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HOUSE BILL 2876

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State of Washington                      52nd Legislature                      1992 Regular Session

By Representatives Anderson, McLean, R. Fisher, Pruitt, Bowman and Basich

Read first time 01/31/92. Referred to Committee on State Government.

1            AN ACT Relating to open government; amending RCW 42.17.020,  
2 42.17.260, 42.17.290, 42.17.320, 42.17.330, 42.17.340, 42.30.020,  
3 42.30.060, 42.30.070, 42.30.075, 42.30.080, 42.30.110, 42.30.120, and  
4 42.30.900; reenacting and amending RCW 42.17.310; adding new sections  
5 to chapter 42.17 RCW; adding new sections to chapter 42.30 RCW;  
6 creating new sections; repealing RCW 42.32.030; and prescribing  
7 penalties.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

9            **Sec. 1.** RCW 42.17.020 and 1991 sp.s. c 18 s 1 are each amended to  
10 read as follows:

11            (1) "Agency" includes all state agencies and all local agencies.  
12 "State agency" includes every state office, department, division,  
13 bureau, board, commission, or other state agency. "Local agency"  
14 includes every county, city, town, municipal corporation, quasi-

1 municipal corporation, or special purpose district, or any office,  
2 department, division, bureau, board, commission, or agency thereof, or  
3 other local public agency.

4 (2) "Ballot proposition" means any "measure" as defined by RCW  
5 29.01.110, or any initiative, recall, or referendum proposition  
6 proposed to be submitted to the voters of the state or any municipal  
7 corporation, political subdivision, or other voting constituency from  
8 and after the time when the proposition has been initially filed with  
9 the appropriate election officer of that constituency prior to its  
10 circulation for signatures.

11 (3) "Depository" means a bank designated by a candidate or  
12 political committee pursuant to RCW 42.17.050.

13 (4) "Treasurer" and "deputy treasurer" mean the individuals  
14 appointed by a candidate or political committee, pursuant to RCW  
15 42.17.050, to perform the duties specified in that section.

16 (5) "Candidate" means any individual who seeks election to public  
17 office. An individual shall be deemed to seek election when he first:

18 (a) Receives contributions or makes expenditures or reserves space  
19 or facilities with intent to promote his candidacy for office; or

20 (b) Announces publicly or files for office.

21 (6) "Commercial advertiser" means any person who sells the service  
22 of communicating messages or producing printed material for broadcast  
23 or distribution to the general public or segments of the general public  
24 whether through the use of newspapers, magazines, television and radio  
25 stations, billboard companies, direct mail advertising companies,  
26 printing companies, or otherwise.

27 (7) "Commission" means the agency established under RCW 42.17.350.

28 (8) "Compensation" unless the context requires a narrower meaning,  
29 includes payment in any form for real or personal property or services  
30 of any kind: PROVIDED, That for the purpose of compliance with RCW

1 42.17.241, the term "compensation" shall not include per diem  
2 allowances or other payments made by a governmental entity to reimburse  
3 a public official for expenses incurred while the official is engaged  
4 in the official business of the governmental entity.

5 (9) "Continuing political committee" means a political committee  
6 that is an organization of continuing existence not established in  
7 anticipation of any particular election campaign.

8 (10) "Contribution" includes a loan, gift, deposit, subscription,  
9 forgiveness of indebtedness, donation, advance, pledge, payment,  
10 transfer of funds between political committees, or transfer of anything  
11 of value, including personal and professional services for less than  
12 full consideration, but does not include interest on moneys deposited  
13 in a political committee's account, ordinary home hospitality and the  
14 rendering of personal services of the sort commonly performed by  
15 volunteer campaign workers, or incidental expenses personally incurred  
16 by volunteer campaign workers not in excess of fifty dollars personally  
17 paid for by the worker. Volunteer services, for the purposes of this  
18 chapter, means services or labor for which the individual is not  
19 compensated by any person. For the purposes of this chapter,  
20 contributions other than money or its equivalents shall be deemed to  
21 have a money value equivalent to the fair market value of the  
22 contribution. Sums paid for tickets to fund-raising events such as  
23 dinners and parties are contributions; however, the amount of any such  
24 contribution may be reduced for the purpose of complying with the  
25 reporting requirements of this chapter, by the actual cost of  
26 consumables furnished in connection with the purchase of the tickets,  
27 and only the excess over the actual cost of the consumables shall be  
28 deemed a contribution.

1 (11) "Elected official" means any person elected at a general or  
2 special election to any public office, and any person appointed to fill  
3 a vacancy in any such office.

4 (12) "Election" includes any primary, general, or special election  
5 for public office and any election in which a ballot proposition is  
6 submitted to the voters: PROVIDED, That an election in which the  
7 qualifications for voting include other than those requirements set  
8 forth in Article VI, section 1 (Amendment 63) of the Constitution of  
9 the state of Washington shall not be considered an election for  
10 purposes of this chapter.

11 (13) "Election campaign" means any campaign in support of or in  
12 opposition to a candidate for election to public office and any  
13 campaign in support of, or in opposition to, a ballot proposition.

14 (14) "Expenditure" includes a payment, contribution, subscription,  
15 distribution, loan, advance, deposit, or gift of money or anything of  
16 value, and includes a contract, promise, or agreement, whether or not  
17 legally enforceable, to make an expenditure. The term "expenditure"  
18 also includes a promise to pay, a payment, or a transfer of anything of  
19 value in exchange for goods, services, property, facilities, or  
20 anything of value for the purpose of assisting, benefiting, or honoring  
21 any public official or candidate, or assisting in furthering or  
22 opposing any election campaign. For the purposes of this chapter,  
23 agreements to make expenditures, contracts, and promises to pay may be  
24 reported as estimated obligations until actual payment is made. The  
25 term "expenditure" shall not include the partial or complete repayment  
26 by a candidate or political committee of the principal of a loan, the  
27 receipt of which loan has been properly reported.

28 (15) "Final report" means the report described as a final report in  
29 RCW 42.17.080(2).

1       (16) "Gift," for the purposes of RCW 42.17.170 and 42.17.2415,  
2 means a rendering of anything of value in return for which reasonable  
3 consideration is not given and received and includes a rendering of  
4 money, property, services, discount, loan forgiveness, payment of  
5 indebtedness, or reimbursements from or payments by persons (other than  
6 the federal government, or the state of Washington or any agency or  
7 political subdivision thereof) for travel or anything else of value.  
8 The term "reasonable consideration" refers to the approximate range of  
9 consideration that exists in transactions not involving donative  
10 intent. However, the value of the gift of partaking in a single hosted  
11 reception shall be determined by dividing the total amount of the cost  
12 of conducting the reception by the total number of persons partaking in  
13 the reception. "Gift" for the purposes of RCW 42.17.170 and 42.17.2415  
14 does not include:

15       (a) A gift, other than a gift of partaking in a hosted reception,  
16 with a value of fifty dollars or less;

17       (b) The gift of partaking in a hosted reception if the value of the  
18 gift is one hundred dollars or less;

19       (c) A contribution that is required to be reported under RCW  
20 42.17.090 or 42.17.243;

21       (d) Informational material that is transferred for the purpose of  
22 informing the recipient about matters pertaining to official business  
23 of the governmental entity of which the recipient is an official or  
24 officer, and that is not intended to confer on that recipient any  
25 commercial, proprietary, financial, economic, or monetary advantage, or  
26 the avoidance of any commercial, proprietary, financial, economic, or  
27 monetary disadvantage;

28       (e) A gift that is not used and that, within thirty days after  
29 receipt, is returned to the donor or delivered to a charitable  
30 organization. However, this exclusion from the definition does not

1 apply if the recipient of the gift delivers the gift to a charitable  
2 organization and claims the delivery as a charitable contribution for  
3 tax purposes;

4 (f) A gift given under circumstances where it is clear beyond any  
5 doubt that the gift was not made as part of any design to gain or  
6 maintain influence in the governmental entity of which the recipient is  
7 an officer or official or with respect to any legislative matter or  
8 matters of that governmental entity; or

9 (g) A gift given prior to September 29, 1991.

10 (17) "Immediate family" includes the spouse, dependent children,  
11 and other dependent relatives, if living in the household.

12 (18) "Legislation" means bills, resolutions, motions, amendments,  
13 nominations, and other matters pending or proposed in either house of  
14 the state legislature, and includes any other matter that may be the  
15 subject of action by either house or any committee of the legislature  
16 and all bills and resolutions that, having passed both houses, are  
17 pending approval by the governor.

18 (19) "Lobby" and "lobbying" each mean attempting to influence the  
19 passage or defeat of any legislation by the legislature of the state of  
20 Washington, or the adoption or rejection of any rule, standard, rate,  
21 or other legislative enactment of any state agency under the state  
22 Administrative Procedure Act, chapter 34.05 RCW. Neither "lobby" nor  
23 "lobbying" includes an association's or other organization's act of  
24 communicating with the members of that association or organization.

25 (20) "Lobbyist" includes any person who lobbies either in his own  
26 or another's behalf.

27 (21) "Lobbyist's employer" means the person or persons by whom a  
28 lobbyist is employed and all persons by whom he is compensated for  
29 acting as a lobbyist.

1 (22) "Person" includes an individual, partnership, joint venture,  
2 public or private corporation, association, federal, state, or local  
3 governmental entity or agency however constituted, candidate,  
4 committee, political committee, political party, executive committee  
5 thereof, or any other organization or group of persons, however  
6 organized.

7 (23) "Person in interest" means the person who is the subject of a  
8 record or any representative designated by that person, except that if  
9 that person is under a legal disability, the term "person in interest"  
10 means and includes the parent or duly appointed legal representative.

11 (24) "Political advertising" includes any advertising displays,  
12 newspaper ads, billboards, signs, brochures, articles, tabloids,  
13 flyers, letters, radio or television presentations, or other means of  
14 mass communication, used for the purpose of appealing, directly or  
15 indirectly, for votes or for financial or other support in any election  
16 campaign.

17 (25) "Political committee" means any person (except a candidate or  
18 an individual dealing with his own funds or property) having the  
19 expectation of receiving contributions or making expenditures in  
20 support of, or opposition to, any candidate or any ballot proposition.

21 (26) "Public office" means any federal, state, county, city, town,  
22 school district, port district, special district, or other state  
23 political subdivision elective office.

24 (27) "Public record" includes any writing containing information  
25 relating to the conduct of government or the performance of any  
26 governmental or proprietary function prepared, owned, used, or retained  
27 by any state or local agency regardless of physical form or  
28 characteristics.

29 (28) "Surplus funds" mean, in the case of a political committee or  
30 candidate, the balance of contributions that remain in the possession

1 or control of that committee or candidate subsequent to the election  
2 for which the contributions were received, and that are in excess of  
3 the amount necessary to pay remaining debts incurred by the committee  
4 or candidate prior to that election. In the case of a continuing  
5 political committee, "surplus funds" mean those contributions remaining  
6 in the possession or control of the committee that are in excess of the  
7 amount necessary to pay all remaining debts when it makes its final  
8 report under RCW 42.17.065.

9 (29) "Writing" means handwriting, typewriting, printing,  
10 photostating, photographing, and every other means of recording any  
11 form of communication or representation, including, but not limited to,  
12 letters, words, pictures, sounds, or symbols, or combination thereof,  
13 and all papers, maps, magnetic or paper tapes, photographic films and  
14 prints, motion picture, film and video recordings, magnetic or punched  
15 cards, discs, drums, diskettes, sound recordings, and other documents  
16 including existing data compilations from which information may be  
17 obtained or translated.

18 As used in this chapter, the singular shall take the plural and any  
19 gender, the other, as the context requires.

20 NEW SECTION. **Sec. 2.** A new section is added to chapter 42.17 RCW  
21 under the subchapter heading "public records" to read as follows:

22 The people of this state do not yield their sovereignty to the  
23 agencies that serve them. The people, in delegating authority, do not  
24 give their public servants the right to decide what is good for the  
25 people to know and what is not good for them to know. The people  
26 insist on remaining informed so that they may maintain control over the  
27 instruments that they have created. The public records subdivision of  
28 this chapter shall be liberally construed and its exemptions narrowly  
29 construed to promote this public policy.

1       **Sec. 3.** RCW 42.17.260 and 1989 c 175 s 36 are each amended to read  
2 as follows:

3       (1) Each agency, in accordance with published rules, shall make  
4 available for public inspection and copying all public records, unless  
5 the record falls within the specific exemptions of subsection (~~(+5)~~)  
6 (6) of this section, RCW 42.17.310, 42.17.315, or other statute which  
7 exempts or prohibits disclosure of specific information or records. To  
8 the extent required to prevent an unreasonable invasion of personal  
9 privacy interests protected by RCW 42.17.310 and 42.17.315, an agency  
10 shall delete identifying details in a manner consistent with RCW  
11 42.17.310 and 42.17.315 when it makes available or publishes any public  
12 record; however, in each case, the justification for the deletion shall  
13 be explained fully in writing.

14       (2) For informational purposes, each agency shall publish and  
15 maintain a current list containing every law, other than those listed  
16 in this chapter, that the agency believes exempts or prohibits  
17 disclosure of specific information or records of the agency. An  
18 agency's failure to list an exemption shall not affect the efficacy of  
19 any exemption.

20       (3) Each local agency shall maintain and make available for public  
21 inspection and copying a current index providing identifying  
22 information as to the following records issued, adopted, or promulgated  
23 after January 1, 1973:

24       (a) Final opinions, including concurring and dissenting opinions,  
25 as well as orders, made in the adjudication of cases;

26       (b) Those statements of policy and interpretations of policy,  
27 statute, and the Constitution which have been adopted by the agency;

28       (c) Administrative staff manuals and instructions to staff that  
29 affect a member of the public;

1 (d) Planning policies and goals, and interim and final planning  
2 decisions;

3 (e) Factual staff reports and studies, factual consultant's reports  
4 and studies, scientific reports and studies, and any other factual  
5 information derived from tests, studies, reports, or surveys, whether  
6 conducted by public employees or others; and

7 (f) Correspondence, and materials referred to therein, by and with  
8 the agency relating to any regulatory, supervisory, or enforcement  
9 responsibilities of the agency, whereby the agency determines, or  
10 opines upon, or is asked to determine or opine upon, the rights of the  
11 state, the public, a subdivision of state government, or of any private  
12 party.

13 (~~((3))~~) (4) A local agency need not maintain such an index, if to  
14 do so would be unduly burdensome, but it shall in that event:

15 (a) Issue and publish a formal order specifying the reasons why and  
16 the extent to which compliance would unduly burden or interfere with  
17 agency operations; and

18 (b) Make available for public inspection and copying all indexes  
19 maintained for agency use.

20 (~~((4) By July 1, 1990,))~~ (5) Each state agency shall, by rule,  
21 establish and implement a system of indexing for the identification and  
22 location of the following records:

23 (a) All records issued before July 1, 1990, for which the agency  
24 has maintained an index;

25 (b) Final orders entered after June 30, 1990, that are issued in  
26 adjudicative proceedings as defined in RCW 34.05.010(1) and that  
27 contain an analysis or decision of substantial importance to the agency  
28 in carrying out its duties;

1 (c) Declaratory orders entered after June 30, 1990, that are issued  
2 pursuant to RCW 34.05.240 and that contain an analysis or decision of  
3 substantial importance to the agency in carrying out its duties;

4 (d) Interpretive statements as defined in RCW 34.05.010(8) that  
5 were entered after June 30, 1990; and

6 (e) Policy statements as defined in RCW 34.05.010(14) that were  
7 entered after June 30, 1990.

8 Rules establishing systems of indexing shall include, but not be  
9 limited to, requirements for the form and content of the index, its  
10 location and availability to the public, and the schedule for revising  
11 or updating the index. State agencies that have maintained indexes for  
12 records issued before July 1, 1990, shall continue to make such indexes  
13 available for public inspection and copying. Information in such  
14 indexes may be incorporated into indexes prepared pursuant to this  
15 subsection. State agencies may satisfy the requirements of this  
16 subsection by making available to the public indexes prepared by other  
17 parties but actually used by the agency in its operations. State  
18 agencies shall make indexes available for public inspection and  
19 copying. State agencies may charge a fee to cover the actual costs of  
20 providing individual mailed copies of indexes.

21 ~~((+5))~~ (6) A public record may be relied on, used, or cited as  
22 precedent by an agency against a party other than an agency and it may  
23 be invoked by the agency for any other purpose only if--

24 (a) It has been indexed in an index available to the public; or

25 (b) Parties affected have timely notice (actual or constructive) of  
26 the terms thereof.

27 ~~((+6))~~ (7) This chapter shall not be construed as giving authority  
28 to any agency to give, sell or provide access to lists of individuals  
29 requested for commercial purposes, and agencies shall not do so unless  
30 specifically authorized or directed by law: PROVIDED, HOWEVER, That

1 lists of applicants for professional licenses and of professional  
2 licensees shall be made available to those professional associations or  
3 educational organizations recognized by their professional licensing or  
4 examination board, upon payment of a reasonable charge therefor:  
5 PROVIDED FURTHER, That such recognition may be refused only for a good  
6 cause pursuant to a hearing under the provisions of chapter 34.05 RCW,  
7 the Administrative Procedure Act.

8       **Sec. 4.** RCW 42.17.290 and 1975 1st ex.s. c 294 s 16 are each  
9 amended to read as follows:

10       Agencies shall adopt and enforce reasonable rules and regulations,  
11 consonant with the intent of this chapter to provide full public access  
12 to public records, to protect public records from damage or  
13 disorganization, and to prevent excessive interference with other  
14 essential functions of the agency. Such rules and regulations shall  
15 provide for the fullest assistance to inquirers and the most timely  
16 possible action on requests for information. Nothing in this section  
17 shall relieve agencies from honoring requests received by mail for  
18 copies of identifiable public records.

19       If a public record request is made at a time when such record  
20 exists but is scheduled for destruction in the near future, the agency  
21 shall retain possession of the record, and may not destroy or erase the  
22 record until the request is resolved.

23       **Sec. 5.** RCW 42.17.310 and 1991 c 301 s 13, 1991 c 87 s 13, and  
24 1991 c 23 s 10 1991 c 1 s 1 are each reenacted and amended to read as  
25 follows:

26       (1) The following are exempt from public inspection and copying:

1 (a) Personal information in any files maintained for students in  
2 public schools, patients or clients of public institutions or public  
3 health agencies, or welfare recipients.

4 (b) Personal information in files maintained for employees,  
5 appointees, or elected officials of any public agency to the extent  
6 that disclosure would violate their right to privacy.

7 (c) Information required of any taxpayer in connection with the  
8 assessment or collection of any tax if the disclosure of the  
9 information to other persons would (i) be prohibited to such persons by  
10 RCW 82.32.330 or (ii) violate the taxpayer's right to privacy or result  
11 in unfair competitive disadvantage to the taxpayer.

12 (d) Specific intelligence information and specific investigative  
13 records compiled by investigative, law enforcement, and penology  
14 agencies, and state agencies vested with the responsibility to  
15 discipline members of any profession, the nondisclosure of which is  
16 essential to effective law enforcement or for the protection of any  
17 person's right to privacy.

18 (e) Information revealing the identity of persons who are witnesses  
19 to or victims of crime or who file complaints with investigative, law  
20 enforcement, or penology agencies, other than the public disclosure  
21 commission, if disclosure would endanger any person's life, physical  
22 safety, or property. If at the time ((the)) a complaint is filed the  
23 complainant indicates a desire for disclosure or nondisclosure, such  
24 desire shall govern. However, all complaints filed with the public  
25 disclosure commission about any elected official or candidate for  
26 public office must be made in writing and signed by the complainant  
27 under oath.

28 (f) Test questions, scoring keys, and other examination data used  
29 to administer a license, employment, or academic examination.

1 (g) Except as provided by chapter 8.26 RCW, the contents of real  
2 estate appraisals, made for or by any agency relative to the  
3 acquisition or sale of property, until the project or prospective sale  
4 is abandoned or until such time as all of the property has been  
5 acquired or the property to which the sale appraisal relates is sold,  
6 but in no event shall disclosure be denied for more than three years  
7 after the appraisal.

8 (h) Valuable formulae, designs, drawings, and research data  
9 obtained by any agency within five years of the request for disclosure  
10 when disclosure would produce private gain and public loss.

11 (i) Preliminary drafts, notes, recommendations, and intra-agency  
12 memorandums in which opinions are expressed or policies formulated or  
13 recommended except that a specific record shall not be exempt when  
14 publicly cited by an agency in connection with any agency action.

15 (j) Records which are relevant to a controversy to which an agency  
16 is a party but which records would not be available to another party  
17 under the rules of pretrial discovery for causes pending in the  
18 superior courts.

19 (k) Records, maps, or other information identifying the location of  
20 archaeological sites in order to avoid the looting or depredation of  
21 such sites.

22 (l) Any library record, the primary purpose of which is to maintain  
23 control of library materials, or to gain access to information, which  
24 discloses or could be used to disclose the identity of a library user.

25 (m) Financial information supplied by or on behalf of a person,  
26 firm, or corporation for the purpose of qualifying to submit a bid or  
27 proposal for (a) a ferry system construction or repair contract as  
28 required by RCW 47.60.680 through 47.60.750 or (b) highway construction  
29 or improvement as required by RCW 47.28.070.

1 (n) Railroad company contracts filed prior to July 28, 1991, with  
2 the utilities and transportation commission under RCW 81.34.070, except  
3 that the summaries of the contracts are open to public inspection and  
4 copying as otherwise provided by this chapter.

5 (o) Financial and commercial information and records supplied by  
6 private persons pertaining to export services provided pursuant to  
7 chapter 43.163 RCW and chapter 53.31 RCW.

8 (p) Financial disclosures filed by private vocational schools under  
9 chapter 28C.10 RCW.

10 (q) Records filed with the utilities and transportation commission  
11 or attorney general under RCW 80.04.095 that a court has determined are  
12 confidential under RCW 80.04.095.

13 (r) Financial and commercial information and records supplied by  
14 businesses during application for loans or program services provided by  
15 chapter 43.163 RCW and chapters 43.31, 43.63A, and 43.168 RCW.

16 (s) Membership lists or lists of members or owners of interests of  
17 units in timeshare projects, subdivisions, camping resorts,  
18 condominiums, land developments, or common-interest communities  
19 affiliated with such projects, regulated by the department of  
20 licensing, in the files or possession of the department.

21 (t) All applications for public employment, including the names of  
22 applicants, resumes, and other related materials submitted with respect  
23 to an applicant.

24 (u) The residential addresses and residential telephone numbers of  
25 employees or volunteers of a public agency which are held by the agency  
26 in personnel records, employment or volunteer rosters, or mailing lists  
27 of employees or volunteers.

28 (v) The residential addresses and residential telephone numbers of  
29 the customers of a public utility contained in the records or lists  
30 held by the public utility of which they are customers.

1 (w) Information obtained by the board of pharmacy as provided in  
2 RCW 69.45.090.

3 (x) Information obtained by the board of pharmacy or the department  
4 of health and its representatives as provided in RCW 69.41.044,  
5 69.41.280, and 18.64.420.

6 (y) Financial information, business plans, examination reports, and  
7 any information produced or obtained in evaluating or examining a  
8 business and industrial development corporation organized or seeking  
9 certification under chapter 31.24 RCW.

10 (z) Financial and commercial information supplied to the state  
11 investment board by any person when the information relates to the  
12 investment of public trust or retirement funds and when disclosure  
13 would result in loss to such funds or in private loss to the providers  
14 of this information.

15 (aa) Financial and valuable trade information under RCW 51.36.120.

16 (bb) Client records maintained by an agency that is a domestic  
17 violence program as defined in RCW 70.123.020 or a rape crisis center  
18 as defined in RCW 70.125.030.

19 (2) Except for information described in subsection (1)(c)(i) of  
20 this section and confidential income data exempted from public  
21 inspection pursuant to RCW 84.40.020, the exemptions of this section  
22 are inapplicable to the extent that information, the disclosure of  
23 which would violate personal privacy or vital governmental interests,  
24 can be deleted from the specific records sought. No exemption may be  
25 construed to permit the nondisclosure of statistical information not  
26 descriptive of any readily identifiable person or persons.

27 (3) Inspection or copying of any specific records exempt under the  
28 provisions of this section may be permitted if the superior court in  
29 the county in which the record is maintained finds, after a hearing  
30 with notice thereof to every person in interest and the agency, that

1 the exemption of such records is clearly unnecessary to protect any  
2 individual's right of privacy or any vital governmental function.

3 (4) Agency responses refusing, in whole or in part, inspection of  
4 any public record shall include a statement of the specific exemption  
5 authorizing the withholding of the record (or part) and a brief  
6 explanation of how the exemption applies to the record withheld.

7 **Sec. 6.** RCW 42.17.320 and 1975 1st ex.s. c 294 s 18 are each  
8 amended to read as follows:

9 Responses to requests for public records shall be made promptly by  
10 agencies. Within five business days of receiving a public record  
11 request, an agency must respond by either (1) providing the record; (2)  
12 acknowledging that the agency has received the request and providing a  
13 reasonable estimate of the time the agency will require to respond to  
14 the request; or (3) denying the public record request. In  
15 acknowledging receipt of a public record request, agencies may seek to  
16 clarify what information the requestor is seeking. Denials of requests  
17 must be accompanied by a written statement of the specific reasons  
18 therefor. Agencies shall establish mechanisms for the most prompt  
19 possible review of decisions denying inspection, and such review shall  
20 be deemed completed at the end of the second business day following the  
21 denial of inspection and shall constitute final agency action for the  
22 purposes of judicial review.

23 **Sec. 7.** RCW 42.17.330 and 1975 1st ex.s. c 294 s 19 are each  
24 amended to read as follows:

25 The examination of any specific public record may be enjoined if,  
26 upon motion and affidavit by a person, other than an agency or its  
27 representative, who is named in the record or to whom the record  
28 specifically pertains, the superior court for the county in which the

1 movant resides or in which the record is maintained, finds that such  
2 examination would clearly not be in the public interest and would  
3 substantially and irreparably damage any person, or would substantially  
4 and irreparably damage vital governmental functions. An agency may,  
5 but is not required to, notify persons named in a record or to whom a  
6 record specifically pertains that release of a record has been  
7 requested.

8       **Sec. 8.** RCW 42.17.340 and 1987 c 403 s 5 are each amended to read  
9 as follows:

10       (1) Upon the motion of any person having been denied an opportunity  
11 to inspect or copy a public record by an agency, the superior court in  
12 the county in which a record is maintained may require the responsible  
13 agency to show cause why it has refused to allow inspection or copying  
14 of a specific public record or class of records. The burden of proof  
15 shall be on the agency to establish that refusal to permit public  
16 inspection and copying is in accordance with a statute that exempts or  
17 prohibits disclosure in whole or in part of specific information or  
18 records.

19       (2) Upon the motion of any person who believes that an agency has  
20 not made a reasonable estimate of the time that the agency requires to  
21 respond to a public record request, the superior court in the county in  
22 which a record is maintained may require the responsible agency to show  
23 that the estimate it provided is reasonable. The burden of proof shall  
24 be on the agency to show that the estimate it provided is reasonable.

25       (3) Judicial review of all agency actions taken or challenged under  
26 RCW 42.17.250 through 42.17.320 shall be de novo. Courts shall take  
27 into account the policy of this chapter that free and open examination  
28 of public records is in the public interest, even though such  
29 examination may cause inconvenience or embarrassment to public

1 officials or others. Courts may examine any record in camera in any  
2 proceeding brought under this section. The court may conduct a hearing  
3 based solely on affidavits.

4 ~~((3))~~ (4) Any person who prevails against an agency in any action  
5 in the courts seeking the right to inspect or copy any public record or  
6 the right to receive a response to a public record request within a  
7 reasonable amount of time shall be awarded all costs, including  
8 reasonable attorney fees, incurred in connection with such legal  
9 action. In addition, it shall be within the discretion of the court to  
10 award such person an amount not less than five dollars and not to  
11 exceed ~~((twenty-five))~~ one hundred dollars for each day that he was  
12 denied the right to inspect or copy said public record.

13 NEW SECTION. Sec. 9. A new section is added to chapter 42.17 RCW  
14 under the subchapter heading "public records" to read as follows:

15 The attorney general's office shall publish, and update when  
16 appropriate, a pamphlet, written in plain language, explaining the  
17 provisions of the public records subdivision of this chapter.

18 NEW SECTION. Sec. 10. A new section is added to chapter 42.17 RCW  
19 under the subchapter heading "public records" to read as follows:

20 Whenever a state agency concludes that a public record is exempt  
21 from disclosure and denies a person opportunity to inspect or copy a  
22 public record for that reason, the person may request the attorney  
23 general to review the matter. The attorney general shall provide the  
24 person with his or her written opinion on whether the record is exempt.

25 NEW SECTION. Sec. 11. A new section is added to chapter 42.17 RCW  
26 under the subchapter heading "public records" to read as follows:

1       The disclosure requirements of this chapter do not apply to  
2 information that identifies a person who, while an agency employee: (1)  
3 Seeks advice, under an informal process established by the employing  
4 agency, in order to ascertain his or her rights in connection with a  
5 possible unfair practice under chapter 49.60 RCW against the person;  
6 and (2) requests his or her identity not be disclosed.

7       NEW SECTION.   **Sec. 12.**   A new section is added to chapter 42.17 RCW  
8 under the subchapter heading "public records" to read as follows:

9       No public agency, public official, public employee, or custodian  
10 shall be liable, nor shall a cause of action exist, for any loss or  
11 damage based upon the release of a public record if the public agency,  
12 public official, public employee, or custodian acted in good faith in  
13 attempting to comply with the provisions of this chapter.

14       NEW SECTION.   **Sec. 13.**       The legislature finds that electronic  
15 data and electronic records pose a number of challenging public  
16 disclosure questions. Included in these challenging questions are how  
17 to provide public access to electronic records while balancing personal  
18 privacy and vital governmental interests; how to best address requests  
19 for electronic records which require agencies to manipulate data; how  
20 to open electronic records to public inspection; how to calculate  
21 charges for data or products from electronic records, particularly if  
22 that data or product is to be used for a commercial purpose; and how  
23 public agencies and employees should handle the personal privacy issues  
24 associated with electronic mail. The legislature finds that these and  
25 other important public policy questions related to electronic records  
26 deserve their own specific deliberation with input from all interested  
27 parties. The legislature urges the creation of a body to address  
28 electronic data issues.

1        NEW SECTION.    **Sec. 14.**        The legislature finds that there is a  
2 large and growing number of exemptions of records from public  
3 disclosure.        The legislature also finds that certain types of  
4 information, such as business and commercial data, are treated  
5 inconsistently under current disclosure law.    The legislature further  
6 finds that there are opportunities for consolidation of many individual  
7 record exemptions into fewer, broader exemptions.    The legislature  
8 directs the Washington state institute for public policy to conduct an  
9 in-depth review of the current exemptions of records from public  
10 disclosure, to include consideration of inconsistent treatment of  
11 records and opportunities for consolidation.    The review should include  
12 both the content and the organization of the various exemptions.    The  
13 legislature directs the institute to solicit input from interested  
14 parties, and to report its findings and recommendations to the  
15 legislature by January 1993.

16        **Sec. 15.**    RCW 42.30.020 and 1985 c 366 s 1 are each amended to read  
17 as follows:

18        As used in this chapter unless the context indicates otherwise:

19        (1) "Public agency" means:

20        (a) Any state board, commission, committee, authority, council,  
21 department, educational institution, or other state agency (~~((which is))~~)  
22 whose members are appointed by public officials or that is created by  
23 or pursuant to statute, other than courts and the legislature;

24        (b) Any county, city, school district, special purpose district, or  
25 other municipal corporation or political subdivision of the state of  
26 Washington;

27        (c) Any (~~((subagency))~~) standing, special, or advisory committees,  
28 boards, commissions, task forces, subcommittees or other subagencies of  
29 a public agency which (~~((is))~~) are created by or pursuant to statute,

1 ordinance, or (~~other legislative act~~) formal action by the public  
2 agency or a public official, including but not limited to planning  
3 commissions, library or park boards, commissions, and agencies;

4 (d) Any policy group whose membership includes representatives of  
5 publicly owned utilities formed by or pursuant to the laws of this  
6 state when meeting together as or on behalf of participants who have  
7 contracted for the output of generating plants being planned or built  
8 by an operating agency.

9 "Public agency" does not include any agency or entity of the  
10 judicial branch or of the legislature. Nor does the term include any  
11 advisory group composed of a public agency's staff or employees  
12 participating in meetings amongst themselves, with public agency  
13 officials, or with similar advisory groups from other agencies, states,  
14 tribes, or countries.

15 (2) "Governing body" means the multimember board, commission,  
16 committee, council, or other policy or rule-making body of a public  
17 agency, or any committee or subcommittee thereof (~~when the committee~~  
18 ~~acts on behalf of the governing body, conducts hearings, or takes~~  
19 ~~testimony or public comment~~)).

20 (3) "Action" means the transaction of the official business of a  
21 public agency by a governing body including but not limited to receipt  
22 of public testimony, deliberations, discussions, considerations,  
23 reviews, evaluations, and final actions. "Final action" means a  
24 collective positive or negative decision, or an actual vote by a  
25 majority of the members of a governing body when sitting as a body or  
26 entity, upon a motion, proposal, resolution, order, or ordinance.

27 (4) "Meeting" means meetings at which action is taken.

28 "Meeting" includes not only in-person meetings, but also any  
29 discussion of official business among a quorum of the governing body  
30 including teleconferences and conference calls.

1 "Meeting" does not include a majority of the members of a governing  
2 body traveling together or gathering for purposes other than a regular  
3 meeting or a special meeting as those terms are used in this chapter  
4 provided that they do not take action as defined in this chapter.

5 (a) A "regular meeting" means a recurring meeting held in  
6 accordance with a periodic schedule declared by statute, rule,  
7 ordinance, resolution, bylaws, or whatever rule is required for the  
8 conduct of business by a governing body.

9 (b) A "special meeting" means a meeting other than a regular  
10 meeting.

11 (5) "Executive session" refers to a meeting, or a portion thereof,  
12 conducted pursuant to RCW 42.30.110 at which no one is permitted to  
13 attend other than members of the governing body, their attorneys, their  
14 staff, and persons whose presence is necessary to provide information  
15 for one or more purposes under RCW 42.30.110(1).

16 **Sec. 16.** RCW 42.30.060 and 1989 c 42 s 1 are each amended to read  
17 as follows:

18 (1) No governing body of a public agency shall adopt any ordinance,  
19 resolution, rule, regulation, order, or directive, except in a meeting  
20 open to the public and then only at a meeting, the date of which is  
21 fixed by law or rule, or at a meeting of which notice has been given  
22 according to the provisions of this chapter.

23 (2) Any action taken at meetings failing to comply with the  
24 provisions of this subsection of this section, RCW 42.30.110, or  
25 section 23 of this act, shall be null and void, provided, however, that  
26 actions that have been taken based on void recommendations of an  
27 advisory committee shall not be void. Actions that are null and void  
28 due to failure to comply with these provisions shall not be taken at  
29 subsequent meetings unless there is opportunity for a de novo

1 discussion and action is undertaken at a meeting properly conducted  
2 under the terms of this chapter.

3 ~~((2))~~ (3) No governing body of a public agency at any meeting  
4 required to be open to the public shall vote by secret ballot. Any  
5 vote taken in violation of this subsection shall be null and void, and  
6 shall be considered an "action" under this chapter.

7 **Sec. 17.** RCW 42.30.070 and 1983 c 155 s 2 are each amended to read  
8 as follows:

9 The governing body of a public agency shall provide the times and  
10 places for holding regular meetings by ordinance, resolution, bylaws,  
11 or by whatever other rule is required for the conduct of business by  
12 that body. Such times and places shall be established with  
13 consideration for the convenience of the public. The times selected  
14 shall be reasonably related to the agency's actual needs for regular  
15 meetings and shall not be overly broad or have unreasonable breaks such  
16 that the public cannot determine when actual meetings will occur.  
17 Unless otherwise provided for in the act under which the public agency  
18 was formed, meetings of the governing body need not always be held  
19 within the boundaries of the territory over which the public agency  
20 exercises jurisdiction. If at any time any regular meeting falls on a  
21 holiday, such regular meeting shall be held on the next business day.  
22 ~~((If, by reason of fire, flood, earthquake, or other emergency, there~~  
23 ~~is a need for expedited action by a governing body to meet the~~  
24 ~~emergency, the presiding officer of the governing body may provide for~~  
25 ~~a meeting site other than the regular meeting site and the notice~~  
26 ~~requirements of this chapter shall be suspended during such emergency.~~  
27 ~~It shall not be a violation of the requirements of this chapter for a~~  
28 ~~majority of the members of a governing body to travel together or~~  
29 ~~gather for purposes other than a regular meeting or a special meeting~~

1 ~~as these terms are used in this chapter: PROVIDED, That they take no~~  
2 ~~action as defined in this chapter.))~~

3 **Sec. 18.** RCW 42.30.075 and 1977 ex.s. c 240 s 12 are each amended  
4 to read as follows:

5 State agencies which hold regular meetings shall file with the code  
6 reviser a schedule of the time and place of such meetings on or before  
7 January of each year for publication in the Washington state register.  
8 Notice of any change from such meeting schedule shall be published in  
9 the state register for distribution at least twenty days prior to the  
10 rescheduled meeting date.

11 ~~((For the purposes of this section "regular" meetings shall mean~~  
12 ~~recurring meetings held in accordance with a periodic schedule declared~~  
13 ~~by statute or rule.))~~

14 **Sec. 19.** RCW 42.30.080 and 1971 ex.s. c 250 s 8 are each amended  
15 to read as follows:

16 (1) A special meeting may be called at any time by the presiding  
17 officer of the governing body of a public agency or by a majority of  
18 the members of the governing body by delivering personally or by mail  
19 written notice to each member of the governing body; and to each local  
20 newspaper of general circulation and to each local radio or television  
21 station which has on file with the governing body a written request to  
22 be notified of such special meeting or of all special meetings. Such  
23 notice must be delivered personally or by mail at least twenty-four  
24 hours before the time of such meeting as specified in the notice. The  
25 call and notice shall specify the time and place of the special meeting  
26 and the ~~((business to be transacted))~~ matters to be discussed. Final  
27 ~~((disposition))~~ action shall not be taken on any other matter at such  
28 meetings by the governing body. Such written notice may be dispensed

1 with as to any member who at or prior to the time the meeting convenes  
2 files with the clerk or secretary of the governing body a written  
3 waiver of notice. Such waiver may be given by telegram. Such written  
4 notice may also be dispensed with as to any member who is actually  
5 present at the meeting at the time it convenes. (~~The notices provided~~  
6 ~~in this section may be dispensed with in the event a special meeting is~~  
7 ~~called to deal with an~~))

8 (2) If, by reason of fire, flood, earthquake, or other emergency  
9 involving injury or damage to persons or property or the likelihood of  
10 such injury or damage, there is a need for expedited action by a  
11 governing body to meet the emergency, the presiding officer of the  
12 governing body may provide for a meeting site other than the regular  
13 meeting site, and the notice requirements of this chapter shall be  
14 suspended during such emergency when time requirements of such notice  
15 would make notice impractical and increase the likelihood of such  
16 injury or damage.

17 **Sec. 20.** RCW 42.30.110 and 1989 c 238 s 2 are each amended to read  
18 as follows:

19 (1) Nothing contained in this chapter may be construed to prevent  
20 a governing body by majority vote of the members present from holding  
21 an executive session during a regular or special meeting:

22 (a) To consider matters affecting national security;

23 (b) To consider the selection of a site or the acquisition of real  
24 estate by lease or purchase when public knowledge regarding such  
25 consideration would cause a likelihood of increased price;

26 (c) To consider the minimum price at which real estate will be  
27 offered for sale or lease when public knowledge regarding such  
28 consideration would cause a likelihood of decreased price. However,

1 final action selling or leasing public property shall be taken in a  
2 meeting open to the public;

3 (d) To review negotiations on the performance of publicly bid  
4 contracts when public knowledge regarding such consideration would  
5 cause a likelihood of increased costs;

6 (e) To consider, in the case of an export trading company,  
7 financial and commercial information supplied by private persons to the  
8 export trading company;

9 (f) To receive and evaluate specific complaints or charges of  
10 misconduct brought against a public officer or employee. However, upon  
11 the request of such officer or employee, a public hearing or a meeting  
12 open to the public shall be conducted upon such complaint or charge;

13 (g) To evaluate the qualifications of an applicant for public  
14 employment or to review the performance of a public employee. However,  
15 subject to RCW 42.30.140(4), discussion by a governing body of  
16 salaries, wages, and other conditions of employment to be generally  
17 applied within the agency shall occur in a meeting open to the public,  
18 and when a governing body elects to take final action hiring, setting  
19 the salary of an individual employee or class of employees, or  
20 discharging or disciplining an employee, that action shall be taken in  
21 a meeting open to the public;

22 (h) To evaluate the qualifications of a candidate for appointment  
23 to elective office. However, any interview of such candidate and final  
24 action appointing a candidate to elective office shall be in a meeting  
25 open to the public;

26 (i) To obtain and discuss legal advice with legal counsel  
27 representing the agency in matters relating to agency enforcement  
28 actions, or to obtain and discuss legal advice with legal counsel  
29 representing the agency in litigation or potential litigation to which  
30 the agency, the governing body, or a member acting in an official

1 capacity is, or is likely to become, a party, when public knowledge  
2 regarding the discussion is likely to result in an adverse legal or  
3 financial consequence to the agency;

4 (j) To consider, in the case of the state library commission or its  
5 advisory bodies, western library network prices, products, equipment,  
6 and services, when such discussion would be likely to adversely affect  
7 the network's ability to conduct business in a competitive economic  
8 climate. However, final action on these matters shall be taken in a  
9 meeting open to the public;

10 (k) To consider, in the case of the state investment board,  
11 financial and commercial information when the information relates to  
12 the investment of public trust or retirement funds and when public  
13 knowledge regarding the discussion would result in loss to such funds  
14 or in private loss to the providers of this information.

15 (2) Before convening in executive session, the presiding officer of  
16 a governing body shall publicly announce the specific purpose for  
17 excluding the public from the meeting place, and the time when the  
18 executive session will be concluded. The presiding officer may ask  
19 whether any person has an objection to the convening of the executive  
20 session and allow a brief statement of the reason for the objection;  
21 but no person is required to make such an objection to protect any  
22 rights under this chapter. The executive session may be extended to a  
23 stated later time by announcement of the presiding officer. No action  
24 shall be taken on any matter during executive session other than the  
25 matter for which a specific purpose has been previously announced.

26 **Sec. 21.** RCW 42.30.120 and 1985 c 69 s 1 are each amended to read  
27 as follows:

28 (1) Each member of the governing body who attends a meeting of such  
29 governing body where action is taken in violation of any provision of

1 this chapter applicable to him or her, with knowledge of the fact that  
2 the meeting is in violation thereof, shall be subject to personal  
3 liability in the form of a civil penalty in the amount of ~~((one))~~ five  
4 hundred dollars. The civil penalty shall be assessed by a judge of the  
5 superior court and an action to enforce this penalty may be brought by  
6 any person. A violation of this chapter does not constitute a crime  
7 and assessment of the civil penalty by a judge shall not give rise to  
8 any disability or legal disadvantage based on conviction of a criminal  
9 offense.

10 (2) Any person who prevails against a public agency in any action  
11 in the courts for a violation of this chapter shall be awarded all  
12 costs, including reasonable attorney fees, incurred in connection with  
13 such legal action. ~~((Pursuant to RCW 4.84.185, any public agency who  
14 prevails in any action in the courts for a violation of this chapter  
15 may be awarded reasonable expenses and attorney fees upon final  
16 judgment and written findings by the trial judge that the action was  
17 frivolous and advanced without reasonable cause.))~~

18 **Sec. 22.** RCW 42.30.900 and 1971 ex.s. c 250 s 16 are each amended  
19 to read as follows:

20 This chapter may be cited as the "Open Public Meetings Act ~~((of~~  
21 ~~1971))~~".

22 NEW SECTION. **Sec. 23.** A new section is added to chapter 42.30 RCW  
23 to read as follows:

24 The governing body of a public agency shall make available to the  
25 public an agenda no later than seventy-two hours prior to holding a  
26 regular meeting. Failure to make available an agenda will require an  
27 adjournment of the regular meeting. Such agenda shall provide specific  
28 identification of the matters to be discussed. At the start of a

1 regular meeting, the governing body shall announce any changes,  
2 additions, or deletions from the published agenda.

3 NEW SECTION. **Sec. 24.** A new section is added to chapter 42.30 RCW  
4 to read as follows:

5 Minutes or records of the full proceedings of all regular and  
6 special meetings of the governing body shall be promptly prepared and  
7 the minutes or records, except any portion pertaining to executive  
8 sessions, shall be open to public inspection and copying.

9 Upon request by any person, the governing body shall tape record an  
10 executive session. The tape recordings of executive sessions shall not  
11 be open to public inspection and copying; they shall be available for  
12 the purpose of in camera review by a court in connection with an action  
13 brought alleging that an executive session has been conducted in  
14 violation of this chapter. If the court finds that a violation has  
15 occurred, the court may release the recording of those portions of the  
16 executive session constituting the violation. Agencies shall preserve  
17 the tape recordings of executive sessions for at least ninety days.

18 NEW SECTION. **Sec. 25.** RCW 42.32.030 and 1953 c 216 s 3 are  
19 each repealed.