

ESHB 1329 - S COMM AMD

By Committee on State Government & Elections

ADOPTED AS AMENDED 03/03/2022

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds and declares that,
4 due to technological advances since the 1971 adoption of the open
5 public meetings act, elected officials no longer conduct the public's
6 business solely at in-person meetings, but can and do utilize
7 telephonic and other electronic methods to efficiently conduct the
8 business of state and local government remotely. Further, limitations
9 on public gatherings required as the result of a disaster or
10 emergency, for example, to assist in preventing the spread of
11 infectious diseases, may affirmatively necessitate the use of
12 technology and the avoidance of in-person attendance at public
13 meetings for the conduct of governmental business. It is the policy
14 of the state that a governing body's actions, including
15 deliberations, shall be taken and conducted in the open. When the
16 public cannot observe and participate in person, it may limit
17 participation in democracy. Therefore, this act shall be construed in
18 favor of ensuring access by the public to observe elected officials
19 when they meet pursuant to this act. It is the intent of this act to
20 modernize and update the open public meetings act emergency
21 procedures to reflect technological advances, while maintaining the
22 act's public policy that governing body's actions and deliberations
23 be taken and conducted openly while balancing public safety in
24 emergency conditions. Governing bodies are encouraged to adopt
25 resolutions or ordinances establishing where and how meetings will be
26 held in the event of an emergency, in order to allow the public to
27 more easily learn about and observe public agency action in an
28 emergent situation.

29 The legislature further finds people participating in their
30 government, especially through public comment, is an essential part
31 of developing public policy. The legislature finds that there are

1 numerous developing technologies that can be used to facilitate
2 public comment, especially for those with disabilities, underserved
3 communities, and those who face time or distance challenges when
4 traveling to public meetings. Therefore, the legislature intends to
5 encourage public agencies to make use of remote access tools as fully
6 as practicable to encourage public engagement and better serve their
7 communities.

8 **Sec. 2.** RCW 42.30.010 and 1971 ex.s. c 250 s 1 are each amended
9 to read as follows:

10 The legislature finds and declares that all public commissions,
11 boards, councils, committees, subcommittees, departments, divisions,
12 offices, and all other public agencies of this state and subdivisions
13 thereof exist to aid in the conduct of the people's business. It is
14 the intent of this chapter that their actions be taken openly and
15 that their deliberations be conducted openly.

16 The people of this state do not yield their sovereignty to the
17 agencies which serve them. The people, in delegating authority, do
18 not give their public servants the right to decide what is good for
19 the people to know and what is not good for them to know. The people
20 insist on remaining informed and informing the people's public
21 servants of their views so that they may retain control over the
22 instruments they have created. For these reasons, even when not
23 required by law, public agencies are encouraged to incorporate and
24 accept public comment during their decision-making process.

25 **Sec. 3.** RCW 42.30.030 and 1971 ex.s. c 250 s 3 are each amended
26 to read as follows:

27 (1) All meetings of the governing body of a public agency shall
28 be open and public and all persons shall be permitted to attend any
29 meeting of the governing body of a public agency, except as otherwise
30 provided in this chapter.

31 (2) Public agencies are encouraged to provide for the increased
32 ability of the public to observe and participate in the meetings of
33 governing bodies through real-time telephonic, electronic, internet,
34 or other readily available means of remote access that do not require
35 an additional cost to access the meeting.

36 NEW SECTION. **Sec. 4.** A new section is added to chapter 42.30
37 RCW to read as follows:

1 (1) Public agencies are encouraged to make an audio or video
2 recording of, or to provide an online streaming option for, all
3 regular meetings of its governing body, and to make recordings of
4 these meetings available online for a minimum of six months.

5 (2) This section does not alter a local government's
6 recordkeeping requirements under chapter 42.56 RCW.

7 NEW SECTION. **Sec. 5.** A new section is added to chapter 42.30
8 RCW to read as follows:

9 (1) If, after the declaration of an emergency by a local or state
10 government or agency, or by the federal government, a public agency
11 determines that it cannot hold a meeting of the governing body with
12 members or public attendance in person with reasonable safety because
13 of the emergency, the public agency may:

14 (a) Hold a remote meeting of the governing body without a
15 physical location; or

16 (b) Hold a meeting of the governing body at which the physical
17 attendance by some or all members of the public is limited due to a
18 declared emergency.

19 (2) During a remote meeting, members of the governing body may
20 appear or attend by phone or by other electronic means that allows
21 real-time verbal communication without being in the same physical
22 location. For a remote meeting or a meeting at which the physical
23 attendance by some or all members of the public is limited due to a
24 declared emergency, the public agency must provide an option for the
25 public to listen to the proceedings telephonically or by using a
26 readily available alternative in real-time that does not require any
27 additional cost for participation. Free readily available options
28 include, but are not limited to, broadcast by the public agency on a
29 locally available cable television station that is available
30 throughout the jurisdiction or other electronic, internet, or other
31 means of remote access that does not require any additional cost for
32 access to the program. The public agency may also allow the other
33 electronic means of remote access.

34 (3) No action may be taken at a remote meeting or a meeting at
35 which the physical attendance by some or all members of the public is
36 limited due to a declared emergency if the public agency has not
37 provided an option for the public to listen to proceedings pursuant
38 to subsection (2) of this section, except for an executive session as
39 authorized in this chapter.

1 (4) Notice of a remote meeting without a physical location or a
2 meeting at which the physical attendance by some or all members of
3 the public is limited due to a declared emergency must be provided in
4 accordance with this chapter and must include instructions on how the
5 public may listen live to proceedings and on how the public may
6 access any other electronic means of remote access offered by the
7 public agency.

8 (5) A remote meeting or a meeting at which the physical
9 attendance by some or all members of the public is limited due to a
10 declared emergency that is held under the provisions of this section
11 shall be considered open and public in compliance with the
12 requirements of this chapter. Nothing in this section alters the
13 ability of public agencies to take action in response to an emergency
14 as provided for in RCW 42.30.070, or to have members of a governing
15 body participate in a meeting remotely with no declared emergency.

16 (6) Notwithstanding any other provision in this section, any
17 governing body of a public agency which held some of its regular
18 meetings remotely prior to March 1, 2021, may continue to hold some
19 of its regular meetings remotely with no declared emergency so long
20 as the public agency provides an option for the public to listen to
21 the proceedings pursuant to subsection (2) of this section.

22 **Sec. 6.** RCW 42.30.040 and 2012 c 117 s 124 are each amended to
23 read as follows:

24 A member of the public shall not be required, as a condition to
25 attendance at a meeting of a governing body, to register his or her
26 name and other information, to complete a questionnaire, or otherwise
27 to fulfill any condition precedent to his or her attendance. This
28 section does not prohibit any generally applicable conditions
29 determined by the governing body to be reasonably necessary to
30 protect the public health or safety, or to protect against
31 interruption of the meeting, including a meeting at which the
32 physical attendance by some or all members of the public is limited
33 due to a declared emergency.

34 **Sec. 7.** RCW 42.30.050 and 1971 ex.s. c 250 s 5 are each amended
35 to read as follows:

36 In the event that any meeting is interrupted by a group or groups
37 of persons so as to render the orderly conduct of such meeting
38 unfeasible and order cannot be restored by the removal of individuals

1 who are interrupting the meeting, the members of the governing body
2 conducting the meeting may order the meeting room cleared and
3 continue in session or may adjourn the meeting and reconvene at
4 another location selected by majority vote of the members. In such a
5 session, final disposition may be taken only on matters appearing on
6 the agenda. Representatives of the press or other news media, except
7 those participating in the disturbance, shall be allowed to attend
8 any session held pursuant to this section. Nothing in this section
9 shall prohibit the governing body from establishing a procedure for
10 readmitting an individual or individuals not responsible for
11 disturbing the orderly conduct of the meeting. Nothing in this
12 section prohibits the governing body from stopping people from
13 speaking to the governing body when not recognized by the governing
14 body to speak.

15 **Sec. 8.** RCW 42.30.070 and 1983 c 155 s 2 are each amended to
16 read as follows:

17 The governing body of a public agency shall provide the time for
18 holding regular meetings by ordinance, resolution, bylaws, or by
19 whatever other rule is required for the conduct of business by that
20 body. Unless otherwise provided for in the act under which the public
21 agency was formed, meetings of the governing body need not be held
22 within the boundaries of the territory over which the public agency
23 exercises jurisdiction. If at any time any regular meeting falls on a
24 holiday, such regular meeting shall be held on the next business day.
25 If, by reason of fire, flood, earthquake, or other emergency, there
26 is a need for expedited action by a governing body to meet the
27 emergency, the presiding officer of the governing body may provide
28 for a meeting site other than the regular meeting site, for a remote
29 meeting without a physical location, or for a meeting at which the
30 physical attendance by some or all members of the public is limited
31 due to a declared emergency, and the notice requirements of this
32 chapter shall be suspended during such emergency. It shall not be a
33 violation of the requirements of this chapter for a majority of the
34 members of a governing body to travel together or gather for purposes
35 other than a regular meeting or a special meeting as these terms are
36 used in this chapter: PROVIDED, That they take no action as defined
37 in this chapter.

1 **Sec. 9.** RCW 42.30.077 and 2014 c 61 s 2 are each amended to read
2 as follows:

3 (1) Public agencies with governing bodies must make the agenda of
4 each regular meeting of the governing body available online no later
5 than (~~(twenty-four)~~) 24 hours in advance of the published start time
6 of the meeting. An agency subject to provisions of this section (~~(is~~
7 not required to post an agenda if it does not have a website or if it
8 employs fewer than ten full-time equivalent employees)) may share a
9 website with, or have its website hosted by, another public agency to
10 post meeting agendas, minutes, budgets, contact information, and
11 other records, including any resolution or ordinance adopted by the
12 agency establishing where and how the public agency will meet in the
13 event of an emergency. Nothing in this section prohibits subsequent
14 modifications to agendas nor invalidates any otherwise legal action
15 taken at a meeting where the agenda was not posted in accordance with
16 this section. Nothing in this section modifies notice requirements or
17 shall be construed as establishing that a public body or agency's
18 online posting of an agenda as required by this section is sufficient
19 notice to satisfy public notice requirements established under other
20 laws. Failure to post an agenda in accordance with this section shall
21 not provide a basis for awarding attorney fees under RCW 42.30.120 or
22 commencing an action for mandamus or injunction under RCW 42.30.130.

23 (2) A special purpose district, city, or town subject to the
24 provisions of this section is not required to post an agenda online
25 if the district, city, or town:

26 (a) Has an aggregate valuation of the property subject to
27 taxation by the district, city, or town of less than \$400,000,000, as
28 placed on the last completed and balanced tax rolls of the county
29 preceding the date of the most recent tax levy;

30 (b) Has a population within its jurisdiction of under 3,000
31 persons; and

32 (c) Provides confirmation to the state auditor at the time it
33 files its annual reports under RCW 43.09.230 that the cost of posting
34 notices on a website of its own, a shared website, or on the website
35 of the county in which the largest portion of the district's, city's,
36 or town's population resides, would exceed one-tenth of one percent
37 of the district's, city's, or town's budget.

38 **Sec. 10.** RCW 42.30.080 and 2012 c 188 s 1 are each amended to
39 read as follows:

1 (1) A special meeting may be called at any time by the presiding
2 officer of the governing body of a public agency or by a majority of
3 the members of the governing body by delivering written notice
4 personally, by mail, by fax, or by ~~((electronic mail))~~ email to each
5 member of the governing body. Written notice shall be deemed waived
6 in the following circumstances:

7 (a) A member submits a written waiver of notice with the clerk or
8 secretary of the governing body at or prior to the time the meeting
9 convenes. A written waiver may be given by telegram, fax, or
10 ~~((electronic mail))~~ email; or

11 (b) A member is actually present at the time the meeting
12 convenes.

13 (2) Notice of a special meeting called under subsection (1) of
14 this section shall be:

15 (a) Delivered to each local newspaper of general circulation and
16 local radio or television station that has on file with the governing
17 body a written request to be notified of such special meeting or of
18 all special meetings;

19 (b) Posted on the agency's website. An agency is not required to
20 post a special meeting notice on its website if it ~~((i))~~ does not
21 have a website ~~((i))~~ or share a website with another agency.
22 Except in the case of a remote meeting or a meeting at which the
23 physical attendance by some or all members of the public is limited
24 due to a declared emergency as provided for in this chapter, an
25 agency is not required to post a special meeting notice on its
26 website if it employs ~~((fewer than ten))~~ no full-time equivalent
27 employees ~~((i))~~ or ~~((iii))~~ does not employ personnel whose duty, as
28 defined by a job description or existing contract, is to maintain or
29 update the website; and

30 (c) Prominently displayed at the main entrance of the agency's
31 principal location and the meeting site if it is not held at the
32 agency's principal location and is not held as a remote meeting;
33 except that during a declared emergency which prevents a meeting from
34 being held in-person with reasonable safety an agency that hosts a
35 website or shares a website with another agency may instead post
36 notice of a remote meeting without a physical location on the website
37 hosted or shared by the agency.

38 Such notice must be delivered or posted, as applicable, at least
39 ~~((twenty-four))~~ 24 hours before the time of such meeting as specified
40 in the notice.

1 (3) The call and notices required under subsections (1) and (2)
2 of this section shall specify the time and place of the special
3 meeting and the business to be transacted. Final disposition shall
4 not be taken on any other matter at such meetings by the governing
5 body.

6 (4) The notices provided in this section may be dispensed with in
7 the event a special meeting is called to deal with an emergency
8 involving injury or damage to persons or property or the likelihood
9 of such injury or damage, when time requirements of such notice would
10 make notice impractical and increase the likelihood of such injury or
11 damage, or when the required notice cannot be posted or displayed
12 with reasonable safety, including but not limited to declared
13 emergencies in which travel to physically post notice is barred or
14 advised against.

15 **Sec. 11.** RCW 42.30.090 and 2012 c 117 s 125 are each amended to
16 read as follows:

17 The governing body of a public agency may adjourn any regular,
18 adjourned regular, special, or adjourned special meeting to a time
19 and place specified in the order of adjournment. Less than a quorum
20 may so adjourn from time to time. If all members are absent from any
21 regular or adjourned regular meeting the clerk or secretary of the
22 governing body may declare the meeting adjourned to a stated time and
23 place. He or she shall cause a written notice of the adjournment to
24 be given in the same manner as provided in RCW 42.30.080 for special
25 meetings, unless such notice is waived as provided for special
26 meetings. (~~Whenever~~) Except in the case of remote meetings without
27 a physical location as provided for in this chapter, whenever any
28 meeting is adjourned a copy of the order or notice of adjournment
29 shall be conspicuously posted immediately after the time of the
30 adjournment on or near the door of the place where the regular,
31 adjourned regular, special, or adjourned special meeting was held.
32 When a regular or adjourned regular meeting is adjourned as provided
33 in this section, the resulting adjourned regular meeting is a regular
34 meeting for all purposes. When an order of adjournment of any meeting
35 fails to state the hour at which the adjourned meeting is to be held,
36 it shall be held at the hour specified for regular meetings by
37 ordinance, resolution, bylaw, or other rule.

1 **Sec. 12.** RCW 42.30.110 and 2019 c 162 s 2 are each amended to
2 read 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
5 or special meeting:

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

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

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

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

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

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

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

35 (g) To evaluate the qualifications of an applicant for public
36 employment or to review the performance of a public employee.
37 However, subject to RCW 42.30.140(4), discussion by a governing body
38 of salaries, wages, and other conditions of employment to be
39 generally applied within the agency shall occur in a meeting open to
40 the public, and when a governing body elects to take final action

1 hiring, setting the salary of an individual employee or class of
2 employees, or discharging or disciplining an employee, that action
3 shall be taken in a meeting open to the public;

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

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

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

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

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

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

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

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

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

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

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

15 (o) To consider information regarding staff privileges or quality
16 improvement committees under RCW 70.41.205.

17 (2) Before convening in executive session, the presiding officer
18 of a governing body shall publicly announce the purpose for excluding
19 the public from the meeting place, and the time when the executive
20 session will be concluded. The executive session may be extended to a
21 stated later time by announcement of the presiding officer. The
22 announced purpose of excluding the public must be entered into the
23 minutes of the meeting required by RCW 42.30.035.

24 NEW SECTION. **Sec. 13.** A new section is added to chapter 42.30
25 RCW to read as follows:

26 (1) Except in an emergency situation, the governing body of a
27 public agency shall provide an opportunity at or before every regular
28 meeting at which final action is taken for public comment. The public
29 comment required under this section may be taken orally at a public
30 meeting, or by providing an opportunity for written testimony to be
31 submitted before or at the meeting. If the governing body accepts
32 written testimony, this testimony must be distributed to the
33 governing body. The governing body may set a reasonable deadline for
34 the submission of written testimony before the meeting.

35 (2) Upon the request of any individual who will have difficulty
36 attending a meeting of the governing body of a public agency by
37 reason of disability, limited mobility, or for any other reason that
38 makes physical attendance at a meeting difficult, the governing body
39 shall, when feasible, provide an opportunity for that individual to

1 provide oral comment at the meeting remotely if oral comment from
2 other members of the public will be accepted at the meeting.

3 (3) Nothing in this section prevents a governing body from
4 allowing public comment on items not on the meeting agenda.

5 (4) Nothing in this section diminishes the authority of governing
6 bodies to deal with interruptions under RCW 42.30.050, limits the
7 ability of the governing body to put limitations on the time
8 available for public comment or on how public comment is accepted, or
9 requires a governing body to accept public comment that renders
10 orderly conduct of the meeting unfeasible.

11 **Sec. 14.** RCW 42.30.900 and 1971 ex.s. c 250 s 16 are each
12 amended to read as follows:

13 This chapter may be known and cited as the (~~"Open Public~~
14 ~~Meetings Act of 1971".~~) Washington state open public meetings act or
15 OPMA.

16 NEW SECTION. **Sec. 15.** Sections 5 through 11 of this act are
17 necessary for the immediate preservation of the public peace, health,
18 or safety, or support of the state government and its existing public
19 institutions, and take effect immediately."

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By Committee on State Government & Elections

ADOPTED AS AMENDED 03/03/2022

20 On page 1, line 2 of the title, after "participation;" strike the
21 remainder of the title and insert "amending RCW 42.30.010, 42.30.030,
22 42.30.040, 42.30.050, 42.30.070, 42.30.077, 42.30.080, 42.30.090,
23 42.30.110, and 42.30.900; adding new sections to chapter 42.30 RCW;
24 creating a new section; and declaring an emergency."

EFFECT: (1) Allows public agencies to hold governing body
meetings remotely or with limited in-person attendance during a
declared state of emergency if the agency determines the meeting
cannot be held at full capacity with reasonable safety.

(2) Requires that public agencies provide an option for the
public to listen to a meeting where attendance is restricted at no
cost for action to be taken at such a meeting.

(3) Allows public agencies to impose generally applicable
conditions on public meeting attendance necessary to protect public
health and safety or against meeting interruptions.

(4) Requires certain public agencies to post agendas online at least 24 hours before a regular meeting.

(5) Requires notice of special meetings to be posted online by any public agency that has or shares a website and an employee to update the website.

(6) Removes requirement that special meeting notices be posted at the principal location of a public agency if posting cannot be done safely or for meetings held remotely if notice is posted on the agency's website.

(7) Allows agencies who held at least some meetings remotely before March 1, 2021, to continue to do so if notice of the meetings is posted online.

(8) Removes provision naming the act after Heather "Newsbrooke" Brooke, Ph.D.

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