

2 **ESSB 5597** - H COMM AMD

3 By Committee on Government Operations

4 ADOPTED AS AMENDED 4/7/95

5 Strike everything after the enacting clause and insert the  
6 following:

7 "**Sec. 1.** RCW 42.17.260 and 1992 c 139 s 3 are each amended to read  
8 as follows:

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

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

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

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

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

34 (c) Administrative staff manuals and instructions to staff that  
35 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 (4) A local agency need not maintain such an index, if to do so  
14 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 (5) Each state agency shall, by rule, establish and implement a  
21 system of indexing for the identification and location of the following  
22 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;

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

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

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

36 Rules establishing systems of indexing shall include, but not be  
37 limited to, requirements for the form and content of the index, its  
38 location and availability to the public, and the schedule for revising  
39 or updating the index. State agencies that have maintained indexes for

1 records issued before July 1, 1990, shall continue to make such indexes  
2 available for public inspection and copying. Information in such  
3 indexes may be incorporated into indexes prepared pursuant to this  
4 subsection. State agencies may satisfy the requirements of this  
5 subsection by making available to the public indexes prepared by other  
6 parties but actually used by the agency in its operations. State  
7 agencies shall make indexes available for public inspection and  
8 copying. State agencies may charge a fee to cover the actual costs of  
9 providing individual mailed copies of indexes.

10 (6) A public record may be relied on, used, or cited as precedent  
11 by an agency against a party other than an agency and it may be invoked  
12 by the agency for any other purpose only if«

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

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

16 (7) Each agency shall establish, maintain, and make available for  
17 public inspection and copying a statement of the actual per page cost  
18 or other costs, if any, that it charges for providing photocopies of  
19 public records and a statement of the factors and manner used to  
20 determine the actual per page cost or other costs, if any.

21 (a) In determining the actual per page cost for providing  
22 photocopies of public records, an agency may include all costs directly  
23 incident to copying such public records including the actual cost of  
24 the paper and the per page cost for use of agency copying equipment.  
25 In determining other actual costs for providing photocopies of public  
26 records, an agency may include all costs directly incident to shipping  
27 such public records, including the cost of postage or delivery charges  
28 and the cost of any container or envelope used.

29 (b) In determining the actual per page cost or other costs for  
30 providing copies of public records, an agency may not include staff  
31 salaries, benefits, or other general administrative or overhead  
32 charges, unless those costs are directly related to the actual cost of  
33 copying the public records. Staff time to copy and mail the requested  
34 public records may be included in an agency's costs.

35 (8) An agency need not calculate the actual per page cost or other  
36 costs it charges for providing photocopies of public records if to do  
37 so would be unduly burdensome, but in that event: The agency may not  
38 charge in excess of fifteen cents per page for photocopies of public  
39 records or for the use of agency equipment to photocopy public records

1 and the actual postage or delivery charge and the cost of any container  
2 or envelope used to mail the public records to the requestor.

3 (9) This chapter shall not be construed as giving authority to any  
4 agency to give, sell or provide access to lists of individuals  
5 requested for commercial purposes, and agencies shall not do so unless  
6 specifically authorized or directed by law: PROVIDED, HOWEVER, That  
7 lists of applicants for professional licenses and of professional  
8 licensees shall be made available to those professional associations or  
9 educational organizations recognized by their professional licensing or  
10 examination board, upon payment of a reasonable charge therefor:  
11 PROVIDED FURTHER, That such recognition may be refused only for a good  
12 cause pursuant to a hearing under the provisions of chapter 34.05 RCW,  
13 the Administrative Procedure Act.

14 **Sec. 2.** RCW 42.17.300 and 1973 c 1 s 30 are each amended to read  
15 as follows:

16 No fee shall be charged for the inspection of public records. No  
17 fee shall be charged for locating public documents and making them  
18 available for copying. Agencies may impose a reasonable charge for  
19 providing copies of public records and for the use by any person of  
20 agency equipment to copy public records, which charges shall not exceed  
21 the amount necessary to reimburse the agency for its actual costs  
22 directly incident to such copying. Agency charges for photocopies  
23 shall be imposed in accordance with the actual per page cost or other  
24 costs established and published by the agency. In no event may an  
25 agency charge a per page cost greater than the actual per page cost as  
26 established and published by the agency. To the extent the agency has  
27 not determined the actual per page cost for photocopies of public  
28 records, the agency may not charge in excess of fifteen cents per page.

29 NEW SECTION. **Sec. 3.** A new section is added to chapter 42.17 RCW  
30 under the subchapter heading "public records" to read as follows:

31 The provisions of RCW 42.17.260 (7) and (8) and 42.17.300 that  
32 establish or allow agencies to establish the costs charged for  
33 photocopies of public records do not supersede other statutory  
34 provisions, other than in this chapter, authorizing or governing fees  
35 for copying public records."

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4 On page 1, line 1 of the title, after "records;" strike the  
5 remainder of the title and insert "amending RCW 42.17.260 and  
6 42.17.300; and adding a new section to chapter 42.17 RCW."

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