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## Judiciary Committee

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### HB 2515

**Title:** An act relating to public records.

**Brief Description:** Changing public records provisions.

**Sponsors:** Representative Nixon.

<p style="text-align: center;"><b>Brief Summary of Bill</b></p> <ul style="list-style-type: none"><li>• Changes the attorney-client privilege exemption under the Public Disclosure Act.</li></ul>
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**Hearing Date:** 1/17/06

**Staff:** Trudes Tango (786-7384).

**Background:**

The Public Disclosure Act (PDA) requires that all state and local government agencies make all public records available for public inspection and copying unless they fall within specific exemptions listed in the PDA "or other statute which exempts or prohibits disclosure of specific information or records." RCW 42.17.260(1).

The provisions requiring public records disclosure must be interpreted liberally and the exceptions narrowly in order to effectuate a general policy favoring disclosure. For example, the PDA exempts documents that are relevant to a controversy in which the agency is a party and that would not be available to another party under the superior court rules of pretrial discovery. The Washington Supreme Court has defined "relevant to a controversy" as "completed, existing, or reasonably anticipated litigation." Dawson v. Daly, 120 Wn.2d 782, 791 (1993).

In a 2004 decision, the Washington Supreme Court ruled that the statutory attorney-client privilege under RCW 5.60.060(2)(a) is a statutory exemption from public disclosure. Hangartner v. City of Seattle, 151 Wn.2d 439, 453 (2004). According to the court, this exemption protects only attorney-client communications and not documents that are prepared for some other purpose than communicating with an attorney. Id., at 452. The court noted that if the legislature did not want the attorney-client privilege statute to be an exemption, it could have specifically excluded it from the consideration as an "other statute" under RCW 42.17.260(1).

**Summary of Bill:**

The attorney-client privilege exemption articulated in Hangartner is changed to: (1) Records reflecting communications relevant to a controversy transmitted in confidence between a public

official or employee of a public agency acting in the performance of his or her duties and an attorney serving in the capacity of legal advisor for the purpose of rendering or obtaining legal advice relevant to a controversy; and (2) Records prepared by the attorney in furtherance of the rendition of legal advice relevant to a controversy.

Records relevant to a controversy shall be as narrowly construed as those relating to completed, existing, or reasonably anticipated litigation. Records are not exempt just because they reflect communications in meetings where legal counsel was present or because a record or copy of a record was provided to legal counsel.

The new language governs exemption of records from the Public Disclosure Act based on the attorney-client privilege as applied to public agencies and public officials in their official capacities, and no broader exemption may be invoked under RCW 5.60.060(2).

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed, except for section Section 2 which takes effect July 1, 2006.