
Government Operations & Elections Committee

HB 1714

Brief Description: Changing open public meetings provisions.

Sponsors: Representatives Pollet, Ross, Johnson and Magendanz; by request of State Auditor.

Brief Summary of Bill

- Authorizes governing bodies of public agencies to record closed executive session meetings and exempts the recordings from disclosure under the Public Records Act.
- Authorizes a court, upon finding that a public agency intentionally violated the Open Public Meetings Act, to order recording of closed executive sessions for two years.
- Provides a public agency with immunity from liability for damages that are the consequence of specific actions made without legal authority in an executive session, when certain conditions are met.
- Authorizes the Attorney General (AG) to approve courses of training offered by a governmental body or other entity on compliance with the Open Public Meetings Act.
- Requires the AG or other entity providing the approved training to provide a certification of course completion to elected or appointed officials who complete the curriculum.

Hearing Date: 2/19/13

Staff: Jasmine Vasavada (786-7301).

Background:

The Open Public Meetings Act (OPMA) requires that all meetings of the governing body of a public agency be open to the public and all persons shall be allowed to attend. For the purposes of the OPMA, a public agency is defined broadly and includes, but is not limited to, any state board, commission, department, education institution, agency, local government, and special

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purpose district. A governing body is defined as the multimember board, commission, committee, council, or other policy or rulemaking body of a public agency or any committee thereof that is acting on behalf of the public agency.

A governing body may meet without the public for portions of a regular or special meeting to discuss certain issues. Before convening in executive session, the presiding officer of a governing body must publicly announce the purpose for excluding the public from the meeting place, and the time when the executive session will be concluded. A governing body may hold an executive session only for purposes specified in statute, and only during a regular or special meeting. Washington courts have held that because an executive session is an exception to the OPMA's overall provisions requiring open meetings, a court will narrowly construe the grounds for an executive session in favor of requiring an open meeting. Some of the matters that may be discussed in an executive session include matters affecting national security, the acquisition or sale of real estate (when public knowledge would cause a likelihood of increased price), contract negotiations, certain personnel matters, and certain discussions with legal counsel.

Any person may bring an action in superior court to enforce the OPMA. The judge may assess a civil penalty of \$100 for any members of a governing body who attends a meeting where the governing body takes action in violation of the OPMA if the member knew the meeting was in violation of the OPMA. Any person who prevails against a public agency in any action in the courts for a violation of the OPMA shall be awarded costs, including reasonable attorneys' fees incurred in connection with such legal action. Any public agency that prevails in any action alleging a violation of the OPMA may be awarded reasonable expenses and attorneys' fees if the court formally finds that the action was frivolous and advanced without reasonable cause.

Summary of Bill:

The governing board of a public agency may record its closed executive session meetings. These recordings are public records exempt from disclosure, copying or inspection under the Public Records Act (PRA), unless the disclosure of the recording is explicitly authorized by a resolution of the governing body. Any disclosure of an otherwise protected recording by the public agency does not waive any privilege or statutory exemption for other protected recordings.

A court may order, as a remedy for any intentional violation of the Open Public Meetings Act (OPMA), the recording of the governing body's closed executive sessions for a period of two years from the date of the order. Recordings must be retained for a period of two years and are exempt from disclosure, inspection, or copying under the PRA.

An agency has conditional immunity from liability for damages to any person that are the consequence of specific actions made without legal authority in an executive session where the following four conditions are met:

- the governing body self-discloses those specific actions in writing and by reading aloud in public at the first regular public meeting after the agency discovers, should have discovered, or receives a complaint of an unauthorized action in an executive session;
- there is no final action related to the specific action prior to the self-disclosure;
- there is no actual or anticipated litigation related to the specific action; and
- the disclosure is available for public inspection and copying.

In addition to providing training on the OPMA, the Attorney General (AG) may approve any acceptable course of training to be offered to the governmental body or other entity. The AG or other entity providing the training shall provide a certification of course completion to elected or appointed officials who complete an approved training curriculum.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

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