
SUBSTITUTE HOUSE BILL 2173

State of Washington

68th Legislature

2024 Regular Session

By House State Government & Tribal Relations (originally sponsored by Representatives Ybarra, Dye, Fitzgibbon, and Doglio)

READ FIRST TIME 01/31/24.

1 AN ACT Relating to executive sessions by publicly owned natural
2 gas utilities under the open public meetings act in order to comply
3 with the climate commitment act; reenacting and amending RCW
4 42.30.110; and creating a new section.

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

6 NEW SECTION. **Sec. 1.** The climate commitment act requires
7 natural gas utilities to obtain greenhouse gas allowances to offset a
8 portion of emissions. Because the allowance auctions must be
9 carefully regulated to guard against market interference, utilities
10 are strictly prohibited from disclosing any information about how
11 they plan to participate in a specific auction. Investor-owned
12 natural gas utilities, which are governed by a private board of
13 directors, are able to keep this information confidential. In
14 contrast, publicly owned natural gas utilities are overseen by the
15 elected city council and are therefore governed by the open public
16 meetings act, which requires that deliberations be conducted in
17 public. Managers of publicly owned natural gas utilities face a
18 conflict between the mandates of the climate commitment act to keep
19 greenhouse gas allowance auction bidding information confidential,
20 and the open public meetings act which requires public decision
21 making. This act allows the governing body of a public owned natural

1 gas utility to meet in executive session to consider the information
2 necessary to comply with the climate commitment act's protection of
3 all information necessary to participate in the greenhouse gas
4 allowance market.

5 **Sec. 2.** RCW 42.30.110 and 2022 c 153 s 13 and 2022 c 115 s 12
6 are each reenacted and amended to read as follows:

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

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

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

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

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

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

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

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

1 (g) To evaluate the qualifications of an applicant for public
2 employment or to review the performance of a public employee.
3 However, subject to RCW 42.30.140(4), discussion by a governing body
4 of salaries, wages, and other conditions of employment to be
5 generally applied within the agency shall occur in a meeting open to
6 the public, and when a governing body elects to take final action
7 hiring, setting the salary of an individual employee or class of
8 employees, or discharging or disciplining an employee, that action
9 shall be taken in a meeting open to the public;

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

14 (i) To discuss with legal counsel representing the agency matters
15 relating to agency enforcement actions, or to discuss with legal
16 counsel representing the agency litigation or potential litigation to
17 which the agency, the governing body, or a member acting in an
18 official capacity is, or is likely to become, a party, when public
19 knowledge regarding the discussion is likely to result in an adverse
20 legal or financial consequence to the agency.

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

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

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

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

36 (j) To consider, in the case of the state library commission or
37 its advisory bodies, western library network prices, products,
38 equipment, and services, when such discussion would be likely to
39 adversely affect the network's ability to conduct business in a

1 competitive economic climate. However, final action on these matters
2 shall be taken in a meeting open to the public;

3 (k) To consider, in the case of the state investment board,
4 financial and commercial information when the information relates to
5 the investment of public trust or retirement funds and when public
6 knowledge regarding the discussion would result in loss to such funds
7 or in private loss to the providers of this information;

8 (l) To consider proprietary or confidential nonpublished
9 information related to the development, acquisition, or
10 implementation of state purchased health care services as provided in
11 RCW 41.05.026;

12 (m) To consider in the case of the life sciences discovery fund
13 authority, the substance of grant applications and grant awards when
14 public knowledge regarding the discussion would reasonably be
15 expected to result in private loss to the providers of this
16 information;

17 (n) To consider in the case of a health sciences and services
18 authority, the substance of grant applications and grant awards when
19 public knowledge regarding the discussion would reasonably be
20 expected to result in private loss to the providers of this
21 information;

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

24 (p) To consider proprietary or confidential data collected or
25 analyzed pursuant to chapter 70.405 RCW;

26 (q) For municipal gas utilities authorized under Title 35 or 35A
27 RCW, to consider greenhouse gas allowance auction bidding information
28 that is prohibited from public disclosure under RCW 70A.65.100.

29 (2) Before convening in executive session, the presiding officer
30 of a governing body shall publicly announce the purpose for excluding
31 the public from the meeting place, and the time when the executive
32 session will be concluded. The executive session may be extended to a
33 stated later time by announcement of the presiding officer. The
34 announced purpose of excluding the public must be entered into the
35 minutes of the meeting required by RCW 42.30.035.

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