H-1913.1

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**SUBSTITUTE HOUSE BILL 1538**

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**State of Washington 66th Legislature 2019 Regular Session**

**By** House State Government & Tribal Relations (originally sponsored by Representative Springer)

AN ACT Relating to sunshine committee recommendations; amending RCW 42.56.230 and 42.56.250; reenacting and amending RCW 42.56.270; adding a new section to chapter 42.56 RCW; and repealing RCW 39.26.030.

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

**Sec.**  RCW 42.56.230 and 2018 c 109 s 16 are each amended to read as follows:

The following personal information is exempt from public inspection and copying under this chapter, unless the agency has received consent for disclosure from the subject of the information or, in the case of a child, from the child's parent or guardian:

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

(2)(a) Personal information:

(i) For a child enrolled in licensed child care in any files maintained by the department of children, youth, and families;

(ii) For a child enrolled in a public or nonprofit program serving or pertaining to children, adolescents, or students, including but not limited to early learning or child care services, parks and recreation programs, youth development programs, and after-school programs; or

(iii) For the family members or guardians of a child who is subject to the exemption under this subsection (2) if the family member or guardian has the same last name as the child or if the family member or guardian resides at the same address as the child and disclosure of the family member's or guardian's information would result in disclosure of the personal information exempted under (a)(i) and (ii) of this subsection.

(b) Emergency contact information under this subsection (2) may be provided to appropriate authorities and medical personnel for the purpose of treating the individual during an emergency situation;

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

(4) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would: (a) Be prohibited to such persons by RCW 84.08.210, 82.32.330, 84.40.020, 84.40.340, or any ordinance authorized under RCW 35.102.145; or (b) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer;

(5) Credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial information as defined in RCW 9.35.005 including social security numbers, except when disclosure is expressly required by or governed by other law;

(6) Personal and financial information related to a small loan or any system of authorizing a small loan in RCW 31.45.093;

(7)(a) Any record used to prove identity, age, residential address, social security number, or other personal information required to apply for a driver's license or identicard.

(b) Information provided under RCW 46.20.111 that indicates that an applicant declined to register with the selective service system.

(c) Any record pertaining to a vehicle license plate, driver's license, or identicard issued under RCW 46.08.066 that, alone or in combination with any other records, may reveal the identity of an individual, or reveal that an individual is or was, performing an undercover or covert law enforcement, confidential public health work, public assistance fraud, or child support investigative activity. This exemption does not prevent the release of the total number of vehicle license plates, drivers' licenses, or identicards that, under RCW 46.08.066, an agency or department has applied for, been issued, denied, returned, destroyed, lost, and reported for misuse.

(d) Any record pertaining to a vessel registration issued under RCW 88.02.330 that, alone or in combination with any other records, may reveal the identity of an individual, or reveal that an individual is or was, performing an undercover or covert law enforcement activity. This exemption does not prevent the release of the total number of vessel registrations that, under RCW 88.02.330, an agency or department has applied for, been issued, denied, returned, destroyed, lost, and reported for misuse;

(8) All information related to individual claims resolution structured settlement agreements submitted to the board of industrial insurance appeals under RCW 51.04.063, other than final orders from the board of industrial insurance appeals.

Upon request by the legislature, the department of licensing shall provide a report to the legislature containing all of the information in subsection (7)(c) and (d) of this section that is subject to public disclosure;

(9) Voluntarily submitted information contained in a database that is part of or associated with enhanced 911 emergency communications systems, or information contained or used in emergency notification systems as provided under RCW 38.52.575 and 38.52.577; and

(10) Until the person reaches eighteen years of age, information, otherwise disclosable under chapter 29A.08 RCW, that relates to a future voter, except for the purpose of processing and delivering ballots.

**Sec.**  RCW 42.56.250 and 2018 c 109 s 17 are each amended to read as follows:

The following employment and licensing information is exempt from public inspection and copying under this chapter:

(1) Test questions, scoring keys, and other examination data used to administer a license, employment, or academic examination;

(2) All applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant;

(3) Professional growth plans (PGPs) in educator license renewals submitted through the eCert system in the office of the superintendent of public instruction;

(4)(a) The following information held by any public agency in personnel records, public employment related records, volunteer rosters, or included in any mailing list of employees or volunteers of any public agency:

(i) Residential addresses (not including city, state, and zip codes), residential telephone numbers, personal wireless telephone numbers, personal email addresses, social security numbers, driver's license numbers, identicard numbers, passport and visa numbers, and emergency contact information of employees or volunteers of a public agency((~~,~~)); and ((~~the names, dates of birth, residential addresses, residential telephone numbers, personal wireless telephone numbers, personal email addresses, social security numbers, and emergency contact information~~))

(ii) All identifying and contact information of dependents of employees or volunteers of a public agency.

(b) For purposes of this subsection (4), "employees" includes independent provider home care workers as defined in RCW 74.39A.240;

(5) Information that identifies a person who, while an agency employee: (a) Seeks advice, under an informal process established by the employing agency, in order to ascertain his or her rights in connection with a possible unfair practice under chapter 49.60 RCW against the person; and (b) requests his or her identity or any identifying information not be disclosed;

(6) Investigative records compiled by an employing agency conducting an active and ongoing investigation of a possible unfair practice under chapter 49.60 RCW or of a possible violation of other federal, state, or local laws prohibiting discrimination in employment. For purposes of this subsection, the exemption is categorical and exempts the records in their entirety while the investigation is ongoing. Once the agency has notified the complaining employee of the outcome of the investigation, the exemption no longer applies;

(7) Criminal history records checks for board staff finalist candidates conducted pursuant to RCW 43.33A.025;

(8) Except as provided in RCW 47.64.220, salary and benefit information for maritime employees collected from private employers under RCW 47.64.220(1) and described in RCW 47.64.220(2);

(9) Photographs and month and year of birth in the personnel files of employees and workers of criminal justice agencies as defined in RCW 10.97.030. The news media, as defined in RCW 5.68.010(5), shall have access to the photographs and full date of birth. For the purposes of this subsection, news media does not include any person or organization of persons in the custody of a criminal justice agency as defined in RCW 10.97.030;

(10) The global positioning system data that would indicate the location of the residence of a public employee or volunteer using the global positioning system recording device; and

(11) Until the person reaches eighteen years of age, information, otherwise disclosable under chapter 29A.08 RCW, that relates to a future voter, except for the purpose of processing and delivering ballots.

**Sec.**  RCW 42.56.270 and 2018 c 201 s 8008, 2018 c 196 s 21, and 2018 c 4 s 9 are each reenacted and amended to read as follows:

(1) The following financial, commercial, and proprietary information is exempt from disclosure under this chapter, as long as the information is clearly marked as confidential and accompanied by a particularized explanation of expected harm from disclosure at the time of submission, subject to subsection (2) of this section:

((~~(1)~~)) (a) Valuable formulae, designs, drawings, computer source code or object code, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss;

((~~(2)~~)) (b) Financial information supplied by or on behalf of a person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for ((~~(a)~~)) (i) a ferry system construction or repair contract as required by RCW 47.60.680 through 47.60.750 or ((~~(b)~~)) (ii) highway construction or improvement as required by RCW 47.28.070;

((~~(3)~~)) (c) Financial and commercial information and records supplied by private persons pertaining to export services provided under chapters 43.163 and 53.31 RCW, and by persons pertaining to export projects under RCW 43.23.035;

((~~(4)~~)) (d) Financial and commercial information and records supplied by businesses or individuals during application for loans or program services provided by chapters 43.325, 43.163, 43.160, 43.330, and 43.168 RCW, or during application for economic development loans or program services provided by any local agency;

((~~(5)~~)) (e) Financial information, business plans, examination reports, and any information produced or obtained in evaluating or examining a business and industrial development corporation organized or seeking certification under chapter 31.24 RCW;

((~~(6)~~)) (f) Financial and commercial information supplied to the state investment board by any person when the information relates to the investment of public trust or retirement funds and when disclosure would result in loss to such funds or in private loss to the providers of this information;

((~~(7)~~)) (g) Financial and valuable trade information under RCW 51.36.120;

((~~(8)~~)) (h) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the clean Washington center in applications for, or delivery of, program services under chapter 70.95H RCW;

((~~(9)~~)) (i) Financial and commercial information requested by the public stadium authority from any person or organization that leases or uses the stadium and exhibition center as defined in RCW 36.102.010;

((~~(10)(a)~~)) (j)(i) Financial information, including but not limited to account numbers and values, and other identification numbers supplied by or on behalf of a person, firm, corporation, limited liability company, partnership, or other entity related to an application for a horse racing license submitted pursuant to RCW 67.16.260(1)(b), marijuana producer, processor, or retailer license, liquor license, gambling license, or lottery retail license;

((~~(b)~~)) (ii) Internal control documents, independent auditors' reports and financial statements, and supporting documents: ((~~(i)~~)) (A) Of house-banked social card game licensees required by the gambling commission pursuant to rules adopted under chapter 9.46 RCW; or ((~~(ii)~~)) (B) submitted by tribes with an approved tribal/state compact for class III gaming;

((~~(11)~~)) (k) Proprietary data, trade secrets, or other information that is submitted by any vendor to the department of social and health services for purposes of the development, acquisition, or implementation of state purchased health care as defined in RCW 41.05.011, and that relates to: ((~~(a)~~)) (i) A vendor's unique methods of conducting business; ((~~(b)~~)) (ii) data unique to the product or services of the vendor; or ((~~(c)~~)) (iii) determining prices or rates to be charged for services((~~, submitted by any vendor to the department of social and health services or the health care authority for purposes of the development, acquisition, or implementation of state purchased health care as defined in RCW 41.05.011~~));

((~~(12)(a)~~)) (l)(i) When supplied to and in the records of the department of commerce:

((~~(i)~~)) (A) Financial and proprietary information collected from any person and provided to the department of commerce pursuant to RCW 43.330.050(8); and

((~~(ii)~~)) (B) Financial or proprietary information collected from any person and provided to the department of commerce or the office of the governor in connection with the siting, recruitment, expansion, retention, or relocation of that person's business and until a siting decision is made, identifying information of any person supplying information under this subsection and the locations being considered for siting, relocation, or expansion of a business;

((~~(b)~~)) (ii) When developed by the department of commerce based on information as described in ((~~(a)(i)~~)) (l)(i)(A) of this subsection, any work product is not exempt from disclosure;

((~~(c)~~)) (iii) For the purposes of this subsection, "siting decision" means the decision to acquire or not to acquire a site;

((~~(d)~~)) (iv) If there is no written contact for a period of sixty days to the department of commerce from a person connected with siting, recruitment, expansion, retention, or relocation of that person's business, information described in ((~~(a)(ii)~~)) (l)(i)(B) of this subsection will be available to the public under this chapter;

((~~(13)~~)) (m) Financial and proprietary information submitted to or obtained by the department of ecology or the authority created under chapter 70.95N RCW to implement chapter 70.95N RCW;

((~~(14)~~)) (n) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the life sciences discovery fund authority in applications for, or delivery of, grants under chapter 43.350 RCW, to the extent that such information, if revealed, would reasonably be expected to result in private loss to the providers of this information;

((~~(15)~~)) (o) Financial and commercial information provided as evidence to the department of licensing as required by RCW 19.112.110 or 19.112.120, except information disclosed in aggregate form that does not permit the identification of information related to individual fuel licensees;

((~~(16)~~)) (p) Any production records, mineral assessments, and trade secrets submitted by a permit holder, mine operator, or landowner to the department of natural resources under RCW 78.44.085;

((~~(17)(a)~~)) (q)(i) Farm plans developed by conservation districts, unless permission to release the farm plan is granted by the landowner or operator who requested the plan, or the farm plan is used for the application or issuance of a permit;

((~~(b)~~)) (ii) Farm plans developed under chapter 90.48 RCW and not under the federal clean water act, 33 U.S.C. Sec. 1251 et seq., are subject to RCW 42.56.610 and 90.64.190;

((~~(18)~~)) (r) Financial, commercial, operations, and technical and research information and data submitted to or obtained by a health sciences and services authority in applications for, or delivery of, grants under RCW 35.104.010 through 35.104.060, to the extent that such information, if revealed, would reasonably be expected to result in private loss to providers of this information;

((~~(19)~~)) (s) Information gathered under chapter 19.85 RCW or RCW 34.05.328 that can be identified to a particular business;

((~~(20)~~)) (t) Financial and commercial information submitted to or obtained by the University of Washington, other than information the university is required to disclose under RCW 28B.20.150, when the information relates to investments in private funds, to the extent that such information, if revealed, would reasonably be expected to result in loss to the University of Washington consolidated endowment fund or to result in private loss to the providers of this information;

((~~(21)~~)) (u) Market share data submitted by a manufacturer under RCW 70.95N.190(4);

((~~(22)~~)) (v) Financial information supplied to the department of financial institutions or to a portal under RCW 21.20.883, when filed by or on behalf of an issuer of securities for the purpose of obtaining the exemption from state securities registration for small securities offerings provided under RCW 21.20.880 or when filed by or on behalf of an investor for the purpose of purchasing such securities;

((~~(23)~~)) (w) Unaggregated or individual notices of a transfer of crude oil that is financial, proprietary, or commercial information, submitted to the department of ecology pursuant to RCW 90.56.565(1)(a), and that is in the possession of the department of ecology or any entity with which the department of ecology has shared the notice pursuant to RCW 90.56.565;

((~~(24)~~)) (x) Financial institution and retirement account information, and building security plan information, supplied to the liquor and cannabis board pursuant to RCW 69.50.325, 69.50.331, 69.50.342, and 69.50.345, when filed by or on behalf of a licensee or prospective licensee for the purpose of obtaining, maintaining, or renewing a license to produce, process, transport, or sell marijuana as allowed under chapter 69.50 RCW;

((~~(25)~~)) (y) Marijuana transport information, vehicle and driver identification data, and account numbers or unique access identifiers issued to private entities for traceability system access, submitted by an individual or business to the liquor and cannabis board under the requirements of RCW 69.50.325, 69.50.331, 69.50.342, and 69.50.345 for the purpose of marijuana product traceability. Disclosure to local, state, and federal officials is not considered public disclosure for purposes of this section;

((~~(26)~~)) (z) Financial and commercial information submitted to or obtained by the retirement board of any city that is responsible for the management of an employees' retirement system pursuant to the authority of chapter 35.39 RCW, when the information relates to investments in private funds, to the extent that such information, if revealed, would reasonably be expected to result in loss to the retirement fund or to result in private loss to the providers of this information except that ((~~(a)~~)) (i) the names and commitment amounts of the private funds in which retirement funds are invested and ((~~(b)~~)) (ii) the aggregate quarterly performance results for a retirement fund's portfolio of investments in such funds are subject to disclosure;

((~~(27)~~)) (aa) Proprietary financial, commercial, operations, and technical and research information and data submitted to or obtained by the liquor and cannabis board in applications for marijuana research licenses under RCW 69.50.372, or in reports submitted by marijuana research licensees in accordance with rules adopted by the liquor and cannabis board under RCW 69.50.372;

((~~(28)~~)) (bb) Trade secrets, technology, proprietary information, and financial considerations contained in any agreements or contracts, entered into by a licensed marijuana business under RCW 69.50.395, which may be submitted to or obtained by the state liquor and cannabis board; ((~~and~~

~~(29)~~)) (cc) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the Andy Hill cancer research endowment program in applications for, or delivery of, grants under chapter 43.348 RCW, to the extent that such information, if revealed, would reasonably be expected to result in private loss to providers of this information; ((~~and~~

~~(30)~~)) (dd) Proprietary information filed with the department of health under chapter 69.48 RCW; and

(ee) Trade secrets as defined in RCW 19.108.010.

(2)(a) If an agency receives a request for information under subsection (1) of this section that is not clearly marked as confidential and accompanied by a particularized explanation of expected harm from disclosure, the agency must notify the subject of the information of the request within five business days of receiving the request.

(b) The time that an agency has to respond to a request for information under RCW 42.56.520 is suspended until twenty business days after the agency sends notice to the subject of the information. The agency shall notify the requester of the need to notify third parties affected by the request.

(c) If the subject of the information provides the agency with a written statement of the need to keep the information confidential, including a particularized explanation of expected harm from disclosure, within fifteen business days after the agency sends notice to the subject of the information, the information is exempt from disclosure. If the agency does not receive such a statement from the subject of the information, the information must be disclosed.

(d) If the requester initiates an action to compel disclosure under this chapter, the subject of the information must be joined as a party to demonstrate the need for confidentiality.

(3) In any action under RCW 42.56.540 to enjoin disclosure of financial, commercial, or proprietary information pursuant to this section, the court may award attorneys' fees to any defendant, including a requester or agency, to the extent that the defendant prevailed in opposing an injunction.

NEW SECTION. **Sec.**  A new section is added to chapter 42.56 RCW to read as follows:

Bids, quotations, or proposals submitted to an agency for goods or services in response to a solicitation issued for such goods or services are exempt from disclosure until the agency announces the apparent successful bidder based on predetermined criteria or decides not to accept any bids, quotations, or proposals.

NEW SECTION. **Sec.**  RCW 39.26.030 (State procurement records—Disclosure) and 2012 c 224 s 4 are each repealed.

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