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SENATE BILL 5095

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State of Washington

56th Legislature

1999 Regular Session

By Senators Thibaudeau, Horn, Kohl-Welles, Patterson, Haugen, Prentice and Costa

Read first time 01/13/1999. Referred to Committee on State & Local Government.

1 AN ACT Relating to public corporations, commissions, and  
2 authorities; and amending RCW 42.30.020 and 42.17.260.

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

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

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

7 (1) "Public agency" means:

8 (a) Any state board, commission, committee, department, educational  
9 institution, or other state agency which is created by or pursuant to  
10 statute, other than courts and the legislature;

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

14 (c) Any subagency of a public agency which is created by or  
15 pursuant to statute, ordinance, or other legislative act, including but  
16 not limited to planning commissions, library or park boards,  
17 commissions, and agencies;

18 (d) Any public corporation, commission, or authority created under  
19 chapter 35.21 RCW;

1 (e) Any policy group whose membership includes representatives of  
2 publicly owned utilities formed by or pursuant to the laws of this  
3 state when meeting together as or on behalf of participants who have  
4 contracted for the output of generating plants being planned or built  
5 by an operating agency.

6 (2) "Governing body" means the multimember board, commission,  
7 committee, council, or other policy or rule-making body of a public  
8 agency, or any committee thereof when the committee acts on behalf of  
9 the governing body, conducts hearings, or takes testimony or public  
10 comment.

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

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

19 **Sec. 2.** RCW 42.17.260 and 1997 c 409 s 601 are each amended to  
20 read as follows:

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

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

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

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

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

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

11 (d) Planning policies and goals, and interim and final planning  
12 decisions;

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

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

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

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

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

30 (5) Each state agency shall, by rule, establish and implement a  
31 system of indexing for the identification and location of the following  
32 records:

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

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

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

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

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

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

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

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

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

27 (7) Each agency shall establish, maintain, and make available for  
28 public inspection and copying a statement of the actual per page cost  
29 or other costs, if any, that it charges for providing photocopies of  
30 public records and a statement of the factors and manner used to  
31 determine the actual per page cost or other costs, if any.

32 (a) In determining the actual per page cost for providing  
33 photocopies of public records, an agency may include all costs directly  
34 incident to copying such public records including the actual cost of  
35 the paper and the per page cost for use of agency copying equipment.  
36 In determining other actual costs for providing photocopies of public  
37 records, an agency may include all costs directly incident to shipping  
38 such public records, including the cost of postage or delivery charges  
39 and the cost of any container or envelope used.

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

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

14 (9) This chapter shall not be construed as giving authority to any  
15 agency, the office of the secretary of the senate, or the office of the  
16 chief clerk of the house of representatives to give, sell or provide  
17 access to lists of individuals requested for commercial purposes, and  
18 agencies, the office of the secretary of the senate, and the office of  
19 the chief clerk of the house of representatives shall not do so unless  
20 specifically authorized or directed by law: PROVIDED, HOWEVER, That  
21 lists of applicants for professional licenses and of professional  
22 licensees shall be made available to those professional associations or  
23 educational organizations recognized by their professional licensing or  
24 examination board, upon payment of a reasonable charge therefor:  
25 PROVIDED FURTHER, That such recognition may be refused only for a good  
26 cause pursuant to a hearing under the provisions of chapter 34.05 RCW,  
27 the Administrative Procedure Act.

28 (10) As used in this section, "agency" includes any public  
29 corporation, commission, or authority created under chapter 35.21 RCW.

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