) To consider information regarding staff privileges or quality  
16 improvement committees under RCW 70.41.205.

17 (2) Before convening in executive session, the presiding officer  
18 of a governing body shall publicly announce the purpose for excluding  
19 the public from the meeting place, and the time when the executive  
20 session will be concluded. The executive session may be extended to a  
21 stated later time by announcement of the presiding officer. The  
22 announced purpose of excluding the public must be entered into the  
23 minutes of the meeting required by RCW 42.30.035.

24 NEW SECTION. **Sec. 13.** A new section is added to chapter 42.30  
25 RCW to read as follows:

26 (1) Except in an emergency situation, the governing body of a  
27 public agency shall provide an opportunity at or before every regular  
28 meeting at which final action is taken for public comment. The public  
29 comment required under this section may be taken orally at a public  
30 meeting, or by providing an opportunity for written testimony to be  
31 submitted before or at the meeting. If the governing body accepts  
32 written testimony, this testimony must be distributed to the  
33 governing body. The governing body may set a reasonable deadline for  
34 the submission of written testimony before the meeting.

35 (2) Upon the request of any individual who will have difficulty  
36 attending a meeting of the governing body of a public agency by  
37 reason of disability, limited mobility, or for any other reason that  
38 makes physical attendance at a meeting difficult, the governing body  
39 shall, when feasible, provide an opportunity for that individual to

1 provide oral comment at the meeting remotely if oral comment from  
2 other members of the public will be accepted at the meeting.

3 (3) Nothing in this section prevents a governing body from  
4 allowing public comment on items not on the meeting agenda.

5 (4) Nothing in this section diminishes the authority of governing  
6 bodies to deal with interruptions under RCW 42.30.050, limits the  
7 ability of the governing body to put limitations on the time  
8 available for public comment or on how public comment is accepted, or  
9 requires a governing body to accept public comment that renders  
10 orderly conduct of the meeting unfeasible.

11 **Sec. 14.** RCW 42.30.900 and 1971 ex.s. c 250 s 16 are each  
12 amended to read as follows:

13 This chapter may be known and cited as the (~~"Open Public~~  
14 ~~Meetings Act of 1971".~~) Washington state open public meetings act or  
15 OPMA.

16 NEW SECTION. **Sec. 15.** Sections 5 through 11 of this act are  
17 necessary for the immediate preservation of the public peace, health,  
18 or safety, or support of the state government and its existing public  
19 institutions, and take effect immediately."

**ESHB 1329** - S COMM AMD

By Committee on State Government & Elections

**ADOPTED 3/3/2022**

20 On page 1, line 2 of the title, after "participation;" strike the  
21 remainder of the title and insert "amending RCW 42.30.010, 42.30.030,  
22 42.30.040, 42.30.050, 42.30.070, 42.30.077, 42.30.080, 42.30.090,  
23 42.30.110, and 42.30.900; adding new sections to chapter 42.30 RCW;  
24 creating a new section; and declaring an emergency."

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