

A photograph showing the silhouettes of several people standing in a meeting room, illuminated by a bright light source from the left, creating a strong backlight effect. The room has large windows and a reflective floor.

# Unemployment Insurance ADVISORY COMMITTEE



**Employment Security Department**  
WASHINGTON STATE

November 9, 2022

# Agenda



- I. Open Public Meetings Act
- II. UIAC Charter/Meeting Minutes Approval
- III. Restarting Employer Collections
- IV. EESB 5193 Consultation: Reserve Adjudicator Training
- V. State Quality Service Plan (SQSP) Overview
- VI. December Meeting Topics



# Intro to the OPMA

Washington Open Public Meetings Act, chapter 42.30 RCW

Lisa Petersen, 11/9/22

# We will cover:

- ▶ Purpose
- ▶ General Requirements
- ▶ Who and what is covered
- ▶ Regular meetings and special meetings
- ▶ Executive sessions
- ▶ Rules on public attendance and conduct
- ▶ Penalties and remedies for violations
- ▶ Remote and hybrid meetings
- ▶ Requirement for public comment at regular meetings

# Purpose of the OPMA

- ▶ **“All meetings of the governing body of a public agency shall be open and public.” RCW 42.30.030.**
- ▶ People of Washington don't yield sovereignty to their government and agencies
- ▶ The people insist on remaining informed
- ▶ Public servants in the state exist to aid in the conduct of the people's business
- ▶ OPMA's intent is that the action of public servants be taken openly and their deliberations be conducted openly

RCW 42.30.010.

# Interpreting the OPMA

- ▶ Act is liberally construed.
- ▶ Exceptions are read narrowly and in accordance with the purposes of the Act.

RCW 42.30.910; Miller v. City of Tacoma, 138 Wn.2d 318, 327 (1999).

# General requirements of the OPMA



- ▶ All meetings of the governing body must be open to the public
- ▶ No secret (anonymous) voting
- ▶ Decisions on motions, proposals, resolutions, orders, or ordinances (“final action”) must be adopted at a public meeting or they will be invalid

# What entities are covered by the act?

“All meetings of the **governing body** of a **public agency** shall be open and public.” RCW 42.30.030.

## “Public agency”

- ▶ state board, commission, committee, department, educational institution, or other state agency which is created by or pursuant to statute

## “Governing body”

- ▶ multimember board, commission, committee, council, or other policy or rule-making body of a public agency, or any committee thereof when the committee acts on behalf of the governing body, conducts hearings, or takes testimony or public comment.

RCW 42.30.020.



# What is considered a “meeting” under the OPMA?

- ▶ A “meeting” of a governing body occurs when a majority of its members gathers with the collective intent of taking “action,” a.k.a. transacting the governing body's business.
- ▶ Quorum

RCW 42.30.020 (definitions); Citizens All. for Prop. Rts. Legal Fund v. San Juan Cnty., 184 Wn.2d 428, 444 (2015).

# What is “action” under the OPMA?

- ▶ **“Action”** means “the transaction of the official business of the public agency” and includes:
  - ▶ Taking public testimony
  - ▶ Deliberations and discussions
  - ▶ Reviews
  - ▶ Evaluations
  - ▶ Final actions - collective positive/negative decision.  
RCW 42.30.020.

# Activities that could be considered a meeting

- ▶ Informal gatherings (e.g. conference, social gathering) during which they discuss or consider official business
- ▶ “Serial” communications in writing (e-mail, text, social media) that discuss or consider official business. Wood v. Battle Ground Sch. Dist., 107 Wn. App. 550, 564 (2001).
  - ▶ Passive receipt of e-mail does not automatically constitute a “meeting”
  - ▶ Collective intent (suggested by active exchange of info and opinions) by a majority to meet and transact business is a “meeting”

# Regular meetings under the OPMA

- ▶ Recurring meetings held according to a regular schedule
- ▶ The governing body must establish the date and time of the regular meetings by resolution, order, or rule
- ▶ Limited notice requirements
- ▶ The agenda can be amended and final action can be taken on items on the agenda
  - ▶ **Governing body shall provide an opportunity at or before every regular meeting at which final action is taken for public comment (new requirement effective June 1, 2022)**

RCW 42.30.075.

# Agenda notice requirements for regular meetings

- ▶ Agency must post online the agenda of each regular meeting at least 24 hours in advance.
- ▶ Exception: special purpose districts, cities, or towns that are under a certain aggregate property valuation and population.

RCW 42.30.077.

# Special meetings under the OPMA

- ▶ Any meeting other than a regular meeting
- ▶ May be called by the presiding officer or a majority of the members of the governing body
- ▶ Notice requirements
  - ▶ Notice must specify the time and place and specific business to be transacted
  - ▶ Cannot take final action on a topic unless the topic was listed in the notice
  - ▶ Exception: No notice required for a special meeting that is called to deal with an emergency
    - ▶ involving injury or damage to persons or property or the likelihood of such injury or damage; and
    - ▶ when the time reqts of such notice would make notice impractical and increase likelihood of such injury or damage.

# Who must be given notice of special meetings

- ▶ At least 24 hours' notice to:
  - Governing body members
  - News media that filed request to be notified of special meetings
  - The public, by posting on agency website (unless meets exceptions in RCW 42.30.080) and at main entrance of principal location (unless meeting is fully remote)

# Minutes

- ▶ Minutes of all regular and special meetings must be promptly recorded and open to public inspection
- ▶ Law doesn't specify a format; agency has discretion on how detailed minutes must be
- ▶ Minutes of executive sessions aren't required, but agency must enter the announced *purpose* of the executive session in the minutes.

RCW 42.30.035; RCW 42.30.110(2).



# Executive sessions

Part of a regular or special meeting that is closed to the public.

Limited to specific purposes set out in the OPMA, including:

- Real estate selection, sale, lease
- Publicly bid contracts
- Evaluating complaints against a public officer or employee
- Evaluating qualifications of applicant for public employment
- Meet with legal counsel about enforcement actions, litigation, potential litigation

Presiding officer must announce the purpose of executive session and time it will end; may extend time by further announcement.

RCW 42.30.110.

# Executive session to discuss agency enforcement actions, litigation, potential litigation

## Requirements:

1. Legal counsel must attend
2. Discussion concerns agency enforcement action or litigation or “potential litigation”
3. Public knowledge of the discussion would likely result in adverse legal or financial consequence to the agency (objective standard).

RCW 42.30.030(1)(i); In re Recall of Lakewood City Council Members, 144 Wn.2d 583, 586 (2001).

Courts construe “potential litigation” (or any other grounds for an executive session) narrowly and in favor of requiring open meetings. This standard is likely met if an entity has threatened litigation.

# Public attendance and conduct during meetings

- Any member of public must be permitted to attend. Agency cannot require any conditions for attendance, such as signing in.
- Governing body can impose “generally applicable conditions ... reasonably necessary to protect the public health or safety, or to protect against interruption of the meeting.” RCW 42.30.050.
  - E.g., remove disruptive attendees; clear meeting room; move meeting to new location.

RCW 42.30.040, .050.

# Penalties for violating the OPMA

- ▶ Any person” may bring action for an OPMA violation.  
Remedies:
  - ▶ Mandamus or injunction to stop or prevent violations ([RCW 42.30.130](#))
  - ▶ Void decisions adopted at meeting that violated OPMA
  - ▶ Costs and reasonable attorney fees
- ▶ Personal liability for members
  - ▶ \$500 civil penalty for first knowing violation
  - ▶ \$1000 civil penalty for successive knowing violations

RCW 42.30.120.

# HB 1329: remote/hybrid meetings

- ▶ *On June 1, 2022, the Governor rescinded the Proclamation that had required all meetings to be remote.*
- ▶ Meetings subject to the OPMA must have a physical location. Agencies are encouraged to provide phone or video access to these meetings.
  - ▶ Members of governing body can always attend meetings remotely
- ▶ When are fully remote or limited in-person hearings allowed?
  - ▶ If agency determines that **it cannot hold an in-person public meeting with “reasonable safety” due to a local, state, or federally declared emergency**
    - ▶ As of 10/31/22, Washington State is no longer in a general declared state of emergency under [Proclamation 20-05](#). There may be local or federal declarations of emergency.
    - ▶ If agency wants to continue fully remote meetings, it should document its reasoning for why the emergency prevents it from meeting in person. Agency can coordinate with local health official or board to get supporting facts.
  - ▶ If governing body held some of its regular meetings remotely prior to March 1, 2020, it can continue to hold those meetings remotely with no declared emergency so long as the public may attend remotely.

# HB 1329: new public comment requirement

- ▶ Effective 6/9/22, governing body must provide an opportunity for public comment at or before every regular meeting at which final action is taken (not special meetings)
- ▶ Must allow public to comment orally at the meeting, or by written comment before the meeting
  - ▶ Agency can limit comments to written comments
  - ▶ Agency can put limitations on time available or how public comment is accepted

# OPMA Resources

- ▶ AGO's Open Government page
  - ▶ Open Government Training (<https://www.atg.wa.gov/open-government-training>)
  - ▶ Open Government Resource Manual (<https://www.atg.wa.gov/open-government-internet-manual>)
  - ▶ AGO opinions about the OPMA ([Indices \(agportal-s3bucket.s3.amazonaws.com\)](https://agportal-s3bucket.s3.amazonaws.com))
- ▶ Municipal Research and Services Center
  - ▶ One page guides on OPMA topics (<https://mrsc.org/Home/Explore-Topics/Legal/Open-Government/Open-Public-Meetings-Act/Open-Public-Meetings-Act-Basics.aspx>)

# UIAC Charter



**Employment  
Security  
Department**  
WASHINGTON STATE

Dan Zeitlin, ESPIDirector, ESD



# UIAC Charter: Decision Making Structure



**UIAC Charter**: The members agree to use the *Robert's Rules of Order Newly Revised*. Advisory recommendations to policy makers of the committee shall be made on a consensus basis (consensus allows the majority of members to vote in favor of a recommendation while others abstain).

# Restarting Employer Collections



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JR Richards, Unemployment Insurance Customer Support Director, ESD

# Resuming Employer Collections



- During the pandemic ESD paused collections of overdue taxes or benefit charges owed by employers
- On December 1, 2022, ESD will resume active collection efforts for delinquent unemployment insurance taxes
- Around 17,000 employers, 6.4% of active accounts, have overdue UI tax and benefit charge accounts
- Employers in arrears will receive two notifications:
  - The November 9, 2022, GovDelivery communication will inform employers that collections will resume
  - The November 28, 2022, communication will be a second notice that collections have resumed.
  - Employer accounts in arrears have payment plan options

# ESSB 5193 Consultation: Reserve Adjudicator Training



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Jill Will, Policy & Legislative Implementation Manager, ESD

# ESSB 5193 Consultation: Reserve Adjudicator Training



**ESSB 5913 requires ESD to consult with UIAC regarding the frequency of the initial and continuing training of a reserve force of skilled UI claim adjudicators who can be available quickly when claims volume demands.**

## Initial National Association of State Workforce Agencies (NASWA) Training

- New UI Staff Training
- UI Operations Integrity Certification
- Fact-Finding and Adjudication Certification

## Frequency

- Total of 449 certified pool members as of July 2022
- 50 additional pool HCA pool members added FY23 and ongoing
- Target – maintain a minimum of 100 active pool members, confirm via quarterly survey and contact updates
- Offer new initial training if pool drops below 100

# ESSB 5193 Consultation: Reserve Adjudicator Training



## NASWA Adjudication Pool Continuing Education Requirements

- 12 hours of continuing online education per calendar quarter through NASWA
- UI operations integrity and fact-finding refreshers must be completed yearly
- Other courses completed at the pool member's option
  - Cultural awareness and language sensitivity
  - Disaster unemployment insurance
  - UI integrity fundamentals for tax
  - UI tax operations overview
  - Identifying signs of truth and deception
  - Handling difficult personalities

# State Quality Service Plan (SQSP)



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Joy Adams, ESPI Deputy Director, ESD

Nicole Sherman, UI Quality Assurance Manager, ESD

# SQSP Overview



1. Report performance to the US Department of Labor (USDOL) using a variety of data sources
2. Address failure to meet USDOL Acceptable Levels of Performance (ALPs)
3. Write Corrective Action Plans (CAPs) when ALPs are not met
4. Develop and track milestones required to meet CAPs
5. Report progress on CAPs and ALPs using milestones
6. Enter progress on SQSP workbook and send to USDOL quarterly



# How does SQSP work?



- USDOL provides ESD with the SQSP workbook that includes ALPs ESD is not meeting identified by area of performance.
- ESD then establishes CAPs and MILESTONES by area of performance.
- Quarterly, ESD sends the SQSP workbook back to USDOL with progress information.
- Half-way through the plan year, USDOL reevaluates the SQSP based on more current performance data and provides a revised plan (SQSP Alternate Year Plan (AYP)).
- SQSP CAPs are set using data from quarter ending 3/31 for both Biennial Year Plan (BYP) and AYP

# What is included as part of SQSP?



## Materials Shared With UIAC:

1. Narrative: Provides a high-level overview of program areas that are not currently meeting USDOL ALPs, including background on what caused the program to fall short of the ALPs and the steps ESD plans to take to meet performance expectations.
2. Workbook: Used to provide quarterly updates to USDOL, includes an in-depth look at each program area not currently meeting ALPs. Each program tab contains quarterly ALP tracking compared to federal expectations, a full CAP summary, and agency-directed milestones.
3. Integrity Action Plan (IAP): Ties directly to agency performance with improper payments, detection of overpayments, and services ESD provides claimants. The plan includes seven national priority topics that are required to be addressed in relation to fraud detection, prevention, and recovery efforts. Each state was directed to specify which areas are being addressed and to include details of processes, partnerships, and use of USDOL and NASWA resources.

# SQSP Key Points



The SQSP broadly captures all UI quality assurance needs and, as such, is an opportunity for UIAC to get a general sense of how the program is performing and the agency's activities in this realm:

1. During this review period, WA failed to reach the ALP in most areas, consistent with performance across the nation in response to the pandemic and related recovery efforts.
2. USDOL is particularly focused on fraud prevention, detection, and recovery. The Integrity Action Plan addresses the 7 topics identified by USDOL and what they consider to be national priorities relating to fraud detection, prevention and recovery.
3. Many topics that were discussed during a June 2022 USDOL site visit are referenced throughout the SQSP narrative and workbook. These topics include Division portfolios, the Report and Data Validation project, the Letters Project which is a result of SB5193, and the Adjudication Quality Assurance project.
4. ESD has a structure for monitoring the milestones included in the SQSP, tracking progress, and working through planning and project timelines. Relevant staff, including leadership, meet monthly to provide updates, gather information, and collaborate on milestone completion.
5. The SQSP is a living document that will continue to be shared regularly with UIAC and other partners to obtain their feedback and collaboration on progress moving forward.

# BYP 2023 Washington Overview



Washington						
MEASURES/PROGRAMS TO BE ADDRESSED FOR BIENNIAL SQSP FISCAL YEAR (FY) 2023						
	Measures/Programs to be Addressed (Each Measure Below is Hyperlinked to the CAP Worksheet)	Acceptable Level of Performance (ALP)	Corrective Action Plan (CAP)		Narrative Required (In Word Doc.)	SQSP 2023 Performance Year Data
			N	E		
B E N E F I T S	First Payment Promptness	≥ 87%		X		62.51%
	First Payment Promptness (IntraState 14/21 Days)	≥ 87%		X		61.79%
	First Payment Promptness (InterState 14/21 Days)	≥ 70%		X		53.52%
	First Payment Promptness (IntraState 35 Days)	≥ 93%		X		72.77%
	First Payment Promptness (InterState 35 Days)	≥ 78%		X		67.32%
	Nonmonetary Determination Timeliness	≥ 80%		X		57.30%
	Nonmonetary Determination Quality - Separations	≥ 75%		X		52.94%
	Nonmonetary Determination Quality - Nonseps	≥ 75%				80.21%
	Lower Authority Appeals (30 Days)	≥ 60%		X		1.90%
	Lower Authority Appeals (45 Days)	≥ 80%		X		2.54%
A P P E A L S	Average Age of Pending Lower Authority Appeals	≤ 30 days		X		109.2
	Average Age of Pending Higher Authority Appeals	≤ 40 days				11.3
	Lower Authority Appeals Quality	≥ 80%				96.91%
	New Employer Status Determinations Timelapse	≥ 70%				84.90%
T A X	Tax Quality (Part A)	No more than 3 tax functions failing TPS in a year				Pass
	Tax Quality (Part B)	The same tax function cannot fail for 3 consecutive years		X		Fail: Collections Debits-reimb
	TPS Sample Reviews	Pass		X		Fail: Collections Debits-reimb
	Effective Audit Measure	Pass 4 factors/score ≥ 7			X	Factor 1: 0.9
I N T E G R I T Y	Improper Payments Measure	< 10%				7.83%
	Detection of Overpayments - 3 Year Measure	≥ 50% & ≤ 95%		X		448.64%
	Overpayment Recovery Measure	≥ 68%		X		19.15%
	Data Validation - Benefits (All Submitted & Passing)	All Benefit Pops Submitted & Passing		X		Not Submitted: Populations 3-5, 12, 13, 15; BTQ 2 & 3
	Data Validation - Tax (All Submitted & Passing)	All Tax Pops Submitted & Passing		X		Fail: TPS 1  Not Submitted: Tax 5
B A M	NDNH BAM Compliance	Pass				Pass
	BAM Operations Compliant	Pass All M&P		X		Fail: 60-day Paid Timeliness: 46.90% 90-day Paid Timeliness: 64.05% Paid Comparison Reports: -38.29%
G P R A	Incorrect Recording of Issue Detection Date	95%			X	Fail
	Incorrect Recording of Determination Date	95%			X	Fail
	UI Reporting Requirements	Pass			X	Fail
	Percent of Intrastate Payments Made Timely	87%				61.79%
	Detection of Recoverable Overpayments	57.5%				300.03%
	Percent of Employer Tax Liability Determinations Made Timely	90%				82.68%

# December Meeting Topics



- Continue SQSP Discussion
- Agency Request Legislation
- November Trust Fund Report
- Overpayments Update
- Rulemaking Update/Benefit Charge Report
- 2023 Committee Meeting Schedule