
ENGROSSED SUBSTITUTE HOUSE BILL 2876

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, 42.17.340, 42.30.020,
3 42.30.060, 42.30.070, 42.30.075, 42.30.080, 42.30.110, 42.30.120, and
4 42.30.900; reenacting and amending RCW 42.17.310; adding new sections
5 to chapter 42.17 RCW; adding new sections to chapter 42.30 RCW;
6 creating new sections; repealing RCW 42.32.030; and prescribing
7 penalties.

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

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

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

1 municipal corporation, or special purpose district, or any office,
2 department, division, bureau, board, commission, or agency thereof, or
3 other local public agency.

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

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

13 (4) "Treasurer" and "deputy treasurer" mean the individuals
14 appointed by a candidate or political committee, pursuant to RCW
15 42.17.050, to perform the duties specified in that section.

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

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

20 (b) Announces publicly or files for office.

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

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

28 (8) "Compensation" unless the context requires a narrower meaning,
29 includes payment in any form for real or personal property or services
30 of any kind: PROVIDED, That for the purpose of compliance with RCW

1 42.17.241, the term "compensation" shall not include per diem
2 allowances or other payments made by a governmental entity to reimburse
3 a public official for expenses incurred while the official is engaged
4 in the official business of the governmental entity.

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

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

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

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

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

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

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

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

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

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

19 (c) A contribution that is required to be reported under RCW
20 42.17.090 or 42.17.243;

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

28 (e) A gift that is not used and that, within thirty days after
29 receipt, is returned to the donor or delivered to a charitable
30 organization. However, this exclusion from the definition does not

1 apply if the recipient of the gift delivers the gift to a charitable
2 organization and claims the delivery as a charitable contribution for
3 tax purposes;

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

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

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

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

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

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

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

1 (22) "Person" includes an individual, partnership, joint venture,
2 public or private corporation, association, federal, state, or local
3 governmental entity or agency however constituted, candidate,
4 committee, political committee, political party, executive committee
5 thereof, or any other organization or group of persons, however
6 organized.

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

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

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

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

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

29 (28) "Surplus funds" mean, in the case of a political committee or
30 candidate, the balance of contributions that remain in the possession

1 or control of that committee or candidate subsequent to the election
2 for which the contributions were received, and that are in excess of
3 the amount necessary to pay remaining debts incurred by the committee
4 or candidate prior to that election. In the case of a continuing
5 political committee, "surplus funds" mean those contributions remaining
6 in the possession or control of the committee that are in excess of the
7 amount necessary to pay all remaining debts when it makes its final
8 report under RCW 42.17.065.

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

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

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

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

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

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

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

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

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

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

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

1 (d) Planning policies and goals, and interim and final planning
2 decisions;

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

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

13 (~~((3))~~) (4) A local agency need not maintain such an index, if to
14 do so would be unduly burdensome, but it shall in that event:

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

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

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

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

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

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

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

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

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

21 ~~((+5))~~ (6) A public record may be relied on, used, or cited as
22 precedent by an agency against a party other than an agency and it may
23 be invoked by the agency for any other purpose only if--

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

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

27 ~~((+6))~~ (7) This chapter shall not be construed as giving authority
28 to any agency to give, sell or provide access to lists of individuals
29 requested for commercial purposes, and agencies shall not do so unless
30 specifically authorized or directed by law: PROVIDED, HOWEVER, That

1 lists of applicants for professional licenses and of professional
2 licensees shall be made available to those professional associations or
3 educational organizations recognized by their professional licensing or
4 examination board, upon payment of a reasonable charge therefor:
5 PROVIDED FURTHER, That such recognition may be refused only for a good
6 cause pursuant to a hearing under the provisions of chapter 34.05 RCW,
7 the Administrative Procedure Act.

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

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

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

23 **Sec. 5.** RCW 42.17.310 and 1991 c 301 s 13, 1991 c 87 s 13, and
24 1991 c 23 s 10 are each reenacted and amended to read as follows:

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

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

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

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

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

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

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

27 (g) Except as provided by chapter 8.26 RCW, the contents of real
28 estate appraisals, made for or by any agency relative to the
29 acquisition or sale of property, until the project or prospective sale
30 is abandoned or until such time as all of the property has been

1 acquired or the property to which the sale appraisal relates is sold,
2 but in no event shall disclosure be denied for more than three years
3 after the appraisal.

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

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

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

15 (k) Records, maps, or other information identifying the location of
16 archaeological sites in order to avoid the looting or depredation of
17 such sites.

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

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

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

1 (o) Financial and commercial information and records supplied by
2 private persons pertaining to export services provided pursuant to
3 chapter 43.163 RCW and chapter 53.31 RCW.

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

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

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

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

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

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

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

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

1 (x) Information obtained by the board of pharmacy or the department
2 of health and its representatives as provided in RCW 69.41.044,
3 69.41.280, and 18.64.420.

4 (y) Financial information, business plans, examination reports, and
5 any information produced or obtained in evaluating or examining a
6 business and industrial development corporation organized or seeking
7 certification under chapter 31.24 RCW.

8 (z) Financial and commercial information supplied to the state
9 investment board by any person when the information relates to the
10 investment of public trust or retirement funds and when disclosure
11 would result in loss to such funds or in private loss to the providers
12 of this information.

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

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

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

23 (2) Except for information described in subsection (1)(c)(i) of
24 this section and confidential income data exempted from public
25 inspection pursuant to RCW 84.40.020, the exemptions of this section
26 are inapplicable to the extent that information, the disclosure of
27 which would violate personal privacy or vital governmental interests,
28 can be deleted from the specific records sought. No exemption may be
29 construed to permit the nondisclosure of statistical information not
30 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 **Sec. 6.** RCW 42.17.320 and 1975 1st ex.s. c 294 s 18 are each
12 amended to read as follows:

13 Responses to requests for public records shall be made promptly by
14 agencies. Within five business days of receiving a public record
15 request, an agency must respond by either (1) providing the record; (2)
16 acknowledging that the agency has received the request and providing a
17 reasonable estimate of the time the agency will require to respond to
18 the request; or (3) denying the public record request. In
19 acknowledging receipt of a public record request that is unclear, an
20 agency may ask the requestor to clarify what information the requestor
21 is seeking. If the requestor fails to clarify the request, the agency
22 need not respond to it. Denials of requests must be accompanied by a
23 written statement of the specific reasons therefor. Agencies shall
24 establish mechanisms for the most prompt possible review of decisions
25 denying inspection, and such review shall be deemed completed at the
26 end of the second business day following the denial of inspection and
27 shall constitute final agency action for the purposes of judicial
28 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 a person, other than an agency or its
5 representative, who is named in the record or to whom the record
6 specifically pertains, the superior court for the county in which the
7 movant resides or in which the record is maintained, finds that such
8 examination would clearly not be in the public interest and would
9 substantially and irreparably damage any person, or would substantially
10 and irreparably damage vital governmental functions. An agency has the
11 option of notifying persons named in the record or to whom a record
12 specifically pertains, that release of a record has been requested.
13 However, this option does not exist where the agency is required by law
14 to provide 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 NEW SECTION. **Sec. 11.** A new section is added to chapter 42.17 RCW
5 under the subchapter heading "public records" to read as follows:

6 No public agency, public official, public employee, or custodian
7 shall be liable, nor shall a cause of action exist, for any loss or
8 damage based upon the release of a public record if the public agency,
9 public official, public employee, or custodian acted in good faith in
10 attempting to comply with the provisions of this chapter.

11 NEW SECTION. **Sec. 12.** The legislature finds that electronic
12 data and electronic records pose a number of challenging public
13 disclosure questions. Included in these challenging questions are how
14 to provide public access to electronic records while balancing personal
15 privacy and vital governmental interests; how to best address requests
16 for electronic records which require agencies to manipulate data; how
17 to open electronic records to public inspection; how to calculate
18 charges for data or products from electronic records, particularly if
19 that data or product is to be used for a commercial purpose; and how
20 public agencies and employees should handle the personal privacy issues
21 associated with electronic mail. The legislature finds that these and
22 other important public policy questions related to electronic records
23 deserve their own specific deliberation with input from all interested
24 parties. The legislature urges the creation of a body to address
25 electronic data issues.

26 NEW SECTION. **Sec. 13.** The legislature finds that there is a
27 large and growing number of exemptions of records from public

1 disclosure. The legislature finds that certain types of information
2 are treated inconsistently under current disclosure laws. The
3 legislature further finds that there may be opportunities for
4 consolidation of many individual record exemptions into fewer, broader
5 exemptions. There is a need to thoroughly review both the content and
6 organization of such exemptions.

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

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

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

27 The joint select committee on open government shall examine these
28 four issues and shall report back to the legislature with any
29 recommendations for statutory changes by January 1, 1993. In examining

1 these issues, the committee shall provide ample opportunity for input
2 from all interested parties.

3 **Sec. 14.** RCW 42.30.020 and 1985 c 366 s 1 are each amended to read
4 as follows:

5 As used in this chapter unless the context indicates otherwise:

6 (1) "Public agency" means:

7 (a) Any state board, commission, committee, authority, council,
8 department, educational institution, or other state agency (~~(which is)~~)
9 whose members are appointed by public officials or that is created by
10 or pursuant to statute, other than courts and the legislature;

11 (b) Any county, city, school district, special purpose district, or
12 other municipal corporation or political subdivision of the state of
13 Washington;

14 (c) Any (~~(subagency)~~) standing, special, or advisory committees,
15 boards, commissions, task forces, subcommittees or other subagencies of
16 a public agency which (~~(is)~~) are created by or pursuant to statute,
17 charter, ordinance, or (~~(other—legislative—act)~~) resolution,
18 administrative rule, executive order, or proclamation, including but
19 not limited to planning commissions, library or park boards,
20 commissions, and agencies, but excluding any advisory committee created
21 by any county, city, town, or other local government public agency;

22 (d) Any policy group whose membership includes representatives of
23 publicly owned utilities formed by or pursuant to the laws of this
24 state when meeting together as or on behalf of participants who have
25 contracted for the output of generating plants being planned or built
26 by an operating agency.

27 "Public agency" does not include any agency or entity of the
28 judicial branch.

1 (2) "Governing body" means the multimember board, commission,
2 committee, council, or other policy or rule-making body of a public
3 agency, or any committee or subcommittee thereof (~~(when the committee~~
4 ~~acts on behalf of the governing body, conducts hearings, or takes~~
5 ~~testimony or public comment)~~)).

6 (3) "Action" means the transaction of the official business of a
7 public agency by a governing body including but not limited to receipt
8 of public testimony, deliberations, discussions, considerations,
9 reviews, evaluations, and final actions. "Final action" means a
10 collective positive or negative decision, or an actual vote by a
11 majority of the members of a governing body when sitting as a body or
12 entity, upon a motion, proposal, resolution, order, or ordinance.

13 (4) "Meeting" means meetings at which action is taken.

14 "Meeting" includes not only in-person meetings, but also any
15 discussion of official business among a quorum of the governing body
16 including teleconferences and conference calls.

17 "Meeting" does not include a majority of the members of a governing
18 body traveling together or gathering for purposes other than a regular
19 meeting or a special meeting as those terms are used in this chapter
20 provided that they do not take action as defined in this chapter.

21 (a) A "regular meeting" means a recurring meeting held in
22 accordance with a periodic schedule declared by statute, rule,
23 ordinance, resolution, bylaws, or whatever rule is required for the
24 conduct of business by a governing body.

25 (b) A "special meeting" means a meeting other than a regular
26 meeting.

27 (5) "Executive session" refers to a meeting, or a portion thereof,
28 conducted pursuant to RCW 42.30.110 at which no one is permitted to
29 attend other than members of the governing body, their attorneys, their

1 staff, and persons whose presence is necessary to provide information
2 for one or more purposes under RCW 42.30.110(1).

3 **Sec. 15.** RCW 42.30.060 and 1989 c 42 s 1 are each amended to read
4 as follows:

5 (1) No governing body of a public agency shall adopt any ordinance,
6 resolution, rule, regulation, order, or directive, except in a meeting
7 open to the public and then only at a meeting, the date of which is
8 fixed by law or rule, or at a meeting of which notice has been given
9 according to the provisions of this chapter.

10 (2) Any action taken at meetings failing to comply with the
11 provisions of this subsection of this section or RCW 42.30.110 shall be
12 null and void, provided, however, that (a) actions that have been taken
13 based on void recommendations of an advisory committee shall not be
14 void, and (b) any action taken by the utilities and transportation
15 commission to suspend a tariff filed by a public service company shall
16 not be void. Actions that are null and void due to failure to comply
17 with these provisions shall not be taken at subsequent meetings unless
18 there is opportunity for a de novo discussion and action is undertaken
19 at a meeting properly conducted under the terms of this chapter.

20 ~~((+2))~~ (3) No governing body of a public agency at any meeting
21 required to be open to the public shall vote by secret ballot. Any
22 vote taken in violation of this subsection shall be null and void, and
23 shall be considered an "action" under this chapter.

24 **Sec. 16.** RCW 42.30.070 and 1983 c 155 s 2 are each amended to read
25 as follows:

26 The governing body of a public agency shall provide the times and
27 places for holding regular meetings by ordinance, resolution, bylaws,
28 or by whatever other rule is required for the conduct of business by

1 that body. Such times and places shall be established with
2 consideration for the convenience of the public. The times selected
3 shall be reasonably related to the agency's actual needs for regular
4 meetings and shall not be overly broad or have unreasonable breaks such
5 that the public cannot determine when actual meetings will occur.
6 Unless otherwise provided for in the act under which the public agency
7 was formed, meetings of the governing body need not always be held
8 within the boundaries of the territory over which the public agency
9 exercises jurisdiction. If at any time any regular meeting falls on a
10 holiday, such regular meeting shall be held on the next business day.
11 ~~((If, by reason of fire, flood, earthquake, or other emergency, there~~
12 ~~is a need for expedited action by a governing body to meet the~~
13 ~~emergency, the presiding officer of the governing body may provide for~~
14 ~~a meeting site other than the regular meeting site and the notice~~
15 ~~requirements of this chapter shall be suspended during such emergency.~~
16 ~~It shall not be a violation of the requirements of this chapter for a~~
17 ~~majority of the members of a governing body to travel together or~~
18 ~~gather for purposes other than a regular meeting or a special meeting~~
19 ~~as these terms are used in this chapter: PROVIDED, That they take no~~
20 ~~action as defined in this chapter.))~~

21 **Sec. 17.** RCW 42.30.075 and 1977 ex.s. c 240 s 12 are each amended
22 to read as follows:

23 State agencies which hold regular meetings shall file with the code
24 reviser a schedule of the time and place of such meetings on or before
25 January of each year for publication in the Washington state register.
26 Notice of any change from such meeting schedule shall be published in
27 the state register for distribution at least twenty days prior to the
28 rescheduled meeting date.

1 (~~For the purposes of this section "regular" meetings shall mean~~
2 ~~recurring meetings held in accordance with a periodic schedule declared~~
3 ~~by statute or rule.~~)

4 **Sec. 18.** RCW 42.30.080 and 1971 ex.s. c 250 s 8 are each amended
5 to read as follows:

6 (1) A special meeting may be called at any time by the presiding
7 officer of the governing body of a public agency or by a majority of
8 the members of the governing body by delivering personally or by mail
9 written notice to each member of the governing body; and to each local
10 newspaper of general circulation and to each local radio or television
11 station which has on file with the governing body a written request to
12 be notified of such special meeting or of all special meetings. Such
13 notice must be delivered personally or by mail at least twenty-four
14 hours before the time of such meeting as specified in the notice. The
15 call and notice shall specify the time and place of the special meeting
16 and the (~~business to be transacted~~) matters to be discussed. Final
17 (~~disposition~~) action shall not be taken on any other matter at such
18 meetings by the governing body. Such written notice may be dispensed
19 with as to any member who at or prior to the time the meeting convenes
20 files with the clerk or secretary of the governing body a written
21 waiver of notice. Such waiver may be given by telegram. Such written
22 notice may also be dispensed with as to any member who is actually
23 present at the meeting at the time it convenes. (~~The notices provided~~
24 ~~in this section may be dispensed with in the event a special meeting is~~
25 ~~called to deal with an~~)

26 (2) If, by reason of fire, flood, earthquake, or other emergency
27 involving injury or damage to persons or property or the likelihood of
28 such injury or damage, there is a need for expedited action by a
29 governing body to meet the emergency, the presiding officer of the

1 governing body may provide for a meeting site other than the regular
2 meeting site, and the notice requirements of this chapter shall be
3 suspended during such emergency when time requirements of such notice
4 would make notice impractical and increase the likelihood of such
5 injury or damage.

6 **Sec. 19.** RCW 42.30.110 and 1989 c 238 s 2 are each amended to read
7 as follows:

8 (1) Nothing contained in this chapter may be construed to prevent
9 a governing body by majority vote of the members present from holding
10 an executive session during a regular or special meeting:

11 (a) To consider matters affecting national security;

12 (b) To consider the selection of a site or the acquisition of real
13 estate by lease or purchase when public knowledge regarding such
14 consideration would cause a likelihood of increased price;

15 (c) To consider the minimum price at which real estate will be
16 offered for sale or lease when public knowledge regarding such
17 consideration would cause a likelihood of decreased price. However,
18 final action selling or leasing public property shall be taken in a
19 meeting open to the public;

20 (d) To review negotiations on the performance of publicly bid
21 contracts when public knowledge regarding such consideration would
22 cause a likelihood of increased costs;

23 (e) To consider, in the case of an export trading company,
24 financial and commercial information supplied by private persons to the
25 export trading company;

26 (f) To receive and evaluate specific complaints or charges of
27 misconduct brought against a public officer or employee. However, upon
28 the request of such officer or employee, a public hearing or a meeting
29 open to the public shall be conducted upon such complaint or charge;

1 (g) To evaluate the qualifications of an applicant for public
2 employment or to review the performance of a public employee. However,
3 subject to RCW 42.30.140(4), discussion by a governing body of
4 salaries, wages, and other conditions of employment to be generally
5 applied within the agency shall occur in a meeting open to the public,
6 and when a governing body elects to take final action hiring, setting
7 the salary of an individual employee or class of employees, or
8 discharging or disciplining an employee, that action shall be taken in
9 a meeting open to the public;

10 (h) To evaluate the qualifications of a candidate for appointment
11 to elective office. However, any interview of such candidate and final
12 action appointing a candidate to elective office shall be in a meeting
13 open to the public;

14 (i) To obtain and discuss legal advice with legal counsel
15 representing the agency in matters relating to agency enforcement
16 actions, or to obtain and discuss legal advice with legal counsel
17 representing the agency in litigation or potential litigation to which
18 the agency, the governing body, or a member acting in an official
19 capacity is, or is likely to become, a party, when public knowledge
20 regarding the discussion is likely to result in an adverse legal or
21 financial consequence to the agency;

22 (j) To consider, in the case of the state library commission or its
23 advisory bodies, western library network prices, products, equipment,
24 and services, when such discussion would be likely to adversely affect
25 the network's ability to conduct business in a competitive economic
26 climate. However, final action on these matters shall be taken in a
27 meeting open to the public;

28 (k) To consider, in the case of the state investment board,
29 financial and commercial information when the information relates to
30 the investment of public trust or retirement funds and when public

1 knowledge regarding the discussion would result in loss to such funds
2 or in private loss to the providers of this information.

3 (2) Before convening in executive session, the presiding officer of
4 a governing body shall publicly announce the specific purpose for
5 excluding the public from the meeting place, and the time when the
6 executive session will be concluded. The presiding officer may ask
7 whether any person has an objection to the convening of the executive
8 session and allow a brief statement of the reason for the objection;
9 but no person is required to make such an objection to protect any
10 rights under this chapter. The executive session may be extended to a
11 stated later time by announcement of the presiding officer. No action
12 shall be taken on any matter during executive session other than the
13 matter for which a specific purpose has been previously announced.

14 **Sec. 20.** RCW 42.30.120 and 1985 c 69 s 1 are each amended to read
15 as follows:

16 (1) Each member of the governing body who attends a meeting of such
17 governing body where action is taken in violation of any provision of
18 this chapter applicable to him or her, with knowledge of the fact that
19 the meeting is in violation thereof, shall be subject to personal
20 liability in the form of a civil penalty in the amount of (~~one~~) five
21 hundred dollars. The civil penalty shall be assessed by a judge of the
22 superior court and an action to enforce this penalty may be brought by
23 any person. A violation of this chapter does not constitute a crime
24 and assessment of the civil penalty by a judge shall not give rise to
25 any disability or legal disadvantage based on conviction of a criminal
26 offense.

27 (2) Any person who prevails against a public agency in any action
28 in the courts for a violation of this chapter shall be awarded all
29 costs, including reasonable attorney fees, incurred in connection with

1 such legal action. (~~Pursuant to RCW 4.84.185, any public agency who~~
2 ~~prevails in any action in the courts for a violation of this chapter~~
3 ~~may be awarded reasonable expenses and attorney fees upon final~~
4 ~~judgment and written findings by the trial judge that the action was~~
5 ~~frivolous and advanced without reasonable cause.))~~

6 NEW SECTION. **Sec. 21.** It is legislative intent that the
7 deletion of language in subsection (2) of section 20 of this act not be
8 construed to have any substantive effect. The legislature recognizes
9 that this language is also provided in, but not deleted from, RCW
10 4.84.185. The purpose of subsection (2) of section 20 of this act is
11 solely to remove duplicative and unnecessary language from the Revised
12 Code of Washington.

13 NEW SECTION. **Sec. 22.** The code reviser shall not codify
14 section 21 of this act.

15 **Sec. 23.** RCW 42.30.900 and 1971 ex.s. c 250 s 16 are each amended
16 to read as follows:

17 This chapter may be cited as the "Open Public Meetings Act (~~of~~
18 ~~1971~~)".

19 NEW SECTION. **Sec. 24.** A new section is added to chapter 42.30 RCW
20 to read as follows:

21 The governing body of a public agency shall make available to the
22 public an agenda no later than seventy-two hours prior to holding a
23 regular meeting. Failure to make available an agenda will require an
24 adjournment of the regular meeting. Such agenda shall provide specific
25 identification of the matters to be discussed. At the start of a
26 regular meeting, the governing body shall announce, or make available

1 an agenda showing, any changes, additions, or deletions from the
2 published agenda. Such changes, additions, or deletions shall not
3 constitute a violation of this section.

4 NEW SECTION. **Sec. 25.** A new section is added to chapter 42.30 RCW
5 to read as follows:

6 Minutes of the full proceedings of all regular and special meetings
7 of the governing body shall be promptly prepared and the minutes,
8 except any portion pertaining to executive sessions, shall be open to
9 public inspection and copying. In lieu of minutes, the governing body
10 may tape-record a meeting, in which case the tape recording of the
11 meeting, except the recording of executive sessions, shall be available
12 for public listening and copying.

13 NEW SECTION. **Sec. 26.** RCW 42.32.030 and 1953 c 216 s 3 are
14 each repealed.