

# SENATE BILL REPORT

## ESHB 1569

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As Reported By Senate Committee On:  
Government Operations & Elections, February 24, 2004

**Title:** An act relating to the confidentiality of information supplied by a bidder on a public bid.

**Brief Description:** Excluding certain information supplied by a bidder on a public bid from public disclosure.

**Sponsors:** House Committee on State Government (originally sponsored by Representatives Armstrong, Haigh, Nixon, Miloscia, Tom, McDermott, Shabro and Benson).

**Brief History:**

**Committee Activity:** Government Operations & Elections: 4/1/03, 4/4/03 [DP, DNP]; 2/24/04 [DPA].

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### SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

**Majority Report:** Do pass as amended.

Signed by Senators Roach, Chair; Stevens, Vice Chair; Berkey, Fairley, Horn, Kastama and McCaslin.

**Staff:** Diane Smith (786-7410)

**Background:** The open public records law was approved by state voters in 1972 as part of Initiative Measure No. 276. All public records of state agencies and local governments are open to public inspection and copying unless a record is expressly excluded by law. This disclosure requirement is liberally construed and any exception is narrowly construed.

A person's right to privacy is invaded or violated only if disclosure of information about the person: (1) would be highly offensive to a reasonable person; and (2) is not of legitimate concern to the public. Beyond that, only those records expressly identified are considered exempt from disclosure.

An exemption from disclosure currently exists for trade secrets or other proprietary information submitted by a bidder, offeror, or contractor relating to an alternative public works project bid (39.10.100 RCW). Financial information supplied for the purpose of qualifying to submit a bid or proposal for a ferry system construction or repair contract or a highway construction or improvement project is also exempt from disclosure (42.17.310 RCW).

**Summary of Amended Bill:** The bidder may request that the bidder's supporting bid documents be placed in escrow with a banking institution for the term of the contract or until the bidder releases escrow. The only other access to the documents in escrow is by court order. The supporting bid documents include background materials but do not include any document required to be submitted as part of the bid by the state or municipality.

**Amended Bill Compared to Substitute Bill:** The original bill required the public entity to decide what bidding information would be exempt from public disclosure. No escrow provisions were included.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** The striking amendment is agreed among the interested parties. It protects the bidding contractor from other, competing contractors who may convert the bidder's supporting documents to the competitor's own use. The state or municipality does not have custody of the documents so is not able to give access to any protected material.

**Testimony Against:** None.

**Testified:** PRO: Dave Ducharme, Utility Contracts Assn. of WA; Rowland Thompson, Allied Daily Newspapers.