



Final Status of Bills Related to Open Government Considered During the 2007-2008 Legislative Sessions

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SUMMARY

The Washington Coalition for Open Government tracked the progress of 115 of the 4,347 bills (2,389 House bills and 1,958 Senate bills) introduced in the Washington State Legislature during the 2007-2008 biennium. *Every one* of the 4,347 bills introduced were examined; the 115 bills summarized in this document were deemed to have some potential impact, positive or negative, on the public's right to know, particularly regarding access to public records and public meetings.

Of the 115 bills tracked, 10 were considered "priority" bills to which the Coalition paid particular attention. These included bills on recording of executive sessions (HB 3292), attorney-client privilege (HB 3231), penalties for violation of the Public Records Act (HB 3219) and the Open Public Meetings Act (HB 2567), the ability for agencies to initiate court action against requestors of public records (HB 2839), and exemption from disclosure of records regarding commissioned peace officers (HB 2490), detailed pipeline map data (HB 1478), and birthdates of public employees (HB 1942). **None of these priority bills neither the good bills nor the bad bills passed the legislature.**

Of the remaining 105 tracked bills, 13 passed and 92 did not pass. **The bills that passed included several that created new exemptions in the Public Records Act** (either directly in RCW 42.56 or in other statutes), including information on burial sites, investigation of street gangs, images of identity documents, mechanical engineer trainee data, audit reports and financial statements of gambling establishments, and fisheries data obtained from the federal government. The Governor's request for funding in the supplemental budget to establish best practices for disclosure of electronic records was *not* included in the final budget that passed. The public did gain access to more information about adverse medical events (SB 6457) and expanded protection for whistleblowers (SB 6776), but, especially when unfavorable court decisions are factored in, **the erosion of the public's right to know continued unabated in this biennium.**

Summaries of all 115 tracked bills appear below, beginning with the 10 priority bills, followed by the bills that passed and finally the bills that failed to pass. The summary of each bill includes the bill title, a brief description of the impact of the bill on access to public information, comments on the history and context of the bill, the Coalition's recommended action, and the disposition of the bill.

PRIORITY BILLS (10 Bills)

HB 1478 ([link](#)) **Disclosure of pipeline mapping data (Morris)** – Requires pipeline mapping data created or acquired by the Utilities and Transportation Commission to be provided to first responders. Amends RCW 42.56.330 to exempt map data from disclosure except in low-resolution form.

- ◁ **Comments:** The pipeline companies have wanted to exempt this data from disclosure because of concerns over targeting of pipelines for terrorist attack. This exemption has previously been very controversial with pipeline watchdog groups. Previous versions of the bill required redaction of a considerable amount of information including the location of valves, etc. This new bill allow for redaction, -resolution map data to be provided t allow (1 to 24000 is roughly 3 inches per mile). It will be interesting to see if the pipeline watchdog groups think this resolution will be sufficient for them to do their work.
- ◁ **Recommended Action: OPPOSE.**
- ◁ **Status: Died on second reading calendar in 2007. Died in House Rules in 2008.**

HB 1942 ([link](#)) **Disclosure of the dates of birth of public agency employees and volunteers under the public records act (Appleton)** – Amends RCW 42.56.250 to prohibit the disclosure of birthdates of public employees.

- ◁ **Comments:** This is a reaction to the recent court case in which the City of Seattle was required to release the full birthdates of employees in response to a PRA request from the Seattle P-I. The mayor of Seattle sent a memo to all city employees complaining about the decision and raising fears of identity theft, despite the fact that birthdates are already widely available from a number of sources and no large-scale identity theft has occurred as a result. Evidence clearly shows that the incidence of identity theft due to the availability of birthdates in public records is vanishingly small. The exemption of public employee birthdates from disclosure will make it much more difficult to match employee data to other lists to verify employee qualifications or disqualifications, such as lists of college graduates, licensees, felons, sex offenders, and a large number of other sources of investigation.
- ◁ **Recommended Action: OPPOSE.**
- ◁ **Status: Died in committee.**

HB 2141 ([link](#)) **Governing body membership under the open public meetings act (Sullivan)** – Amends the definition of "meeting" in the a "meeting" if a majority of the governing board are present. Also says that the provisions of the OPMA apply to newly-elected members of governing time of election".

- ◁ **Comments:** This would be a significant loss of access under the OPMA. Case law says that a majority does *not* need to be present for a "meeting" taken, which can include even such things a discussion of issues before the board. This bill would enable the "serial meeting" jurisdictions to skirt the requirements of the law. Requiring the OPMA to apply to

newly-elected members of bodies is a good idea to be defined.

- ◁ **Recommended Action:** **STRONGLY OPPOSE** the change to require a majority to be present for a "meeting" if the requirement that newly-elected members be included in determining whether a meeting occurs.
- ◁ **Status:** Died in committee.

HB 2490 ([link](#)) - **Protecting personal information about commissioned peace officers and their families (Hinkle)** – Amends the Public Records Act, RCW 42.56.230, to exempt

from disclosure *all* personal information contained in *all* public records, regardless of which agency holds the records, about commissioned peace officers and their families, including "information that would disclose the identity of a peace officer or their immediate supervisor or both must be notified of the name and city or county of the requester.

- ◁ **Comments:** Proponents of the bill say that it is intended to prevent organized crime and gangs from compiling databases of officers for purposes of retaliation or identifying officers operating under cover. They also claim that it limits disclosure of only "general birth dates, and photographs extremely broad and expansive. It would be very costly and complex to implement. It sets a precedent of requiring proof of identity of requesters. It would effectively require creation of a database of all officers and their family members so that agencies could check before releasing documents, but that runs exactly counter to the desires of the proponents.
- ◁ **Recommended Action:** **STRONGLY OPPOSE.**
- ◁ **Status:** Died in committee.

HB 2567 ([link](#)) - **Increasing the civil penalty for violating the open public meetings act (Haler)** – Amends the Open Public Meetings Act, RCW 42.30.120, to increase the civil penalty for knowing violations of the OPMA from \$100 to \$1,000.

- ◁ **Comments:** WCOG supports increasing these penalties to account for inflation since the enactment of the OPMA and so that the penalties are no longer treated as an acceptable risk source.
- ◁ **Recommended Action:** **STRONGLY SUPPORT.**
- ◁ **Status:** Passed House 77-19 on 2/13/08. Died on 2nd Reading Calendar in Senate.

HB 2839 ([link](#)) - **Removing the ability of agencies to enjoin the examination of a specific public record (Williams)** – Amends RCW 42.56.540 to delete agency or its representative or " .

- ◁ **Comments:** This will undo one of the impacts of the *Soter v. Cowles* decision which established that an agency can sue a requester of a record, which is a form of strategic lawsuit against public participation (SLAPP). If the bill is adopted as written, only a *person* named in a record will be able to file for an injunction under RCW 42.56.540. Agencies desiring to withhold a record would have to instead find

and claim a specific exemption in the law rather than bringing a court action to enjoin release.

- ◁ **Recommended Action:** **STRONGLY SUPPORT.**
- ◁ **Status:** Died in committee.

HB 3219 ([link](#)) [**Companion Bill SB 6294**] - **Modifying compensation for denials of public records by agencies (Chandler)** – By request of the Attorney General. Amends RCW 42.56.550 to provide that if penalties are awarded due to improper denial of a public records request, and the requester was in jail or prison at the time of the request, but the penalties will instead be paid into the crime RCW 7.68. The requester is still entitled to recover attorney fees and costs.

- ◁ **Comments:** This would have the effect of discriminating on the basis of the requester's status, violating a fundamental principle of law: "Agencies shall not distinguish among persons requesting records". It is a precedent that could be quickly followed by other provisions that discriminate on the basis of who the requestor is. It would also establish a precedent of penalties for PRA violations being directed to someone other than the requester, which could be easily expanded into redirection of PRA penalties into other programs so as to discourage use of the PRA by those seeking financial reward rather than seeking information. None of these precedents are desirable.
- ◁ **Recommended Action:** **OPPOSE.**
- ◁ **Status:** Died in committee.

HB 3231 ([link](#)) - **Regarding public disclosure of records relevant to a controversy to which an agency is a party (Williams)** – Amends RCW 42.56.290 (agency party to a controversy) to state that the exemption applies "does not apply to any records created prior to the filing of litigation or notice of a legal claim against the agency."

- ◁ **Comments:** This deals with *Solter v. Cowles* decision. half " of t
- ◁ **Recommended Action:** **STRONGLY SUPPORT.** The Coalition will work with the bill sponsor to see if the language can possibly be expanded to more comprehensively cover attorney work product.
- ◁ **Status:** Died in committee.

HB 3251 ([link](#)) - **Regarding local government self-insurance programs and public records (Williams)** – Amends the local government self-insurance statute, RCW 48.62, to state that it is against public policy for the local government self-insurance program to pay liability or defense costs related to violations of the Public Records Act or Open Public Meetings Act, and prohibits the self-insurance program from cancelling or threatening to cancel insurance because an agency chooses to comply with the Public Records Act.

- ◁ **Comments:** This is in response to threats from the Washington Cities Insurance Authority to cancel the liability insurance of the city of Monroe because the city wanted to proactively post public records on its web site.
- ◁ **Recommended Action:** **STRONGLY SUPPORT.**

- ◁ **Status: Died in committee.**

HB 3292 ([link](#)) - **Recording executive sessions under the open public meetings act (Kessler) (by request of Attorney General and State Auditor)** – Adds a new subsection to RCW 42.30.110 (the executive session section of the Open Public Meetings Act) to require verbatim audio recordings of all executive sessions. Recordings are exempt from disclosure under the Public Records Act. If credible evidence is presented that the OPMA has been violated and that an executive session was improper, a judge may review the recording in chambers. If any portion of the meeting is determined to have been held in violation of the OPMA, the recording of the portion in violation *may* be released.

- ◁ **Comments:** The bill includes an extensive intent section that emphasizes the benefits to agencies of recording executive sessions. Recording of executive sessions is one of the top priority issues in the WCOG Legislative Agenda.
- ◁ **Recommended Action: STRONGLY SUPPORT.**
- ◁ **Status: Died on House 2nd Reading Calendar.**

OTHER BILLS THAT PASSED (13 Bills)

HB 2624 ([link](#)) [**Companion Bill SB 6521**] - **Concerning human remains (McCoy)** -

Expands responsibilities of persons who discover human remains, including notice requirements to tribes. Section 6 requires the state department of archaeology and historic preservation to create a database of all known cemeteries and burial sites in Washington. Clarifies that portions of the database disclosed to other agencies remain subject to the exemption while in the possession of the other agencies.

- ◁ **Comments:** The entire database appears to be declared exempt from disclosure under RCW 42.56.300, including those portions that are disclosed but allows other government agencies and tribes access to the data.
- ◁ **Recommended Action:** Neutral on the bill. **Request amendment to clarify that only those portions of the database that would have already been exempt under RCW 42.56.300 will be exempt, and information on non-archaeological sites will continue to be disclosable.**
- ◁ **Status: Passed House 63-31.** Passed Senate 44-5 with amendments. Passed House as amended 74-23. **Signed by Governor 3/31/2008.**

HB 2687 ([link](#)) [**Companion Bill SB 6378**] - **Making 2008 operating supplemental appropriations (Sommers)** -

The Governor's supplemental budget includes \$100,000 to the Department of Information Systems to contract with persons with expertise in both information technology systems and public disclosure requirements to develop best practices to satisfy public records disclosure requests for electronic records in an electronic format so that agencies respond in a way that is consistent, complete, timely, and cost effective."

- ◁ **Comments:** WCOG's legislative agenda supports agencies' ability to disclose records in electronic format.
- ◁ **Recommended Action:** **STRONG SUPPORT** for Section 135(6) *only*.
- ◁ **Status: Passed** and signed (with partial vetoes), but the governor's request for funding for best practices on electronic records disclosure was removed in conference.

HB 2712 ([link](#)) [**Companion bill SB 6608**] - **Concerning criminal street gangs (Hurst)** -

Addresses the impact of street gangs through several initiatives including pilot projects for gang prevention, intervention, and suppression; local grants targeting gangs and graffiti abatement; creating a statewide gang database; authorizing civil injunctions to prevent gang activity; making it a crime for an adult felon to solicit a minor to commit a felony; and expanding the aggravating factors in the sentencing reform act. Section 301 creates the statewide gang database. Information in the database shall not be (1) available for public use", and subsection 301(5) exempts the contents from disclosure under the RCW 42.56.

- ◁ **Comments:** Many similar law enforcement databases are exempt from disclosure.
- ◁ **Recommended Action:** Neutral on the bill. **Request an amendment adding a subsection to RCW 42.56.240 referencing the new exemption.**

- ◁ **Status: Passed House 94-1 as amended on 2/18/08 (the amendment requested by WCOG was included). Passed Senate 46-3. Signed by Governor 3/31/2008.**

HB 2729 ([link](#)) - Addressing the reading and handling of certain identification documents (Eddy) – Prohibits businesses from reading RFID-based identification except to verify authenticity or verify age or identity under prescribed circumstances and with the customers knowledge. Information read may not be stored except for fraud prevention and must be destroyed within 30 days. Amends RCW 42.56.250 (employment and licensing) with language similar to HB 2725 to exempt from disclosure documents presented to prove identity when obtaining a driver license or identicard. Amends RCW 42.56.330(7) (public utilities and transportation) to treat identity documents containing RFID similar to transit and toll passes (similar to HB 2725 but accomplished a different way).

- ◁ **Comments:** Retained images of documents presented to prove identity could be a source for identity theft. Stored identity information can be used to compile databases that track the movement of individuals and their buying habits.
- ◁ **Recommended Action:** Neutral on the bill. **Suggest amendment to strengthen privacy protections by also exempting from disclosure information derived from the presented documents and not just the documents themselves. Recommend alignment with HB 2725 to prevent duplicative language.**
- ◁ **Status: Passed House 95-0 on 2/7/08 including amendment proposed by WCOG. Passed Senate unanimously. Signed by Governor 3/31/2008.**

HB 2788 ([link](#)) - Organizing definitions in Title 77 RCW (VanDeWege) – Reorganizes Title 77 so that all definitions are specified in RCW 77.08.010 instead of being scattered throughout the title. Section 9 amends RCW 77.12.885 to delete a reference to RCW

42.56.430 and the definition of "predatory wildlife"; the de

- ◁ **Comments:** If the bill is enacted as written, RCW 77.12.885, which it reference
- ◁ **Recommended Action:** Neutral on the bill. **Request amendment to RCW 42.56.430 to change the reference to RCW 77.12.885 to RCW 77.08.010,**
- ◁ **Status: Passed House 93-0. Senate passed 48-1. Signed by Governor 3/31/2008.**

SB 5831 ([link](#)) [Companion Bill HB 1876] Certification of mechanics performing heating, ventilating, air conditioning, refrigeration, and gas piping work (Kohl-Welles). Creates a new chapter in Title 18 that substantially increases the certification requirements for certain types of mechanical engineers. Section 13 requires contractors to report the names of trainees employed and the number of supervised hours worked by the trainees toward their certification; subsection 13(3) exempts these reports of trainees names and hours from disclosure under RCW 42.56.

- ◁ **Comments:** Exemption of this information from disclosure will make it difficult to monitor whether the department of labor and industries is fulfilling its responsibility to monitor and audit the training hours reported. Also, no cross-reference is added to RCW 42.56 to reference the new exemption.

- ◁ **Recommended Action:** At a minimum, request an amendment to the bill to add a cross-reference in RCW 42.56.250 to the new Section 13(3). Consider raising a concern that the exemption makes it difficult for the public to hold L&I accountable.
- ◁ **Status:** Passed House 95-2. Passed Senate 40-9. **Signed by Governor 3/31/2008.**

SB 5927 ([link](#)) - Independent auditor reports and financial statements of licensees regulated by the gambling commission (Delvin) - Amends RCW 42.56.270 to create a

new exemption as follows: "Independent auditors of licensees required by the gambling commission; however when the gambling commission receives a request for disclosure of an independent auditor's report and financial statements, the commission shall notify the person who is the subject of the audit and the commission may release the records only if the person consents to the release. This provision retroactive, and Section 6 declares an emergency and makes the bill effective immediately when signed.

- ◁ **Comments:** Very similar to HB 1449, but without the emergency clause. This appears to be consistent with other exemptions in 42.56.270.
- ◁ **Recommended Action:** None.
- ◁ **Status:** Passed Senate 45-0. Passed House 93-1. **Signed by Governor 4/1/2008.**

SB 6426 ([link](#)) [Companion Bill HB 2918] - Enacting the Interstate Compact on Educational Opportunity for Military Children (Hobbs) - Enacts an interstate

agreement "to remove barriers to educational success imposed on children of military families because of frequent moves and deployment of their parents". Article IX of compact creates an "interstate commission" which includes one representative from each state. Subsection (7) of Article IX requires meetings of the commission to be open to the public and provides for a number of reasons for executive sessions, including internal personnel matters, matters exempted by federal or state statute, discussion of trade secrets or confidential commercial or financial information, and various other reasons.

- ◁ **Comments:** Some of the reasons given for closing meetings of the commission go beyond the provisions of the Open Public Meetings Act, RCW 42.30. Since the commission is a "joint" agency, it should be able to withhold information or business from the public that is required to be disclosed in one or more of the member states.
- ◁ **Recommended Action:** Neutral of the bill. **Implementation of the compact include a representative on the commission advocate for keeping open to the public all business that would be required to be open under RCW 42.30.**
- ◁ **Status:** Passed Senate 49-0. Passed House 93-1 with striking amendment creating a task force to study the issue. Passed Senate as amended by the House 34-15. **Signed by Governor 3/27/2008.**

SB 6457 ([link](#)) [Companion Bill HB2670] - Modifying disclosure provisions under the adverse health events and incident reporting system (Keiser) - Authorizes the release of notifications of adverse medical events and incidents related to an unanticipated injury.

Requires annual reports related to adverse medical events and incidents to disclose the date and type of each occurrence by facility. Section 7 amends RCW 42.56.360 (health care) to *narrow* the exemption; any information and documents created specifically for and maintained by quality improvement programs and peer review committees that are used to make a notification or report of an adverse event or incident remain confidential and exempt from public disclosure, except that the actual notifications of adverse events and incidents relating to an unanticipated injury are subject to disclosure. Reports of adverse events and notifications of incidents that could have caused unanticipated injury or required additional health services, but did not, are exempt from public disclosure requirements.

- ◁ **Comments:** The bill makes additional information available to the public that was previously not available.
- ◁ **Recommended Action:** **SUPPORT.**
- ◁ **Status:** **Passed Senate 47-0. Passed House 93-0. Signed by Governor 3/25/2008.**

SB 6626 ([link](#)) [**Companion Bill HB 3099**] - **Creating a sales and use tax deferral program for eligible investment projects in community empowerment zones (Kilmer)** – Creates a sales and use tax deferral for costs of constructing corporate headquarters in community empowerment zones. Recipients of deferrals are required to file annual reports on the amount of taxes deferred as well as the following details: total number of employees in Washington; number of full-time, part-time, and temporary positions; number of employees in various wage bands; number of employees that have various benefits in each wage band; plus any other information requested by the department of revenue to measure the results of the deferral program. The deferred taxes do not need to be repaid if the recipient continues to meet program eligibility requirements, but payment is due if required reports are not filed. Section 2(2)(d) of the bill declares all of the information provided in the annual report, except for the amount of deferral taken, to be taxpayer information under RCW 82.32.330 and exempt from disclosure.

- ◁ **Comments:** The exemption of reported data is consistent with similar tax exemption and deferral programs. Such exemptions do make it difficult for independent investigators to verify claims of effectiveness of such programs.
- ◁ **Recommended Action:** Neutral on the bill.
- ◁ **Status:** **Passed Senate 48-0. Passed House with amendments 92-1. Passed Senate as amended 47-0. Signed by Governor 3/14/2008.**

SB 6753 ([link](#)) [**Companion Bill HB 2768**] - **Regarding changes in calling burn bans for solid fuel burning devices (Fraser)** – Adds restrictions on when second stage burn bans may be called, and requires detailed reporting of the conditions causing a second stage burn ban. Requires these reports to be retained by the agency for at least five years and be available for public inspection and copying.

- ◁ **Comments:** Mandates a document retention period that may exceed that otherwise established by the state or local records committee under RCW 40.14.
- ◁ **Recommended Action:** None.

- ◁ **Status: Passed Senate 48-0. Passed House 93-0. Signed by Governor 3/17/2008.**

SB 6776 ([link](#)) [**Companion Bill HB 3193**] - **Modifying state whistleblower protections**

(Kline) – Expands state whistleblower protections to include protection for reports of gross mismanagement, abuse of authority, or preventing the dissemination of scientific opinion or alteration of technical findings. Expands authority or influence" to include making throu location, material changes in pay, refusal of training or benefits, reprimand, and tolerance of a hostile work environment. The definition of those *perceived* by the employer as about to provide information, and expands the public officials to whom information can be provided. Expands the identifying information the auditor may keep confidential about whistleblowers, and the discretion the auditor may exercise in when to release identifying information. Requires the auditor to maintain a public file of whistleblower reports and make all possible information available to the public. Other changes are included.

- ◁ **Comments:** Although the whistleblower act does not cover the scope of open public records, open public meetings, and open courts, it is an important adjunct which WCOG strongly supports.
- ◁ **Recommended Action:** **SUPPORT.**
- ◁ **Status: Passed Senate 48-0.** Passed House 95-0 with amendments. Passed Senate as amended by the House 46-0. **Signed by Governor 3/31/2008.**

SB 6821 ([link](#)) [**Companion Bill HB 3195**] - **Exempting certain information obtained by the department of fish and wildlife from disclosure under chapter 42.56 RCW**

(Hatfield) – Amends RCW 42.56.430 (fish and wildlife) to add a new exemption for information that the department of fish and wildlife has received or accessed but may not disclose due to confidentiality requirements in the Magnuson-Stevens fishery conservation and management reauthorization act of 2006 (16 U.S.C. Sec. 1861(h)(3) and (i), and Sec. 1881a(b)).

- ◁ **Comments:** The referenced federal act was signed into law 1/12/2007. 1861(h)(3) says that a state may enter into a joint enforcement agreement with the National Marine Fisheries Service, and that the agreement " shall provide for confidentiality of data and information submitted to the State under section 402."
- ◁ **Recommended Action:** None.
- ◁ **Status: Passed Senate 44-3.** Passed House 92-2. **Signed by Governor 3/28/2008.**

OTHER BILLS THAT DID NOT PASS (92 Bills)

HB 1070 ([link](#)) - The legislative ethics board reprimanded a legislator last year for writing a letter on legislative stationery expressing a personal position about a labor dispute between one of her constituents and the (non-government) employer of the constituent, which was not deemed to be official state business. This bill adds a subsection to RCW 42.52.160 saying that such use of state resources is permitted. The concluding sentence and electronic communications are subject to

- ◁ **Comments:** The disclosure of such correspondence is likely to be a controversial provision, since under the definition of 40.14.100, correspondence in the files of legislators is *not* currently subject to disclosure.
- ◁ **Recommended Action:** Neutral on the bill.
- ◁ **Status:** Died in committee.

HB 1202 ([link](#)) [Companion Bill SB 5547] **Creating the office of the ombudsman for persons with developmental disabilities (Roberts)** – Adds a chapter to RCW Title 43. Section 4 says “Investigative records of the ombudsman are confidential and are exempt from public disclosure under chapter 42.56 RCW.” Sections 6 and 7 create discovery privi

- ◁ **Comments:** Similar provisions exist for other types of ombudsmen.
- ◁ **Recommended Action:** Neutral on the bill. Suggest a pointer to the exemption be added to RCW 42.56.
- ◁ **Status:** Died in Appropriations.

HB 1362 ([link](#)) **Campaign finance reform (Miloscia)** – Adds to the duties of the PDC to proposes changes to increase legislative and judicial independence, reduce the cost of campaigns, and reduce the influence of large organizational contributors. Limits total PAC contributions to any candidate to \$5,000 per election cycle. Limits contributions to PACs to \$1,000 per year per contributor. Eliminates campaign contributions from corporations and labor unions. Bans large state contractors and their managerial employees from making contributions to state candidates or parties. Requires the disclosure of not just the top five contributors to PACs, but all contributors of over \$500. Sections 8 and 9 move the definition of “Public Record” from RCW 42.17.

- ◁ **Comments:** As controversial as this bill is, from an open government perspective it is neutral. Section 8 deletes the definition 9 recreates it, word-for-word the same, in 42.56. However section of RCW 42.56, since RCW 42.56 already has a section entitled (RCW 42.56.010).
- ◁ **Recommended Action:** Neutral on the bill. Request an amendment to create the definition of “public record” in RCW 42.56
- ◁ **Status:** Died in committee.

HB 1415 ([link](#)) **Activities to Support the Certificate of Need Program (Cody)** – Creates an Office of Strategic Health Resource Coordination and a Health Resource Strategy Commission appointed by the governor. Section 7(2) of the bill says elements related to the identification of individual patient's, provider's, and facility's care outcomes are confidential, are exempt from RCW 42.56.030 through 42.56.570 and 42.17.350 through 42.17.450, and are not subject to discovery by subpoena or admissible as evidence. "

- < **Comments:** While Section 7(2) seems well-intended in terms of exempting patient information, the way it is expressed (listing broad ranges of sections, most of which have nothing to do with this issue) is sloppy and fraught with problems. The references to 42.17 are particularly strange since those sections have to do with campaign finance.
- < **Recommended Action:** **Assist the bill sponsor and staff in narrowly crafting appropriate exemption language.**
- < **Status:** **Died in committee.**

HB 1433 ([link](#)) **Uniform securities act of Washington (Kirby)** – Requested by the Uniform Legislation Commission; aligns Washington securities laws with other states. Repeals RCW 21.20 and creates a new chapter 21.20A. Section 45 makes it unlawful for public employees to use information for personal gain that is not available to the general public under RCW 42.56. Section 51 requires records to be available for disclosure under 42.56. Section 81 exempts examination reports from disclosure under 42.56. Section 112 amends 42.56.400 to correct references to a repealed section of 21.20 so that it refers to the replacement section in 21.20A.

- < **Comments:** The public records provisions of the bill appear to be consistent with what was in existing law.
- < **Recommended Action:** None.
- < **Status:** **Died in committee.**

HB 1446 ([link](#)) [**Companion Bill SB 5436**] **Statute of limitations for actions under the public records act (Kessler)** – Requested by the Attorney General. Amends RCW 42.56.550(6) to provide that the one-year statute of limitations on filing a PRA lawsuit starts on any violation of the PRA including failure to respond.

- < **Comments:** This will prevent agencies from "stopping" lawsuit clock starts.
- < **Recommended Action:** **SUPPORT**, only because it makes sense for the legislature to clarify when the clock starts rather than it having to be worked out in the courts. However, we must **insist that the statute of limitations be increased beyond one year**, preferably to three years or more, to restore the balance originally worked out on HB 1758 (2005) in which penalties were to be increased by 500% to balance the reduction in the statute of limitations by 80% [but the penalty increase was removed from the bill]. **Request Senate amendment to increase statute of limitations.**
- < **Status:** **Passed House 94-0 in 2007; failed to pass Senate. Died in committee in 2008.**

HB 1553 ([link](#)) [**Companion Bill SB 5973**] **Creating a controlled substances prescription monitoring program (Hinkle)** – Establishes an interstate database of controlled substance prescriptions so that dispensers can check in real time for excessive prescriptions being filled for abusers of certain drugs. Requires prescription data to be submitted, and the database to be checked when controlled substance prescriptions are filled. Section 9 of the bill amends RCW 42.56.360 to make information submitted to the database exempt from disclosure under the PRA.

- ◁ **Comments:** Information on drug prescriptions is protected under federal law (HIPPA). The exemption is consistent with HIPPA protections.
- ◁ **Recommended Action:** None.
- ◁ **Status:** Died in Appropriations.

HB 1696 ([link](#)) [**Companion Bill SB 5598**] **Creating the Citizens Initiative Review Commission (McDermott)** – Creates a commission to review proposed statewide ballot measures. The commission would convene panels of citizens around the state. Citizens on the panels would be randomly, similar to juries. The panels would hold public hearings, take testimony from proponents and opponents, and produce a report containing a recommendation on whether the voters of the state should support or oppose the ballot measure. These reports are published in the says " A citizens panel is not an emergency of the governmental body and is exempt from chapters

- ◁ **Comments:** Members of WCOG will undoubtedly have a variety of opinions on the merits of the bill as a whole. The question is whether it is a good idea for the citizen panels to be entirely exempt from our open government laws. We do exempt juries from the PRA and OPMA and their deliberations are in secret, and if these panels are considered similar to juries than these exemptions may be reasonable.
- ◁ **Recommended Action:** WCOG should debate its position on the exemption in Section 4(4).
- ◁ **Status:** Died in committee.

HB 1734 ([link](#)) **Reorganizing campaign contribution and disclosure laws (Haigh)** – Reorganizes and clarifies these portions of the Public Disclosure Act. The intent is to make no substantive changes to the PDA. Section 1005 adds a new section to RCW 42.56 creating definitions of " public record " and " writing " .

- ◁ **Comments:** HB 1445 does a better job of creating necessary definitions in 42.56, and does it in the right place (insertion into 42.56.010) instead of creating a new section.
- ◁ **Recommended Action:** Neutral on the bill. Request the sponsors to either delete Section 1005 or place the definitions in RCW 42.56.010 as done in HB 1445. Request amendment to delete section 1005.
- ◁ **Status:** Passed House 97-0 in 2007; failed to pass Senate. Passed House 90-0 in 2008; failed to pass Senate.

HB 1876 ([link](#)) [**Companion Bill SB 5831**] **Certification of mechanics performing heating, ventilating, air conditioning, refrigeration, and gas piping work (Conway)** – Creates a new chapter in Title 18 that substantially increases the certification requirements for certain types of mechanical engineers. Section 13 requires contractors to report the names of trainees employed and the number of supervised hours worked by the trainees toward their certification; subsection 13(3) exempts these reports of trainees names and hours from disclosure under RCW 42.56.

- ◁ **Comments:** Exemption of this information from disclosure will make it difficult to monitor whether the department of labor and industries is fulfilling its responsibility to monitor and audit the training hours reported. Also, no cross-reference is added to RCW 42.56 to reference the new exemption.
- ◁ **Recommended Action:** At a minimum, **request an amendment to the bill to add a cross-reference in RCW 42.56.250 to the new Section 13(3)**. Consider raising a concern that the exemption makes it difficult for the public to hold L&I accountable.
- ◁ **Status:** **Passed House 90-6 in 2007; failed to pass Senate. Died in committee in 2008.**

HB 1900 ([link](#)) [**Companion Bill SB 5603**] **Updating public records provisions (Kretz)** – Reorganizes RCW 40.14 on preservation and destruction of public records, including the duties of the state archivist. Makes technical amendments to references in RCW 42.56.

- ◁ **Comments:** Reorganization of the state archive statute.
- ◁ **Recommended Actions:** **SUPPORT**
- ◁ **Status:** **Died in committee.**

HB 1932 ([link](#)) **Restricting the use and disclosure of social security numbers**

" ® Prohibits county auditors and all other agencies from disclosing social security numbers without the consent of the person to whom the number is assigned except to government agencies. Requires auditors to redact social security numbers in documents released, including document images posted on the internet and documents copied or presented for inspection under public records requests. Prohibits persons or businesses from requiring a social security number to do business unless expressly permitted by law. Prohibits printing social security numbers on cards or using them in correspondence. Section 2 of the bill creates the exemption in RCW 42.56. Section 3 of the bill creates the redaction requirement in RCW 36.22.

- ◁ **Comments:** The importance of social security numbers in identity theft is well established. Social security numbers in agency files are already protected from disclosure in many cases, such as for government employees and their family members, in department of health files, and others, and requirements are in place for notification of breaches of security that result in release of social security numbers. This bills extends these protections to social security numbers held in all other government files. Auditors have resisted this proposal in the past saying that people who submit documents for recording should be held accountable, that auditors are not allowed to modify documents submitted for recording, and that the cost of redacting SSNs from documents already recorded would be very high. Some

counties have already removed documents from accessibility over the internet because of the number of them that contain social security numbers (e.g., mortgage documents in King County).

- ◁ **Recommended Actions:** Monitor the bill to insure that it does not morph into allowing entire documents to be withheld rather than SSNs be redacted. Request that a cross reference to the new section in RCW 36.22 be added to the new section of 42.56.
- ◁ **Status: Died in committee.**

HB 1943 ([link](#)) **Medical disciplinary act (Hinkle)** – Renames the Medical Quality Assurance Commission to be the Medical Board for Safety and Quality, and makes significant changes in the scope and power of the board. Sections 31 through 35 create a “physician education and improvement program” all findings pursuant to Sections 31 through 35 of this act are not subject to disclosure pursuant to chapters 44 through 86 of the Bill would become a new chapter in Title 18. Section 55 says “Complaint chapter 42.56 RCW until the complaint has been initially assessed and determined to warrant an investigation by the board.” Section 69(4) says “The pretreatment records of license holders referred to or voluntarily participating in approved programs are confidential, exempt from chapter 42.56 RCW, and not subject to discovery by subpoena or admissible as evidence...” and “Records held by the section are exempt from chapter 42.56 RCW...”

- ◁ **Comments:** The bill creates a program to help physicians who need improvement short of discipline, but Section 36 exempts all records of the program from disclosure. This is excessive; at best, some personally identifying information should be exempt, but not *all records*. The exemption in Section 55 is standard for complaints prior to investigation, and the exemption in Section 69 is standard for anything related to people in treatment (and probably necessary to comply with HIPAA).
- ◁ **Recommended Action:** Request the bill sponsors to amend Section 36 to exempt only personally identifying information in records”.
- ◁ **Status: Died in committee.**

HB 2042 ([link](#)) **Access to negotiations with and records concerning certain public employee representatives (Chandler)** – Requires that collective bargaining sessions with public employee unions be public meetings under RCW 42.30. Creates a new section in RCW 42.56 that says “Records of any collective bargaining conducted during labor negotiations, or grievance or mediation proceedings that would reveal the strategy or position being taken by an agency are exempt

- ◁ **Comments:** Collective bargaining sessions are currently exempt from the OPMA under RCW 42.30.140(4); this would make them open to the public, a move which many believe would make the process of how public employee pay and benefits (the single largest cost to government) are arrived at much more transparent. The exemption from disclosure of negotiation strategy appears reasonable.

- < **Recommended Action:** **SUPPORT.**
- < **Status:** **Died in committee.**

HB 2062 ([link](#)) [**Companion Bill SB 6040**] **Creating a public speedway authority (Simpson)** – Creates an agency with taxing authority to create a NASCAR race track in Washington. Section 702 of the bill enumerates various laws that would apply to the authority, including the open public meetings under chapter 42.17 RCW”.

- < **Comments:** We won't comment on the merits of the bill.
- < **Recommended Action:** Neutral. Ask for an amendment correcting the reference to RCW 42.17 to instead refer to RCW 42.56.
- < **Status:** **Died in committee.**

HB 2099 ([link](#)) **Activities to support the certificate of need program (Cody)** – Amends various provisions of the health care facility certificate of need program in RCW 70.38. Section 3 of the bill amends RCW 70.38.095, which currently requires “agencies” to be treated as “public agencies” under the Public Access to Records Act, and replaces it with a requirement that “agencies” give certain selected items of information about certificate of need applications.

- < **Comments:** This appears to be a significant contraction of information available regarding the certificate of need process in the Department of Health.
- < **Recommended Action:** **OPPOSE**
- < **Status:** **Died in Appropriations in 2007. Died in committee in 2008.**

HB 2100 ([link](#)) **Establishing a statewide health resources strategy (Cody)** – Creates the “Office of Strategic Health Resource Coordination” to coordinate public and private efforts to improve health care quality, promote cost-effective health care, and plan health facility and service availability. The office will also serve as a repository for health care data statewide needed to perform its functions. The office will be overseen by a nineteen-member “Health Resources Strategy Council” appointed by the governor, with the responsibility to develop a statewide health resources strategy. The Department of Health certificate of need program will be guided by this strategy. Section 7 of the bill says “Data elements relating to a provider's, and facility's care outcomes are confidential, are exempt from RCW 42.56.030 through 42.56.570 and 42.17.350 through 42.17.450, and are not subject to discovery by subpoena or admissible as evidence.”

- < **Comments:** Federal law requires individual patient health information to be kept confidential, but this goes beyond that and prevents the examination of data about the quality of care being provided by all providers and facilities. The proposed extremely broad exemption may make it impossible for the media to investigate and report on bad doctors and hospitals. The language is also poorly written, in that it exempts the “data exemption” in RCW 42.56. from the

- ◁ **Recommended Action:** **OPPOSE** unless the bill is amended to a more narrowly-crafted exemption. If the bill does move forward, a reference should be inserted into 42.56 to this new exemption.
- ◁ **Status:** **Died in House Rules.**

HB 2106 ([link](#)) **Farm labor contractors (Kenney)** – Strengthens provisions of the farm labor contractor statute, RCW 19.30. Section 13 of the bill allows workers filing complaints against farm labor contractors to request redaction of their personal identifying information from any records disclosed under the PRA, but the section incorrectly references RCW 42.17 instead of RCW 42.56.

- ◁ **Comments:** The ability to request redaction of information that identifies complainants is consistent with other whistleblower protections in order to reduce the possibility of retaliation.
- ◁ **Recommended Action:** Neutral on the bill. Request the reference to 42.17 be changed to 42.56.
- ◁ **Status:** **Died in House Rules.**

HB 2120 ([link](#)) - **Permitting the liquor control board to provide retail licensee sales data information to the national alcohol beverage control association (Williams)** – RCW 66.16.090 currently has a blanket exemption from disclosure for all information about sales of liquor by the liquor control board that would identify any purchaser. This bill would allow information to be disclosed to the state auditor for auditing purposes, and also allow disclosure of information on sales to retail licensees of the board to be sent to the national alcohol beverage control association. Subsection (3) exempts the Liquor Control Board from the prohibition in RCW 42.56.070(9) of providing lists of individuals for commercial purposes.

- ◁ **Comments:** It's not clear why this sales data. The association bill does make data available that wasn't to constrict access further than current law. Some organizations may oppose the expansion of the ability of lists to be provided for commercial purposes.
- ◁ **Recommended Action:** Neutral. We should recommend that the exemption from 42.56.070(9) be mentioned in 42.56 directly.
- ◁ **Status:** **Died in committee.**

HB 2150 ([link](#)) **Appointment of judges (Rodne)** – Creates a judicial nominating commission to nominate persons for appointment by the governor to the state supreme court and court of appeals. Retention elections would be held every six years instead of an election contested by other candidates; if the retention vote fails, a new judge is appointed to fill the vacancy. Section 103 requires "open under the OPMA and "final deliberations" decide for itself whether other meetings are open or closed.

- ◁ **Comments:** Many WCOG members will have opinions on whether judges should be elected or appointed, but that issue is no speak out against allowing an agency to decide for itself whether or not its meetings should be open to the public. Arguably, meetings to consider which candidates to

nominate would fall under 42.30.110(g) as applicant for public employment". But just on who to offer a job to in a public meeting, so should this nominating commission have to take a public vote on who to nominate for judicial positions.

- < **Recommended Action:** Neutral on the overall bill, but **OPPOSED** to Section 103 as written. The meetings to be closed to the public should be explicitly specified by the legislature and not left up to the commission to decide for itself. The existing executive session rules should suffice.
- < **Status: Died in House Rules.**

HB 2166 ([link](#)) - **Washington safe cosmetics act (Chase)** – Requires manufacturers of cosmetics sold in Washington to provide the department of health with information on products that contain any chemicals that cause cancer or that can harm unborn children.

Section 3(1)(b) says "Any ingredients considered public disclosure required by chapter 42.56 R

- < **Comments:** This seems to be a standard trade secret exemption consistent with others contained in the PRA and also consistent with federal law. One wonders, however, whether the exemption eviscerates the act by preventing the disclosure of harmful ingredients simply by declaring th
- < **Recommended Action:** Neutral.
- < **Status: Died in committee.**

HB 2212 ([link](#)) **Applicability of GMA to agricultural activities (Blake)** – Limits the applicability of development regulations adopted under GMA to agricultural activities on

land zoned for agriculture when a "farm plan" the land at least as well as the development regulations, and if the owner of the land agrees to waive the disclosure exemption in 42.56.270(17) thereby allowing the public to view the farm plan. Also limits the ability of growth management hearing boards to become involved in disputes regarding agricultural use of agricultural land.

- < **Comments:** It seems reasonable to require a farm owner to allow their farm plan to be disclosed so that it is possible to independently verify the assertion that the plan provides protection at least as good as the development regulations.
- < **Recommended Action:** Neutral.
- < **Status: Passed House 79-17 in 2007; died in Senate Rules. Died in House Rules in 2008.**

HB 2213 ([link](#)) **Applicability of GMA to agricultural activities (Sullivan)** – Limits the applicability of development regulations adopted under GMA to agricultural activities on

land zoned for agriculture when a "farm plan" the land at least as well as the development regulations, and if the owner of the land agrees to waive the disclosure exemption in 42.56.270(17) thereby allowing the public to view the farm plan. Also limits the ability of growth management hearing boards to become involved in disputes regarding agricultural use of agricultural land.

- < **Comments:** Appears to be identical to HB 2212 above, but with the sponsors in a different order.

- < **Recommended Action:** Neutral.
- < **Status:** Died in committee.

HB 2255 ([link](#)) - **Encouraging initiatives and referendums by extending privacy protections to signatories and assuring accurate verification (Chandler)** – Makes initiative and referendum petitions, including the names, addresses, and signatures on them, exempt from disclosure under the PRA. Modifies the statement being agreed to by signers and the declaration made by petition circulators. Requires the secretary of state to accept valid signatures even if other problems exist in the petition, or the manner in which the petition was circulated.

- < **Comments:** This would seem to make it impossible to do any independent verification of petitions and reduce accountability of the Secretary of State on petition signature verification. It is extremely unlikely that signatures on a petition could be a source for identity theft; if they were, we would see thieves circulating bogus petitions to collect signatures, and there have been no reports of such activity. Requiring valid signatures to be counted even if collected by someone who should not have been circulating a petition seems reasonable but is not a WCOG issue. Given the current anti-initiative mood in the legislature, this bill is unlikely to even get a hearing.
- < **Recommended Action:** **OPPOSE**.
- < **Status:** Died in committee.

HB 2277 ([link](#)) - **Encouraging initiatives and referendums by extending privacy protections to signatories and assuring accurate verification (Chandler)**

- < **Comments:** Appears to be a minor editorial rewrite on HB 2255 above.
- < **Recommended Action:** **OPPOSE** for the same reasons as 2255.
- < **Status:** Died in committee.

HB 2326 ([link](#)) - **Protecting the integrity of collective bargaining for public sector employees (Williams)** – Would add a new section to the PRA recognizes that in order to maintain the integrity of the collective bargaining process, enable rank and file participation in labor negotiations, and encourage candid, constructive, efficient, and effective negotiations between public employers and labor organizations, records from any collective bargaining, labor negotiations, or grievance or mediation, that would reveal strategies or positions taken by any employer or labor organization during the pendency of those proceedings shall be exempt from disclosure under this chapter. This section shall not disturb any right afforded to any employer or labor organization under existing collective bargaining statutes or or

- < **Comments:** This appears related to HB 2042 and the debate over whether collective bargaining sessions between agencies and public employee unions, and the recent attempt to get access to the negotiating position notes of agency representatives. The paragraph is not well drafted for intent language rather than stating a straight-forward exemption.
- < **Recommended Action:** Neutral. Recommend a rewrite of the language to put the intent language in a separate non-codified introductory section, and place the

exemption itself, concisely-stated, in the appropriate existing topical section of 42.56.

◁ **Status: Died in House Rules.**

HB 2342 ([link](#)) **Making state budget information available to the public (Miloscia)** –

Adds a new chapter to RCW title 43 requiring OFM to create and maintain a consolidated state budget information web site.

◁ **Comments:** This kind of provision – requiring more information to be more readily available in a usable form – is excellent and should be encouraged.

◁ **Recommended Action: SUPPORT.**

◁ **Status: Died in committee.**

HB 2348 ([link](#)) - **Exempting labor relations materials from public disclosure (Sells)** –

Amends RCW 41.58 (public employment labor relations) to exempt records of mediation

communication and "Evidence furnished as show representation petition or motion for interve

◁ **Comments:** This appears related to HB 2326 (above), and in response to attempts to obtain information related to labor negotiations.

◁ **Recommended Action:** Neutral. Recommend that the language be placed directly in RCW 42.56 rather than, or in addition to, RCW 41.58.

◁ **Status: Died in House Rules.**

HB 2368 ([link](#)) **Model municipal business and occupation tax code (Santos)** –

Makes various amendments to the model municipal B&O tax code, mostly related to businesses that provide services within a city but do not have a physical location in the city. Section 7 of the bill provides that cities with B&O taxes can require that tax returns and other confidential financial information of taxpayers be exempt from disclosure in the same way that similar information provided to the state department of revenue is exempt from disclosure.

◁ **Comments:** This appears to provide the same protection to data submitted to a city as is afforded to the same data when presented to the state.

◁ **Recommended Action:** None.

◁ **Status: Died in House Rules.**

HB 2486 ([link](#)) - **Disclosure of confidential information on birth certificates (Ross)** –

Currently, the confidential section of a birth certificate is not disclosed except by court order. This bill would allow the person who is the subject of the confidential information to access it without a court order by proving their identity in a manner prescribed by the state board of health.

◁ **Comments:** This will make it easier for people to access their own birth records while preserving privacy and confidentiality.

◁ **Recommended Action: SUPPORT.**

◁ **Status: Died in committee.**

HB 2630 ([link](#)) - Changing the definition of meetings in the open public meetings act

(Liias) - Narrows the definition of "meeting" in the act so that a "meeting" occurs only when a majority of the governing body is present in person, and that notice requirements apply to electronic and telephonic meetings.

- ⟨ **Comments:** The existing OPMA does not, by its language, require a quorum of the governing body to be present, oral and electronic. Attorney General Opinion have interpreted it as such. WCOG has opposed this interpretation in the past.
- ⟨ **Recommended Action:** **The WCOG board needs to develop a position on this bill.**
- ⟨ **Status:** Died in committee.

HB 2640 ([link](#)) [Companion Bill SB 6603] - Establishing the guaranteed health benefit program act (Morrell)

– Creates a mandatory guaranteed health insurance system for all residents of Washington not covered by other government-operated programs, funded by taxes paid by employers and employees, for preventive and catastrophic care. Section 26 creates a new section in RCW 42.56 that broadly exempts from disclosure all personal medical records and proprietary or trade secret information submitted by insurance carriers bidding to participate in the program.

- ⟨ **Comments:** Neutral on the bill. The exemption created is consistent with other state and federal exemptions for health care information, trade secrets, and proprietary financial information.
- ⟨ **Recommended Action:** Neutral on the bill. **Request an amendment to add the exemption to RCW 42.56.360 (health care exemptions) rather than creating a new section.**
- ⟨ **Status:** Died in committee.

HB 2664 ([link](#)) - Prohibiting the sale and use of prescriber-identifiable prescription data for marketing or promotional purposes (Pedersen)

– Prohibits marketers of pharmaceuticals from purchasing data identifying the doctor who wrote particular prescriptions, and makes it a deceptive practice under the consumer protection act. Section 6 amends RCW 42.56.350 (health professionals) to exempt from disclosure records held by state health care purchasing agencies that can be used to identify the prescribing physician of a particular physician.

- ⟨ **Comments:** The new exemption is likely intended to prevent pharmaceutical marketers from going around the prohibition and accessing similar data through public records.
- ⟨ **Recommended Action:** Neutral on the bill. **Request the exemption be amended to require redaction of prescriber-identifying information rather than withholding of the entire record.**
- ⟨ **Status:** Died on House 2nd Reading Calendar.

HB 2670 ([link](#)) [Companion Bill SB 6457] - Modifying disclosure provisions under the adverse health events and incident reporting system (Campbell) - Authorizes the

release of notifications of adverse medical events and incidents related to an unanticipated injury. Requires annual reports related to adverse medical events and incidents to disclose the date and type of each occurrence by facility. Section 7 amends RCW 42.56.360 (health care) to *narrow* the exemption; any information and documents created specifically for and maintained by quality improvement programs and peer review committees that are used to make a notification or report of an adverse event or incident remain confidential and exempt from public disclosure, except that the actual notifications of adverse events and incidents relating to an unanticipated injury are subject to disclosure. Reports of adverse events and notifications of incidents that could have caused unanticipated injury or required additional health services, but did not, are exempt from public disclosure requirements.

- ⟨ **Comments:** The bill makes additional information available to the public that was previously not available.
- ⟨ **Recommended Action:** **SUPPORT.**
- ⟨ **Status:** **Passed House 97-0. Died on Senate 2nd Reading Calendar.**

HB 2721 ([link](#)) [**Companion Bill SB 6705**] - **Adopting model rules for public agencies under the open public meetings act (Miloscia)** – Requested by the Attorney General. Amends RCW 42.30.210 requiring the Attorney General to provide an explanatory pamphlet on the Open Public Meetings Act, and to create model rules for public agencies.

- ⟨ **Comments:** Similar model rules have been adopted for the Public Records Act.
- ⟨ **Recommended Action:** **SUPPORT.**
- ⟨ **Status:** **Died in committee.**

HB 2725 ([link](#)) [**Companion Bill SB 6250**] - **Protecting the confidentiality and privacy of personal information in connection with drivers' licenses and identicards (Clibborn)** – Amends RCW 42.56.230 (personal information) to exempt from disclosure documents used to prove personal information needed to apply for a driver license or identicard. Amends RCW 42.56.330 (public utilities and transportation) to exempt from disclosure personal identifying information of persons who use a driver license or identicard that incorporates RFID technology.

- ⟨ **Comments:** The federal REAL ID Act requires states to *verify and retain images of* identity documents used to prove various personal information. The department of licensing wants to ensure that this retained information is not accessed for identity theft purposes. The exemption of personal identifying information of RFID-equipped IDs is similar to the existing exemption for users of transit and toll passes. WCOG was asked to review this bill prior to its introduction and we proposed changes to strengthen the privacy protections, but our proposed changes were not incorporated.
- ⟨ **Recommended Action:** Neutral on the bill. **Suggest amendment to strengthen privacy protections by also exempting from disclosure information derived from the presented documents and not just the documents themselves.**
- ⟨ **Status:** **Died in committee.**

HB 2736 ([link](#)) - **Creating the Puget Sound port authority (Anderson)** – Combines the existing port districts of Seattle, Tacoma, and Everett to form a unified Puget South Port Authority. Section 402 includes a non-exhaustive list of RCW chapters that apply to the new entity; the list includes RCW 42.30, but does not include RCW 42.56.

- ⟨ **Comments:** None.
- ⟨ **Recommended Action:** Neutral on the bill. **Request an amendment adding RCW 42.56 to section 402 of the bill, or elimination of the list of specific chapters that apply to authority since it is incomplete and potentially misleading.**
- ⟨ **Status:** Died in committee.

HB 2741 ([link](#)) - **Creating greater transparency in the decision-making processes of port districts (Hudgins)** – Imposes on port districts additional requirements, beyond the provisions of RCW 42.30. All meetings of the port commission shall be recorded, and the recordings are public records. Ample notice of all meetings must be provided to the public. Port districts must maintain a web site that includes notice of meetings. Port districts must adopt rules consistent with the provisions of the bill and RCW 42.30.

- ⟨ **Comments:** It would be nice if these provisions applied to *all* agencies.
- ⟨ **Recommended Action:** **SUPPORT.**
- ⟨ **Status:** Died in committee.

HB 2768 ([link](#)) [**Companion Bill SB 6753**] - **Regarding changes in calling burn bans for solid fuel burning devices (Campbell)** – Adds restrictions on when second stage burn bans may be called, and requires detailed reporting of the conditions causing a second stage burn ban. Requires these reports to be retained by the agency for at least five years and be available for public inspection and copying.

- ⟨ **Comments:** Mandates a document retention period that may exceed that otherwise established by the state or local records committee under RCW 40.14.
- ⟨ **Recommended Action:** None.
- ⟨ **Status:** Died in House Rules.

HB 2906 ([link](#)) [**Companion Bill SB 6506**] - **Creating a system for enforcing discipline in medical professions (Seaquist)** – Restructures the disciplinary processes for medical professions, including replacing the Medical Quality Assurance Commission with a new independent Medical Board for Safety and Quality. Sections 133 through 137 of the bill

create a new "physician education and improve physician assistants" whose care may be lacking present an immediate threat to the public" records and all findings" of the physician ed apparently, all of its financial records. Section 218 creates a voluntary substance abuse monitoring program, and requires that all records pertaining to participants in the program are exempt from disclosure under the PRA and also not subject to subpoena or admissible as evidence.

- ⟨ **Comments:** The broad exemption in Section 138 of *all* records of the physician education and improvement program is not appropriate and is a recipe for fraud

and unaccountability. It may be argued that the exemption in Section 218 is necessary to convince drug-abusing physicians to voluntarily enter the program.

- ◁ **Recommended Action:** **OPPOSE** unless the exemption in Section 138 is significantly narrowed.
- ◁ **Status:** Died in committee.

HB 2911 ([link](#)) - **Removing the public records exemption for certain records addressing public sector collective bargaining (Chandler)** – Amends RCW 42.56.280 (preliminary drafts, notes, recommendations, intra-agency memorandums) so that records created or presented during collective bargaining must be disclosed after the collective bargaining agreement is reached.

- ◁ **Comments:** Expands the information available to citizens regarding the conduct of the public's business.
- ◁ **Recommended Action:** **SUPPORT.**
- ◁ **Status:** Died in committee.

HB 2918 ([link](#)) [**Companion Bill SB 6426**] - **Enacting the Interstate Compact on Educational Opportunity for Military Children (Wallace)** – Enacts an interstate agreement "barriers to educational success imposed on children of military families because of frequent moves and deployment of their parents". Article IX of compact creates an "interstate commission" which includes one representative from each state. Subsection (7) of Article IX requires meetings of the commission to be open to the public and provides for a number of reasons for executive sessions, including internal personnel matters, matters exempted by federal or state statute, discussion of trade secrets or confidential commercial or financial information, and various other reasons.

- ◁ **Comments:** Some of the reasons given for closing meetings of the commission go beyond the provisions of the Open Public Meetings Act, RCW 42.30. Since the commission is a "joint agency of the member states," it is not required to withhold information or business from the public that is required to be disclosed in one or more of the member states.
- ◁ **Recommended Action:** Neutral of the bill. **representative on the commission advocate for keeping open to the public all business that would be required to be open under RCW 42.30.**
- ◁ **Status:** Died in House Rules.

HB 2936 ([link](#)) [**Companion Bill SB 6590**] - **Modifying confidential information provisions (Moeller)** – Amends RCW 74.34 on Abuse of Vulnerable Adults to change the information available to the public from reports of abuse. The name of the abused vulnerable adult and of witnesses will no longer be disclosable unless they consent in writing. However, summary information will now be available including the fact that a report was received, whether or not an investigator has been assigned and whether or not the investigation is ongoing, and whether or not protective services were offered to the vulnerable adult. The department is authorized to adopt rules to implement the section.

- ⟨ **Comments:** None.
- ⟨ **Recommended Action:** Neutral on the bill.
- ⟨ **Status:** Died in committee.

HB 2937 ([link](#)) [**Companion Bill SB 6491**]- **Providing for vulnerable adult fatality review (Moeller)** – Creates a “vulnerable adult fatality review” existing infant and child mortality review. Subsection (2) of the bill exempts all records associated with the fatality review from disclosure.

- ⟨ **Comments:** The infant and child mortality review is a voluntary process, and the exemption from disclosure is necessary to convince those with information who might be otherwise reluctant to participate in the review to do so. This bill does not say that the vulnerable adult fatality review is voluntary, or whether persons with information about the fatality may be compelled to participate and provide information. The exemption in subsection (2) is very broad – broader than that provided for infant and child mortality reviews – but no justification is given for why deaths in state care should be subject to such secrecy.
- ⟨ **Recommended Action:** **OPPOSE** unless the broad exemption from disclosure is well-justified or eliminated.
- ⟨ **Status:** Died in Appropriations.

HB 2939 ([link](#)) [**Companion Bill SB 6845**] - **Regulating exchange facilitators (Kelley)** – creates a new licensing program under the Department of Financial Institutions to regulate “exchange facilitators”, and property they wish to participate in exchange. Section 13 of the bill authorizes the department to conduct audits of licensed exchange facilitators. Information obtained in these audits that is considered a trade secret by the subject of the audit is exempt from disclosure. RCW 42.56.270 (financial, commercial, and proprietary information) is amended to exempt from disclosure financial information, business plans, examination reports, and any other information produced or obtained in such audits.

- ⟨ **Comments:** These disclosure provisions are the same as similar provisions for audits of other financial businesses.
- ⟨ **Recommended Action:** Neutral.
- ⟨ **Status:** Died in committee.

HB 3004 ([link](#)) [**Companion Bill SB 6492**] - **Regarding public disclosure of civil confinement facility information (Roberts)** – Amends RCW 42.56.420 to add civil commitment centers for sexually violent predators (such as on McNiel Island) to the list of facilities for which vulnerability assessment and emergency and escape response plans are exempt from disclosure.

- ⟨ **Comments:** There’s a saying in the security business “no security at all”, and a strong philosophy is that prisons, and SCCs like McNiel Island would actually be improved by opening them up to scrutiny by independent experts. Until that philosophy is well-accepted, however, it makes sense to include the SCC along with jails and prisons in this exemption.

- ◁ **Recommended Action:** None.
- ◁ **Status:** Died in committee.

HB 3009 ([link](#)) - **Exempting the annual parental declaration of intent to home school from the public disclosure act (McCune)** – Amends RCW 42.56.320 (educational information) to exempt from disclosure the annual declaration of intent filed by parents under RCW 28A.200.010 for a child to receive home-based instruction.

- ◁ **Comments:** Many home school parents would consider the contents of these declarations to be private. It could probably be argued that this information is already exempt under 42.56.320 (“Personal Information in any which the files maintained for students in public schools” but the new language is more specific. The exemption may make it more difficult for independent investigators to identify and contact home schooling parents.
- ◁ **Recommended Action:** Neutral on the bill.
- ◁ **Status:** Died in committee.

HB 3067 ([link](#)) [**Companion Bill SB 6631**] - **Adopting the life settlements model act (Kirby)** – Establishes a licensing and regulatory program for sellers of “life contracts”. Section 7 enables the insurance commissioner. Section 7(b) says that all examination reports, working papers, recorded information, and documents produced, obtained, or disclosed to the examiner during such audits are exempt from disclosure, subpoena, discovery, and admission into evidence in private civil actions.

- ◁ **Comments:** Similar exemptions exist for comparable information obtained in all other examinations by the insurance commissioner.
- ◁ **Recommended Action:** Neutral on the bill. **Request an amendment adding a reference in RCW 42.56.400 to Section 7 of the bill.**
- ◁ **Status:** Died in House Rules.

HB 3090 ([link](#)) [**Companion Bill SB 6704**] - **Modifying the notice requirement for special meetings (Miloscia)** – Requires notice of special meetings of governing boards to be posted on the agency’s web site, in an open format, and to be delivered (not just mailed or faxed) to newspapers and radio and TV stations.

- ◁ **Comments:** Chances are some stations would *prefer* email or fax over hand delivery, but the requirement for web posting will make notice more readily available to the public. It would be nice if a requirement also existed to enable citizens to subscribe to email notification, rather than having to remember to check the web site on a regular basis.
- ◁ **Recommended Action:** **SUPPORT.** **Recommend an amendment to allow media outlets to request email and fax notice in addition to hand delivery, and to allow interested citizens to subscribe to receive email notice.**
- ◁ **Status:** Died in committee.

HB 3099 ([link](#)) [**Companion Bill SB 6626**] - **Creating a sales and use tax deferral program for eligible investment projects in community empowerment zones (Kelley)** – Creates a sales and use tax deferral for costs of constructing corporate

headquarters in community empowerment zones. Recipients of deferrals are required to file annual reports on the amount of taxes deferred as well as the following details: total number of employees in Washington; number of full-time, part-time, and temporary positions; number of employees in various wage bands; number of employees that have various benefits in each wage band; plus any other information requested by the department of revenue to measure the results of the deferral program. The deferred taxes do not need to be repaid if the recipient continues to meet program eligibility requirements, but payment is due if required reports are not filed. Section 2(2)(d) of the bill declares all of the information provided in the annual report, except for the amount of deferral taken, to be taxpayer information under RCW 82.32.330 and exempt from disclosure.

- ◁ **Comments:** The exemption of reported data is consistent with similar tax exemption and deferral programs. Such exemptions do make it difficult for independent investigators to verify claims of effectiveness of such programs.
- ◁ **Recommended Action:** Neutral on the bill.
- ◁ **Status:** Died on House 2nd Reading Calendar.

HB 3193 ([link](#)) [**Companion Bill SB 6776**] - **Modifying state whistleblower protections (Ormsby)** - Expands state whistleblower protections to include protection for reports of gross mismanagement, abuse of authority, or preventing the dissemination of scientific opinion or alteration of technical findings. authority or influence" to include making th r location, material changes in pay, refusal of training or benefits, reprimand, and tolerance of a hostile work environment. The definition those *perceived* by the employer as about to provide information, and expands the public officials to whom information can be provided. Expands the identifying information the auditor may keep confidential about whistleblowers, and the discretion the auditor may exercise in when to release identifying information. Requires the auditor to maintain a public file of whistleblower reports and make all possible information available to the public. Other changes are included.

- ◁ **Comments:** Although the whistleblower act does n scope of open public records, open public meetings, and open courts, it is an important adjunct which WCOG strongly supports.
- ◁ **Recommended Action:** **SUPPORT.**
- ◁ **Status:** Died on House 2nd Reading Calendar.

HB 3195 ([link](#)) [**Companion Bill SB 6821**] - **Exempting certain information obtained by the department of fish and wildlife from disclosure under chapter 42.56 RCW (Blake)** - Amends RCW 42.56.430 (fish and wildlife) to add a new exemption for information that the department of fish and wildlife has received or accessed but may not disclose due to confidentiality requirements in the Magnuson-Stevens fishery conservation and management reauthorization act of 2006 (16 U.S.C. Sec. 1861(h)(3) and (i), and Sec. 1881a(b)).

- ◁ **Comments:** The referenced federal act was signed into law 1/12/2007. 1861(h)(3) says that a state may enter into a joint enforcement agreement with the

National Marine Fisheries Service, and that the agreement " shall provide for confidentiality of data and information submitted to the State under section 402."

- ◁ **Recommended Action:** Neutral on the bill.
- ◁ **Status:** Died in committee.

HB 3233 ([link](#)) [Companion Bill SB 6523] - Establishing a Washington identity theft analysis center (Loomis)

Directs the Washington Association of Sheriffs and Police Chiefs to establish a " Washington Identity Theft Information System " containing a central repository of information on identity theft arrests and convictions and improve coordination across jurisdictions. Information pertaining to identity theft may be contributed by private parties; however, data shall not be accessible by or disclosable to private parties."

- ◁ **Comments:** This language regarding disclosure is not well-crafted. It is not clear whether this is an exemption from the Public Records Act, or also from subpoena and discovery. It is also not clear if the information from the database is only exempt from disclosure to the public directly from the database, or also indirectly from agencies who obtained it from the database (i.e., that agencies using the database are under obligation to control access and keep the contents of the database confidential.)
- ◁ **Recommended Action:** Neutral on the bill. **Recommend that the language in Section 2(c) be clarified substantially, and OPPOSE the bill if the language remains this vague.**
- ◁ **Status:** Died in committee.

HB 3243 ([link](#)) - Allowing law enforcement agencies to request state assistance when verifying a registered sex or kidnapping offender's residential address (# 2021-0000) ✕

Allows any law enforcement agency conducting address verification for registered sex offenders to request DSHS to search its databases for any address information it may have. Section 1(4)(d) of the bill exempts from disclosure requests sent from all law enforcement agencies to DSHS and responses from DSHS to law enforcement agencies.

- ◁ **Comments:** Sealed records related to sex offenders under 9A.44 is already exempted from disclosure by 42.56.240(3) and RCW 40.14.070(2)(b). It is not explicitly stated in the bill why it is necessary for the correspondence between law enforcement agencies and DSHS needs to be confidential.
- ◁ **Recommended Action:** **Request explanation of why the exemption is necessary. If it is justified, request that a reference to it be included in RCW 42.56.240.**
- ◁ **Status:** Died in Appropriations.

HB 3359 ([link](#)) - Concerning pistol ammunition (# 2021-0000) ✕ Requires all pistol ammunition to be " coded " with a unique alphanumeric identifier at the base of each bullet projectile and inside each shell casing. Every seller of ammunition is required to record the ammunition identifier and identification of the purchaser, and report it to the department of licensing for recording in a new database. Section 5 of the bill amends RCW 42.56.240 (Investigative, law enforcement, and crime victims) to exempt

from disclosure the contents of the centralized ammunition database except for law enforcement agencies and prosecutors.

- ◁ **Comments:** Presuming it is appropriate for the government to collect this data in the first place (second amendment rights are clearly implicated), it seems appropriate to protect the privacy of lawful purchasers of ammunition by exempting the database from disclosure.
- ◁ **Recommended Action:** None.
- ◁ **Status:** Died in committee.

SB 5120 ([link](#)) Requiring a survey on the deployment of broadband technologies among households in the state (Kohl-Welles) – Appropriates \$165,000 for the department of Community, Trade and Economic Development to contract for a survey, to be completed by the end of 2007, of the availability and use of broadband service

throughout the state. Section 3 of the bill names and identification data of any person, household, or business participating in a survey under this act are exempt from disclosure.

- ◁ **Comments:** This bill does not codify any new law, but is session law only and is likely to be turned into a budget addition to RCW 42.56 in order to protect personal identifying information of those participating in the survey.
- ◁ **Recommended Action:** Neutral on the bill. Request that the bill be amended to not create a new section in RCW 42.56, but to keep it self-contained and not codify the exemption.
- ◁ **Status:** Died in Ways & Means.

SB 5151 ([link](#)) Registration of persons who provide or offer to provide athletic coaching services to children under the age of eighteen (Franklin) – Requires commercial youth athletic coaches (who are not school employees) to be registered with the state; establishes registration qualifications; requires criminal background checks; requires advertising of registration numbers; requires provision of certificate before hiring; etc.

Section 5(3) of the bill says "Criminal history information received-- by the department under this chapter is exempt from public inspection or disclosure under chapter 42.56 RCW", and Section 14 of the bill "Criminal history information received-- by the department under this chapter (sections 1 through 13 and 15 of this act) is exempt from disclosure under this chapter."

- ◁ **Comments:** Dissemination of criminal history information is already tightly regulated under RCW 10.97, including detailed record-keeping of who obtains the information. If Section 14 is enabled, criminal history information releasable under RCW 10.97 will still be obtainable from the appropriate law enforcement agency, but not through the Department of Licensing registration program. This makes sense; we don't want DOL to have to implement and tracking system of law enforcement agencies in order to comply with RCW 10.97. However, this exemption does not need to be an independent section in RCW 42.56.

- ◁ **Recommended Action:** Neutral on the bill. Request an amendment to put the exemption in a subsection of RCW 42.56.250 rather than a new section.
- ◁ **Status:** Died on Senate 2nd Reading Calendar.

SB 5295 ([link](#)) **Creating an office of corrections ombudsman (Kastama)** – Creates a corrections ombudsman to provide information to offenders and their families, promote public awareness, identify issues and responses, and ensure compliances with statutes, rules and policies, to assist offenders and reduce the possibility of litigation. Section 7(2) says “ Investigative records of the office of exempt from public disclosure under chapter 42.56

- ◁ **Comments:** Similar provisions exist for other ombudsmen. If we keep creating so many ombudsmen, there won't be many invest disclosable.
- ◁ **Recommended Action:** Neutral on the bill. Request that a pointer to the exemption be included in RCW 42.56.
- ◁ **Status:** Died in Ways & Means.

SB 5302 ([link](#)) **Limiting the assessed value of real property to the lesser of the property's current assessed value or a five percent increase from the previous year's assessed value (Haugen)** – In addition to the purpose noted in the title, makes a change in a reference to the Public Records Act. Section 3 changes a reference to RCW 42.56.210 to RCW 42.56.230.

- ◁ **Comments:** This appears to be a technical correction.
- ◁ **Recommended Action:** None.
- ◁ **Status:** Died in committee.

SB 5341 ([link](#)) **Breaches of security that compromise personal information (Kline)** – Amends RCW 19.255.010 and 42.56.590 to clarify the amount of damages than can be awarded to a customer whose personal data is improperly released or stolen and who is not notified of the disclosure as required by law. Also makes failure to notify an unfair or deceptive practice under the consumer protection act.

- ◁ **Comments:** RCW 19.255.010 requires notification of data security breaches in private companies; RCW 42.56.590 requires the same of government agencies. Providing guidance to courts on the amount of damages that can be awarded for failure to notify customers of a breach seems to be a reasonable change.
- ◁ **Recommended Action:** None.
- ◁ **Status:** Died in committee.

SB 5420 ([link](#)) **Adding a new section to RCW 42.30 requiring all agencies that maintain web sites to post all adopted ordinances, resolutions, rules, regulations, orders and directives on their web site within five days of adoption, to post all minutes within five days of the meeting, to post their schedule of meetings, to post notices of special meetings, and a roster of names of the governing body including the terms of elected members.**

- ◁ **Comments:** This seems to be useful information that agencies should post on their web sites to assist the public in participating in meetings.
- ◁ **Recommended Action:** **SUPPORT**. Encourage Senate leadership to vote on the bill.
- ◁ **Status:** **Died on Senate 2nd Reading calendar.**

SB 5436 ([link](#)) [Companion Bill HB 1446] **Statute of limitations for actions under the public records act (Pflug)**

- ◁ **Comments:** See notes on HB 1446 above.
- ◁ **Recommended Action:** **SUPPORT**, only because it makes sense for the legislature to clarify when the clock starts rather than it having to be worked out in the courts. However, we must insist that the statute of limitations be increased beyond one year, preferably to three years or more, to restore the balance originally worked out on HB 1758 (2005) in which penalties were to be increased by 500% to balance the reduction in the statute of limitations by 80% [but the penalty increase was removed from the bill].
- ◁ **Status:** **Died in Rules.**

SB 5457 ([link](#)) **Special Meetings (Morton)** – Amends RCW 42.30.080 to require that jurisdictions with fewer than 1000 voters allow any resident to file with the governing body a request to be notified of special meetings.

- ◁ **Comments:** Allowing citizens to request to be notified of special meetings is a great thing, but why should it be limited to jurisdictions with fewer than 1000 voters?
- ◁ **Recommendation Action:** **SUPPORT**. Request amendment to expand to all jurisdictions.
- ◁ **Status:** **Died on Senate 2nd Reading Calendar.**

SB 5547 ([link](#)) [Companion Bill HB 1202] **Creating the office of the ombudsman for persons with developmental disabilities (Kline)**

- ◁ **Comments:** See notes on HB 1202 above.
- ◁ **Recommended Action:** Neutral on the bill. Suggest a pointer to the exemption be added to RCW 42.56.
- ◁ **Status:** **Died in Ways & Means.**

SB 5587 ([link](#)) **Judicial conduct commission (Honeyford)** – Amends RCW 2.64, regarding the judicial conduct commission, in a number of ways. These include prohibiting commissioners who participate in investigations from participating in subsequent proceedings; allowing jurists who are investigating to obtain discovery of evidence; allows jurists to use the PRA to access investigatory records using the Public Records Act; allows meetings of the judicial conduct commission to be exempt from the Open Public Meetings Act *only* to the extent the constitution requires it; and makes all members of the commissions subject to the judicial code of conduct.

- ◁ **Comments:** With regard to the PRA, the bill expands access. The law previous made many of the meetings of the commission entirely exempt from the OPMA, but under this bill that would be exempt *only* if the *Constitution* requires it, and otherwise they would be subject to the OPMA.

- ◁ **Recommended Action:** **SUPPORT**. Encourage Senate leadership to vote on bill.
- ◁ **Status:** Died on Senate 2nd Reading Calendar.

SB 5598 ([link](#)) [Companion Bill HB 1696] **Creating the Citizens Initiative Review Commission (Oemig)**

- ◁ **Comments:** See notes on HB 1696 above.
- ◁ **Recommended Action:** **WCOG should debate its position on the exemption in Section 4(4).**
- ◁ **Status:** Died in committee.

SB 5603 ([link](#)) [Companion Bill HB 1900] **Updating public records provisions (Roach)**

- ◁ **Comments:** See notes on companion bill HB 1900 above.
- ◁ **Recommended Actions:** **SUPPORT**. Encourage Senators to vote yes.
- ◁ **Status:** Died on Senate 2nd Reading calendar.

SB 5672 ([link](#)) Adds a new section to RCW 42.30 requiring all agencies that maintain web sites to post agendas of their meetings " within a reasonable time before ordinances, rules, or regulations to be considered at the meeting; to post minutes of meetings " within a reasonable time after a meetings.

- ◁ **Comments:** Compare this to SB 5420. SB 5420 is much more specific in its requirements, while 5672 is quite ambiguous and open to interpretation (e.g., " a reasonable time before ordinances, resolutions, rules, etc., to be posted on the web site, and does not require posting of the members, positions, terms, and district boundaries of the governing body. Note that the sponsor of 5672 is the committee chair, and the sponsor of 5420 is the ranking minority member of the committee.
- ◁ **Recommended Action:** **SUPPORT**. But wouldn't 5420 be better information available to the public online?
- ◁ **Status:** Died in committee.

SB 5973 ([link](#)) [Companion Bill HB 1553] **Creating a controlled substances prescription monitoring program (Parlette)**

- ◁ **Comments:** Same as companion bill HB 1553 (above).
- ◁ **Recommended Action:** None.
- ◁ **Status:** Died in Ways & Means in 2007. Died in committee in 2008.

SB 6040 ([link](#)) [Companion Bill HB 2062] **Creating a public speedway authority (Hatfield)**

- ◁ **Comments:** Same as companion bills HB 2062 above.
- ◁ **Recommended Action:** Neutral. Ask for an amendment correcting the reference to RCW 42.17 to instead refer to RCW 42.56.
- ◁ **Status:** Died in Ways & Means.

SB 6045 ([link](#)) **Transportation regulation (Haugen)** – Moves the regulation of motor carriers and other transportation from the WUTC to the Department of Licensing, Transportation Commission, Department of Transportation, and the State Patrol. Renames the “ Washington utilities and transportation making all the necessary changes throughout the RCW including in 42.56.330(1). Makes various other clean-ups.

- ◁ **Comments:** The change to the PRA is editorial only.
- ◁ **Recommended Action:** None.
- ◁ **Status:** Died in committee.

SB 6069 ([link](#)) - **Establishment of advisory rates for log haulers (Hargrove)** – Permits the WUTC to establish “ advisory rates ” for log commission to notify forest landowners or log haulers before releasing commercial information to provide an opportunity for the subject of the information to request a court order barring disclosure.

- ◁ **Comments:** Given all of the other exemptions for confidential financial information already in RCW 42.56.270, it would seem to make more sense to just have a straightforward exemption than to restate the 42.56.540 process in this new section.
- ◁ **Recommended Action:** Neutral on the bill. Recommend reconsideration of the proposed process for contesting release of information and inclusion of an appropriate exemption for confidential financial information in 42.56.270.
- ◁ **Status:** Died in Ways & Means.

SB 6076 ([link](#)) - **Disclosure of investigative records of law enforcement agencies (McCaslin)** – Adds a new exemption to RCW 42.56.240 for prepared by any state, county, municipal, or other law enforcement agency pertaining to an incident that has not led to an arrest, conviction, or other disposition adverse to the subject, if more than one year has elapsed since the record was prepared, and for which proceedings are no longer actively pending” .

- ◁ **Comments:** 42.56.240(1) already exempts disclosure of investigative records “ nondisclosure of which is essential to ef protection of any person's right to privacy concealment of investigative records permanent after one year even if there is no longer question of the release impacting n
- ◁ **Recommended Action:** **OPPOSE.** If there is a privacy interest in non-disclosure, the records are already exempt. Otherwise, this provision simply allows for sealing of many records that would currently be discloseable and that may be important for accountability.
- ◁ **Status:** Died in committee.

SB 6191 ([link](#)) - **Requiring disclosure of certain health care information (Keiser)** – Amends RCW 42.56.360 (health care) to eliminate the exemption from disclosure of notifications or reports of adverse events or incidents made under RCW 70.56.020 and 70.56.040.

- ◁ **Comments:** This is similar in some respects to the provisions of HB 2670/SB 6457, but simpler – just a straight-forward elimination of the exemption rather than a narrowing of it.
- ◁ **Recommended Action:** **SUPPORT.**
- ◁ **Status:** Died in committee.

SB 6241 ([link](#)) - **Prohibiting the sale or use of prescriber-identifiable prescription data for commercial or marketing purposes absent prescriber consent (Fairley)** – Prohibits marketers of pharmaceuticals from purchasing data indentifying the doctor who wrote particular subscriptions, and makes it a deceptive practice under the consumer protection act. Section 6 amends RCW 42.56.350 (health professionals) to exempt from disclosure records held by state health care purchasing agencies that can be used to identify the prescribing physician of a particular physician.

- ◁ **Comments:** The new exemption is likely intended to prevent pharmaceutical marketers from going around the prohibition and accessing similar data through public records. This bill is very similar to HB 2664 and probably should have been filed as a companion bill.
- ◁ **Recommended Action:** Neutral on the bill. **Request the exemption be amended to require redaction of prescriber-identifying information rather than withholding of the entire record.**
- ◁ **Status:** Passed Senate 26-22. Died on House 2nd Reading calendar.

SB 6250 ([link](#)) [**Companion Bill HB 2725**] - **Protecting the confidentiality and privacy of personal information in connection with drivers' licenses and identicards (Haugen)** – Amends RCW 42.56.230 (personal information) to exempt from disclosure documents used to prove personal information needed to apply for a driver license or identicard. Amends RCW 42.56.330 (public utilities and transportation) to exempt from disclosure personal identifying information of persons who use a driver license or identicard that incorporates RFID technology.

- ◁ **Comments:** The federal REAL ID Act requires states to verify *and retain images of* identity documents used to prove various personal information. The department of licensing wants to ensure that this retained information is not accessed for identity theft purposes. The exemption of personal identifying information of RFID-equipped IDs is similar to the existing exemption for users of transit and toll passes. WCOG was asked to review this bill prior to its introduction and we proposed changes to strengthen the privacy protections, but our proposed changes were not incorporated.
- ◁ **Recommended Action:** Neutral on the bill. **Suggest amendment to strengthen privacy protections by also exempting from disclosure information derived from the presented documents and not just the documents themselves.**
- ◁ **Status:** Passed Senate 47-0. Passed House 96-0 with amendments. **Senate failed to take up House amendments, so bill died in Senate.**

SB 6294 ([link](#)) [**Companion Bill HB 3219**] - **Modifying compensation for denials of public records by agencies (Hargrove)** – By request of the Attorney General. Amends

RCW 42.56.550 to provide that if penalties are awarded due to improper denial of a public records request, and the requester was in jail or prison at the time of the request, but the penalties will instead be paid into the crime RCW 7.68. The requester is still entitled to recover attorney fees and costs.

- ◁ **Comments:** This would have the effect of discriminating on the basis of the requester's status, violating a fundamental principle of RCW 42.56. Agencies shall not distinguish among persons requesting records". It would establish a precedent that provisions that discriminate on the basis of who the requestor is. It would also establish a precedent of penalties for PRA violations being directed to someone other than the requester, which could be easily expanded into redirection of PRA penalties into other programs so as to discourage use of the PRA by those seeking financial reward rather than seeking information. None of these precedents are desirable.
- ◁ **Recommended Action:** **OPPOSE.**
- ◁ **Status:** Died in committee.

SB 6365 ([link](#)) - **Studying association health plans (Marr)** – Requires the insurance commissioner to collect and analyze data from association health plans to determine the impact of association health plans on the health care market. Section 1 of the bill exempts from disclosure data provided by association health plans to the commissioner.

- ◁ **Comments:** Section 1 of the bill does not have a need to reference 42.17 anymore within chapter 48.43 without inserting any cross-reference in RCW 42.56.
- ◁ **Recommended Action:** Neutral on the bill. **Request amendment to eliminate reference to 42.17, and to insert a cross-reference to the new section into RCW 42.56.270.**
- ◁ **Status:** Died in committee.

SB 6378 ([link](#)) [**Companion Bill HB 2687**] - **Making 2008 operating supplemental appropriations (Prentice)** – The Governor's budget Section 135(6) includes \$100,000 to the Department of Information Systems to contract with persons with expertise in both information technology systems and public disclosure requirements to develop best practices to satisfy public records disclosure requests for electronic records in an electronic format so that agencies respond in a way that is consistent, complete, timely, and cost effective."

- ◁ **Comments:** WCOG's legislative agenda supports agencies to develop best practices to satisfy public records disclosure requests for electronic records in electronic format.
- ◁ **Recommended Action:** **STRONG SUPPORT** for Section 135(6) only.
- ◁ **Status:** House version passed.

SB 6491 ([link](#)) [**Companion Bill HB 2937**] - **Providing for vulnerable adult fatality review (Brandland)** – Creates a "vulnerable adult fatality review" to review existing infant and child mortality review. Subsection (2) of the bill exempts all records associated with the fatality review from disclosure.

- ◁ **Comments:** The infant and child mortality review is a voluntary process, and the exemption from disclosure is necessary to convince those with information who might be otherwise reluctant to participate in the review to do so. This bill does not say that the vulnerable adult fatality review is voluntary, or whether persons with information about the fatality may be compelled to participate and provide information. The exemption in subsection (2) is very broad – broader than that provided for infant and child mortality reviews – but no justification is given for why deaths in state care should be subject to such secrecy.
- ◁ **Recommended Action:** **OPPOSE** unless the broad exemption from disclosure is well-justified or eliminated.
- ◁ **Status:** **Died in committee.**

SB 6492 ([link](#)) [**Companion Bill HB 3004**] - **Regarding public disclosure of civil confinement facility information (McAuliffe)** – Amends RCW 42.56.420 to add civil commitment centers for sexually violent predators (such as on McNiel Island) to the list of facilities for which vulnerability assessment and emergency and escape response plans are exempt from disclosure.

- ◁ **Comments:** There's a saying in the security business "no security at all", and a strong philosophy is that prisons, and SCCs like McNiel Island would actually be improved by opening them up to scrutiny by independent experts. Until that philosophy is well-accepted, however, it makes sense to include the SCC along with jails and prisons in this exemption.
- ◁ **Recommended Action:** None.
- ◁ **Status:** **Passed Senate 45-0. Died in House Rules.**

SB 6506 ([link](#)) [**Companion Bill HB 2906**] - **Creating a system for enforcing discipline in medical professions (Marr)** – Restructures the disciplinary processes for medical professions, including replacing the Medical Quality Assurance Commission with a new independent Medical Board for Safety and Quality. Sections 133 through 137 of the bill

create a new "physician education and improvement program" whose care may be lacking present an immediate threat to the public". Section 138 creates a voluntary substance abuse monitoring program, and requires that all records pertaining to participants in the program are exempt from disclosure under the PRA and also not subject to subpoena or admissible as evidence.

- ◁ **Comments:** The broad exemption in Section 138 of *all* records of the physician education and improvement program is not appropriate and is a recipe for fraud and unaccountability. It may be argued that the exemption in Section 218 is necessary to convince drug-abusing physicians to voluntarily enter the program.
- ◁ **Recommended Action:** **OPPOSE** unless the exemption in Section 138 is significantly narrowed.
- ◁ **Status:** **Died in Ways & Means.**

SB 6521 ([link](#)) [**Companion Bill HB 2624**] - **Concerning human remains (McDermott)** - Expands responsibilities of persons who discover human remains, including notice requirements to tribes. Section 6 requires the state department of archaeology and historic preservation to create a database of all known cemeteries and burial sites in Washington. Clarifies that portions of the database disclosed to other agencies remain subject to the exemption while in the possession of the other agencies.

- ◁ **Comments:** The entire database appears to be declared exempt from disclosure under RCW 42.56.300, including those portions but allows other government agencies and tribes access to the data.
- ◁ **Recommended Action:** Neutral on the bill. **Request amendment to clarify that only those portions of the database that would have already been exempt under RCW 42.56.300 will be exempt, and information on non-archaeological sites will continue to be disclosable.**
- ◁ **Status:** Died in Ways & Means.

SB 6523 ([link](#)) [**Companion Bill HB 3233**] - **Establishing a Washington identity theft analysis center (Kline)** – Directs the Washington Association of Sheriffs and Police Chiefs to establish a “Washington Identity Theft Analysis Center” website. The center will contain a central repository of information on identity theft arrests and convictions and improve coordination across jurisdictions. Information pertaining to identity theft may be contributed by private parties; however, data shall not be accessible by or disclosable to private parties.”

- ◁ **Comments:** This language regarding disclosure is not well-crafted. It is not clear whether this is an exemption from the Public Records Act, or also from subpoena and discovery. It is also not clear if the information from the database is only exempt from disclosure to the public directly from the database, or also indirectly from agencies who obtained it from the database (i.e., that agencies using the database are under obligation to control access and keep the contents of the database confidential.)
- ◁ **Recommended Action:** Neutral on the bill. **Recommend that the language in Section 2(c) be clarified substantially, and OPPOSE the bill if the language remains this vague.**
- ◁ **Status:** Died in Ways & Means.

SB 6590 ([link](#)) [**Companion Bill HB 2936**] - **Modifying confidential information provisions (Fairley)** – Amends RCW 74.34 on Abuse of Vulnerable Adults to change the information available to the public from reports of abuse. The name of the abused vulnerable adult and of witnesses will no longer be disclosable unless they consent in writing. However, summary information will now be available including the fact that a report was received, whether or not an investigator has been assigned and whether or not the investigation is ongoing, and whether or not protective services were offered to the vulnerable adult. The department is authorized to adopt rules to implement the section.

- ◁ **Comments:** None.
- ◁ **Recommended Action:** Neutral on the bill.

- ◁ **Status: Died in committee.**

SB 6603 ([link](#)) [**Companion Bill HB 2640**] - **Establishing the guaranteed health benefit program act (Fairley)** – Creates a mandatory guaranteed health insurance system for all residents of Washington not covered by other government-operated programs, funded by taxes paid by employers and employees, for preventive and catastrophic care. Section 26 creates a new section in RCW 42.56 that broadly exempts from disclosure all personal medical records and proprietary or trade secret information submitted by insurance carriers bidding to participate in the program.

- ◁ **Comments:** Neutral on the bill. The exemption created is consistent with other state and federal exemptions for health care information, trade secrets, and proprietary financial information.
- ◁ **Recommended Action:** Neutral on the bill. **Request an amendment to add the exemption to RCW 42.56.360 (health care exemptions) rather than creating a new section.**
- ◁ **Status: Died in committee.**

SB 6608 ([link](#)) [**Companion bill HB 2712**] - **Concerning criminal street gangs (Kline)** – Addresses the impact of street gangs through several initiatives including pilot projects for gang prevention, intervention, and suppression; local grants targeting gangs and graffiti abatement; creating a statewide gang database; authorizing civil injunctions to prevent gang activity; making it a crime for an adult felon to solicit a minor to commit a felony; and expanding the aggravating factors in the sentencing reform act. Section 301 creates the statewide gang database. Information in the database shall not be (1) available for public use", and subsection 301(5) exempts the contents from disclosure under the RCW 42.56.

- ◁ **Comments:** Many similar law enforcement databases are exempt from disclosure.
- ◁ **Recommended Action:** Neutral on the bill. **Request an amendment adding a subsection to RCW 42.56.240 referencing the new exemption.**
- ◁ **Status: Died in committee.**

SB 6631 ([link](#)) [**Companion Bill HB 3067**] - **Adopting the life settlements model act (Berkey)** – Establishes a licensing and regulatory contracts". Section 7 enables the insurance commissioner to examine the life insurance contracts. 7(b) says that all examination reports, working papers, recorded information, and documents produced, obtained, or disclosed to the examiner during such audits are exempt from disclosure, subpoena, discovery, and admission into evidence in private civil actions.

- ◁ **Comments:** Similar exemptions exist for comparable information obtained in all other examinations by the insurance commissioner.
- ◁ **Recommended Action:** Neutral on the bill. **Request an amendment adding a reference in RCW 42.56.400 to Section 7 of the bill.** Sponsor has agreed to include this amendment.
- ◁ **Status: Died in committee.**

SB 6704 ([link](#)) [**Companion Bill HB 3090**] - **Modifying the notice requirement for special meetings (Fairley)** – Requires notice of special meetings of governing boards to be posted on the agency's web site, in an open and accessible format, and delivered (not just mailed or faxed) to newspapers and radio and TV stations.

- ◁ **Comments:** Chances are some stations would *prefer* email or fax over hand delivery, but the requirement for web posting will make notice more readily available to the public. It would be nice if a requirement also existed to enable citizens to subscribe to email notification, rather than having to remember to check the web site on a regular basis.
- ◁ **Recommended Action:** **SUPPORT**. Recommend an amendment to allow media outlets to request email and fax notice in addition to hand delivery, and to allow interested citizens to subscribe to receive email notice.
- ◁ **Status:** Died in Senate Rules.

SB 6705 ([link](#)) [**Companion Bill HB 2721**] - **Adopting model rules for public agencies under the open public meetings act (Morton)** – Requested by the Attorney General. Amends RCW 42.30.210 requiring the Attorney General to provide an explanatory pamphlet on the Open Public Meetings Act, and to create model rules for public agencies.

- ◁ **Comments:** Similar model rules have been adopted for the Public Records Act.
- ◁ **Recommended Action:** **SUPPORT**.
- ◁ **Status:** Died in committee.

SB 6845 ([link](#)) [**Companion Bill HB 2939**] - **Regulating exchange facilitators (Hobbs)** – creates a new licensing program under the Department of Financial Institutions to regulate "exchange facilitators", which property they wish to parties exchange. Section 13 of the bill authorizes the department to conduct audits of licensed exchange facilitators. Information obtained in these audits that is considered a trade secret by the subject of the audit is exempt from disclosure. RCW 42.56.270 (financial, commercial, and proprietary information) is amended to exempt from disclosure financial information, business plans, examination reports, and any other information produced or obtained in such audits.

- ◁ **Comments:** These disclosure provisions are the same as similar provisions for audits of other financial businesses.
- ◁ **Recommended Action:** Neutral.
- ◁ **Status:** Died in committee.

SB 6921 ([link](#)) - **Exempting certain proprietary information from disclosure under the public records act (Delvin)** – Amends RCW 42.56.270 (Financial, commercial, and proprietary information) to exempt from disclosure proprietary information including leases, contracts, and internal control documents of licensees required by the gambling commission. However, when the gambling commission receives a request for disclosure of any of these documents, the commission shall notify the person who is the subject of the request and the commission may release the records only if the person consents to the release " .

- ◁ **Comments:** Mini-casinos have been seeking this exemption for several sessions in order to put them on a level playing field with their competitors, the tribal casinos. They consider it unfair that the tribes potentially have access to their internal business information while the tribes do not have to disclose similar information to the state. As is the case with so many other similar exemptions, it is reasonable to question why the government needs to collect this information in the first place, but if it is collected it is reasonable that it not be able to be used to secure a competitive advantage. The language of the proposed exemption is unusual in that it exempts information from disclosure, but then requires the agency to inform the subject of the request and allows the subject to permit the release of the information; this is opposite the existing mechanism under RCW 42.56.540 in which the subject of a record may file for an injunction to prevent the release of the information. The ramifications of this precedent are not clear.
- ◁ **Recommended Action:** None.
- ◁ **Status:** Died in committee.