Open Public Meetings Act
RCW 42.30

Prepared by Washington State Attorney General's Office

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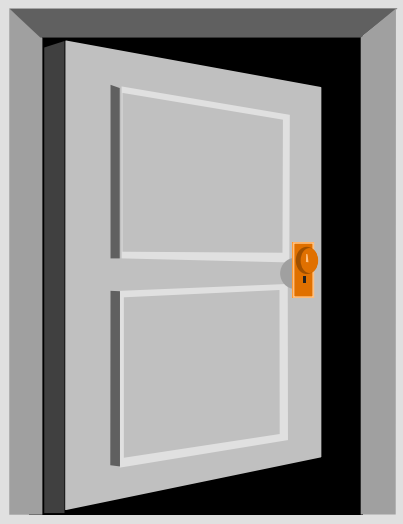
Washington's Open Public Meetings Act (OPMA)

- Passed in 1971
- Requires meetings to be open to the public, gavel to gavel
- RCW 42.30



Purpose

- “The people do not yield their sovereignty to the agencies which serve them.”
- “The people, in delegating authority, do not give public servants the right to decide what is good for the people to know and what is not good for them to know.”
- “The people insist on remaining informed so they may retain control over the instruments they have created.”

~ RCW 42.30.010

Purpose (Cont.)

- Public commissions, boards, councils, etc. listed in OPMA are agencies of this state that exist to aid in the conduct of the people's business.
- Their actions are to be taken openly and deliberations conducted openly.

~ *RCW 42.30.010*

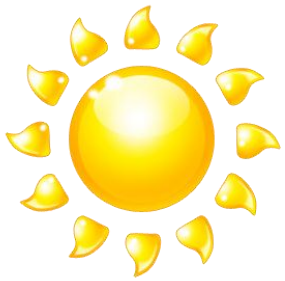
- Act is to be "liberally construed."

~ *RCW 42.30.910*

- The purpose of the OPMA is to allow the public to view the "decisonmaking process."

~ *Washington State Supreme Court*

Open Government Laws Like the OPMA are Often Called "Transparency Laws" or "Sunshine Laws"



This is because they "shine light" on government. U.S. Supreme Court Justice Louis Brandeis once famously said, "*Sunlight is the best disinfectant."*

Transparency builds public confidence in government.

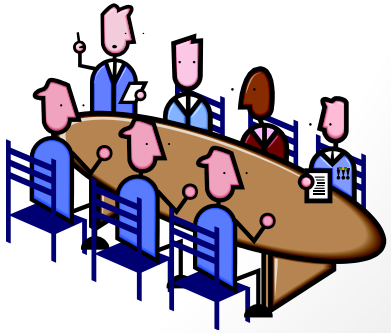
OPMA Applies To:

Multi-member public state and local agencies, such as boards and commissions, as follows:

- Any state board, commission, committee, department, educational institution, or other state agency which is created by or pursuant to statute, other than courts and the legislature.
- Any county, city, school district, special purpose district, or other municipal corporation or political subdivision of Washington.
- Any subagency of a public agency which is created by or pursuant to statute, ordinance, or other legislative act, including but not limited to planning commissions, library or park boards, commissions, and agencies.
- Any policy group whose membership includes representatives of publicly owned utilities formed by or pursuant to the laws of this state when meeting together as or on behalf of participants who have contracted for the output of generating plants being planned or built by an operating agency.

~ RCW 42.30.020

These are the "public agencies" subject to the OPMA.



OPMA Does Not Apply To:

- These entities:
  - ❑ Courts
  - ❑ Legislature
  - ❑ Agencies not defined as “public agency” in OPMA, such as agencies governed by a single individual
  - ❑ Private organizations

- These activities:
  - ❑ Licensing/permitting for businesses, occupations or professions or their disciplinary proceedings (or proceedings to receive a license for a sports activity, or to operate a mechanical device or motor vehicle)
  - ❑ Quasi-judicial matters
  - ❑ Matters governed by the Washington Administrative Procedure Act, RCW 34.05
  - ❑ Collective bargaining

~ RCW 42.30.020(1), RCW 42.30.140

Governing Body

- All meetings of the ***governing body*** of a public agency shall be open and public and all persons shall be permitted to attend any meeting of the governing body of a public agency, except as otherwise provided in RCW 42.30.

~ RCW 42.30.030

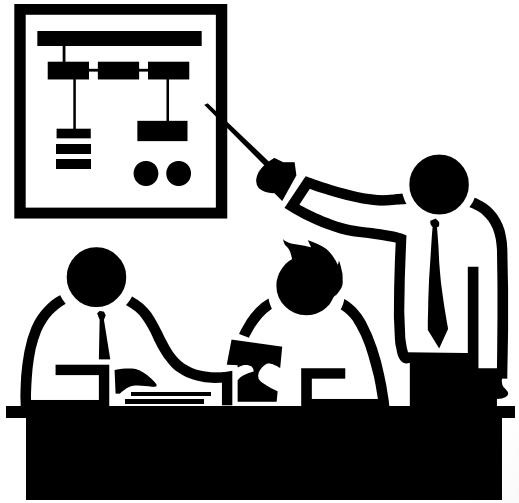
What is a Governing Body?

- The **multimember board or other policy or rule-making body**

<u>OR</u>

- Any **committee** of such public agency *when:*
  - the committee acts on behalf of the governing body,
  - conducts hearings, or
  - takes testimony or public comment

~ RCW 42.30.020



What is a Meeting?

- "**Meeting**" means meetings at which the public agency takes "**action**" ~ *RCW 42.30.020*

- Physical presence not required – can occur by phone or email

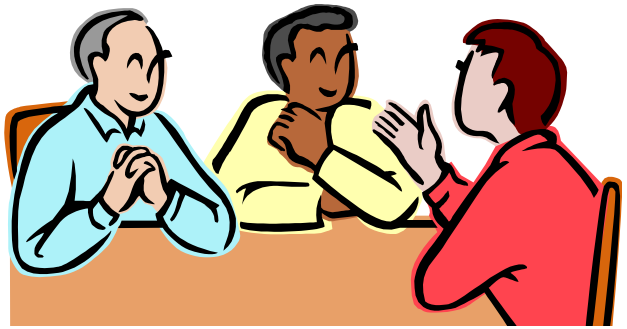
An exchange of e-mail could constitute a meeting if, for example, a quorum of the members participate in the e-mail exchange & discuss agency business. Simply receiving information without comment is not a meeting.

- Does not need to be titled "meeting" – OPMA also applies to "retreats," "workshops," "study sessions," etc.

- No meeting occurs if the governing body lacks a quorum.

Action

- "**Action**" means the transaction of the official business of the public agency and includes but is not limited to:
  - Public testimony
  - All deliberations
  - Discussions
  - Considerations
  - Reviews
  - Evaluations
  - Final actions



The requirements of the OPMA are triggered whether or not "final" action is taken.

~ RCW 42.30.020

Final Action

- "**Final action**" is a collective positive or negative decision, or an actual vote, by a majority of the governing body, or by the "committee thereof"
- Must be taken in public, even if deliberations were in closed session
- Secret ballots are not allowed

~ RCW 42.30.060, RCW 42.30.020

Travel and Gathering

- A majority of the members of a governing body may travel together or gather for purposes other than a regular meeting or a special meeting, so long as no action is taken.
- Discussion or consideration of official business would be action, triggering the requirements of the OPMA.

~ RCW 42.30.070

"Regular" Meetings

- **"Regular meetings"** are recurring meetings held in accordance with a periodic schedule by ordinance, resolution, bylaws or other rule.
- A state public agency must:
  - Yearly, file with Code Reviser a schedule of regular meetings, including time and place
  - Publish changes to regular meeting schedule in state register at least 20 days prior to rescheduled date
- On June 12, 2014, new agenda notice requirements apply to regular meetings under OPMA (see next slide). (These requirements are in addition to those that may be applicable in other laws outside the OPMA for particular agencies.)

~ RCW 42.30.070, RCW 42.30.075; Chap. 61, 2014 Laws

"Regular" Meetings (Cont.)

- On June 12, 2014, new agenda notice requirements apply to regular meetings.
- Chapter 61, 2014 Laws (SHB 2105) amends the OPMA to require governing bodies to make the agenda of each regular meeting of the governing body available online no later than 24 hours in advance of the published start time of the meeting.

- The new law does not:
  - *Apply to agencies that do not have websites.*
  - *Apply to agencies that employ fewer than 10 full-time employees.*
  - Restrict agencies from later modifying an agenda.
  - Invalidate otherwise legal actions taken at a regular meeting where agenda was not posted 24 hours in advance.
  - Satisfy public notice requirements established under other laws.
  - Provide a basis to award attorneys fees or seek court order under OPMA if agenda is not posted in accordance with the new law.

"Special" Meetings

- A **"special meeting"** is a meeting that is not a regular meeting (not a regularly scheduled meeting).
- Called by presiding officer or majority of the members
- Notice - timing: 24 hours before the special meeting, written notice must be:

  - Given to each **member** of the governing body (unless waived)
  - Given to each **local newspaper of general circulation, radio, and TV station** which has a notice request on file
  - Posted on the **agency's website** --- with certain exceptions in RCW 42.30.080(2)(b), if the agency (i) does not have a website, (ii) employs fewer than ten full-time equivalent employees; or (iii) does not employ personnel whose duty, as defined by a job description or existing contract, is to maintain or update the web site
  - Prominently **displayed at the main entrance** of the agency's principal location and the meeting site (if not that same location)

  ~ RCW 42.30.080

"Special" Meetings (Cont.)

- Notice - contents: The special meeting notice must specify:
  - Time
  - Place
  - Business to be transacted (agenda)
    - Final disposition shall not be taken on any other matter at such meeting

~ RCW 42.30.080

Emergency Special Meetings

- Notice is not required when special meeting called to deal with an emergency
  - Emergency involves injury or damage to persons or property or the likelihood of such injury or damage
  - Where time requirements of notice make notice impractical and increase likelihood of such injury or damage

~ RCW 42.30.080(4)

Public Attendance

- A public agency can't place conditions on public to attend meeting subject to OPMA:
  - For proceedings governed by OPMA, cannot require people to register their names or other information, complete a questionnaire, or otherwise fulfill any condition precedent to attendance

  ~ RCW 42.30.040

- Reasonable rules of conduct can be set
- Cameras and tape recorders are permitted unless disruptive
  ~ AGO 1998 No. 15
- No "public comment" period required by OPMA

Interruptions and Disruptions

- The OPMA provides a procedure for dealing with situations where a meeting is being interrupted so the orderly conduct of the meeting is unfeasible, and order cannot be restored by removal of the disruptive persons.

- Meeting room can be cleared and meeting can continue, or meeting can be moved to another location, but final disposition can occur only on matters appearing on the agenda. More details set out in the OPMA.

~ RCW 42.30.050

Executive Session

- Part of a regular or special meeting that is closed to the public
- Limited to specific purposes set out in the OPMA
- Purpose of the executive session and the time it will end must be announced by the presiding officer before it begins; time may be extended by further announcement

~ RCW 42.30.110

Executive Sessions

Specified purposes set out in OPMA. Includes, for example:

- National security
- Real estate
  - Site selection or acquisition of real estate
    - Lease or purchase
    - Public knowledge would likely increase price
  - Sale or lease
    - Public knowledge would likely decrease price
    - Final action selling or leasing public property must be take at open meeting
- Publicly bid contracts
  - Review negotiations on performance
  - Public knowledge would like increase costs
- Evaluate qualifications of applicant for public employment
- Meet with legal counsel regarding enforcement actions, litigation or potential litigation
- Other purposes listed in RCW 42.30.110

~ RCW 42.30.110

Executive Session to Discuss Agency Enforcement Actions, Litigation or Potential Litigation

- This executive session is not permitted just because legal counsel is present
- This executive session must address:
  - Agency enforcement action
  - Agency litigation or
  - Potential litigation

~ RCW 42.30.110

Executive Session to Discuss Agency Enforcement Actions, Litigation, or Potential Litigation: Three Requirements

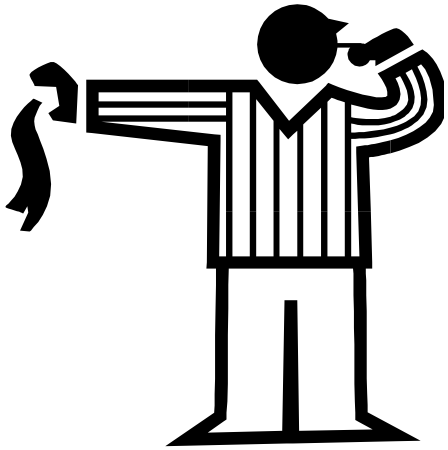
- Legal counsel representing the agency is present
- Purpose is to discuss agency enforcement action, litigation or potential litigation to which the agency, governing body, or a member acting in official capacity is, or is likely to become, a party
- Public knowledge regarding discussion likely to result in an adverse legal or financial consequence to the agency

~ RCW 42.30.110

Penalties for Violating the OPMA

- A court can impose a $100 civil penalty against each member (personal liability)
- Court will award costs and attorney fees to a successful party seeking the remedy
- Action taken at meeting can be declared null and void

~ RCW 42.30.120; RCW 42.30.130; RCW 42.30.060



Minutes – RCW 42.32.030

- Minutes of public meetings must be promptly recorded and open to public inspection
- Minutes of an executive session are not required
- No format specified in law

~ RCW 42.32.030

OPMA Training

- A new law effective July 1, 2014 amends the OPMA to require members of governing bodies to receive OPMA training. Chapter 66, 2014 Laws (ESB 5964) ("Open Government Trainings Act"). They can take training sooner than July 1. Refresher training occurs no later than every 4 years.
- Training can be taken online, in person, or by other means.

- Training resources, videos, and more information about the Act (a "Q & A") are available on the Attorney General's Office Open Government Training Web Page: http://www.atg.wa.gov/OpenGovernmentTraining.aspx

OPMA Assistance

- The Washington State Attorney General's Office may provide information, technical assistance, and training on the OPMA. Contact Assistant Attorney General for Open Government.

- The Attorney General's Office may issue formal opinions about the OPMA for qualified requesters.

- The Attorney General's Office has helpful materials about the OPMA, and other open government topics and resources, on its website at www.atg.wa.gov.

- The Attorney General's Office Open Government Training Web Page with training resources, videos and other materials is at: http://www.atg.wa.gov/OpenGovernmentTraining.aspx

~ RCW 42.30.210

THANK YOU