

# HOUSE BILL REPORT

## SSB 6047

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### As Passed House - Amended:

February 28, 2024

**Title:** An act relating to executive sessions under the open public meetings act in order to comply with the climate commitment act.

**Brief Description:** Concerning executive sessions under the open public meetings act in order to comply with the climate commitment act.

**Sponsors:** Senate Committee on State Government & Elections (originally sponsored by Senators Warnick, Boehnke and Short).

### Brief History:

#### Committee Activity:

State Government & Tribal Relations: 2/14/24, 2/16/24 [DPA].

#### Floor Activity:

Passed House: 2/28/24, 92-2.

### Brief Summary of Substitute Bill (As Amended by House)

- Permits governing bodies of public agencies 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:** Do pass as amended. Signed by 7 members: Representatives Ramos, Chair; Stearns, Vice Chair; Cheney, Ranking Minority Member; Christian, Assistant Ranking Minority Member; Gregerson, Low and Mena.

**Staff:** Jason Zolle (786-7124).

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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.*

## **Background:**

### Open Public Meetings Act.

The Open Public Meetings Act (OPMA) requires meetings of many governing bodies of governmental entities 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.

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.

**Summary of Amended Bill:**

Governing bodies of public agencies are permitted to hold an executive session under the OPMA to consider GHG allowance auction bidding information that is prohibited from disclosure.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Staff Summary of Public Testimony:**

(In support) The cities of Ellensburg and Enumclaw operate a municipal utility, and they are caught between the OPMA and the Climate Commitment Act when it comes to disclosure of GHG auction information. Because of the confidentiality of auction information, the utility has had to make investments without involving their city council. This is not the type of governance that cities should be engaged in. Exemptions to the OPMA are sacred, but this one is necessary to eliminate a conflict in laws. The House version of the bill passed unanimously from committee.

(Opposed) None.

**Persons Testifying:** Senator Judy Warnick, prime sponsor; and Heidi Behrends Cerniway and Buddy Stanavich, City of Ellensburg.

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