

# SENATE BILL REPORT

## SB 5885

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As of January 26, 2010

**Title:** An act relating to the general administrative powers of the department of revenue.

**Brief Description:** Removing public disclosure exemptions for tax exemption information.

**Sponsors:** Senators Kline, Franklin and Keiser.

**Brief History:**

**Committee Activity:** Ways & Means: 1/25/10.

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### SENATE COMMITTEE ON WAYS & MEANS

**Staff:** Dianne Criswell (786-7433)

**Background:** The Public Records Act requires that all state and local government agencies make all public records available for public disclosure unless they fall within certain statutory exemptions. The provisions requiring public records disclosure must be interpreted liberally and the exceptions narrowly in order to effectuate a general policy favoring disclosure.

A public record is any writing (including e-mail, disks, or tapes) that contains information related to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency, regardless of its physical form.

All public records must be disclosed unless they fall within a specific statutory exemption or prohibition. Personal information required of any taxpayer in connection with the assessment or collection of any tax is exempt if the disclosure of such information by employees of the Department of Revenue (DOR) is prohibited or would violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer.

The Secrecy Clause, RCW 82.32.330, is the law that prohibits DOR employees from disclosing excise tax returns or tax information about specific taxpayers to unauthorized persons. This law defines the circumstances under which documents may be disclosed and to whom. All tax information is confidential and not disclosable to the public, without the taxpayer's permission or other statutory authorization. An employee who releases confidential information to a person not entitled to the information is guilty of a

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misdemeanor and may be terminated from their current position and barred from public employment in the state for two years.

The Secrecy Clause provides a definition of tax information, which includes aspects of the taxpayer and tax payment, such as: the taxpayer's identity; the nature, source, or amount of the taxpayer's income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability deficiencies, overassessments, or tax payments; and other information or data about the taxpayer's tax liability or tax history. However, data, material, or documents that do not disclose information related to a specific or identifiable taxpayer do not constitute tax information.

**Summary of Bill:** Tax exemptions are deleted from the definition of tax information.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: SB 5885 balances the public's right to know with the taxpayer's right to privacy. The Secrecy Clause protects a large and wide variety of information. This bill deletes one word from the definition of tax information. Exemptions are public subsidies. There ought to be a public right to know the value of these exemptions.

CON: Annual accountability reports and surveys require reporting of information, some of which is disclosable, and other data which is not. Disclosure of the value of a taxpayer's exemptions could create competitive disadvantages.

OTHER: Under current law, there is a lot of taxpayer information available from those businesses which file annual accountability reports and surveys.

**Persons Testifying:** PRO: Senator Adam Kline, prime sponsor.

CON: Amber Carter, Association of Washington Business.

OTHER: Lew McMurren, Washington Technology Industry Association.