



WASHINGTON STATE ATTORNEY GENERAL
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AG REQUEST LEGISLATION - 2008 SESSION

PUBLIC RECORDS: TAPING OF EXECUTIVE SESSIONS

THE PROBLEM

The Open Public Meetings Act (OPMA) allows elected officials to hold closed-door discussions regarding any pending litigation, personnel matters and real estate transactions. However, the act requires that all votes be held in a public session.

Earlier this year, the Port of Longview commissioners were in a position to replace one of the three commissioners. The two remaining members selected the new commissioner from a hat. They exited an executive session and announced the winner. This may have been in violation of the OPMA, yet there is no record or accounting of the activities that took place behind closed doors that could provide additional detail on this situation.

According to the state auditor, from Jan. 1, 2004 to Nov. 13, 2007, there were 460 instances where executive sessions were an issue. These issues have varied from illegal executive sessions to improper notice.

Taping executive sessions could also help governments recall actions taken when disputes later arise. The *Seattle Times* reported that Port of Seattle commissioners argued over whether some of them, in executive session, had promised their outgoing Port Executive a severance package upon retirement. According to the Times, there was a document, but they disagreed on exactly what it meant.

The *Yakima Herald* recently applauded the proposal to tape executive sessions stating that it is good-government legislation and those not abusing the executive session exemption have nothing to fear from this bill.

BACKGROUND

According to the Open Public Meetings Act (OPMA), before convening in executive session, the presiding officer of a governing body shall publicly announce the purpose for excluding the public from the meeting place, and the time when the executive session will be concluded. The executive session may be extended to a stated later time by announcement of the presiding officer. RCW 42.30.110(2). There is no requirement to record the proceedings conducted in executive session.

REQUIRING AUDIO RECORDING OF EXECUTIVE SESSIONS UNDER THE OPMA

The Attorney General will join State Auditor Brian Sonntag in introducing legislation that:

- Requires an audio recording of complete executive sessions
- Makes the recording a public record, not subject to disclosure except by court order
- Allows an individual alleging an improper executive session to petition a court to review the audio recording and the court will determine whether there was an improper executive session.
- Permits the court to disclose only those portions of the audio recording where it finds a violation of the executive session provisions.
- Allows any documents relied upon in an improper executive session to be subject to disclosure if not otherwise exempt.