

Initiative Measure No. 1652

Filed January 7, 2019

TRANSPARENCY IN LAWMAKING ACT

AN ACT Relating to strengthening the state's public disclosure laws; amending RCW 42.56.010, 40.14.100, 42.30.020, and 42.30.110; adding a new section to chapter 42.56 RCW; adding a new section to chapter 42.30 RCW; and creating new sections.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

INTENT

NEW SECTION. **Sec. 1.** The people find that the purpose of the state's public disclosure laws is founded on the public's right to know the business of their government and that transparency in government is an important component of representative democracy. That full access to information concerning the conduct of government on every level must be assured as a fundamental and necessary precondition to the sound governance of a free society. This measure strengthens the state's public disclosure laws. The people strongly support universal access to public records and open public meetings to stop politicians from making decisions in secret that impact the public.

NEW SECTION. **Sec. 2.** A new section is added to chapter 42.56 RCW to read as follows:

The state legislature must comply with the Public Records Act and must make past, current, and future public records publicly available after the effective date of this act.

NEW SECTION. **Sec. 3.** A new section is added to chapter 42.30 RCW to read as follows:

The state legislature must comply with the Open Public Meetings Act after the effective date of this act.

Sec. 4. RCW 42.56.010 and 2017 c 303 s 1 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Agency" includes all state agencies and all local agencies. "State agency" includes the state legislature, every state office, department, division, bureau, board, commission, or other state agency. "Local agency" includes every county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district, or any office, department, division, bureau, board, commission, or agency thereof, or other local public agency. For purposes of this chapter, "state legislature" means the state legislative branch and its houses, members, offices, employees, and agencies.

(2) "Person in interest" means the person who is the subject of a record or any representative designated by that person, except that if that person is under a legal disability, "person in interest" means and includes the parent or duly appointed legal representative.

(3) "Public record" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. For the ~~((office of the secretary of the senate and the office of the chief clerk of the house of representatives))~~ state legislature, public records ~~((mean))~~ include, but are not limited to, legislative records as defined in RCW 40.14.100 and ~~((also means the following:—A))~~ all budget and financial records; personnel leave, travel, and payroll records; records of legislative sessions; reports

submitted to the legislature; and any other (~~record designated a public record by any official action of the senate or the house of representatives. This definition does not~~) public record but does not include records that are not otherwise required to be retained by the agency and are held by volunteers who:

(a) Do not serve in an administrative capacity;

(b) Have not been appointed by the agency to an agency board, commission, or internship; and

(c) Do not have a supervisory role or delegated agency authority.

(4) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translate.

Sec. 5. RCW 40.14.100 and 1971 ex.s. c 102 s 2 are each amended to read as follows:

As used in RCW 40.14.010 and 40.14.100 through 40.14.180, unless the context requires otherwise, "legislative records" shall be defined as correspondence, amendments, reports, and minutes of meetings made by or submitted to legislative committees or subcommittees and transcripts or other records of hearings or supplementary written testimony or data thereof filed with committees or subcommittees in connection with the exercise of legislative or investigatory functions, but does not include the records of an official act of the legislature kept by the secretary of state, bills and their copies, published materials, digests, or multi-copied matter which are routinely retained and otherwise available at the state library or in a public repository(~~(, or reports or correspondence made or received by or in any way under the personal control of the individual members of the legislature)~~).

Sec. 6. RCW 42.30.020 and 2017 c 303 s 1 are each amended to read as follows:

The definitions in this section apply throughout this chapter

unless the context clearly requires otherwise.

As used in this chapter unless the context indicates otherwise:

(1) "Public agency" means:

(a) 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~~);

(b) (~~Any~~) The state legislature and any county, city, school district, special purpose district, or other municipal corporation or political subdivision of the state of Washington. For purposes of this chapter, "state legislature" means the state legislative branch and its houses, members, offices, employees, and agencies;

(c) Any subagency of a public agency which is created by or pursuant to statute, ordinance, or other legislative act, including but not limited to planning commissions, library or park boards, commissions, and agencies;

(d) Any policy group whose membership includes representatives of publicly owned utilities formed by or pursuant to the laws of this state when meeting together as or on behalf of participants who have contracted for the output of generating plants being planned or built by an operating agency.

(2) "Governing body" means the multimember board, commission, committee, council, or other policy or rule-making body of a public agency, or any committee thereof when the committee acts on behalf of the governing body, conducts hearings, or takes testimony or public comment.

(3) "Action" means the transaction of the official business of a public agency by a governing body including but not limited to receipt of public testimony, deliberations, discussions, considerations, reviews, evaluations, and final actions. "Final action" means a collective positive or negative decision, or an actual vote by a majority of the members of a governing body when sitting as a body or entity, upon a motion, proposal, resolution, order, or ordinance.

(4) "Meeting" means meetings at which action is taken.

Sec. 7. RCW 42.30.110 and 2017 c 303 s 1 are each amended to read as follows:

(1) An executive session must be recorded.

(2) Nothing contained in this chapter may be construed to prevent a governing body from holding an executive session during a regular or

special meeting:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(l) To consider proprietary or confidential nonpublished information related to the development, acquisition, or implementation

of state purchased health care services as provided in RCW 41.05.026;

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

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

~~((2))~~ (3) Before convening in executive session, the presiding officer of a governing body shall publicly announce the purpose for excluding the public from the meeting place, announce that the executive session will be recorded as required by subsection (1) of this section, and announce the time when the executive session will be concluded. The executive session may be extended to a stated later time by announcement of the presiding officer.

NEW SECTION. **Sec. 8.** The provisions of this act are to be liberally construed to effectuate the policies, purposes, and intent of this act.

NEW SECTION. **Sec. 9.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 10.** This act is known and may be cited as the "Transparency in Lawmaking Act."

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