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HOUSE BILL 2483

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State of Washington

55th Legislature

1998 Regular Session

By Representatives Dunn, Wolfe and D. Schmidt; by request of Department of Information Services

Read first time . Referred to Committee on .

1 AN ACT Relating to the protection of taxpayer funded computer  
2 software; reenacting and amending RCW 42.17.310; and creating a new  
3 section.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that computer software  
6 developed to support the public missions of state and local agencies is  
7 a strategic public asset and needs to be managed as such. The  
8 legislature also finds that computer software and related intellectual  
9 property is central to many of its plans to improve service delivery to  
10 the public.

11 It is the intent of the legislature to protect the significant  
12 taxpayer investment in software development. It is also the intent of  
13 the legislature to encourage public-private cooperation in ways that  
14 further the mission of the state, including measures to support joint  
15 projects with private-sector companies in which the risks and rewards  
16 of software development are shared.

17 The legislature also seeks to ensure that Washington state is able  
18 to compete for private partners with other states that have enacted

1 measures to exempt computer software from the definition of a public  
2 record.

3 It is also the intent of the legislature that copies of such  
4 software be available to support the full range of the public's  
5 business, including but not limited to public access to records  
6 otherwise subject to disclosure and legislatively mandated audits,  
7 during the entire life cycle of any given system.

8 **Sec. 2.** RCW 42.17.310 and 1997 c 310 s 2, 1997 c 274 s 8, 1997 c  
9 250 s 7, 1997 c 239 s 4, 1997 c 220 s 120 (Referendum Bill No. 48), and  
10 1997 c 58 s 900 are each reenacted and amended to read as 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 84.08.210, 82.32.330, 84.40.020, or 84.40.340 or (ii) violate the  
22 taxpayer's right to privacy or result in unfair competitive  
23 disadvantage to the taxpayer.

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

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

1 candidate for public office must be made in writing and signed by the  
2 complainant under oath.

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

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

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

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

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

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

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

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

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

38 (o) Financial and commercial information and records supplied by  
39 private persons pertaining to export services provided pursuant to

1 chapter 43.163 RCW and chapter 53.31 RCW, and by persons pertaining to  
2 export projects pursuant to RCW 43.23.035.

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

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

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

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

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

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

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

32 (w)(i) The federal social security number of individuals governed  
33 under chapter 18.130 RCW maintained in the files of the department of  
34 health, except this exemption does not apply to requests made directly  
35 to the department from federal, state, and local agencies of  
36 government, and national and state licensing, credentialing,  
37 investigatory, disciplinary, and examination organizations; (ii) the  
38 current residential address and current residential telephone number of  
39 a health care provider governed under chapter 18.130 RCW maintained in

1 the files of the department, if the provider requests that this  
2 information be withheld from public inspection and copying, and  
3 provides to the department an accurate alternate or business address  
4 and business telephone number. On or after January 1, 1995, the  
5 current residential address and residential telephone number of a  
6 health care provider governed under RCW 18.130.140 maintained in the  
7 files of the department shall automatically be withheld from public  
8 inspection and copying unless the provider specifically requests the  
9 information be released, and except as provided for under RCW  
10 42.17.260(9).

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

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

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

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

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

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

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

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

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

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

7 (hh) Information and documents created specifically for, and  
8 collected and maintained by a quality improvement committee pursuant to  
9 RCW 43.70.510, regardless of which agency is in possession of the  
10 information and documents.

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

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

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

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

26 (mm) Proprietary financial and commercial information that the  
27 submitting entity, with review by the department of health,  
28 specifically identifies at the time it is submitted and that is  
29 provided to or obtained by the department of health in connection with  
30 an application for, or the supervision of, an antitrust exemption  
31 sought by the submitting entity under RCW 43.72.310. If a request for  
32 such information is received, the submitting entity must be notified of  
33 the request. Within ten business days of receipt of the notice, the  
34 submitting entity shall provide a written statement of the continuing  
35 need for confidentiality, which shall be provided to the requester.  
36 Upon receipt of such notice, the department of health shall continue to  
37 treat information designated under this section as exempt from  
38 disclosure. If the requester initiates an action to compel disclosure

1 under this chapter, the submitting entity must be joined as a party to  
2 demonstrate the continuing need for confidentiality.

3 (nn) Records maintained by the board of industrial insurance  
4 appeals that are related to appeals of crime victims' compensation  
5 claims filed with the board under RCW 7.68.110.

6 (oo) Computer software owned solely by agencies and political  
7 subdivisions or together with private entities. "Computer software"  
8 means the programming source code or object code necessary for the  
9 operation of a computer program. It does not include records  
10 accessible through the use of the computer program that are not  
11 otherwise exempt.

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

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

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

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