

# HOUSE BILL REPORT

## HB 2173

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**As Reported by House Committee On:**  
State Government & Tribal Relations

**Title:** An act relating to executive sessions by publicly owned natural gas utilities under the open public meetings act in order to comply with the climate commitment act.

**Brief Description:** Concerning executive sessions by publicly owned natural gas utilities under the open public meetings act in order to comply with the climate commitment act.

**Sponsors:** Representatives Ybarra, Dye, Fitzgibbon and Doglio.

**Brief History:**

**Committee Activity:**

State Government & Tribal Relations: 1/17/24, 1/31/24 [DPS].

**Brief Summary of Substitute Bill**

- Permits municipal gas utilities subject to the Open Public Meetings Act to enter executive session to consider greenhouse gas allowance auction bidding information.

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### HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL RELATIONS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Ramos, Chair; Stearns, Vice Chair; Cheney, Ranking Minority Member; Christian, Assistant Ranking Minority Member; Gregerson, Low and Mena.

**Staff:** Carter Gale (786-7290) and Jason Zolle (786-7124).

**Background:**

[Open Public Meetings Act.](#)

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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 part of the legislation nor does it constitute a statement of legislative intent.*

The meetings of many governing bodies of governmental entities are required to be open and public. Covered entities include state agencies, local governments, subagencies of such entities, and policy groups whose membership includes representatives of publicly owned utilities under certain conditions. When actions are taken in violation of this rule, those actions are null and void and members of the board may be held personally liable in civil court. As an exception to the general rule, governing bodies may enter executive session and take otherwise prohibited actions. Executive sessions are parts of a regular or special meeting of a governing body that are closed to the public. These sessions may be permitted only for discussing reasons listed in statute, such as the purchase or sale of land, the qualifications of potential appointees, and considering complaints or charges against a public official or employee.

#### Greenhouse Gas Allowance Auctions.

The Department of Ecology (Ecology) implements a Cap-and-Invest program to reduce greenhouse gas (GHG) emissions consistent with statutory procedural and emissions limits. The Cap-and-Invest program covers industrial facilities, certain fuel suppliers, in-state electricity generators, electricity importers, and natural gas distributors with annual GHG emissions above 25,000 metric tons of carbon dioxide equivalent.

Entities emitting more than the 25,000 metric tons of carbon dioxide equivalent must either reduce their emissions or obtain allowances to cover any remaining emissions. Other entities may elect to participate in the process for obtaining allowances. Both electing entities and required entities must register with Ecology to obtain allowances for GHG emissions. Some utilities and industries are issued free allowances, while other allowances are sold at auction. Ecology holds a maximum of four auctions annually, plus reserve auctions, when necessary, in the event of unanticipated high costs for compliance.

#### Prohibition on Disclosing Bidding Information.

Entities registered with Ecology to participate in allowance auctions may not release or disclose any bidding information, including:

- intent to participate or refrain from participation;
- auction approval status;
- intent to bid;
- bidding strategy;
- bid price or bid quantity; or
- information on the bid guarantee provided to the financial services administrator.

Ecology may also adopt provisions to guard against bidder collusion and market manipulation. If a registered entity violates the prohibition or other rules, Ecology may cancel or restrict previously approved auction participation applications and may reject new applications.

#### Public Utilities under Title 35 and 35A RCW.

Title 35 of the Revised Code of Washington (RCW) concerns the classification, formation,

and powers of first-class cities, second-class cities, and towns. Title 35A RCW concerns code cities not governed under Title 35 RCW. Both titles permit municipalities to create and operate various types of public utilities. The cities of Ellensburg and Enumclaw both operate municipal natural gas utilities.

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**Summary of Substitute Bill:**

Governing bodies of municipal gas utilities authorized under Title 35 or 35A RCW are permitted to hold an executive session to consider GHG allowance auction bidding information that is prohibited from disclosure.

**Substitute Bill Compared to Original Bill:**

The substitute bill limits the use of executive sessions to discuss bidding information for GHG emission allowance auctions to municipal gas utilities authorized under Title 35 or 35A RCW.

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**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Staff Summary of Public Testimony:**

(In support) There is a conflict of laws between the requirements of the Climate Commitment Act (CCA) and the Open Public Meetings Act (OPMA). The CCA prohibits the public disclosure of bidding information used for participating in auctions for greenhouse gas emission allowances through the Department of Ecology (Ecology). However, the OPMA requires that information to be made public when discussed in a public meeting by organizations covered by that act. For the two municipal natural gas utilities in the state and for other public utilities, this means that the information cannot be discussed by the public decisionmakers of these agencies. As a result, public entities subject to the OPMA may not have discussions about bidding information under the CCA without violating the CCA's provisions. Instead, these utilities have worked around the issue by having staff coordinate with their financial servicing advisors and Ecology without the input of their public board. While this complies with the OPMA and CCA, it undermines public oversight of utilities. Allowing public entities to enter executive session to discuss bidding information would restore the ability of local governments to operate utilities without violating the provisions of the CCA, while also maintaining the spirit of the

OPMA.

(Opposed) None.

**Persons Testifying:** Representative Alex Ybarra, prime sponsor; and Heidi Behrends Cerniwey and Buddy Stanavich, City of Ellensburg.

**Persons Signed In To Testify But Not Testifying:** None.