

# FINAL BILL REPORT

## SHB 1384

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Synopsis as Enacted

**Brief Description:** Clarifying the circumstances under which the governing body of a public agency may hold an executive session to discuss litigation.

**Sponsors:** By House Committee on State Government (originally sponsored by Representatives Romero, McMorris, Simpson, Conway, Miloscia, Haigh, D. Schmidt, Clements, Delvin, Hunt, Lambert, Benson and Schindler; by request of State Auditor).

**House Committee on State Government**  
**Senate Committee on State & Local Government**

**Background:**

Under the Open Public Meetings Act (OPMA), a public body may not hold a meeting at which the official business of the body is transacted unless the meeting is open to the public. Unless there is an emergency, the public body must give advance notice of all meetings to the public. Citizens may bring court actions to challenge the validity of past meetings, or to enjoin future violations of the act. Actions taken at a meeting in violation of the OPMA are void. A public official knowingly attending a meeting in violation of the OPMA may be subject to a civil penalty.

Public bodies may hold executive sessions out of the public eye for certain enumerated purposes. One of these purposes is to discuss with legal counsel litigation or potential litigation to which the body is likely to become a party when knowledge of the discussion is likely to result in adverse legal or financial consequences.

**Summary:**

A public body may not hold an executive session under the "potential litigation" exception simply because an attorney is present or is consulted on a matter. "Potential litigation" is defined to mean matters protected by the attorney-client privilege concerning:

- litigation that has been specifically threatened;
- litigation that the public body reasonably believes may be commenced by or against the body; or
- litigation or legal risks of a proposed action or current practice that the public body has identified when public discussion of the litigation or legal risks is likely to result in an adverse legal or financial consequence.

The Attorney General may provide information, technical assistance, and training on the provisions of the OPMA.

**Votes on Final Passage:**

House 87 7

Senate 44 1 (Senate amended)

House 93 0 (House concurred)

**Effective:** July 22, 2001