
HOUSE BILL 2060

State of Washington

56th Legislature

1999 Regular Session

By Representatives DeBolt, Morris, Crouse, Ruderman and Poulsen

Read first time 02/15/1999. Referred to Committee on Technology,
Telecommunications & Energy.

1 AN ACT Relating to franchises and the use of public rights-of-way;
2 amending RCW 35.21.860, 36.55.010, and 42.17.310; adding a new section
3 to chapter 35A.21 RCW; adding a new chapter to Title 35 RCW; adding a
4 new chapter to Title 36 RCW; providing an effective date; providing a
5 contingent effective date; and declaring an emergency.

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

7 NEW SECTION. **Sec. 1.** The definitions in this section apply
8 throughout this chapter unless the context clearly requires otherwise.

9 (1) "Cable television service" means the one-way transmission to
10 subscribers of video programming and other programming service and
11 subscriber interaction, if any, that is required for the selection or
12 use of such video programming or other programming service.

13 (2) "Facilities" means all of the plant, equipment, fixtures,
14 appurtenances, antennas, and other facilities necessary to furnish and
15 deliver telecommunications services and cable television services,
16 including but not limited to poles with crossarms, poles without
17 crossarms, wires, lines, conduits, cables, communication and signal
18 lines and equipment, braces, guys, anchors, vaults, and all
19 attachments, appurtenances, and appliances necessary or incidental to

1 the distribution and use of telecommunications services and cable
2 television services.

3 (3) "Right-of-way" means public roads and streets, but does not
4 include:

5 (a) State highways;

6 (b) Land dedicated for roads, streets, and highways not opened or
7 improved for motor vehicle use;

8 (c) Structures located within the right-of-way;

9 (d) Federally granted trust lands or the forest board trust lands;

10 (e) Lands owned or managed by the state parks and recreation
11 commission; or

12 (f) Federally granted railroad rights-of-way acquired under 43
13 U.S.C. Sec. 912 and related provisions of federal law that are not open
14 for motor vehicle use.

15 (4) "Service provider" means every corporation, company,
16 association, joint stock association, firm, partnership, person, city,
17 or town owning, operating, or managing any facilities used to provide
18 telecommunications or cable television service for hire, sale, or
19 resale to the general public. "Service provider" includes the legal
20 successor to any such corporation, company, association, joint stock
21 association, firm, partnership, person, city, or town.

22 (5) "Telecommunications service" means the transmission of
23 information by wire, radio, optical cable, electromagnetic, or other
24 similar means for the general public. For the purpose of this
25 subsection, "information" means knowledge or intelligence represented
26 by any form of writing, signs, signals, pictures, sounds, or any other
27 symbols. For the purpose of this chapter, "telecommunications service"
28 excludes the over-the-air transmission of broadcast television or
29 broadcast radio signals.

30 NEW SECTION. **Sec. 2.** (1) A city or town shall not unreasonably
31 deny the use of the right-of-way for installing, maintaining, or
32 removing facilities for telecommunications services or cable television
33 services. The reasons for a denial of the use of the right-of-way
34 shall be stated in writing.

35 (2) A city or town shall:

36 (a) Before issuing a permit, make a finding that approval of the
37 permit is consistent with easement rights, if any, granted for the
38 right-of-way;

1 (b) Provide as much advance notice as practicable of plans to open
2 the right-of-way so that work within the right-of-way may be scheduled
3 and coordinated. Information regarding existing or planned facilities
4 that is provided by a service provider to a city or town for the
5 purpose of planning for, scheduling, and coordinating work in the
6 right-of-way is exempt under RCW 42.17.310 from public inspection and
7 copying; and

8 (c) Ensure that facilities are installed and maintained within the
9 right-of-way in such manner and at such points so as not to
10 inconvenience the public use of the right-of-way.

11 (3) A service provider shall:

12 (a) Obtain all permits required by the city or town for the
13 installation, maintenance, or removal of facilities in the right-of-
14 way;

15 (b) Ensure that facilities comply with applicable land use and
16 construction codes, regulations, standards, and franchise requirements
17 adopted by a city or town, subject to verification by the city or town
18 of such compliance;

19 (c) Cooperate with the city or town in ensuring that facilities are
20 installed and maintained within the right-of-way in such a manner and
21 at such points so as not to inconvenience the public use of the right-
22 of-way;

23 (d) Prior to attaching to or otherwise using a facility or
24 structure in the right-of-way: (i) Obtain the written approval of the
25 facility or structure owner if the service provider does not own it;
26 and (ii) comply with any conditions imposed regarding such an
27 attachment to or other use of the facility or structure;

28 (e) Prior to using public property that is not in the right-of-way:
29 (i) Obtain the written approval of the governmental entity that manages
30 or has authority over the public property; and (ii) comply with any
31 conditions imposed regarding such an attachment to or other use of the
32 facility or structure; and

33 (f) Construct, install, operate, and maintain facilities at the
34 service provider's own expense.

35 (4) Nothing in this section shall be construed as:

36 (a) Creating or expanding (i) liabilities of a city or town
37 regarding the construction, installation, maintenance, or removal of
38 facilities; or (ii) duties owed by a city or town to service providers
39 to construct, install, maintain, or remove facilities;

1 (b) Creating, expanding, or extending any liability of a city or
2 town to any third-party user of facilities or third-party beneficiary;
3 or

4 (c) Limiting the right of a city or town to require an
5 indemnification agreement as a condition of a service provider's
6 facilities occupying the right-of-way.

7 (5) Nothing in this section creates, modifies, expands, or
8 diminishes the priority of use of the right-of-way by a service
9 provider, either in relation to other service providers or in relation
10 to other users of the right-of-way for other purposes.

11 NEW SECTION. **Sec. 3.** (1) A city or town shall not adopt or
12 enforce regulations or ordinances specifically relating to service
13 providers using the right-of-way that:

14 (a) Impose requirements that regulate the services or business
15 operations of the service provider, except where specifically
16 authorized in state or federal law;

17 (b) Conflict with federal or state laws, rules, or regulations that
18 specifically apply to the design, construction, and operation of
19 facilities or with federal or state worker safety or public safety
20 laws, rules, or regulations; or

21 (c) Regulate the services provided based upon the content or kind
22 of signals that are carried or are capable of being carried over the
23 facilities, except where specifically authorized in state or federal
24 law.

25 (2) Nothing in this section limits the authority of a city or town
26 to regulate the placement of facilities through its local zoning or
27 police power, if the regulations do not:

28 (a) Prohibit the placement of all wireless or of all wireline
29 facilities within the city or town, or prohibit the placement of all
30 wireless or of all wireline facilities within city or town rights-of-
31 way;

32 (b) Act as a barrier to entry prohibited by the telecommunications
33 act of 1996, P.L. 104-104 (110 Stat. 56); or

34 (c) Unreasonably discriminate or have the effect of unreasonably
35 discriminating between similarly situated service providers or
36 facilities.

37 A city or town that regulates the placement of facilities by use of
38 its police power shall support its decision in writing.

1 NEW SECTION. **Sec. 4.** (1) Beginning April 1, 2000, except as
2 provided in subsection (2) of this section, a city or town shall not
3 place a moratorium on the acceptance and processing of applications,
4 permitting, construction, maintenance, repair, replacement, extension,
5 operation, or use of any personal wireless facility. An existing
6 moratorium that expires after April 1, 2000, shall not be extended in
7 whole or in part.

8 (2) A city or town may impose a moratorium under the following
9 circumstances:

10 (a) The city or town's policies or regulations regarding the
11 acceptance and processing of applications, permitting, construction,
12 maintenance, repair, replacement, extension, operation, or use of any
13 personal wireless facility, have been invalidated by a court; or

14 (b) The city or town incorporated after April 1, 2000.

15 A moratorium imposed under either (a) or (b) of this subsection may
16 neither exceed one hundred eighty days nor be extended. Upon
17 expiration of the moratorium, the city or town is subject to subsection
18 (1) of this section.

19 (3) Cities, towns, and service providers are encouraged to work
20 together, in consultation with municipalities and counties that have
21 adopted regulations governing personal wireless facilities, to develop
22 policies and other provisions for the siting of such facilities.

23 NEW SECTION. **Sec. 5.** (1) Except as otherwise provided in
24 subsection (3) of this section, cities and towns shall adopt procedures
25 for issuing or denying franchises or permits within one hundred twenty
26 days from the date a service provider files a complete application for
27 a franchise or permit to use the right-of-way, except:

28 (a) Where required by specific procedures to assure coordination of
29 work within the right-of-way that provide reasonable opportunities for
30 scheduling of work, including advance notice of planned work, and that
31 do not impose unreasonable barriers to entry as prohibited by the
32 telecommunications act of 1996, P.L. 104-104 (110 Stat. 56);

33 (b) With the agreement of the applicant;

34 (c) Where permits require the approval or cooperation of another
35 unit of government that cannot be obtained within the one hundred
36 twenty-day period;

1 (d) Where franchises require the approval of the legislative body
2 of the city or town that cannot be obtained within the one hundred
3 twenty-day period;

4 (e) When the volume of other applications for franchises or permits
5 received prior to the application make compliance within the one
6 hundred twenty-day period impracticable, but the reasonableness of such
7 a determination shall be documented in writing; or

8 (f) Where the application concerns personal wireless facilities and
9 the city or town has a valid moratorium under section 4 of this act.

10 (2) For purposes of this section, cities and towns shall adopt by
11 rule or ordinance the specific requirements necessary for an
12 application for a permit to be complete, and shall provide a copy of
13 the requirements to all applicants. Cities and towns also shall
14 develop procedures for expediting consideration of applications for
15 permits for small projects within the right-of-way.

16 (3) The issuance and renewals of franchises and related permits
17 for cable television service is governed by federal law.

18 **Sec. 6.** RCW 35.21.860 and 1983 2nd ex.s. c 3 s 39 are each amended
19 to read as follows:

20 (1) Except as provided in section 7 of this act, no city or town
21 may impose a franchise fee or any other fee or charge of whatever
22 nature or description upon the light and power, or gas distribution
23 businesses, as defined in RCW 82.16.010, or telephone business, as
24 defined in RCW 82.04.065, except that (a) a tax authorized by RCW
25 35.21.865 may be imposed and (b) a fee may be charged to such
26 businesses that recovers actual administrative expenses incurred by a
27 city or town that are directly related to receiving and approving a
28 permit, license, and franchise, to inspecting plans and construction,
29 or to the preparation of a detailed statement pursuant to chapter
30 43.21C RCW.

31 (2) Subsection (1) of this section does not prohibit franchise fees
32 imposed on an electrical energy, natural gas, or telephone business, by
33 contract existing on April 20, 1982, with a city or town, for the
34 duration of the contract, but the franchise fees shall be considered
35 taxes for the purposes of the limitations established in RCW 35.21.865
36 and 35.21.870 to the extent the fees exceed the costs allowable under
37 subsection (1) of this section.

1 NEW SECTION. **Sec. 7.** No city or town shall adopt any ordinance,
2 regulation, or rule that imposes upon a service provider any franchise
3 fee or any other fee or charge, not in effect on the effective date of
4 this section, for the use of the right-of-way, except that:

5 (1) A city or town may impose a tax allowed by RCW 35.21.865 and
6 35.21.870;

7 (2) A city or town may charge a fee that recovers actual
8 administrative expenses incurred by the city or town that are directly
9 related to receiving and approving a permit, license, or franchise, to
10 inspecting plans and construction, or to the preparation of a detailed
11 statement under chapter 43.21C RCW. Nothing in this section prohibits
12 a city or town from recovering the actual costs of maintenance, repair,
13 or restoration of the right-of-way that are reasonably related to the
14 impact of the installation, maintenance, and use of the facility.
15 Under this subsection (2), the legislature intends for a city or town
16 to recover all costs, both short and long term, incurred in allowing a
17 service provider to use the right-of-way, but except as otherwise
18 provided in subsections (1), (3), and (4) of this section, does not
19 intend for a city or town to receive additional compensation for use of
20 the right-of-way;

21 (3) A city or town may issue franchises and impose franchise
22 requirements and fees for cable television services as allowed by
23 federal law; or

24 (4) A city or town may enter into leases for use of structures
25 located in the right-of-way by wireless telecommunications service
26 providers that are acceptable to the parties.

27 NEW SECTION. **Sec. 8.** A new section is added to chapter 35A.21 RCW
28 to read as follows:

29 Each code city is subject to the requirements and restrictions
30 regarding facilities and rights-of-way under sections 1 through 5 and
31 7 of this act and RCW 35.21.860.

32 NEW SECTION. **Sec. 9.** The definitions in this section apply
33 throughout this chapter unless the context clearly requires otherwise.

34 (1) "Cable television service" means the one-way transmission to
35 subscribers of video programming and other programming service and
36 subscriber interaction, if any, that is required for the selection or
37 use of such video programming or other programming service.

1 (2) "Facilities" means all of the plant, equipment, fixtures,
2 appurtenances, antennas, and other facilities necessary to furnish and
3 deliver telecommunications services and cable television services,
4 including but not limited to poles with crossarms, poles without
5 crossarms, wires, lines, conduits, cables, communication and signal
6 lines and equipment, braces, guys, anchors, vaults, and all
7 attachments, appurtenances, and appliances necessary or incidental to
8 the distribution and use of telecommunications services and cable
9 television services.

10 (3) "Right-of-way" means public roads and streets, but does not
11 include:

12 (a) State highways;

13 (b) Land dedicated for roads, streets, and highways not opened or
14 improved for motor vehicle use;

15 (c) Structures located within the right-of-way;

16 (d) Federally granted trust lands or the forest board trust lands;

17 (e) Lands owned or managed by the state parks and recreation
18 commission; or

19 (f) Federally granted railroad rights-of-way acquired under 43
20 U.S.C. Sec. 912 and related provisions of federal law that are not open
21 for motor vehicle use.

22 (4) "Service provider" means every corporation, company,
23 association, joint stock association, firm, partnership, person, city,
24 or town owning, operating, or managing any facilities used to provide
25 telecommunications or cable television service for hire, sale, or
26 resale to the general public. "Service provider" includes the legal
27 successor to any such corporation, company, association, joint stock
28 association, firm, partnership, person, city, or town.

29 (5) "Telecommunications service" means the transmission of
30 information by wire, radio, optical cable, electromagnetic, or other
31 similar means for the general public. For the purpose of this
32 subsection, "information" means knowledge or intelligence represented
33 by any form of writing, signs, signals, pictures, sounds, or any other
34 symbols. For the purpose of this chapter, "telecommunications service"
35 excludes the over-the-air transmission of broadcast television or
36 broadcast radio signals.

37 NEW SECTION. **Sec. 10.** (1) A county shall not unreasonably deny
38 the use of the right-of-way for installing, maintaining, or removing

1 facilities for telecommunications services or cable television
2 services. The reasons for a denial of the use of the right-of-way
3 shall be stated in writing.

4 (2) A county shall:

5 (a) Before issuing a permit, make a finding that approval of the
6 permit is consistent with easement rights, if any, granted for the
7 right-of-way;

8 (b) Provide as much advance notice as practicable of plans to open
9 the right-of-way so that work within the right-of-way may be scheduled
10 and coordinated. Information regarding existing or planned facilities
11 that is provided by a service provider to a county for the purpose of
12 planning for, scheduling, and coordinating work in the right-of-way is
13 exempt under RCW 42.17.310 from public inspection and copying; and

14 (c) Ensure that facilities are installed and maintained within the
15 right-of-way in such manner and at such points so as not to
16 inconvenience the public use of the right-of-way.

17 (3) A service provider shall:

18 (a) Obtain all permits required by the county for the installation,
19 maintenance, or removal of facilities in the right-of-way;

20 (b) Ensure that facilities comply with applicable land use and
21 construction codes, regulations, standards, and franchise requirements
22 adopted by a county, subject to verification by the county of such
23 compliance;

24 (c) Cooperate with the county in ensuring that facilities are
25 installed and maintained within the right-of-way in such a manner and
26 at such points so as not to inconvenience the public use of the right-
27 of-way;

28 (d) Prior to attaching to or otherwise using a facility or
29 structure in the right-of-way: (i) Obtain the written approval of the
30 facility or structure owner if the service provider does not own it;
31 and (ii) comply with any conditions imposed regarding such an
32 attachment to or other use of the facility or structure;

33 (e) Prior to using public property that is not in the right-of-way:
34 (i) Obtain the written approval of the governmental entity that manages
35 or has authority over the public property; and (ii) comply with any
36 conditions imposed regarding such an attachment to or other use of the
37 facility or structure; and

38 (f) Construct, install, operate, and maintain facilities at the
39 service provider's own expense.

1 (4) Nothing in this section shall be construed as:

2 (a) Creating or expanding (i) liabilities of a county regarding the
3 construction, installation, maintenance, or removal of facilities; or
4 (ii) duties owed by a county to service providers to construct,
5 install, maintain, or remove facilities;

6 (b) Creating, expanding, or extending any liability of a county to
7 any third-party user of facilities or third-party beneficiary; or

8 (c) Limiting the right of a county to require an indemnification
9 agreement as a condition of a service provider's facilities occupying
10 the right-of-way.

11 (5) Nothing in this section creates, modifies, expands, or
12 diminishes the priority of use of the right-of-way by a service
13 provider, either in relation to other service providers or in relation
14 to other users of the right-of-way for other purposes.

15 NEW SECTION. **Sec. 11.** (1) A county shall not adopt or enforce
16 regulations or ordinances specifically relating to service providers
17 using the right-of-way that:

18 (a) Impose requirements that regulate the services or business
19 operations of the service provider, except where specifically
20 authorized in state or federal law;

21 (b) Conflict with federal or state laws, rules, or regulations that
22 specifically apply to the design, construction, and operation of
23 facilities or with federal or state worker safety or public safety
24 laws, rules, or regulations; or

25 (c) Regulate the services provided based upon the content or kind
26 of signals that are carried or are capable of being carried over the
27 facilities, except where specifically authorized in state or federal
28 law.

29 (2) Nothing in this section limits the authority of a county to
30 regulate the placement of facilities through its local zoning or police
31 power, if the regulations do not:

32 (a) Prohibit the placement of all wireless or of all wireline
33 facilities within the county, or prohibit the placement of all wireless
34 or of all wireline facilities within county rights-of-way;

35 (b) Act as a barrier to entry prohibited by the telecommunications
36 act of 1996, P.L. 104-104 (110 Stat. 56); or

1 (c) Unreasonably discriminate or have the effect of unreasonably
2 discriminating between similarly situated service providers or
3 facilities.

4 A county that regulates the placement of facilities by use of its
5 police power shall support its decision in writing.

6 NEW SECTION. **Sec. 12.** (1) Beginning April 1, 2000, except as
7 provided in subsection (2) of this section, a county shall not place a
8 moratorium on the acceptance and processing of applications,
9 permitting, construction, maintenance, repair, replacement, extension,
10 operation, or use of any personal wireless facility. An existing
11 moratorium that expires after April 1, 2000, shall not be extended in
12 whole or in part.

13 (2) A county may impose a moratorium under the following
14 circumstances:

15 (a) The county's policies or regulations regarding the acceptance
16 and processing of applications, permitting, construction, maintenance,
17 repair, replacement, extension, operation, or use of any personal
18 wireless facility, have been invalidated by a court; or

19 (b) The county was created after April 1, 2000.

20 A moratorium imposed under either (a) or (b) of this subsection may
21 neither exceed one hundred eighty days nor be extended. Upon
22 expiration of the moratorium, the city or town is subject to subsection
23 (1) of this section.

24 (3) Counties and service providers are encouraged to work together,
25 in consultation with counties and municipalities that have adopted
26 regulations governing personal wireless facilities, to develop policies
27 and other provisions for the siting of such facilities.

28 NEW SECTION. **Sec. 13.** (1) Except as otherwise provided in
29 subsection (3) of this section, counties shall adopt procedures for
30 issuing or denying franchises or permits within one hundred twenty days
31 from the date a service provider files a complete application for a
32 franchise or permit to use the right-of-way, except:

33 (a) Where required by specific procedures to assure coordination of
34 work within the right-of-way that provide reasonable opportunities for
35 scheduling of work, including advance notice of planned work, and that
36 do not impose unreasonable barriers to entry as prohibited by the
37 telecommunications act of 1996, P.L. 104-104 (110 Stat. 56);

1 (b) With the agreement of the applicant;

2 (c) Where permits require the approval or cooperation of another
3 unit of government that cannot be obtained within the one hundred
4 twenty-day period;

5 (d) Where franchises require the approval of the legislative body
6 of the county that cannot be obtained within the one hundred twenty-day
7 period;

8 (e) When the volume of other applications for franchises or permits
9 received prior to the application make compliance within the one
10 hundred twenty-day period impracticable, but the reasonableness of such
11 a determination shall be documented in writing; or

12 (f) Where the application concerns personal wireless facilities and
13 the county has a valid moratorium under section 12 of this act.

14 (2) For purposes of this section, counties shall adopt by rule or
15 ordinance the specific requirements necessary for an application for a
16 permit to be complete, and shall provide a copy of the requirements to
17 all applicants. Counties also shall develop procedures for expediting
18 consideration of applications for permits for small projects within the
19 right-of-way.

20 (3) The issuance and renewals of franchises and related permits for
21 cable television service is governed by federal law.

22 **Sec. 14.** RCW 36.55.010 and 1963 c 4 s 36.55.010 are each amended
23 to read as follows:

24 Subject to the provisions of section 15 of this act, any ((board of
25 county commissioners)) county legislative authority may grant
26 franchises to persons or private or municipal corporations to use the
27 right of way of county roads in their respective counties for the
28 construction and maintenance of waterworks, gas pipes, telephone,
29 telegraph, and electric light lines, sewers and any other such
30 facilities.

31 NEW SECTION. **Sec. 15.** No county shall adopt any ordinance,
32 regulation, or rule that imposes upon a service provider any franchise
33 fee or any other fee or charge, not in effect on the effective date of
34 this section, for the use of the right-of-way, except that:

35 (1) A county may impose the tax on the privilege of providing
36 telecommunications services;

1 (2) A county may charge a fee that recovers actual administrative
2 expenses incurred by the county that are directly related to receiving
3 and approving a permit, license, or franchise, to inspecting plans and
4 construction, or to the preparation of a detailed statement under
5 chapter 43.21C RCW. Nothing in this section prohibits a county from
6 recovering the actual costs of maintenance, repair, or restoration of
7 the right-of-way that are reasonably related to the impact of the
8 installation, maintenance, and use of the facility. Under this
9 subsection (2), the legislature intends for a county to recover all
10 costs, both short and long term, incurred in allowing a service
11 provider to use the right-of-way, but except as otherwise provided in
12 subsections (1), (3), and (4) of this section, does not intend for a
13 county to receive additional compensation for use of the right-of-way;

14 (3) A county may issue franchises and impose franchise requirements
15 and fees for cable television services as allowed by federal law; or

16 (4) A county may enter into leases for use of structures located in
17 the right-of-way by wireless telecommunications service providers that
18 are acceptable to the parties.

19 **Sec. 16.** RCW 42.17.310 and 1998 c 69 s 1 are each amended to read
20 as follows:

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

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

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

28 (c) Information required of any taxpayer in connection with the
29 assessment or collection of any tax if the disclosure of the
30 information to other persons would (i) be prohibited to such persons by
31 RCW 84.08.210, 82.32.330, 84.40.020, or 84.40.340 or (ii) violate the
32 taxpayer's right to privacy or result in unfair competitive
33 disadvantage to the taxpayer.

34 (d) Specific intelligence information and specific investigative
35 records compiled by investigative, law enforcement, and penology
36 agencies, and state agencies vested with the responsibility to
37 discipline members of any profession, the nondisclosure of which is

1 essential to effective law enforcement or for the protection of any
2 person's right to privacy.

3 (e) Information revealing the identity of persons who are witnesses
4 to or victims of crime or who file complaints with investigative, law
5 enforcement, or penology agencies, other than the public disclosure
6 commission, if disclosure would endanger any person's life, physical
7 safety, or property. If at the time a complaint is filed the
8 complainant, victim or witness indicates a desire for disclosure or
9 nondisclosure, such desire shall govern. However, all complaints filed
10 with the public disclosure commission about any elected official or
11 candidate for public office must be made in writing and signed by the
12 complainant under oath.

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

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

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

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

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

33 (k) Records, maps, or other information identifying the location of
34 archaeological sites in order to avoid the looting or depredation of
35 such sites.

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

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

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

10 (o) Financial and commercial information and records supplied by
11 private persons pertaining to export services provided pursuant to
12 chapter 43.163 RCW and chapter 53.31 RCW, and by persons pertaining to
13 export projects pursuant to RCW 43.23.035.

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

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

19 (r) Financial and commercial information and records supplied by
20 businesses or individuals during application for loans or program
21 services provided by chapters 43.163, 43.160, 43.330, and 43.168 RCW,
22 or during application for economic development loans or program
23 services provided by any local agency.

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

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

32 (u) The residential addresses and residential telephone numbers of
33 employees or volunteers of a public agency which are held by the agency
34 in personnel records, employment or volunteer rosters, or mailing lists
35 of employees or volunteers.

36 (v) The residential addresses and residential telephone numbers of
37 the customers of a public utility contained in the records or lists
38 held by the public utility of which they are customers, except that
39 this information may be released to the division of child support or

1 the agency or firm providing child support enforcement for another
2 state under Title IV-D of the federal social security act, for the
3 establishment, enforcement, or modification of a support order.

4 (w)(i) The federal social security number of individuals governed
5 under chapter 18.130 RCW maintained in the files of the department of
6 health, except this exemption does not apply to requests made directly
7 to the department from federal, state, and local agencies of
8 government, and national and state licensing, credentialing,
9 investigatory, disciplinary, and examination organizations; (ii) the
10 current residential address and current residential telephone number of
11 a health care provider governed under chapter 18.130 RCW maintained in
12 the files of the department, if the provider requests that this
13 information be withheld from public inspection and copying, and
14 provides to the department an accurate alternate or business address
15 and business telephone number. On or after January 1, 1995, the
16 current residential address and residential telephone number of a
17 health care provider governed under RCW 18.130.140 maintained in the
18 files of the department shall automatically be withheld from public
19 inspection and copying unless the provider specifically requests the
20 information be released, and except as provided for under RCW
21 42.17.260(9).

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

24 (y) Information obtained by the board of pharmacy or the department
25 of health and its representatives as provided in RCW 69.41.044,
26 69.41.280, and 18.64.420.

27 (z) Financial information, business plans, examination reports, and
28 any information produced or obtained in evaluating or examining a
29 business and industrial development corporation organized or seeking
30 certification under chapter 31.24 RCW.

31 (aa) Financial and commercial information supplied to the state
32 investment board by any person when the information relates to the
33 investment of public trust or retirement funds and when disclosure
34 would result in loss to such funds or in private loss to the providers
35 of this information.

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

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

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

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

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

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

17 (hh) Information and documents created specifically for, and
18 collected and maintained by a quality improvement committee pursuant to
19 RCW 43.70.510, regardless of which agency is in possession of the
20 information and documents.

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

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

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

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

36 (mm) Proprietary financial and commercial information that the
37 submitting entity, with review by the department of health,
38 specifically identifies at the time it is submitted and that is
39 provided to or obtained by the department of health in connection with

1 an application for, or the supervision of, an antitrust exemption
2 sought by the submitting entity under RCW 43.72.310. If a request for
3 such information is received, the submitting entity must be notified of
4 the request. Within ten business days of receipt of the notice, the
5 submitting entity shall provide a written statement of the continuing
6 need for confidentiality, which shall be provided to the requester.
7 Upon receipt of such notice, the department of health shall continue to
8 treat information designated under this section as exempt from
9 disclosure. If the requester initiates an action to compel disclosure
10 under this chapter, the submitting entity must be joined as a party to
11 demonstrate the continuing need for confidentiality.

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

15 (oo) Financial and commercial information supplied by or on behalf
16 of a person, firm, corporation, or entity under chapter 28B.95 RCW
17 relating to the purchase or sale of tuition units and contracts for the
18 purchase of multiple tuition units.

19 (pp) Designs, drawings, maps, and other information regarding
20 existing or planned facilities that are provided by a service provider
21 to a city, town, code city, or county under sections 2(2) and 10(2) of
22 this act.

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.

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

37 (4) Agency responses refusing, in whole or in part, inspection of
38 any public record shall include a statement of the specific exemption

1 authorizing the withholding of the record (or part) and a brief
2 explanation of how the exemption applies to the record withheld.

3 NEW SECTION. **Sec. 17.** Sections 1 through 5 and 7 of this act
4 constitute a new chapter in Title 35 RCW.

5 NEW SECTION. **Sec. 18.** Sections 9 through 13 and 15 of this act
6 constitute a new chapter in Title 36 RCW.

7 NEW SECTION. **Sec. 19.** (1) Sections 4 and 12 take effect April 1,
8 2000.

9 (2) Sections 14 and 15 of this act are necessary for the immediate
10 preservation of the public peace, health, or safety, or support of the
11 state government and its existing public institutions, and take effect
12 July 1, 1999, only if a law is enacted before July 1, 1999, granting
13 counties excise taxing authority regarding telecommunications services.

14 (3) The remainder of this act is necessary for the immediate
15 preservation of the public peace, health, or safety, or support of the
16 state government and its existing public institutions, and takes effect
17 immediately.

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