

2 **ESHB 2876** - S COMM AMD

3 By Committee on Governmental Operations

4

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

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

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

16 (2) "Ballot proposition" means any "measure" as defined by RCW
17 29.01.110, or any initiative, recall, or referendum proposition
18 proposed to be submitted to the voters of the state or any municipal
19 corporation, political subdivision, or other voting constituency from
20 and after the time when the proposition has been initially filed with
21 the appropriate election officer of that constituency prior to its
22 circulation for signatures.

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

25 (4) "Treasurer" and "deputy treasurer" mean the individuals
26 appointed by a candidate or political committee, pursuant to RCW
27 42.17.050, to perform the duties specified in that section.

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

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

5 (b) Announces publicly or files for office.

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

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

13 (8) "Compensation" unless the context requires a narrower meaning,
14 includes payment in any form for real or personal property or services
15 of any kind: PROVIDED, That for the purpose of compliance with RCW
16 42.17.241, the term "compensation" shall not include per diem
17 allowances or other payments made by a governmental entity to reimburse
18 a public official for expenses incurred while the official is engaged
19 in the official business of the governmental entity.

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

23 (10) "Contribution" includes a loan, gift, deposit, subscription,
24 forgiveness of indebtedness, donation, advance, pledge, payment,
25 transfer of funds between political committees, or transfer of anything
26 of value, including personal and professional services for less than
27 full consideration, but does not include interest on moneys deposited
28 in a political committee's account, ordinary home hospitality and the
29 rendering of personal services of the sort commonly performed by
30 volunteer campaign workers, or incidental expenses personally incurred

1 by volunteer campaign workers not in excess of fifty dollars personally
2 paid for by the worker. Volunteer services, for the purposes of this
3 chapter, means services or labor for which the individual is not
4 compensated by any person. For the purposes of this chapter,
5 contributions other than money or its equivalents shall be deemed to
6 have a money value equivalent to the fair market value of the
7 contribution. Sums paid for tickets to fund-raising events such as
8 dinners and parties are contributions; however, the amount of any such
9 contribution may be reduced for the purpose of complying with the
10 reporting requirements of this chapter, by the actual cost of
11 consumables furnished in connection with the purchase of the tickets,
12 and only the excess over the actual cost of the consumables shall be
13 deemed a contribution.

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

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

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

27 (14) "Expenditure" includes a payment, contribution, subscription,
28 distribution, loan, advance, deposit, or gift of money or anything of
29 value, and includes a contract, promise, or agreement, whether or not
30 legally enforceable, to make an expenditure. The term "expenditure"

1 also includes a promise to pay, a payment, or a transfer of anything of
2 value in exchange for goods, services, property, facilities, or
3 anything of value for the purpose of assisting, benefiting, or honoring
4 any public official or candidate, or assisting in furthering or
5 opposing any election campaign. For the purposes of this chapter,
6 agreements to make expenditures, contracts, and promises to pay may be
7 reported as estimated obligations until actual payment is made. The
8 term "expenditure" shall not include the partial or complete repayment
9 by a candidate or political committee of the principal of a loan, the
10 receipt of which loan has been properly reported.

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

13 (16) "Gift," for the purposes of RCW 42.17.170 and 42.17.2415,
14 means a rendering of anything of value in return for which reasonable
15 consideration is not given and received and includes a rendering of
16 money, property, services, discount, loan forgiveness, payment of
17 indebtedness, or reimbursements from or payments by persons (other than
18 the federal government, or the state of Washington or any agency or
19 political subdivision thereof) for travel or anything else of value.
20 The term "reasonable consideration" refers to the approximate range of
21 consideration that exists in transactions not involving donative
22 intent. However, the value of the gift of partaking in a single hosted
23 reception shall be determined by dividing the total amount of the cost
24 of conducting the reception by the total number of persons partaking in
25 the reception. "Gift" for the purposes of RCW 42.17.170 and 42.17.2415
26 does not include:

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

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

1 (c) A contribution that is required to be reported under RCW
2 42.17.090 or 42.17.243;

3 (d) Informational material that is transferred for the purpose of
4 informing the recipient about matters pertaining to official business
5 of the governmental entity of which the recipient is an official or
6 officer, and that is not intended to confer on that recipient any
7 commercial, proprietary, financial, economic, or monetary advantage, or
8 the avoidance of any commercial, proprietary, financial, economic, or
9 monetary disadvantage;

10 (e) A gift that is not used and that, within thirty days after
11 receipt, is returned to the donor or delivered to a charitable
12 organization. However, this exclusion from the definition does not
13 apply if the recipient of the gift delivers the gift to a charitable
14 organization and claims the delivery as a charitable contribution for
15 tax purposes;

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

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

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

24 (18) "Legislation" means bills, resolutions, motions, amendments,
25 nominations, and other matters pending or proposed in either house of
26 the state legislature, and includes any other matter that may be the
27 subject of action by either house or any committee of the legislature
28 and all bills and resolutions that, having passed both houses, are
29 pending approval by the governor.

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

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

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

13 (22) "Person" includes an individual, partnership, joint venture,
14 public or private corporation, association, federal, state, or local
15 governmental entity or agency however constituted, candidate,
16 committee, political committee, political party, executive committee
17 thereof, or any other organization or group of persons, however
18 organized.

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

23 (24) "Political advertising" includes any advertising displays,
24 newspaper ads, billboards, signs, brochures, articles, tabloids,
25 flyers, letters, radio or television presentations, or other means of
26 mass communication, used for the purpose of appealing, directly or
27 indirectly, for votes or for financial or other support in any election
28 campaign.

29 (25) "Political committee" means any person (except a candidate or
30 an individual dealing with his own funds or property) having the

1 expectation of receiving contributions or making expenditures in
2 support of, or opposition to, any candidate or any ballot proposition.

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

6 (27) "Public record" includes any writing containing information
7 relating to the conduct of government or the performance of any
8 governmental or proprietary function prepared, owned, used, or retained
9 by any state or local agency regardless of physical form or
10 characteristics.

11 (28) "Surplus funds" mean, in the case of a political committee or
12 candidate, the balance of contributions that remain in the possession
13 or control of that committee or candidate subsequent to the election
14 for which the contributions were received, and that are in excess of
15 the amount necessary to pay remaining debts incurred by the committee
16 or candidate prior to that election. In the case of a continuing
17 political committee, "surplus funds" mean those contributions remaining
18 in the possession or control of the committee that are in excess of the
19 amount necessary to pay all remaining debts when it makes its final
20 report under RCW 42.17.065.

21 (29) "Writing" means handwriting, typewriting, printing,
22 photostating, photographing, and every other means of recording any
23 form of communication or representation, including, but not limited to,
24 letters, words, pictures, sounds, or symbols, or combination thereof,
25 and all papers, maps, magnetic or paper tapes, photographic films and
26 prints, motion picture, film and video recordings, magnetic or punched
27 cards, discs, drums, diskettes, sound recordings, and other documents
28 including existing data compilations from which information may be
29 obtained or translated.

1 As used in this chapter, the singular shall take the plural and any
2 gender, the other, as the context requires."

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

5 The people of this state do not yield their sovereignty to the
6 agencies that serve them. The people, in delegating authority, do not
7 give their public servants the right to decide what is good for the
8 people to know and what is not good for them to know. The people
9 insist on remaining informed so that they may maintain control over the
10 instruments that they have created. The public records subdivision of
11 this chapter shall be liberally construed and its exemptions narrowly
12 construed to promote this public policy."

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

15 (1) Each agency, in accordance with published rules, shall make
16 available for public inspection and copying all public records, unless
17 the record falls within the specific exemptions of subsection ~~((+5))~~
18 (6) of this section, RCW 42.17.310, 42.17.315, or other statute which
19 exempts or prohibits disclosure of specific information or records. To
20 the extent required to prevent an unreasonable invasion of personal
21 privacy interests protected by RCW 42.17.310 and 42.17.315, an agency
22 shall delete identifying details in a manner consistent with RCW
23 42.17.310 and 42.17.315 when it makes available or publishes any public
24 record; however, in each case, the justification for the deletion shall
25 be explained fully in writing.

26 (2) For informational purposes, each agency shall publish and
27 maintain a current list containing every law, other than those listed
28 in this chapter, that the agency believes exempts or prohibits

1 disclosure of specific information or records of the agency. An
2 agency's failure to list an exemption shall not affect the efficacy of
3 any exemption.

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

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

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

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

14 (d) Planning policies and goals, and interim and final planning
15 decisions;

16 (e) Factual staff reports and studies, factual consultant's reports
17 and studies, scientific reports and studies, and any other factual
18 information derived from tests, studies, reports, or surveys, whether
19 conducted by public employees or others; and

20 (f) Correspondence, and materials referred to therein, by and with
21 the agency relating to any regulatory, supervisory, or enforcement
22 responsibilities of the agency, whereby the agency determines, or
23 opines upon, or is asked to determine or opine upon, the rights of the
24 state, the public, a subdivision of state government, or of any private
25 party.

26 ((+3)) (4) A local agency need not maintain such an index, if to
27 do so would be unduly burdensome, but it shall in that event:

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

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

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

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

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

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

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

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

19 Rules establishing systems of indexing shall include, but not be
20 limited to, requirements for the form and content of the index, its
21 location and availability to the public, and the schedule for revising
22 or updating the index. State agencies that have maintained indexes for
23 records issued before July 1, 1990, shall continue to make such indexes
24 available for public inspection and copying. Information in such
25 indexes may be incorporated into indexes prepared pursuant to this
26 subsection. State agencies may satisfy the requirements of this
27 subsection by making available to the public indexes prepared by other
28 parties but actually used by the agency in its operations. State
29 agencies shall make indexes available for public inspection and

1 copying. State agencies may charge a fee to cover the actual costs of
2 providing individual mailed copies of indexes.

3 ~~((+5+))~~ (6) A public record may be relied on, used, or cited as
4 precedent by an agency against a party other than an agency and it may
5 be invoked by the agency for any other purpose only if--

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

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

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

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

22 Agencies shall adopt and enforce reasonable rules and regulations,
23 consonant with the intent of this chapter to provide full public access
24 to public records, to protect public records from damage or
25 disorganization, and to prevent excessive interference with other
26 essential functions of the agency. Such rules and regulations shall
27 provide for the fullest assistance to inquirers and the most timely
28 possible action on requests for information. Nothing in this section

1 shall relieve agencies from honoring requests received by mail for
2 copies of identifiable public records.

3 If a public record request is made at a time when such record
4 exists but is scheduled for destruction in the near future, the agency
5 shall retain possession of the record, and may not destroy or erase the
6 record until the request is resolved."

7 "Sec. 5. RCW 42.17.310 and 1991 c 301 s 13, 1991 c 87 s 13, and
8 1991 c 23 s 10 are each reenacted and amended to read as follows:

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

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

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

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

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

27 (e) Information revealing the identity of persons who are witnesses
28 to or victims of crime or who file complaints with investigative, law
29 enforcement, or penology agencies, other than the public disclosure

1 commission, if disclosure would endanger any person's life, physical
2 safety, or property. If at the time ((the)) a complaint is filed the
3 complainant, victim or witness indicates a desire for disclosure or
4 nondisclosure, such desire shall govern. However, all complaints filed
5 with the public disclosure commission about any elected official or
6 candidate for public office must be made in writing and signed by the
7 complainant under oath.

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

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

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

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

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

28 (k) Records, maps, or other information identifying the location of
29 archaeological sites in order to avoid the looting or depredation of
30 such sites.

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

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

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

13 (o) Financial and commercial information and records supplied by
14 private persons pertaining to export services provided pursuant to
15 chapter 43.163 RCW and chapter 53.31 RCW.

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

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

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

24 (s) Membership lists or lists of members or owners of interests of
25 units in timeshare projects, subdivisions, camping resorts,
26 condominiums, land developments, or common-interest communities
27 affiliated with such projects, regulated by the department of
28 licensing, in the files or possession of the department.

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

4 (u) The residential addresses and residential telephone numbers of
5 employees or volunteers of a public agency which are held by the agency
6 in personnel records, employment or volunteer rosters, or mailing lists
7 of employees or volunteers.

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

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

13 (x) Information obtained by the board of pharmacy or the department
14 of health and its representatives as provided in RCW 69.41.044,
15 69.41.280, and 18.64.420.

16 (y) Financial information, business plans, examination reports, and
17 any information produced or obtained in evaluating or examining a
18 business and industrial development corporation organized or seeking
19 certification under chapter 31.24 RCW.

20 (z) Financial and commercial information supplied to the state
21 investment board by any person when the information relates to the
22 investment of public trust or retirement funds and when disclosure
23 would result in loss to such funds or in private loss to the providers
24 of this information.

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

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

29 (cc) Information that identifies a person who, while an agency
30 employee: (i) Seeks advice, under an informal process established by

1 the employing agency, in order to ascertain his or her rights in
2 connection with a possible unfair practice under chapter 49.60 RCW
3 against the person; and (ii) requests his or her identity or any
4 identifying information not be disclosed.

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

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

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

23 "Sec. 6. RCW 42.17.320 and 1975 1st ex.s. c 294 s 18 are each
24 amended to read as follows:

25 Responses to requests for public records shall be made promptly by
26 agencies. Within five business days of receiving a public record
27 request, an agency must respond by either (1) providing the record; (2)
28 acknowledging that the agency has received the request and providing a
29 reasonable estimate of the time the agency will require to respond to

1 the request; or (3) denying the public record request. Additional time
2 required to respond to a request may be based upon the need to clarify
3 the intent of the request, to locate and assemble the information
4 requested, to notify third persons or agencies affected by the request,
5 or to determine whether any of the information requested is exempt and
6 that a denial should be made as to all or part of the request. In
7 acknowledging receipt of a public record request that is unclear, an
8 agency may ask the requestor to clarify what information the requestor
9 is seeking. If the requestor fails to clarify the request, the agency
10 need not respond to it. Denials of requests must be accompanied by a
11 written statement of the specific reasons therefor. Agencies shall
12 establish mechanisms for the most prompt possible review of decisions
13 denying inspection, and such review shall be deemed completed at the
14 end of the second business day following the denial of inspection and
15 shall constitute final agency action for the purposes of judicial
16 review."

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

19 The examination of any specific public record may be enjoined if,
20 upon motion and affidavit by an agency or its representative or a
21 person who is named in the record or to whom the record specifically
22 pertains, the superior court for the county in which the movant resides
23 or in which the record is maintained, finds that such examination would
24 clearly not be in the public interest and would substantially and
25 irreparably damage any person, or would substantially and irreparably
26 damage vital governmental functions. An agency has the option of
27 notifying persons named in the record or to whom a record specifically
28 pertains, that release of a record has been requested. However, this

1 option does not exist where the agency is required by law to provide
2 such notice."

3 "Sec. 8. RCW 42.17.340 and 1987 c 403 s 5 are each amended to read
4 as follows:

5 (1) Upon the motion of any person having been denied an opportunity
6 to inspect or copy a public record by an agency, the superior court in
7 the county in which a record is maintained may require the responsible
8 agency to show cause why it has refused to allow inspection or copying
9 of a specific public record or class of records. The burden of proof
10 shall be on the agency to establish that refusal to permit public
11 inspection and copying is in accordance with a statute that exempts or
12 prohibits disclosure in whole or in part of specific information or
13 records.

14 (2) Upon the motion of any person who believes that an agency has
15 not made a reasonable estimate of the time that the agency requires to
16 respond to a public record request, the superior court in the county in
17 which a record is maintained may require the responsible agency to show
18 that the estimate it provided is reasonable. The burden of proof shall
19 be on the agency to show that the estimate it provided is reasonable.

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

28 ((+3+)) (4) Any person who prevails against an agency in any action
29 in the courts seeking the right to inspect or copy any public record or

1 the right to receive a response to a public record request within a
2 reasonable amount of time shall be awarded all costs, including
3 reasonable attorney fees, incurred in connection with such legal
4 action. In addition, it shall be within the discretion of the court to
5 award such person an amount not less than five dollars and not to
6 exceed (~~twenty-five~~) one hundred dollars for each day that he was
7 denied the right to inspect or copy said public record."

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

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

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

15 Whenever a state agency concludes that a public record is exempt
16 from disclosure and denies a person opportunity to inspect or copy a
17 public record for that reason, the person may request the attorney
18 general to review the matter. The attorney general shall provide the
19 person with his or her written opinion on whether the record is
20 exempt."

21 "NEW SECTION. Sec. 11. A new section is added to chapter 42.17
22 RCW under the subchapter heading "public records" to read as follows:

23 No public agency, public official, public employee, or custodian
24 shall be liable, nor shall a cause of action exist, for any loss or
25 damage based upon the release of a public record if the public agency,
26 public official, public employee, or custodian acted in good faith in
27 attempting to comply with the provisions of this chapter."

1 "NEW SECTION. Sec. 12. The legislature finds that electronic
2 data and electronic records pose a number of challenging public
3 disclosure questions. Included in these challenging questions are how
4 to provide public access to electronic records while balancing personal
5 privacy and vital governmental interests; how to best address requests
6 for electronic records which require agencies to manipulate data; how
7 to open electronic records to public inspection; how to calculate
8 charges for data or products from electronic records, particularly if
9 that data or product is to be used for a commercial purpose; and how
10 public agencies and employees should handle the personal privacy issues
11 associated with electronic mail.

12 The legislature finds that there is a large and growing number of
13 exemptions of records from public disclosure. The legislature finds
14 that certain types of information are treated inconsistently under
15 current disclosure laws. The legislature further finds that there may
16 be opportunities for consolidation of many individual record exemptions
17 into fewer, broader exemptions. There is a need to thoroughly review
18 both the content and organization of such exemptions.

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

24 The legislature also finds that certain entities that may have
25 substantial impacts on public policy are not covered by the open public
26 meetings act. Such entities include certain boards, councils,
27 committees, or other groups of similar nomenclature that serve in an
28 advisory capacity. To ensure that public agencies comply with the
29 intent of the open public meetings act, it is important for the

1 legislature to determine which categories of such groups should be
2 covered by the open public meetings act.

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

8 Finally, while the open public meetings act authorizes agencies to
9 use closed executive sessions to consider certain matters specified in
10 the act, agencies when in closed executive session are required to
11 restrict their consideration to those matters. The act's provisions
12 may need to be amended to prevent or deter public agencies from
13 considering matters in closed executive session that they are not
14 entitled to consider.

15 The joint select committee on open government shall examine these
16 five issues and shall report back to the legislature with any
17 recommendations for statutory changes by January 1, 1993. In examining
18 these issues, the committee shall provide ample opportunity for input
19 from all interested parties."

20 **ESHB 2876** - S COMM AMD

21 By Committee on Governmental Operations

22

23 On page 1, line 1 of the title, after "government;" strike the
24 remainder of the title and insert "amending RCW 42.17.020, 42.17.260,
25 42.17.290, 42.17.320, 42.17.330, and 42.17.340; reenacting and amending
26 RCW 42.17.310; adding new sections to chapter 42.17 RCW; and creating
27 a new section."