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HOUSE BILL 3292

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State of Washington

60th Legislature

2008 Regular Session

By Representatives Kessler, DeBolt, Miloscia, Upthegrove, Kelley, and Hurst; by request of Attorney General and State Auditor

Read first time 01/29/08. Referred to Committee on State Government & Tribal Affairs.

1 AN ACT Relating to executive session recordings; amending RCW  
2 42.30.110; and creating a new section.

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

4 NEW SECTION. **Sec. 1.** (1) The legislature finds that some of the  
5 most important deliberations by public bodies occur in closed executive  
6 sessions with no requirement in law that there be kept a verbatim  
7 record of the discussions. Recording executive sessions will allow  
8 current and future governing members to review the history of issues  
9 that have come before the governing body, and for use of the governing  
10 body, to memorialize legal or other advice provided in executive  
11 session.

12 (2) The purpose of this act is to encourage governing bodies to  
13 strictly comply with the rules governing executive sessions and promote  
14 the public interest by creating greater governmental accountability in  
15 the use of executive sessions. However, it is not the purpose of this  
16 act to inhibit full and robust discussions of issues relating to  
17 permissible subjects for consideration in executive sessions.

1       **Sec. 2.** RCW 42.30.110 and 2005 c 424 s 13 are each amended to read  
2 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 or  
5 special meeting:

6       (a) To consider matters affecting national security;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (m) To consider in the case of the life sciences discovery fund

1 authority, the substance of grant applications and grant awards when  
2 public knowledge regarding the discussion would reasonably be expected  
3 to result in private loss to the providers of this information.

4 (2) Before convening in executive session, the presiding officer of  
5 a governing body shall publicly announce the purpose for excluding the  
6 public from the meeting place, and the time when the executive session  
7 will be concluded. The executive session may be extended to a stated  
8 later time by announcement of the presiding officer.

9 (3)(a) A governing body holding an executive session under this  
10 subsection shall make a verbatim audio recording of the complete  
11 executive session and retain the recording for a period of two years.  
12 Such recordings are public records not subject to public inspection and  
13 copying under chapter 42.56 RCW except by court order as specified in  
14 (b) of this subsection, or unless authorized by the governing body.

15 (b)(i) In an action under this chapter alleging a violation of the  
16 executive session provisions in this section, a party challenging the  
17 lawfulness of the executive session bears the burden of proof.

18 (ii) If the party challenging the lawfulness of the executive  
19 session supports its allegation with credible evidence, supported by  
20 declaration or affidavit, the court shall review the entire verbatim  
21 audio recording in camera. As part of the in camera proceeding,  
22 without divulging the contents of the tape to the plaintiff or its  
23 counsel, the court may make inquiry of the parties, as necessary, to  
24 fairly and fully resolve any issues before it.

25 (iii) After such review, if the court finds that the executive  
26 session was not in compliance with the provisions of this chapter  
27 related to such session, it may order disclosure of only those portions  
28 of the verbatim audio recording of the executive session found not in  
29 compliance, subject to such other exemptions as may exist in law. The  
30 remainder of the verbatim audio recording found to comply with this  
31 chapter shall not be disclosed.

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