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**State Government & Tribal  
Affairs Committee**

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**HB 2630**

**Brief Description:** Changing the definition of meetings in the open public meetings act.

**Sponsors:** Representatives Lias, Loomis and Hunt.

**Brief Summary of Bill**

- Modifies the definition of "meeting" under the Open Public Meetings Act to include meetings by telephonic and electronic methods.

**Hearing Date:** 1/23/08

**Staff:** Colleen Kerr (786-7168).

**Background:**

Open Public Meetings Act

The Legislature enacted Washington's Open Public Meetings Act (OPMA) in 1971. The OPMA is modeled on California's Brown Act of 1953 and Florida's Government-in-the-Sunshine Law, or Sunshine Act, of 1967. Open government laws are often referred to as sunshine laws in reference to a quote from Justice Brandies who said, "Sunlight is said to be the best of disinfectants." Indeed, Washington's Public Disclosure Act, now the Public Records Act was sometimes called the Sunshine Law at the time of enactment.

Washington's OPMA states that: "[m]eeting" means meetings at which "action" is taken. "Action" means the transaction of official business of a public agency by a governing body." The OPMA also requires a meeting to have notice to be valid: governing bodies must adopt a schedule of regular meetings and provide notice for each special meeting; emergency meetings do not require notice, but must meet the statutory definition. If the required notice for a meeting has not been given, the action taken is null and void as if it had never occurred.

Telephone and Electronic Communications under the OPMA

Telephone communications and email communications are not addressed in the OPMA. The

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Attorney General's Public Records & Open Meetings Deskbook from 1998 states:

"It is generally agreed that an agency may conduct its meetings where one of the members of the governing body attends by telephone and a speaker phone is available at the official location of the meeting so as to afford the public the opportunity to hear the member's input. This should only occur when a member is unable to travel to the meeting site and would not include "telephone trees" where the members repeatedly call each other to form a majority decision." The Deskbook is silent on email or electronic meetings.

Other states have provisions in statute that either define meetings of a governing body to include telephone and electronic communication or that allow meetings by any means provided there is opportunity for interaction. These states include California, Iowa, Kansas, and Tennessee.

#### Case Law

The issue of what constitutes a meeting and whether the OPMA applies to members-elect was the subject of a 2001 Court of Appeals, Division II case. In *Wood v. Battle Ground School District*, 107 Wn. App. 550(2001), the Court stated: "the exchange of emails can constitute a 'meeting'", citing the OPMA's broad definition of "meeting" and the law's mandate to liberally construe this statute in favor of coverage. According to this ruling, the OPMA can apply, depending on the circumstances, to electronic mail (e-mail) communications between a majority of the members of a governing body if a majority of the members "collectively intend to meet [by e-mail] to transact the governing body's official business" and they "communicate about issues that may or will come before the [governing body] for a vote."

The *Wood* Court went on to point out that such a meeting would nevertheless violate the OPMA because the meeting would lack notice and any action would be null and void; the OPMA is not violated, however, when the members of a governing body merely receive information by e-mail about upcoming issues. The ruling did not go to telephone calls, though it did cite the Attorney General's Deskbook regarding telephone trees.

#### **Summary of Bill:**

As applied to the Open Public Meetings Act, a meeting may be in person, by telephone, or by electronic means provided there is the opportunity for members of the governing body to hear, deliberate, or take action on the business or affairs of the agency or governing body. Electronic or telephone meetings are subject to existing notice requirements.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.