

2SHB 1758 - H AMD 257

By Representative Moeller

FAILED 03/15/2005

1 On page 3, after line 38, insert the following:

2 "Sec. 5. RCW 42.17.310 and 2003 c 277 s 3 and 2003 c 124 s 1 are  
3 each reenacted and amended to read as follows:

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

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

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

11 (c) Information required of any taxpayer in connection with the  
12 assessment or collection of any tax if the disclosure of the  
13 information to other persons would (i) be prohibited to such persons by  
14 RCW 84.08.210, 82.32.330, 84.40.020, or 84.40.340 or (ii) violate the  
15 taxpayer's right to privacy or result in unfair competitive  
16 disadvantage to the taxpayer.

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

23 (e) Information revealing the identity of persons who are witnesses  
24 to or victims of crime or who file complaints with investigative, law  
25 enforcement, or penology agencies, other than the public disclosure  
26 commission, if disclosure would endanger any person's life, physical  
27 safety, or property. If at the time a complaint is filed the  
28 complainant, victim or witness indicates a desire for disclosure or  
29 nondisclosure, such desire shall govern. However, all complaints filed

1 with the public disclosure commission about any elected official or  
2 candidate for public office must be made in writing and signed by the  
3 complainant under oath.

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

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

13 (h) Valuable formulae, designs, drawings, computer source code or  
14 object code, and research data obtained by any agency within five years  
15 of the request for disclosure when disclosure would produce private  
16 gain and public loss.

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

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

25 (k) Records, maps, or other information identifying the location of  
26 archaeological sites in order to avoid the looting or depredation of  
27 such sites.

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

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

36 (n) Railroad company contracts filed prior to July 28, 1991, with  
37 the utilities and transportation commission under RCW 81.34.070, except

1 that the summaries of the contracts are open to public inspection and  
2 copying as otherwise provided by this chapter.

3 (o) Financial and commercial information and records supplied by  
4 private persons pertaining to export services provided pursuant to  
5 chapter 43.163 RCW and chapter 53.31 RCW, and by persons pertaining to  
6 export projects pursuant to RCW 43.23.035.

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

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

12 (r) Financial and commercial information and records supplied by  
13 businesses or individuals during application for loans or program  
14 services provided by chapters 43.163, 43.160, 43.330, and 43.168 RCW,  
15 or during application for economic development loans or program  
16 services provided by any local agency.

17 (s) Membership lists or lists of members or owners of interests of  
18 units in timeshare projects, subdivisions, camping resorts,  
19 condominiums, land developments, or common-interest communities  
20 affiliated with such projects, regulated by the department of  
21 licensing, in the files or possession of the department.

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

25 (u) The residential addresses or residential telephone numbers of  
26 employees or volunteers of a public agency which are held by any public  
27 agency in personnel records, public employment related records, or  
28 volunteer rosters, or are included in any mailing list of employees or  
29 volunteers of any public agency.

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

37 (w)(i) The federal social security number of individuals governed  
38 under chapter 18.130 RCW maintained in the files of the department of

1 health, except this exemption does not apply to requests made directly  
2 to the department from federal, state, and local agencies of  
3 government, and national and state licensing, credentialing,  
4 investigatory, disciplinary, and examination organizations; (ii) the  
5 current residential address and current residential telephone number of  
6 a health care provider governed under chapter 18.130 RCW maintained in  
7 the files of the department, if the provider requests that this  
8 information be withheld from public inspection and copying, and  
9 provides to the department an accurate alternate or business address  
10 and business telephone number. On or after January 1, 1995, the  
11 current residential address and residential telephone number of a  
12 health care provider governed under RCW 18.130.040 maintained in the  
13 files of the department shall automatically be withheld from public  
14 inspection and copying unless the provider specifically requests the  
15 information be released, and except as provided for under RCW  
16 42.17.260(9).

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

19 (y) Information obtained by the board of pharmacy or the department  
20 of health and its representatives as provided in RCW 69.41.044,  
21 69.41.280, and 18.64.420.

22 (z) Financial information, business plans, examination reports, and  
23 any information produced or obtained in evaluating or examining a  
24 business and industrial development corporation organized or seeking  
25 certification under chapter 31.24 RCW.

26 (aa) Financial and commercial information supplied to the state  
27 investment board by any person when the information relates to the  
28 investment of public trust or retirement funds and when disclosure  
29 would result in loss to such funds or in private loss to the providers  
30 of this information.

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

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

35 (dd) Information that identifies a person who, while an agency  
36 employee: (i) Seeks advice, under an informal process established by  
37 the employing agency, in order to ascertain his or her rights in

1 connection with a possible unfair practice under chapter 49.60 RCW  
2 against the person; and (ii) requests his or her identity or any  
3 identifying information not be disclosed.

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

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

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

14 (hh) Information and documents created specifically for, and  
15 collected and maintained by a quality improvement committee pursuant to  
16 RCW 43.70.510 or 70.41.200, or by a peer review committee under RCW  
17 4.24.250, regardless of which agency is in possession of the  
18 information and documents.

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

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

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

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

34 (mm) The personally identifying information of current or former  
35 participants or applicants in a paratransit or other transit service  
36 operated for the benefit of persons with disabilities or elderly  
37 persons.

1 (nn) The personally identifying information of persons who acquire  
2 and use transit passes and other fare payment media including, but not  
3 limited to, stored value smart cards and magnetic strip cards, except  
4 that an agency may disclose this information to a person, employer,  
5 educational institution, or other entity that is responsible, in whole  
6 or in part, for payment of the cost of acquiring or using a transit  
7 pass or other fare payment media, or to the news media when reporting  
8 on public transportation or public safety. This information may also  
9 be disclosed at the agency's discretion to governmental agencies or  
10 groups concerned with public transportation or public safety.

11 (oo) Proprietary financial and commercial information that the  
12 submitting entity, with review by the department of health,  
13 specifically identifies at the time it is submitted and that is  
14 provided to or obtained by the department of health in connection with  
15 an application for, or the supervision of, an antitrust exemption  
16 sought by the submitting entity under RCW 43.72.310. If a request for  
17 such information is received, the submitting entity must be notified of  
18 the request. Within ten business days of receipt of the notice, the  
19 submitting entity shall provide a written statement of the continuing  
20 need for confidentiality, which shall be provided to the requester.  
21 Upon receipt of such notice, the department of health shall continue to  
22 treat information designated under this section as exempt from  
23 disclosure. If the requester initiates an action to compel disclosure  
24 under this chapter, the submitting entity must be joined as a party to  
25 demonstrate the continuing need for confidentiality.

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

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

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

1 (ss) Credit card numbers, debit card numbers, electronic check  
2 numbers, card expiration dates, or bank or other financial account  
3 numbers, except when disclosure is expressly required by or governed by  
4 other law.

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

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

13 (vv) Individually identifiable information received by the work  
14 force training and education coordinating board for research or  
15 evaluation purposes.

16 (ww) Those portions of records assembled, prepared, or maintained  
17 to prevent, mitigate, or respond to criminal terrorist acts, which are  
18 acts that significantly disrupt the conduct of government or of the  
19 general civilian population of the state or the United States and that  
20 manifest an extreme indifference to human life, the public disclosure  
21 of which would have a substantial likelihood of threatening public  
22 safety, consisting of:

23 (i) Specific and unique vulnerability assessments or specific and  
24 unique response or deployment plans, including compiled underlying data  
25 collected in preparation of or essential to the assessments, or to the  
26 response or deployment plans; and

27 (ii) Records not subject to public disclosure under federal law  
28 that are shared by federal or international agencies, and information  
29 prepared from national security briefings provided to state or local  
30 government officials related to domestic preparedness for acts of  
31 terrorism.

32 (xx) Commercial fishing catch data from logbooks required to be  
33 provided to the department of fish and wildlife under RCW 77.12.047,  
34 when the data identifies specific catch location, timing, or  
35 methodology and the release of which would result in unfair competitive  
36 disadvantage to the commercial fisher providing the catch data.  
37 However, this information may be released to government agencies  
38 concerned with the management of fish and wildlife resources.

1 (yy) Sensitive wildlife data obtained by the department of fish and  
2 wildlife. However, sensitive wildlife data may be released to  
3 government agencies concerned with the management of fish and wildlife  
4 resources. Sensitive wildlife data includes:

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

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

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

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

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

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

18 (zz) The personally identifying information of persons who acquire  
19 recreational licenses under RCW 77.32.010 or commercial licenses under  
20 chapter 77.65 or 77.70 RCW, except name, address of contact used by the  
21 department, and type of license, endorsement, or tag. However, the  
22 department of fish and wildlife may disclose personally identifying  
23 information to:

24 (i) Government agencies concerned with the management of fish and  
25 wildlife resources;

26 (ii) The department of social and health services, child support  
27 division, and to the department of licensing in order to implement RCW  
28 77.32.014 and 46.20.291; and

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

31 (aaa)(i) Discharge papers of a veteran of the armed forces of the  
32 United States filed at the office of the county auditor before July 1,  
33 2002, that have not been commingled with other recorded documents.  
34 These records will be available only to the veteran, the veteran's next  
35 of kin, a deceased veteran's properly appointed personal representative  
36 or executor, a person holding that veteran's general power of attorney,  
37 or to anyone else designated in writing by that veteran to receive the  
38 records.

1 (ii) Discharge papers of a veteran of the armed forces of the  
2 United States filed at the office of the county auditor before July 1,  
3 2002, that have been commingled with other records, if the veteran has  
4 recorded a "request for exemption from public disclosure of discharge  
5 papers" with the county auditor. If such a request has been recorded,  
6 these records may be released only to the veteran filing the papers,  
7 the veteran's next of kin, a deceased veteran's properly appointed  
8 personal representative or executor, a person holding the veteran's  
9 general power of attorney, or anyone else designated in writing by the  
10 veteran to receive the records.

11 (iii) Discharge papers of a veteran filed at the office of the  
12 county auditor after June 30, 2002, are not public records, but will be  
13 available only to the veteran, the veteran's next of kin, a deceased  
14 veteran's properly appointed personal representative or executor, a  
15 person holding the veteran's general power of attorney, or anyone else  
16 designated in writing by the veteran to receive the records.

17 (iv) For the purposes of this subsection (1)(aaa), next of kin of  
18 deceased veterans have the same rights to full access to the record.  
19 Next of kin are the veteran's widow or widower who has not remarried,  
20 son, daughter, father, mother, brother, and sister.

21 (bbb) Those portions of records containing specific and unique  
22 vulnerability assessments or specific and unique emergency and escape  
23 response plans at a city, county, or state adult or juvenile  
24 correctional facility, the public disclosure of which would have a  
25 substantial likelihood of threatening the security of a city, county,  
26 or state adult or juvenile correctional facility or any individual's  
27 safety.

28 (ccc) Information compiled by school districts or schools in the  
29 development of their comprehensive safe school plans pursuant to RCW  
30 28A.320.125, to the extent that they identify specific vulnerabilities  
31 of school districts and each individual school.

32 (ddd) Information regarding the infrastructure and security of  
33 computer and telecommunications networks, consisting of security  
34 passwords, security access codes and programs, access codes for secure  
35 software applications, security and service recovery plans, security  
36 risk assessments, and security test results to the extent that they  
37 identify specific system vulnerabilities.

1 (eee) Information obtained and exempted or withheld from public  
2 inspection by the health care authority under RCW 41.05.026, whether  
3 retained by the authority, transferred to another state purchased  
4 health care program by the authority, or transferred by the authority  
5 to a technical review committee created to facilitate the development,  
6 acquisition, or implementation of state purchased health care under  
7 chapter 41.05 RCW.

8 (fff) Proprietary data, trade secrets, or other information that  
9 relates to: (i) A vendor's unique methods of conducting business; (ii)  
10 data unique to the product or services of the vendor; or (iii)  
11 determining prices or rates to be charged for services, submitted by  
12 any vendor to the department of social and health services for purposes  
13 of the development, acquisition, or implementation of state purchased  
14 health care as defined in RCW 41.05.011.

15 (ggg)(i) Records reflecting communications transmitted in  
16 confidence between a public official or employee of a public agency  
17 acting in the performance of his or her duties and an attorney serving  
18 in the capacity of legal advisor for the purpose of rendering or  
19 obtaining legal advice, and records prepared by the attorney in  
20 furtherance of the rendition of legal advice.

21 (ii) Records are not exempt from disclosure under this subsection  
22 merely because they reflect communications in meetings where legal  
23 counsel was present or because a record or copy of a record was  
24 provided to legal counsel, if the elements of (ggg)(i) of this  
25 subsection are not met.

26 This subsection (1)(ggg) governs exemption of records from the  
27 provisions of this chapter based on the attorney-client privilege as  
28 applied to public agencies and public officials in their official  
29 capacities, consistent with the provisions of RCW 5.60.060(2).

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

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

7           (4) Agency responses refusing, in whole or in part, inspection of  
8 any public record shall include a statement of the specific exemption  
9 authorizing the withholding of the record (or part) and a brief  
10 explanation of how the exemption applies to the record withheld."

11           Renumber the remaining section consecutively and correct the title.

--- END ---