

2 EHB 1891 - S AMD - 476

3 By Senators Rossi, Haugen, and Horn

4

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

7 NEW SECTION. **Sec. 1.** It is the intent of the legislature to  
8 delineate between legitimate business use of public records and  
9 inappropriate commercial use. It is also the intent of the legislature  
10 to protect the privacy of citizens from inappropriate commercial use of  
11 public records by providing disincentives for such use. Furthermore,  
12 the legislature seeks to encourage public-private cooperation in ways  
13 that further the public mission of the state and to maintain and  
14 enhance public access to public records for the purpose of encouraging  
15 public oversight and facilitating other desirable social and economic  
16 benefits.

17 **Sec. 2.** RCW 42.17.020 and 1995 c 397 s 1 are each amended to read  
18 as follows:

19 (1) "Agency" includes all state agencies and all local agencies.  
20 "State agency" includes every state office, department, division,  
21 bureau, board, commission, or other state agency. "Local agency"  
22 includes every county, city, town, municipal corporation, quasi-  
23 municipal corporation, or special purpose district, or any office,  
24 department, division, bureau, board, commission, or agency thereof, or  
25 other local public agency.

26 (2) "Authorized committee" means the political committee authorized  
27 by a candidate, or by the public official against whom recall charges  
28 have been filed, to accept contributions or make expenditures on behalf  
29 of the candidate or public official.

30 (3) "Ballot proposition" means any "measure" as defined by RCW  
31 29.01.110, or any initiative, recall, or referendum proposition  
32 proposed to be submitted to the voters of the state or any municipal  
33 corporation, political subdivision, or other voting constituency from  
34 and after the time when the proposition has been initially filed with

1 the appropriate election officer of that constituency prior to its  
2 circulation for signatures.

3 (4) "Benefit" means a commercial, proprietary, financial, economic,  
4 or monetary advantage, or the avoidance of a commercial, proprietary,  
5 financial, economic, or monetary disadvantage.

6 (5) "Bona fide political party" means:

7 (a) An organization that has filed a valid certificate of  
8 nomination with the secretary of state under chapter 29.24 RCW;

9 (b) The governing body of the state organization of a major  
10 political party, as defined in RCW 29.01.090, that is the body  
11 authorized by the charter or bylaws of the party to exercise authority  
12 on behalf of the state party; or

13 (c) The county central committee or legislative district committee  
14 of a major political party. There may be only one legislative district  
15 committee for each party in each legislative district.

16 (6) "Business use" or "business purpose" means use of public  
17 records that contain personally identifiable information, which use is  
18 for the purpose of meeting statutory or regulatory requirements,  
19 conducting business in a safe and lawful manner, or validating  
20 information provided by a third party, and which use does not result in  
21 unsolicited commercial contact to persons identified in such records.

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

24 ((+7)) (8) "Treasurer" and "deputy treasurer" mean the individuals  
25 appointed by a candidate or political committee, pursuant to RCW  
26 42.17.050, to perform the duties specified in that section.

27 ((+8)) (9) "Candidate" means any individual who seeks nomination  
28 for election or election to public office. An individual seeks  
29 nomination or election when he or she first:

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

32 (b) Announces publicly or files for office;

33 (c) Purchases commercial advertising space or broadcast time to  
34 promote his or her candidacy; or

35 (d) Gives his or her consent to another person to take on behalf of  
36 the individual any of the actions in (a) or (c) of this subsection.

37 ((+9)) (10) "Caucus political committee" means a political  
38 committee organized and maintained by the members of a major political  
39 party in the state senate or state house of representatives.

1       (~~(10)~~) (11) "Commercial advertiser" means any person who sells  
2 the service of communicating messages or producing printed material for  
3 broadcast or distribution to the general public or segments of the  
4 general public whether through the use of newspapers, magazines,  
5 television and radio stations, billboard companies, direct mail  
6 advertising companies, printing companies, or otherwise.

7       (~~(11)~~) (12) "Commission" means the agency established under RCW  
8 42.17.350.

9       (~~(12)~~) (13) "Compensation" unless the context requires a narrower  
10 meaning, includes payment in any form for real or personal property or  
11 services of any kind(~~(:—PROVIDED, That)~~). However, for the purpose of  
12 compliance with RCW 42.17.241, the term "compensation" shall not  
13 include per diem allowances or other payments made by a governmental  
14 entity to reimburse a public official for expenses incurred while the  
15 official is engaged in the official business of the governmental  
16 entity.

17       (~~(13)~~) (14) "Continuing political committee" means a political  
18 committee that is an organization of continuing existence not  
19 established in anticipation of any particular election campaign.

20       (~~(14)~~) (15)(a) "Contribution" includes:

21       (i) A loan, gift, deposit, subscription, forgiveness of  
22 indebtedness, donation, advance, pledge, payment, transfer of funds  
23 between political committees, or anything of value, including personal  
24 and professional services for less than full consideration;

25       (ii) An expenditure made by a person in cooperation, consultation,  
26 or concert with, or at the request or suggestion of, a candidate, a  
27 political committee, or their agents;

28       (iii) The financing by a person of the dissemination, distribution,  
29 or republication, in whole or in part, of broadcast, written, graphic,  
30 or other form of political advertising prepared by a candidate, a  
31 political committee, or its authorized agent;

32       (iv) Sums paid for tickets to fund-raising events such as dinners  
33 and parties, except for the actual cost of the consumables furnished at  
34 the event.

35       (b) "Contribution" does not include:

36       (i) Standard interest on money deposited in a political committee's  
37 account;

38       (ii) Ordinary home hospitality;

1 (iii) A contribution received by a candidate or political committee  
2 that is returned to the contributor within five business days of the  
3 date on which it is received by the candidate or political committee;

4 (iv) A news item, feature, commentary, or editorial in a regularly  
5 scheduled news medium that is of primary interest to the general  
6 public, that is in a news medium controlled by a person whose business  
7 is that news medium, and that is not controlled by a candidate or a  
8 political committee;

9 (v) An internal political communication primarily limited to the  
10 members of or contributors to a political party organization or  
11 political committee, or to the officers, management staff, or  
12 stockholders of a corporation or similar enterprise, or to the members  
13 of a labor organization or other membership organization;

14 (vi) The rendering of personal services of the sort commonly  
15 performed by volunteer campaign workers, or incidental expenses  
16 personally incurred by volunteer campaign workers not in excess of  
17 fifty dollars personally paid for by the worker. "Volunteer services,"  
18 for the purposes of this section, means services or labor for which the  
19 individual is not compensated by any person;

20 (vii) Messages in the form of reader boards, banners, or yard or  
21 window signs displayed on a person's own property or property occupied  
22 by a person. However, a facility used for such political advertising  
23 for which a rental charge is normally made must be reported as an in-  
24 kind contribution and counts towards any applicable contribution limit  
25 of the person providing the facility;

26 (viii) Legal or accounting services rendered to or on behalf of:

27 (A) A political party or caucus political committee if the person  
28 paying for the services is the regular employer of the person rendering  
29 such services; or

30 (B) A candidate or an authorized committee if the person paying for  
31 the services is the regular employer of the individual rendering the  
32 services and if the services are solely for the purpose of ensuring  
33 compliance with state election or public disclosure laws.

34 (c) Contributions other than money or its equivalent are deemed to  
35 have a monetary value equivalent to the fair market value of the  
36 contribution. Services or property or rights furnished at less than  
37 their fair market value for the purpose of assisting any candidate or  
38 political committee are deemed a contribution. Such a contribution

1 must be reported as an in-kind contribution at its fair market value  
2 and counts towards any applicable contribution limit of the provider.

3 ~~((15))~~ (16) "Elected official" means any person elected at a  
4 general or special election to any public office, and any person  
5 appointed to fill a vacancy in any such office.

6 ~~((16))~~ (17) "Election" includes any primary, general, or special  
7 election for public office and any election in which a ballot  
8 proposition is submitted to the voters: PROVIDED, That an election in  
9 which the qualifications for voting include other than those  
10 requirements set forth in Article VI, section 1 (Amendment 63) of the  
11 Constitution of the state of Washington shall not be considered an  
12 election for purposes of this chapter.

13 ~~((17))~~ (18) "Election campaign" means any campaign in support of  
14 or in opposition to a candidate for election to public office and any  
15 campaign in support of, or in opposition to, a ballot proposition.

16 ~~((18))~~ (19) "Election cycle" means the period beginning on the  
17 first day of December after the date of the last previous general  
18 election for the office that the candidate seeks and ending on November  
19 30th after the next election for the office. In the case of a special  
20 election to fill a vacancy in an office, "election cycle" means the  
21 period beginning on the day the vacancy occurs and ending on November  
22 30th after the special election.

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

37 ~~((20))~~ (21) "Final report" means the report described as a final  
38 report in RCW 42.17.080(2).

1       (~~(21)~~) (22) "General election" means the election that results in  
2 the election of a person to a state office. It does not include a  
3 primary.

4       (~~(22)~~) (23) "Gift," is as defined in RCW 42.52.010.

5       (~~(23)~~) (24) "Immediate family" includes the spouse, dependent  
6 children, and other dependent relatives, if living in the household.  
7 For the purposes of RCW 42.17.640 through 42.17.790, "immediate family"  
8 means an individual's spouse, and child, stepchild, grandchild, parent,  
9 stepparent, grandparent, brother, half brother, sister, or half sister  
10 of the individual and the spouse of any such person and a child,  
11 stepchild, grandchild, parent, stepparent, grandparent, brother, half  
12 brother, sister, or half sister of the individual's spouse and the  
13 spouse of any such person.

14       (~~(24)~~) (25) "Independent expenditure" means an expenditure that  
15 has each of the following elements:

16       (a) It is made in support of or in opposition to a candidate for  
17 office by a person who is not (i) a candidate for that office, (ii) an  
18 authorized committee of that candidate for that office, (iii) a person  
19 who has received the candidate's encouragement or approval to make the  
20 expenditure, if the expenditure pays in whole or in part for political  
21 advertising supporting that candidate or promoting the defeat of any  
22 other candidate or candidates for that office, or (iv) a person with  
23 whom the candidate has collaborated for the purpose of making the  
24 expenditure, if the expenditure pays in whole or in part for political  
25 advertising supporting that candidate or promoting the defeat of any  
26 other candidate or candidates for that office;

27       (b) The expenditure pays in whole or in part for political  
28 advertising that either specifically names the candidate supported or  
29 opposed, or clearly and beyond any doubt identifies the candidate  
30 without using the candidate's name; and

31       (c) The expenditure, alone or in conjunction with another  
32 expenditure or other expenditures of the same person in support of or  
33 opposition to that candidate, has a value of five hundred dollars or  
34 more. A series of expenditures, each of which is under five hundred  
35 dollars, constitutes one independent expenditure if their cumulative  
36 value is five hundred dollars or more.

37       (~~(25)~~) (26)(a) "Intermediary" means an individual who transmits  
38 a contribution to a candidate or committee from another person unless  
39 the contribution is from the individual's employer, immediate family as

1 defined for purposes of RCW 42.17.640 through 42.17.790, or an  
2 association to which the individual belongs.

3 (b) A treasurer or a candidate is not an intermediary for purposes  
4 of the committee that the treasurer or candidate serves.

5 (c) A professional fund-raiser is not an intermediary if the fund-  
6 raiser is compensated for fund-raising services at the usual and  
7 customary rate.

8 (d) A volunteer hosting a fund-raising event at the individual's  
9 home is not an intermediary for purposes of that event.

10 (~~(26)~~) (27) "Legislation" means bills, resolutions, motions,  
11 amendments, nominations, and other matters pending or proposed in  
12 either house of the state legislature, and includes any other matter  
13 that may be the subject of action by either house or any committee of  
14 the legislature and all bills and resolutions that, having passed both  
15 houses, are pending approval by the governor.

16 (~~(27)~~) (28) "Lobby" and "lobbying" each mean attempting to  
17 influence the passage or defeat of any legislation by the legislature  
18 of the state of Washington, or the adoption or rejection of any rule,  
19 standard, rate, or other legislative enactment of any state agency  
20 under the state Administrative Procedure Act, chapter 34.05 RCW.  
21 Neither "lobby" nor "lobbying" includes an association's or other  
22 organization's act of communicating with the members of that  
23 association or organization.

24 (~~(28)~~) (29) "Lobbyist" includes any person who lobbies either in  
25 his or her own or another's behalf.

26 (~~(29)~~) (30) "Lobbyist's employer" means the person or persons by  
27 whom a lobbyist is employed and all persons by whom he or she is  
28 compensated for acting as a lobbyist.

29 (~~(30)~~) (31) "Person" includes an individual, partnership, joint  
30 venture, public or private corporation, association, federal, state, or  
31 local governmental entity or agency however constituted, candidate,  
32 committee, political committee, political party, executive committee  
33 thereof, or any other organization or group of persons, however  
34 organized.

35 (~~(31)~~) (32) "Person in interest" means the person who is the  
36 subject of a record or any representative designated by that person,  
37 except that if that person is under a legal disability, the term  
38 "person in interest" means and includes the parent or duly appointed  
39 legal representative.

1       (~~(32)~~) (33) "Personally identifiable information" means  
2 information provided by an individual as a prerequisite to the receipt  
3 of a license, approval, award, product, or service from a government  
4 agency, which may include name, address, telephone number, social  
5 security number, photographs, fingerprints, or computerized images  
6 thereof.

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

13       (~~(33)~~) (35) "Political committee" means any person (except a  
14 candidate or an individual dealing with his or her own funds or  
15 property) having the expectation of receiving contributions or making  
16 expenditures in support of, or opposition to, any candidate or any  
17 ballot proposition.

18       (~~(34)~~) (36) "Primary" means the procedure for nominating a  
19 candidate to state office under chapter 29.18 or 29.21 RCW or any other  
20 primary for an election that uses, in large measure, the procedures  
21 established in chapter 29.18 or 29.21 RCW.

22       (~~(35)~~) (37) "Public office" means any federal, state, county,  
23 city, town, school district, port district, special district, or other  
24 state political subdivision elective office.

25       (~~(36)~~) (38) "Public record" includes any writing containing  
26 information relating to the conduct of government or the performance of  
27 any governmental or proprietary function prepared, owned, used, or  
28 retained by any state or local agency regardless of physical form or  
29 characteristics. For the office of the secretary of the senate and the  
30 office of the chief clerk of the house of representatives, public  
31 records means legislative records as defined in RCW 40.14.100 and also  
32 means the following: All budget and financial records; personnel  
33 leave, travel, and payroll records; records of legislative sessions;  
34 reports submitted to the legislature; and any other record designated  
35 a public record by any official action of the senate or the house of  
36 representatives.

37       (~~(37)~~) (39) "Recall campaign" means the period of time beginning  
38 on the date of the filing of recall charges under RCW 29.82.015 and  
39 ending thirty days after the recall election.



1       (~~(38)~~) (40) "State legislative office" means the office of a  
2 member of the state house of representatives or the office of a member  
3 of the state senate.

4       (~~(39)~~) (41) "State office" means state legislative office or the  
5 office of governor, lieutenant governor, secretary of state, attorney  
6 general, commissioner of public lands, insurance commissioner,  
7 superintendent of public instruction, state auditor, or state  
8 treasurer.

9       (~~(40)~~) (42) "State official" means a person who holds a state  
10 office.

11       (~~(41)~~) (43) "Surplus funds" mean, in the case of a political  
12 committee or candidate, the balance of contributions that remain in the  
13 possession or control of that committee or candidate subsequent to the  
14 election for which the contributions were received, and that are in  
15 excess of the amount necessary to pay remaining debts incurred by the  
16 committee or candidate prior to that election. In the case of a  
17 continuing political committee, "surplus funds" mean those  
18 contributions remaining in the possession or control of the committee  
19 that are in excess of the amount necessary to pay all remaining debts  
20 when it makes its final report under RCW 42.17.065.

21       (~~(42)~~) (44) "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.

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

32       **Sec. 3.** RCW 42.17.260 and 1995 c 397 s 11 and 1995 c 341 s 1 are  
33 each reenacted and amended to read as follows:

34       (1) Each agency, in accordance with published rules, shall make  
35 available for public inspection and copying all public records, unless  
36 the record falls within the specific exemptions of subsection (6) of  
37 this section, RCW 42.17.310, 42.17.315, or other statute which exempts  
38 or prohibits disclosure of specific information or records. To the

1 extent required to prevent an unreasonable invasion of personal privacy  
2 interests protected by RCW 42.17.310 and 42.17.315, an agency shall  
3 delete identifying details in a manner consistent with RCW 42.17.310  
4 and 42.17.315 when it makes available or publishes any public record;  
5 however, in each case, the justification for the deletion shall be  
6 explained fully in writing.

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

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

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

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

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

23 (d) Planning policies and goals, and interim and final planning  
24 decisions;

25 (e) Factual staff reports and studies, factual consultant's reports  
26 and studies, scientific reports and studies, and any other factual  
27 information derived from tests, studies, reports, or surveys, whether  
28 conducted by public employees or others; and

29 (f) Correspondence, and materials referred to therein, by and with  
30 the agency relating to any regulatory, supervisory, or enforcement  
31 responsibilities of the agency, whereby the agency determines, or  
32 opines upon, or is asked to determine or opine upon, the rights of the  
33 state, the public, a subdivision of state government, or of any private  
34 party.

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

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

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

3 (5) Each state agency shall, by rule, establish and implement a  
4 system of indexing for the identification and location of the following  
5 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  
30 copying. State agencies may charge a fee to cover the actual costs of  
31 providing individual mailed copies of indexes.

32 (6) A public record may be relied on, used, or cited as precedent  
33 by an agency against a party other than an agency and it may be invoked  
34 by the agency for any other purpose only if(~~(←)~~):

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

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

38 (7) Each agency shall establish, maintain, and make available for  
39 public inspection and copying a statement of the actual per page cost

1 or other costs, if any, that it charges for providing photocopies of  
2 public records and a statement of the factors and manner used to  
3 determine the actual per page cost or other costs, if any.

4 (a) In determining the actual per page cost for providing  
5 photocopies of public records, an agency may include all costs directly  
6 incident to copying such public records including the actual cost of  
7 the paper and the per page cost for use of agency copying equipment.  
8 In determining other actual costs for providing photocopies of public  
9 records, an agency may include all costs directly incident to shipping  
10 such public records, including the cost of postage or delivery charges  
11 and the cost of any container or envelope used.

12 (b) In determining the actual per page cost or other costs for  
13 providing copies of public records, an agency may not include staff  
14 salaries, benefits, or other general administrative or overhead  
15 charges, unless those costs are directly related to the actual cost of  
16 copying the public records. Staff time to copy and mail the requested  
17 public records may be included in an agency's costs.

18 (8) An agency need not calculate the actual per page cost or other  
19 costs it charges for providing photocopies of public records if to do  
20 so would be unduly burdensome, but in that event: The agency may not  
21 charge in excess of fifteen cents per page for photocopies of public  
22 records or for the use of agency equipment to photocopy public records  
23 and the actual postage or delivery charge and the cost of any container  
24 or envelope used to mail the public records to the requestor.

25 (9) Except under an agreement for business use in RCW 42.17.300,  
26 this chapter shall not be construed as giving authority to any agency,  
27 the office of the secretary of the senate, or the office of the chief  
28 clerk of the house of representatives to give, sell or provide access  
29 to lists of individuals requested for commercial purposes, and  
30 agencies, the office of the secretary of the senate, and the office of  
31 the chief clerk of the house of representatives shall not do so unless  
32 specifically authorized or directed by law: PROVIDED, HOWEVER, That  
33 lists of applicants for professional licenses and of professional  
34 licensees shall be made available to those professional associations or  
35 educational organizations recognized by their professional licensing or  
36 examination board, upon payment of a reasonable charge ((therefor)), in  
37 compliance with RCW 42.17.300(2): PROVIDED FURTHER, That such  
38 recognition may be refused only for a good cause pursuant to a hearing

1 under the provisions of chapter 34.05 RCW, the Administrative Procedure  
2 Act.

3 **Sec. 4.** RCW 42.17.300 and 1995 c 397 s 14 and 1995 c 341 s 2 are  
4 each reenacted and amended to read as follows:

5 (1) No fee shall be charged for the inspection of public records.  
6 No fee shall be charged for locating public documents and making them  
7 available for copying. A reasonable charge may be imposed for  
8 providing copies of public records and for the use by any person of  
9 agency equipment or equipment of the office of the secretary of the  
10 senate or the office of the chief clerk of the house of representatives  
11 to copy public records, which charges shall not exceed the amount  
12 necessary to reimburse the agency, the office of the secretary of the  
13 senate, or the office of the chief clerk of the house of  
14 representatives for its actual costs directly incident to such copying.  
15 Agency charges for photocopies shall be imposed in accordance with the  
16 actual per page cost or other costs established and published by the  
17 agency. In no event may an agency charge a per page cost greater than  
18 the actual per page cost as established and published by the agency.  
19 To the extent the agency has not determined the actual per page cost  
20 for photocopies of public records, the agency may not charge in excess  
21 of fifteen cents per page.

22 (2) An agency may provide information for business use of public  
23 records for which disclosure is otherwise permitted by law, and may  
24 enter into agreements for access to public information for business use  
25 as provided in subsection (3) of this section. The agency may charge  
26 a fee reasonably designed to recover the actual cost of providing the  
27 information.

28 (3) The agreements for access to public records for business  
29 purposes shall substantially conform to the following conditions and  
30 limitations:

31 (a) The contractor agrees to use the information provided by the  
32 agency only for the purpose for which the information was initially  
33 sought;

34 (b) The contractor agrees not to disclose information received  
35 under the agreement to anyone, except as provided under the terms and  
36 conditions of the agreement;

37 (c) The contractor, or any employee or agent of the contractor,  
38 shall not furnish in any form, to any person, corporation, partnership,

1 association, or organization, a copy of any information, in whole or in  
2 part, provided by the agency, without the express written consent of  
3 the agency for the provision of the information for a purpose  
4 consistent with the agreement;

5 (d) The contractor shall adhere to any current or subsequently  
6 amended statutory or administrative rules regulating privacy or  
7 confidentiality relating to the information provided by the agency;

8 (e) No name or address of any individual furnished by the agency to  
9 the contractor shall be published or otherwise disclosed by the  
10 contractor in any manner not otherwise approved by the agency;

11 (f) The contractor, or any officer, employee, or agent of the  
12 contractor, shall not furnish in any form, to any person, corporation,  
13 partnership, association, or organization, any of the individual's  
14 personally identifiable information provided by the agency under the  
15 agreement for the purpose of making unsolicited commercial contact with  
16 the individuals named or otherwise identified, unless specifically  
17 authorized or directed by law;

18 (g) The contractor agrees that the agency may provide "control" or  
19 "salted" data as a portion of provided information as a means to ensure  
20 that any personally identifiable information is utilized only for the  
21 specific purposes allowed under the terms of the agreement;

22 (h) The contractor shall not gain any proprietary right to or  
23 interest in any information provided by the agency and shall not assign  
24 its interest in the agreement or any portion thereof to any person,  
25 corporation, partnership, association, or organization of any kind;

26 (i) The contractor accepts full responsibility and liability for  
27 any violations of the agreement by the contractor or any officer,  
28 employee, or agent of the contractor and any such violation shall  
29 result in immediate termination by the agency of all information  
30 provided to the contractor or any officer, employee, or agent of the  
31 contractor in any form and immediate forfeiture to the agency of any  
32 agency-provided information, in any form, held by the contractor or any  
33 officer, employee, or agent of the contractor; and

34 (j) The agency reserves the right to seek or impose all other  
35 lawful remedies and penalties for any violation of this agreement by  
36 the contractor, or any officer, employee, or agent of the contractor.

37 NEW SECTION. Sec. 5. A new section is added to chapter 42.17 RCW  
38 to read as follows:

1 A person who knowingly uses or discloses personally identifiable  
2 information in violation of an agreement under RCW 42.17.300(2) is  
3 subject to a civil penalty not to exceed ten thousand dollars for each  
4 violation or one dollar per name used, whichever is greater, and loss  
5 of access to public records for business purposes for up to five years.

6 This section shall be enforced under the applicable provisions of  
7 RCW 42.17.400.

8 **Sec. 6.** RCW 42.17.310 and 1996 c 305 s 2, 1996 c 253 s 302, 1996  
9 c 191 s 88, and 1996 c 80 s 1 are each reenacted and amended to read as  
10 follows:

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

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

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

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

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

29 (e) Information revealing the identity of persons who are witnesses  
30 to or victims of crime or who file complaints with investigative, law  
31 enforcement, or penology agencies, other than the public disclosure  
32 commission, if disclosure would endanger any person's life, physical  
33 safety, or property. If at the time a complaint is filed the  
34 complainant, victim or witness indicates a desire for disclosure or  
35 nondisclosure, such desire shall govern. However, all complaints filed  
36 with the public disclosure commission about any elected official or  
37 candidate for public office must be made in writing and signed by the  
38 complainant under oath.

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

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

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

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

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

21 (k) Records, maps, or other information identifying the location of  
22 archaeological sites in order to avoid the looting or depredation of  
23 such sites.

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

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

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

36 (o) Financial and commercial information and records supplied by  
37 private persons pertaining to export services provided pursuant to  
38 chapter 43.163 RCW and chapter 53.31 RCW, and by persons pertaining to  
39 export projects pursuant to RCW 43.23.035.



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

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

6 (r) Financial and commercial information and records supplied by  
7 businesses or individuals during application for loans or program  
8 services provided by chapters 43.163, 43.160, 43.330, and 43.168 RCW,  
9 or during application for economic development loans or program  
10 services provided by any local agency.

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

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

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

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

26 (w)(i) The federal social security number of individuals governed  
27 under chapter 18.130 RCW maintained in the files of the department of  
28 health, except this exemption does not apply to requests made directly  
29 to the department from federal, state, and local agencies of  
30 government, and national and state licensing, credentialing,  
31 investigatory, disciplinary, and examination organizations; (ii) the  
32 current residential address and current residential telephone number of  
33 a health care provider governed under chapter 18.130 RCW maintained in  
34 the files of the department, if the provider requests that this  
35 information be withheld from public inspection and copying, and  
36 provides to the department an accurate alternate or business address  
37 and business telephone number. On or after January 1, 1995, the  
38 current residential address and residential telephone number of a  
39 health care provider governed under RCW 18.130.140 maintained in the

1 files of the department shall automatically be withheld from public  
2 inspection and copying unless the provider specifically requests the  
3 information be released, and except as provided for under RCW  
4 42.17.260(9).

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

7 (y) Information obtained by the board of pharmacy or the department  
8 of health and its representatives as provided in RCW 69.41.044,  
9 69.41.280, and 18.64.420.

10 (z) Financial information, business plans, examination reports, and  
11 any information produced or obtained in evaluating or examining a  
12 business and industrial development corporation organized or seeking  
13 certification under chapter 31.24 RCW.

14 (aa) Financial and commercial information supplied to the state  
15 investment board by any person when the information relates to the  
16 investment of public trust or retirement funds and when disclosure  
17 would result in loss to such funds or in private loss to the providers  
18 of this information.

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

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

23 (dd) Information that identifies a person who, while an agency  
24 employee: (i) Seeks advice, under an informal process established by  
25 the employing agency, in order to ascertain his or her rights in  
26 connection with a possible unfair practice under chapter 49.60 RCW  
27 against the person; and (ii) requests his or her identity or any  
28 identifying information not be disclosed.

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

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

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

1 (hh) Information and documents created specifically for, and  
2 collected and maintained by a quality improvement committee pursuant to  
3 RCW 43.70.510, regardless of which agency is in possession of the  
4 information and documents.

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

7 (jj) Computer programs and software developed by agencies alone or  
8 in partnership with other public and private entities. For the  
9 purposes of this chapter, software is the programming source codes or  
10 object codes developed by an agency or developed by a private  
11 contractor for an agency. However, information contained in or  
12 accessible through those computer programs and software that is  
13 disclosable under state law is not exempt from disclosure and those  
14 computer programs and software may be used to search or inspect such  
15 information under this subsection (1)(jj).

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

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

30 (4) Agency responses refusing, in whole or in part, inspection of  
31 any public record shall include a statement of the specific exemption  
32 authorizing the withholding of the record (or part) and a brief  
33 explanation of how the exemption applies to the record withheld.

34 **Sec. 7.** RCW 43.105.310 and 1996 c 171 s 15 are each amended to  
35 read as follows:

36 (1) State agencies and local governments that collect and enter  
37 information concerning individuals into electronic records and  
38 information systems that will be widely accessible by the public under

1 RCW 42.17.020 shall ensure the accuracy of this information to the  
2 extent possible. To the extent possible, information must be collected  
3 directly from, and with the consent of, the individual who is the  
4 subject of the data. Agencies shall establish procedures for  
5 correcting inaccurate information, including establishing mechanisms  
6 for individuals to review information about themselves and recommend  
7 changes in information they believe to be inaccurate. The inclusion of  
8 personal information in electronic public records that is widely  
9 available to the public should include information on the date when the  
10 data base was created or most recently updated. If personally  
11 identifiable information is included in electronic public records that  
12 are made widely available to the public, agencies must follow retention  
13 and archival schedules in accordance with chapter 40.14 RCW, retaining  
14 personally identifiable information only as long as needed to carry out  
15 the purpose for which it was collected.

16 (2) State agencies and local governments that collect personally  
17 identifiable information that is subject to disclosure under chapter  
18 42.17 RCW or other law shall, to the extent practicable, post or  
19 publish public notice that the information gathered may be disclosable  
20 as a public record. The agency-specific public notice will reflect the  
21 common uses of such records. Upon request, state agencies and local  
22 governments shall provide a written statement regarding the  
23 circumstances under which specific personally identifiable information  
24 may be disclosed to the public or for business purposes.

25 NEW SECTION. Sec. 8. A new section is added to chapter 42.17 RCW  
26 to read as follows:

27 The provisions of 18 U.S.C. Sec. 2721 and chapter . . . (Substitute  
28 Senate Bill No. 5718), Laws of 1997 prevail over any conflicting  
29 provisions of chapter . . ., Laws of 1997 (this act)."

30 **EHB 1891** - S AMD - 476

31 By Senators Rossi, Haugen, and Horn

32

33 On page 1, beginning on line 2 of the title, after "form;" strike  
34 the remainder of the title and insert "amending RCW 42.17.020 and  
35 43.105.310; reenacting and amending RCW 42.17.260, 42.17.300, and

1 42.17.310; adding new sections to chapter 42.17 RCW; creating a new  
2 section; and prescribing penalties."

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