

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 2876

Chapter 139, Laws of 1992

52nd Legislature
1992 Regular Session

PUBLIC RECORDS DISCLOSURE--REVISIONS

EFFECTIVE DATE: 6/11/92

Passed by the House March 10, 1992
Yeas 97 Nays 0

JOE KING
**Speaker of the
House of Representatives**

Passed by the Senate March 6, 1992
Yeas 49 Nays 0

JOEL PRITCHARD
President of the Senate

Approved March 31, 1992

BOOTH GARDNER
Governor of the State of Washington

CERTIFICATE

I, Alan Thompson, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is ENGROSSED SUBSTITUTE HOUSE BILL 2876 as passed by the House of Representatives and the Senate on the dates hereon set forth.

ALAN THOMPSON
Chief Clerk

FILED

March 31, 1992 - 12:40 p.m.

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 2876

AS AMENDED BY THE SENATE

Passed Legislature - 1992 Regular Session

State of Washington 52nd Legislature 1992 Regular Session

By House Committee on State Government (originally sponsored by
Representatives Anderson, McLean, R. Fisher, Pruitt, Bowman and Basich)

Read first time 02/07/92.

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, and 42.17.340; reenacting
3 and amending RCW 42.17.310; adding new sections to chapter 42.17 RCW;
4 and creating a new section.

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

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

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

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

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

10 (4) "Treasurer" and "deputy treasurer" mean the individuals
11 appointed by a candidate or political committee, pursuant to RCW
12 42.17.050, to perform the duties specified in that section.

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

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

17 (b) Announces publicly or files for office.

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

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

25 (8) "Compensation" unless the context requires a narrower meaning,
26 includes payment in any form for real or personal property or services
27 of any kind: PROVIDED, That for the purpose of compliance with RCW
28 42.17.241, the term "compensation" shall not include per diem
29 allowances or other payments made by a governmental entity to reimburse

1 a public official for expenses incurred while the official is engaged
2 in the official business of the governmental entity.

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

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

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

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

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

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

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

27 (16) "Gift," for the purposes of RCW 42.17.170 and 42.17.2415,
28 means a rendering of anything of value in return for which reasonable
29 consideration is not given and received and includes a rendering of
30 money, property, services, discount, loan forgiveness, payment of

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

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

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

15 (c) A contribution that is required to be reported under RCW
16 42.17.090 or 42.17.243;

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

24 (e) A gift that is not used and that, within thirty days after
25 receipt, is returned to the donor or delivered to a charitable
26 organization. However, this exclusion from the definition does not
27 apply if the recipient of the gift delivers the gift to a charitable
28 organization and claims the delivery as a charitable contribution for
29 tax purposes;

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

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

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

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

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

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

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

27 (22) "Person" includes an individual, partnership, joint venture,
28 public or private corporation, association, federal, state, or local
29 governmental entity or agency however constituted, candidate,
30 committee, political committee, political party, executive committee

1 thereof, or any other organization or group of persons, however
2 organized.

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

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

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

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

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

25 (28) "Surplus funds" mean, in the case of a political committee or
26 candidate, the balance of contributions that remain in the possession
27 or control of that committee or candidate subsequent to the election
28 for which the contributions were received, and that are in excess of
29 the amount necessary to pay remaining debts incurred by the committee
30 or candidate prior to that election. In the case of a continuing

1 political committee, "surplus funds" mean those contributions remaining
2 in the possession or control of the committee that are in excess of the
3 amount necessary to pay all remaining debts when it makes its final
4 report under RCW 42.17.065.

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

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

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

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

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

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

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

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

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

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

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

28 (d) Planning policies and goals, and interim and final planning
29 decisions;

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

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

11 ~~((3))~~ (4) A local agency need not maintain such an index, if to
12 do so would be unduly burdensome, but it shall in that event:

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

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

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

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

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

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

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

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

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

18 ~~((+5))~~ (6) A public record may be relied on, used, or cited as
19 precedent by an agency against a party other than an agency and it may
20 be invoked by the agency for any other purpose only if--

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

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

24 ~~((+6))~~ (7) This chapter shall not be construed as giving authority
25 to any agency to give, sell or provide access to lists of individuals
26 requested for commercial purposes, and agencies shall not do so unless
27 specifically authorized or directed by law: PROVIDED, HOWEVER, That
28 lists of applicants for professional licenses and of professional
29 licensees shall be made available to those professional associations or
30 educational organizations recognized by their professional licensing or

1 examination board, upon payment of a reasonable charge therefor:
2 PROVIDED FURTHER, That such recognition may be refused only for a good
3 cause pursuant to a hearing under the provisions of chapter 34.05 RCW,
4 the Administrative Procedure Act.

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

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

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

20 **Sec. 5.** RCW 42.17.310 and 1991 c 301 s 13, 1991 c 87 s 13, and
21 1991 c 23 s 10 are each reenacted and amended to read as follows:

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

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

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

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

6 (d) Specific intelligence information and specific investigative
7 records compiled by investigative, law enforcement, and penology
8 agencies, and state agencies vested with the responsibility to
9 discipline members of any profession, the nondisclosure of which is
10 essential to effective law enforcement or for the protection of any
11 person's right to privacy.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (s) Membership lists or lists of members or owners of interests of
10 units in timeshare projects, subdivisions, camping resorts,
11 condominiums, land developments, or common-interest communities
12 affiliated with such projects, regulated by the department of
13 licensing, in the files or possession of the department.

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

17 (u) The residential addresses and residential telephone numbers of
18 employees or volunteers of a public agency which are held by the agency
19 in personnel records, employment or volunteer rosters, or mailing lists
20 of employees or volunteers.

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

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

26 (x) Information obtained by the board of pharmacy or the department
27 of health and its representatives as provided in RCW 69.41.044,
28 69.41.280, and 18.64.420.

29 (y) Financial information, business plans, examination reports, and
30 any information produced or obtained in evaluating or examining a

1 business and industrial development corporation organized or seeking
2 certification under chapter 31.24 RCW.

3 (z) Financial and commercial information supplied to the state
4 investment board by any person when the information relates to the
5 investment of public trust or retirement funds and when disclosure
6 would result in loss to such funds or in private loss to the providers
7 of this information.

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

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

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

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

26 (3) Inspection or copying of any specific records exempt under the
27 provisions of this section may be permitted if the superior court in
28 the county in which the record is maintained finds, after a hearing
29 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. Additional time
15 required to respond to a request may be based upon the need to clarify
16 the intent of the request, to locate and assemble the information
17 requested, to notify third persons or agencies affected by the request,
18 or to determine whether any of the information requested is exempt and
19 that a denial should be made as to all or part of the request. In
20 acknowledging receipt of a public record request that is unclear, an
21 agency may ask the requestor to clarify what information the requestor
22 is seeking. If the requestor fails to clarify the request, the agency
23 need not respond to it. Denials of requests must be accompanied by a
24 written statement of the specific reasons therefor. Agencies shall
25 establish mechanisms for the most prompt possible review of decisions
26 denying inspection, and such review shall be deemed completed at the
27 end of the second business day following the denial of inspection and
28 shall constitute final agency action for the purposes of judicial
29 review.

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

3 The examination of any specific public record may be enjoined if,
4 upon motion and affidavit by an agency or its representative or a
5 person who is named in the record or to whom the record specifically
6 pertains, the superior court for the county in which the movant resides
7 or in which the record is maintained, finds that such examination would
8 clearly not be in the public interest and would substantially and
9 irreparably damage any person, or would substantially and irreparably
10 damage vital governmental functions. An agency has the option of
11 notifying persons named in the record or to whom a record specifically
12 pertains, that release of a record has been requested. However, this
13 option does not exist where the agency is required by law to provide
14 such notice.

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

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

26 (2) Upon the motion of any person who believes that an agency has
27 not made a reasonable estimate of the time that the agency requires to
28 respond to a public record request, the superior court in the county in
29 which a record is maintained may require the responsible agency to show

1 that the estimate it provided is reasonable. The burden of proof shall
2 be on the agency to show that the estimate it provided is reasonable.

3 (3) Judicial review of all agency actions taken or challenged under
4 RCW 42.17.250 through 42.17.320 shall be de novo. Courts shall take
5 into account the policy of this chapter that free and open examination
6 of public records is in the public interest, even though such
7 examination may cause inconvenience or embarrassment to public
8 officials or others. Courts may examine any record in camera in any
9 proceeding brought under this section. The court may conduct a hearing
10 based solely on affidavits.

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

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

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

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

27 Whenever a state agency concludes that a public record is exempt
28 from disclosure and denies a person opportunity to inspect or copy a

1 public record for that reason, the person may request the attorney
2 general to review the matter. The attorney general shall provide the
3 person with his or her written opinion on whether the record is exempt.

4 Nothing in this section shall be deemed to establish an attorney-
5 client relationship between the attorney general and a person making a
6 request under this section.

7 NEW SECTION. **Sec. 11.** 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. 12.** 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.

25 The legislature finds that there is a large and growing number of
26 exemptions of records from public disclosure. The legislature finds
27 that certain types of information are treated inconsistently under
28 current disclosure laws. The legislature further finds that there may

1 be opportunities for consolidation of many individual record exemptions
2 into fewer, broader exemptions. There is a need to thoroughly review
3 both the content and organization of such exemptions.

4 The legislature recognizes that there is legal uncertainty
5 regarding the status of investigative records under the open records
6 law. It is important that clear statutory direction be provided in
7 this area to ensure reasonable access to such records while protecting
8 the integrity of the investigatory process and privacy interests.

9 The legislature also finds that certain entities that may have
10 substantial impacts on public policy are not covered by the open public
11 meetings act. Such entities include certain boards, councils,
12 committees, or other groups of similar nomenclature that serve in an
13 advisory capacity. To ensure that public agencies comply with the
14 intent of the open public meetings act, it is important for the
15 legislature to determine which categories of such groups should be
16 covered by the open public meetings act.

17 The legislature shall investigate special meetings and notice
18 procedures, emergency meetings, executive sessions and matters that may
19 be properly addressed in an executive session, publication of and
20 provision to the public a regular meeting agenda, and penalties related
21 to failure to comply with open meeting violations.

22 Finally, while the open public meetings act authorizes agencies to
23 use closed executive sessions to consider certain matters specified in
24 the act, agencies when in closed executive session are required to
25 restrict their consideration to those matters. The act's provisions
26 may need to be amended to prevent or deter public agencies from
27 considering matters in closed executive session that they are not
28 entitled to consider.

29 The joint select committee on open government shall examine these
30 five issues and shall report back to the legislature with any

1 recommendations for statutory changes by January 1, 1993. In examining
2 these issues, the committee shall provide ample opportunity for input
3 from all interested parties.

Passed the House March 10, 1992.

Passed the Senate March 6, 1992.

Approved by the Governor March 31, 1992.

Filed in Office of Secretary of State March 31, 1992.