

# HOUSE BILL REPORT

## ESHB 1569

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### As Passed House:

February 11, 2004

**Title:** An act relating to the confidentiality of information supplied by a bidder on a public bid.

**Brief Description:** Excluding certain information supplied by a bidder on a public bid from public disclosure.

**Sponsors:** By House Committee on State Government (originally sponsored by Representatives Armstrong, Haigh, Nixon, Miloscia, Tom, McDermott, Shabro and Benson).

### Brief History:

#### Committee Activity:

State Government: 2/11/03, 2/21/03 [DPS].

#### Floor Activity:

Passed House: 2/11/04, 86-1.

### Brief Summary of Engrossed Substitute Bill

- Exempts from public disclosure trade secrets or financial or commercial information not directly related to a bid or offer in connection with a public works project, provided that the bidder states in writing the reasons why protection is necessary and identifies the data or materials to be protected. The public entity requesting the bid makes a final written determination on what data or materials are confidential.

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## HOUSE COMMITTEE ON STATE GOVERNMENT

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Haigh, Chair; Miloscia, Vice Chair; Armstrong, Ranking Minority Member; Shabro, Assistant Ranking Minority Member; Hunt, McDermott, Nixon, Tom and Wallace.

**Staff:** Marsha Reilly (786-7135).

### Background:

The open public records law was approved by state voters in 1972 as part of Initiative Measure No. 276. All public records of state agencies and local governments are open to public inspection and copying unless a record is expressly excluded by law. This disclosure requirement is liberally construed and any exception is narrowly constructed.

A person's right to privacy is invaded or violated only if disclosure of information about the person: (1) would be highly offensive to a reasonable person; and (2) is not of legitimate concern to the public. Beyond that, only those records expressly identified are considered exempt from disclosure.

Since the law was enacted in 1972 many express exemptions have been enacted, including: (1) personal information in files that would violate the right to privacy; (2) certain taxpayer information; (3) certain financial and commercial information supplied by individuals applying for various programs; (4) residential addresses and residential telephone numbers of public utility customers; and many others.

An exemption from disclosure currently exists for trade secrets or other proprietary information submitted by a bidder, offeror, or contractor relating to an alternative public works project bid (39.10.100 RCW). Financial information supplied for the purpose of qualifying to submit a bid or proposal for a ferry system construction or repair contract or a highway construction or improvement project are also exempt from disclosure (42.17.310 RCW).

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**Summary of Engrossed Substitute Bill:**

Trade secrets or financial or commercial information not directly related to a bid or offer in connection with a public works project as defined in 39.04 RCW are exempt from public disclosure and copying if the bidder specifically states in writing the reasons why protection is necessary and identifies the data or materials to be protected. The public entity requesting the bid makes a final written determination on what data or materials are confidential.

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**Appropriation:** None.

**Fiscal Note:** Not Requested.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Testimony For:** The Utility Contractors Association of Washington supports the bill. It is not without precedent. Financial information supplied for bid qualification for ferry construction and highway construction project is exempt, and trade secrets and other proprietary information is exempt, when requested, for alternative public works projects.

The Northwest Boring Company supports the bill for the right purposes. Audits should be allowed, but having trade secrets or proprietary spreadsheets open for disclosure provides an advantage for other bidders on future projects. The actual bid is not exempted, just the proprietary information. This offers the same protection as for bids associated with alternative public works projects.

(With concerns) The Washington Building Trades Council and the National Electrical Contractors Association have concerns that the bill, as written, is too broad and is not clear about what problem it is trying to solve. The Allied Daily Newspapers also have concerns that the bill is overly broad. Ownership needs to be established. There is risk in bidding on public projects, it's part of the process. It should be an honest open process.

**Testimony Against:** None.

**Testified:** (In support) Representative Armstrong, prime sponsor; Dave Ducharme, Utility Contractors Association of Washington; Bob Marconi, Stanislaw & Ashbaugh; and Don Gonzales, Northwest Boring Company.

(With concerns) Mitch Seaman, Washington State Building and Trade Council; Rowland Thompson, Allied Daily Newspapers; and Larry Stevens, National Electrical Contractors Association and Mechanical Contractors Association.