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HOUSE BILL 2998

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State of Washington                      57th Legislature                      2002 Regular Session

By Representatives Rockefeller, Woods, Jackley, Mielke and Lysen

Read first time 03/01/2002. Referred to Committee on Transportation.

1            AN ACT Relating to authorizing temporary permits for passenger-only  
2 vessels; amending RCW 81.84.070; reenacting and amending RCW 42.17.310;  
3 and adding a new section to chapter 81.84 RCW.

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

5            **Sec. 1.** RCW 81.84.070 and 1993 c 427 s 8 are each amended to read  
6 as follows:

7            (1) The commission may, with or without a hearing, issue temporary  
8 certificates to operate under this chapter, but only after it finds  
9 that the issuance of the temporary certificate is necessary due to an  
10 immediate and urgent need; a short-term unmet need; or a need to  
11 determine the economic viability of serving a potential route on a  
12 permanent basis prior to filing for a certificate of convenience and  
13 necessity; and is otherwise consistent with the public interest.  
14 ((The))

15            (a) A certificate for immediate and urgent need or to meet a short-  
16 term unmet need may be issued for a period of up to one hundred eighty  
17 days.

18            (b) A certificate for determining the economic viability of serving  
19 a potential route may be issued for a period of up to two years.

1       (2) The commission may (~~prescribe~~) adopt such special rules and  
2 impose special terms and conditions on the granting of the certificate  
3 as in its judgment are reasonable and necessary in carrying out this  
4 chapter.

5       (3) The commission shall collect a filing fee, not to exceed two  
6 hundred dollars, for each application for a temporary certificate.

7       (4) The commission shall not issue a temporary certificate to  
8 operate on a route for which a certificate has been issued (~~or for~~  
9 ~~which an application by another commercial ferry operator is pending~~),  
10 except with the concurrence of the existing certificate holder or upon  
11 a finding by the commission that the existing certificate holder is not  
12 providing service to the satisfaction of the commission.

13       **NEW SECTION.**   **Sec. 2.** A new section is added to chapter 81.84 RCW  
14 to read as follows:

15       Records under RCW 81.84.070 for passenger-only vessels, subject to  
16 chapter 42.17 RCW, filed with the commission or the attorney general  
17 from any person that contain valuable commercial information, including  
18 trade secrets or confidential marketing, cost, or financial  
19 information, or customer-specific usage and network configuration and  
20 design information, are not subject to inspection or copying under  
21 chapter 42.17 RCW: (1) Until notice to the person or persons directly  
22 affected has been given; and (2) if, within ten days of the notice, the  
23 person has obtained a superior court order protecting the records as  
24 confidential.   The court shall determine that the records are  
25 confidential and not subject to inspection and copying if disclosure  
26 would result in private loss, including an unfair competitive  
27 disadvantage.   When providing information to the commission or the  
28 attorney general, a person shall designate which records or portions of  
29 records contain valuable commercial information.   This section does not  
30 prevent the use of protective orders by the commission governing  
31 disclosure of proprietary or confidential information in contested  
32 proceedings.

33       **Sec. 3.** RCW 42.17.310 and 2001 c 278 s 1, 2001 c 98 s 2, and 2001  
34 c 70 s 1 are each reenacted and amended to read as follows:

35       (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 84.08.210, 82.32.330, 84.40.020, or 84.40.340 or (ii) violate the  
11 taxpayer's right to privacy or result in unfair competitive  
12 disadvantage to the taxpayer.

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

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

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

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

38 (h) Valuable formulae, designs, drawings, computer source code or  
39 object code, and research data obtained by any agency within five years

1 of the request for disclosure when disclosure would produce private  
2 gain and public loss.

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

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

11 (k) Records, maps, or other information identifying the location of  
12 archaeological sites in order to avoid the looting or depredation of  
13 such sites.

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

17 (m) Financial information supplied by or on behalf of a person,  
18 firm, or corporation for the purpose of qualifying to submit a bid or  
19 proposal for (i) a ferry system construction or repair contract as  
20 required by RCW 47.60.680 through 47.60.750 or (ii) highway  
21 construction or improvement as required by RCW 47.28.070.

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

26 (o) Financial and commercial information and records supplied by  
27 private persons pertaining to export services provided pursuant to  
28 chapter 43.163 RCW and chapter 53.31 RCW, and by persons pertaining to  
29 export projects pursuant to RCW 43.23.035.

30 (p) Financial disclosures filed by private vocational schools under  
31 chapters 28B.85 and 28C.10 RCW.

32 (q) Records filed with the utilities and transportation commission  
33 or attorney general under RCW 80.04.095 or section 2 of this act that  
34 a court has determined are confidential under RCW 80.04.095 or section  
35 2 of this act.

36 (r) Financial and commercial information and records supplied by  
37 businesses or individuals during application for loans or program  
38 services provided by chapters 43.163, 43.160, 43.330, and 43.168 RCW,

1 or during application for economic development loans or program  
2 services provided by any local agency.

3 (s) Membership lists or lists of members or owners of interests of  
4 units in timeshare projects, subdivisions, camping resorts,  
5 condominiums, land developments, or common-interest communities  
6 affiliated with such projects, regulated by the department of  
7 licensing, in the files or possession of the department.

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

11 (u) The residential addresses or residential telephone numbers of  
12 employees or volunteers of a public agency which are held by any public  
13 agency in personnel records, public employment related records, or  
14 volunteer rosters, or are included in any mailing list of employees or  
15 volunteers of any public agency.

16 (v) The residential addresses and residential telephone numbers of  
17 the customers of a public utility contained in the records or lists  
18 held by the public utility of which they are customers, except that  
19 this information may be released to the division of child support or  
20 the agency or firm providing child support enforcement for another  
21 state under Title IV-D of the federal social security act, for the  
22 establishment, enforcement, or modification of a support order.

23 (w)(i) The federal social security number of individuals governed  
24 under chapter 18.130 RCW maintained in the files of the department of  
25 health, except this exemption does not apply to requests made directly  
26 to the department from federal, state, and local agencies of  
27 government, and national and state licensing, credentialing,  
28 investigatory, disciplinary, and examination organizations; (ii) the  
29 current residential address and current residential telephone number of  
30 a health care provider governed under chapter 18.130 RCW maintained in  
31 the files of the department, if the provider requests that this  
32 information be withheld from public inspection and copying, and  
33 provides to the department an accurate alternate or business address  
34 and business telephone number. On or after January 1, 1995, the  
35 current residential address and residential telephone number of a  
36 health care provider governed under RCW 18.130.040 maintained in the  
37 files of the department shall automatically be withheld from public  
38 inspection and copying unless the provider specifically requests the

1 information be released, and except as provided for under RCW  
2 42.17.260(9).

3 (x) Information obtained by the board of pharmacy as provided in  
4 RCW 69.45.090.

5 (y) Information obtained by the board of pharmacy or the department  
6 of health and its representatives as provided in RCW 69.41.044,  
7 69.41.280, and 18.64.420.

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

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

17 (bb) Financial and valuable trade information under RCW 51.36.120.

18 (cc) Client records maintained by an agency that is a domestic  
19 violence program as defined in RCW 70.123.020 or 70.123.075 or a rape  
20 crisis center as defined in RCW 70.125.030.

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

27 (ee) Investigative records compiled by an employing agency  
28 conducting a current investigation of a possible unfair practice under  
29 chapter 49.60 RCW or of a possible violation of other federal, state,  
30 or local laws prohibiting discrimination in employment.

31 (ff) Business related information protected from public inspection  
32 and copying under RCW 15.86.110.

33 (gg) Financial, commercial, operations, and technical and research  
34 information and data submitted to or obtained by the clean Washington  
35 center in applications for, or delivery of, program services under  
36 chapter 70.95H RCW.

37 (hh) Information and documents created specifically for, and  
38 collected and maintained by a quality improvement committee pursuant to  
39 RCW 43.70.510 or 70.41.200, or by a peer review committee under RCW

1 4.24.250, regardless of which agency is in possession of the  
2 information and documents.

3 (ii) Personal information in files maintained in a data base  
4 created under RCW 43.07.360.

5 (jj) Financial and commercial information requested by the public  
6 stadium authority from any person or organization that leases or uses  
7 the stadium and exhibition center as defined in RCW 36.102.010.

8 (kk) Names of individuals residing in emergency or transitional  
9 housing that are furnished to the department of revenue or a county  
10 assessor in order to substantiate a claim for property tax exemption  
11 under RCW 84.36.043.

12 (ll) The names, residential addresses, residential telephone  
13 numbers, and other individually identifiable records held by an agency  
14 in relation to a vanpool, carpool, or other ride-sharing program or  
15 service. However, these records may be disclosed to other persons who  
16 apply for ride-matching services and who need that information in order  
17 to identify potential riders or drivers with whom to share rides.

18 (mm) The personally identifying information of current or former  
19 participants or applicants in a paratransit or other transit service  
20 operated for the benefit of persons with disabilities or elderly  
21 persons.

22 (nn) The personally identifying information of persons who acquire  
23 and use transit passes and other fare payment media including, but not  
24 limited to, stored value smart cards and magnetic strip cards, except  
25 that an agency may disclose this information to a person, employer,  
26 educational institution, or other entity that is responsible, in whole  
27 or in part, for payment of the cost of acquiring or using a transit  
28 pass or other fare payment media, or to the news media when reporting  
29 on public transportation or public safety. This information may also  
30 be disclosed at the agency's discretion to governmental agencies or  
31 groups concerned with public transportation or public safety.

32 (oo) Proprietary financial and commercial information that the  
33 submitting entity, with review by the department of health,  
34 specifically identifies at the time it is submitted and that is  
35 provided to or obtained by the department of health in connection with  
36 an application for, or the supervision of, an antitrust exemption  
37 sought by the submitting entity under RCW 43.72.310. If a request for  
38 such information is received, the submitting entity must be notified of  
39 the request. Within ten business days of receipt of the notice, the

1 submitting entity shall provide a written statement of the continuing  
2 need for confidentiality, which shall be provided to the requester.  
3 Upon receipt of such notice, the department of health shall continue to  
4 treat information designated under this section as exempt from  
5 disclosure. If the requester initiates an action to compel disclosure  
6 under this chapter, the submitting entity must be joined as a party to  
7 demonstrate the continuing need for confidentiality.

8 (pp) Records maintained by the board of industrial insurance  
9 appeals that are related to appeals of crime victims' compensation  
10 claims filed with the board under RCW 7.68.110.

11 (qq) Financial and commercial information supplied by or on behalf  
12 of a person, firm, corporation, or entity under chapter 28B.95 RCW  
13 relating to the purchase or sale of tuition units and contracts for the  
14 purchase of multiple tuition units.

15 (rr) Any records of investigative reports prepared by any state,  
16 county, municipal, or other law enforcement agency pertaining to sex  
17 offenses contained in chapter 9A.44 RCW or sexually violent offenses as  
18 defined in RCW 71.09.020, which have been transferred to the Washington  
19 association of sheriffs and police chiefs for permanent electronic  
20 retention and retrieval pursuant to RCW 40.14.070(2)(b).

21 (ss) Credit card numbers, debit card numbers, electronic check  
22 numbers, card expiration dates, or bank or other financial account  
23 numbers supplied to an agency for the purpose of electronic transfer of  
24 funds, except when disclosure is expressly required by law.

25 (tt) Financial information, including but not limited to account  
26 numbers and values, and other identification numbers supplied by or on  
27 behalf of a person, firm, corporation, limited liability company,  
28 partnership, or other entity related to an application for a liquor  
29 license, gambling license, or lottery retail license.

30 (uu) Records maintained by the employment security department and  
31 subject to chapter 50.13 RCW if provided to another individual or  
32 organization for operational, research, or evaluation purposes.

33 (vv) Individually identifiable information received by the work  
34 force training and education coordinating board for research or  
35 evaluation purposes.

36 (ww) Those portions of records containing specific and unique  
37 vulnerability assessments or specific and unique response plans, either  
38 of which is intended to prevent or mitigate criminal terrorist acts as



1 defined in RCW 70.74.285, the public disclosure of which would have a  
2 substantial likelihood of threatening public safety.

3 (xx) Commercial fishing catch data from logbooks required to be  
4 provided to the department of fish and wildlife under RCW 77.12.047,  
5 when the data identifies specific catch location, timing, or  
6 methodology and the release of which would result in unfair competitive  
7 disadvantage to the commercial fisher providing the catch data.  
8 However, this information may be released to government agencies  
9 concerned with the management of fish and wildlife resources.

10 (yy) Sensitive wildlife data obtained by the department of fish and  
11 wildlife. However, sensitive wildlife data may be released to  
12 government agencies concerned with the management of fish and wildlife  
13 resources. Sensitive wildlife data includes:

14 (i) The nesting sites or specific locations of endangered species  
15 designated under RCW 77.12.020, or threatened or sensitive species  
16 classified by rule of the department of fish and wildlife;

17 (ii) Radio frequencies used in, or locational data generated by,  
18 telemetry studies; or

19 (iii) Other location data that could compromise the viability of a  
20 specific fish or wildlife population, and where at least one of the  
21 following criteria are met:

22 (A) The species has a known commercial or black market value;

23 (B) There is a history of malicious take of that species; or

24 (C) There is a known demand to visit, take, or disturb, and the  
25 species behavior or ecology renders it especially vulnerable or the  
26 species has an extremely limited distribution and concentration.

27 (zz) The personally identifying information of persons who acquire  
28 recreational licenses under RCW 77.32.010 or commercial licenses under  
29 chapter 77.65 or 77.70 RCW, except name, address of contact used by the  
30 department, and type of license, endorsement, or tag. However, the  
31 department of fish and wildlife may disclose personally identifying  
32 information to:

33 (i) Government agencies concerned with the management of fish and  
34 wildlife resources;

35 (ii) The department of social and health services, child support  
36 division, and to the department of licensing in order to implement RCW  
37 77.32.014 and 46.20.291; and

38 (iii) Law enforcement agencies for the purpose of firearm  
39 possession enforcement under RCW 9.41.040.

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

9       (3) Inspection or copying of any specific records exempt under the  
10 provisions of this section may be permitted if the superior court in  
11 the county in which the record is maintained finds, after a hearing  
12 with notice thereof to every person in interest and the agency, that  
13 the exemption of such records is clearly unnecessary to protect any  
14 individual's right of privacy or any vital governmental function.

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

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