



## Final Status of Bills Related to Open Government Considered During the 2009 Legislative Session

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### SUMMARY

The Washington Coalition for Open Government tracked the progress of 101 of the 2,661 bills, memorials, and resolutions (1,427 in the House, and 1,234 in the Senate) introduced in the Washington State Legislature during the 2009 session. *Every one* of the 2,661 measures introduced were examined for impact on open government; the 101 that are 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 101 bills tracked, 19 were considered "priority" bills to which the Coalition paid particular attention. These included bills:

- Allowing agencies to obtain injunctions blocking public records requests by prisoners deemed to be "harassing" an agency (**SB 5130/HB 1181**), another that would allow such injunctions to be obtained against any request including non-prisoners (**HB 1316**), and a third that would prohibit prisoners from making public records requests for any reason (**HB 2259**);
- Studying the feasibility of creating an open government enforcement board (**HB 1017/SB 5339**) and another that would have given that enforcement power to the Public Disclosure Commission (**HB 1784**);
- Restoring the attorney-client communication privilege to its pre-*Hangartner* interpretation applying only to records pertaining to an active controversy (**HB 1105**);
- Eliminating the ability for an agency to seek an injunction against release of a record (**HB 1106**);
- Preventing government liability insurance programs from threatening to cancel insurance of agencies that voluntarily release records that would be otherwise exempt (**HB 1107**);
- Exempting from disclosure personal information of all government employees held by any agency (**HB 1317**) and another exempting disclosure of any personal information of criminal justice employees (**HB 2259**);
- Exempting recordings of executive sessions from disclosure and allowing courts to require agencies who intentionally abused executive session to make such recordings, and requiring Open Public Meetings Act training (**HB 1676**);
- Increasing the default charge for copies of records from 15 to 25 cents per page (**SB 5250**), allowing agencies to charge requesters for copies made on their behalf even if they didn't ask for them (**SB 5251**), and allowing agencies to withhold records if the requester hasn't paid for previous the copies they didn't want (**SB 5249**);
- Implementing unanimous recommendations of the Public Records Exemption Accountability Committee known as the "Sunshine Committee" (**SB 5295**) and also non-unanimous recommendations of the committee (**SB 5294**); and,
- Several bills proposing to eliminate the Sunshine Committee (**SB 5119, HB 1497, SB 5588**).

**Of these priority bills, only one passed: SB 5130**, allowing agencies to obtain injunctions blocking public records requests by prisoners deemed to be “harassing” an agency. This bill was, in fact, rushed through the legislature within the span of three days and signed by the Governor the same day it passed, so that it could be used to block requests by a particular inmate at a court hearing the following week. **Through the efforts of WCOG and other organizations concerned about government transparency and accountability, many damaging bills failed to pass.** Unfortunately, as is often the case, many good bills also failed.

Of the remaining 82 tracked bills, 19 passed and 63 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:

- Security plans of the Special Commitment Center for sexually-violent predators (HB 1030);
- Records obtained by regulatory agencies from exchange facilitators (HB 1078), consumer loan companies (HB 1621, HB 1749) and purveyors of life settlement contracts (SB 5195);
- Annual declarations filed by home-school parents (HB 1288);
- Records pertaining to sexually-aggressive children (HB 1419); and,
- Records of private investment funds obtained by the University of Washington endowment fund (HB 1640) .

These new exemptions were not opposed by WCOG, although in some cases concerns were raised and the bills amended to narrow the exemptions. **One exemption was eliminated**, regarding information collected from beer and wine distributors (HB 2040), because the information will no longer have to be submitted to the state.

**Some positive bills also passed.** These included a requirement that state agencies post rule-making information on their web sites (**HB 1475**) and that public hearings associated with rule-making procedures be conducted so that all in attendance can hear the testimony given (**HB 1552**), and a requirement that all reports submitted to the legislature be submitted in electronic form and made available to the public on the legislatures web site (**HB 2327**).

Summaries of all 101 tracked bills appear below, beginning with the 19 priority bills, followed by the bills that passed and finally the bills that failed to pass (bills that failed will be automatically reintroduced in the 2010 session, although a number of them are moot because companion bills already passed). 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, a brief legislative history of the bill, and the disposition of the bill.

## PRIORITY BILLS (19)

**SB 5130** ([link](#)) [**Companion Bill HB 1181**] - **Regarding prisoner access to public records (Carrell; by request of the Attorney General)** – Adds a new section to the Public Records Act that permit an agency or someone named in a record or to whom it pertains to seek an injunction against release of a record requested by an inmate in jail or prison. The injunction may be granted if the court finds that the request was intended to harass or intimidate the agency, its employees, or any person, or if disclosure would undermine penological interests, safety, or security. The court is allowed to consider factors including the requesters history or requests, the type of record sought, statements by the requester regarding the purpose of the request, potential harm to government interests, whether the number of documents requested is burdensome, potential impact on safety or security, etc. The court may also enjoin requests for the records made on behalf of the prison by third parties. Penalties for failing to disclose records do not apply while an injunction is in effect, including during any appeals, regardless of the outcome of the appeal.

- **Comments:** There are a small number of prisoners who have been abusing the Public Records Act, attempting to harass the Department of Corrections and other agencies as an end in itself or in hopes of catching the agency in a technical violation of the PRA and cashing in on penalties. Some mechanism needs to be created to end the harassment, but not at the risk of setting a precedent that agencies can question the motivations of requesters and allowing this to be a factor in deciding whether or not access is to be provided. If this language is adopted, it would be trivial to later amend it to provide this same agency injunction capability to *any* agency against *any* requester at *any* time the agency doesn't want to release a record and thinks it can make a case that the requester has asked one too many times.
- **Recommended Action: OPPOSE.**
- **Status:** Introduced 1/14/09. Referred to Human Services & Corrections. Scheduled for public hearing 1/29/09 at 3:30PM. Executive action taken on 2/10/09. Substitute bill voted out of committee unanimously on 2/12/09. (In the substitute bill, instead of "undermining a legitimate penological interest," a person may enjoin an inmate from requesting public records if the request(s) threatens the security of a correctional facility. In order to obtain an injunction, the moving party must meet its statutory burden by a preponderance of the evidence. The ability to enjoin requests by a third party is removed. The court may, however, enjoin future requests by an entity owned or controlled in whole or in part by the inmate. An emergency clause is added.) Placed on second reading calendar 2/17/09. **Passed Senate 47-0 on 3/3/09.** Referred to House State Government & Tribal Affairs. Scheduled for public hearing on 3/17/09 at 1:30PM. Voted out of committee 6-1 on 3/17/09. **Amended bill passed House 94-2 on 3/18/09. Senate concurred in House amendments on 3/20/09. Passed Senate 43-0 on 3/20/09. Delivered to Governor. Signed by Governor on 3/20/09.**

**HB 1017** ([link](#)) [**Companion Bill SB 5339**] - **Creating a committee to study the feasibility of creating a board with public records act and open public meetings act responsibilities (Kessler; requested by the Attorney General and State Auditor)** – Creates a committee to study and report, by November 15, 2009, on creating a state board to adjudicate complaints of violations of the Public Records Act and the Open Public Meetings Act. The committee would have 13 members: 3 appointed by the governor (1 representing the governor, 1 local government, and 1 the public), 3 by the attorney general (1 representing the AG, 1 a statewide media organization, and 1 the public), 3 by the state auditor (1 representing the auditor, and 2 the public), 2 senators, and 2 representatives. The board would have power to adjudicate PRA and OPMA complaints, enforce the PRA and OPMA, provide alternative dispute resolution mechanisms, issue interpretive opinions on the PRA and OPMA, provide confidential consultation on the acts, provide training of the public, recommend legislative improvements, adopt rules to implement its powers. Staff for the committee would be provided by the AG and auditor. The board would examine best practices of other states.

- **Comments:** This sounds very similar to the powers the current Public Disclosure Commission has with regard to campaign finance reporting and limits and lobbying reporting. The bill does not say how the powers of the new state board would interact with the existing ability of individuals to sue agencies for violations, to recover attorney fees and costs, or the disposition of penalties. WCOG would have to be an active participant in the committee's work to ensure that the interests of the public are protected and the incentives for agencies to obey the PRA and OPMA are not diminished in the committee's recommendations.
- **Recommended Action: SUPPORT** but with concerns about this potential impact on requesters, the possible loss of individual enforcement power, and our continued support for an independent ombudsman with responsibility to help and represent the public.
- **Status:** Prefiled 12/8/08. Introduced 1/12/09. Referred to State Government & Tribal Affairs. Scheduled for public hearing 1/16/09 at 1:30PM. **Died in committee.**

**HB 1105** ([link](#)) - **Regarding public disclosure of records relevant to a controversy to which an agency is a party (Williams)** – Amends the Public Records Act, RCW 42.56.290, to specify that the exemption for records relevant to a controversy (lawsuit) applies only to *ongoing* controversies and only to records created after the claim or lawsuit was filed.

- **Comments:** This would address the 2007 *Soter v. Cowles* decision which effectively said that records could be kept secret forever because a lawsuit could potentially be filed in the future or, even after a case was concluded, someone else might file a similar case.
- **Recommended Action:** **STRONGLY SUPPORT.**
- **Status:** Introduced 1/13/09. Referred to State Government & Tribal Affairs. **Died in committee.**

**HB 1106** ([link](#)) - **Removing the ability of agencies to enjoin the examination of a specific public record (Williams)** – Amends the Public Records Act, RCW 42.56.540, to eliminate the ability for an agency or its representative to file for an injunction blocking release of a record. The ability for a person named in a record to file for an injunction would be continued.

- **Comments:** This would address the 2007 *Soter v. Cowles* decision which validated the ability for agencies to initiate lawsuits against requesters to block release of records.
- **Recommended Action:** **STRONGLY SUPPORT.**
- **Status:** Introduced 1/13/09. Referred to State Government & Tribal Affairs. **Died in committee.**

**HB 1107** ([link](#)) - **Regarding local government self-insurance programs and public records (Williams)** – Amends the RCW 48.62 (Local government insurance) to declare that it is against public policy for local government self-insurance programs to cover the cost of liability or defense costs for violations of the Public Records Act or the Open Public Meetings Act, and to prohibit local government self-insurance programs from dictating to covered local governments how they comply with the Public Records Act or threatening to cancel their insurance for releasing records, including attorney-client communications.

- **Comments:** This would address the actions of the Washington Cities Insurance Authority, which has specifically threatened a number of cities in Washington with cancellation of their liability insurance if they released attorney-client communications records.
- **Recommended Action:** **STRONGLY SUPPORT.**
- **Status:** Introduced 1/13/09. Referred to Financial Institutions & Insurance. Scheduled for public hearing on 1/22/09 at 1:30PM. **Died in committee.**

**HB 1316** ([link](#)) - **Providing a court procedure to enjoin the production of public records the court deems were made for the purpose of harassment (Kessler)** – Amends RCW 42.56.540 to permit an agency or someone named in a record or to whom it pertains to seek an injunction against release of a record requested by any person with the intent of harassing the agency, its employees, or a person named in the record or to whom the record pertains. The court is allowed to consider factors including the requesters history of requests, the type of record sought, statements by the requester regarding the purpose of the request, potential harm to government interests, whether the number of documents requested is burdensome, etc. Penalties for failing to disclose records do not apply during the time between the request for the injunction and the court's ruling.

- **Comments:** This is similar to HB 1181 and SB 5130, except that its impact is not limited to inmates in jail or prison, and can be used to enjoin requests *by anyone* – exactly the slippery slope we feared 1181/5130 would lead to. Agencies should not be permitted to condition access to information on subjective determination of proper motivation of the requester, the frequency of requests, or the scope of the request.
- **Recommended Action:** **STRONGLY OPPOSE.**
- **Status:** Introduced 1/19/09. Referred to State Government & Tribal Affairs. **Scheduled for public hearing 1/30/09 at 1:30PM. Died in committee.**

**HB 1317** ([link](#)) - **Regarding the disclosure of public records containing information used to locate or identify employees of criminal justice agencies (Kessler)** – Amends RCW 42.56.230 to define as personal information and exempt from disclosure all “Photographs, day and month of birth, residential addresses, personal telephone numbers, and other personal information that can be used to locate employees of criminal justice agencies as defined in RCW 10.97.030”.

- **Comments:** Like last year's HB 2490, proponents of the bill will 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. But RCW 42.56.250(3) *already* exempts from disclosure the residential addresses, personal telephone numbers, and many more items of personal information of *all* government employees. The key items being added here are photographs, birthdate, and “other personal information that can be used to locate employees of criminal justice agencies”. Access to photographs is important for accountability, and access to birthdates is important for matching against other databases. “Other personal information” is too

broad and non-specific. HB 2490 applied only to commissioned peace officers, but this bill is much broader; the definition of “criminal justice agency” in RCW 10.97.030 includes all courts and all agencies that allocate “a substantial part of its annual budget to ... Detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders, ... criminal identification activities and the collection, storage, dissemination of criminal history record information, and the compensation of victims of crime” – a huge swath of government employees. And it has the same problem as HB 2490 in that it exempts any information *anywhere* in *any* public records that can be used “to locate” such employees, which means any record that contains the name and address of any employee – such as property ownership records, tax records, and voter registration records, just to start. The only way to implement this would be to create a database of all such employees *and* their family members so that agencies could check before releasing documents.

- **Recommended Action:** **STRONGLY OPPOSE.**
- **Status:** Introduced 1/19/09. Referred to State Government & Tribal Affairs. **Scheduled for public hearing 1/30/09 at 1:30PM. Died in committee.**

**HB 1497** ([link](#)) - **Eliminating boards and commissions (Hunter)** – Repeals the statutes create many (and perhaps *all*) state boards and commissions. Section 201(75) eliminates the Public Disclosure Commission. Section 201(78) eliminates the Sunshine Committee.

- **Comments:** One wonders whether the bill is even serious, but it is certainly a way to start a conversation about the number of various boards and commissions that exist and for which the people of Washington pay with their tax dollars. If the bill gets a hearing, WCOG will want to testify and defend the Sunshine Committee and PDC.
- **Recommended Action:** **OPPOSE** with regard to the Sunshine Committee and Public Disclosure Commission.
- **Status:** Introduced 1/22/09. Referred to State Government & Tribal Affairs. **Died in committee.**

**HB 1676** ([link](#)) - **Changing open public meetings act provisions (Kessler; requested by Attorney General and State Auditor)** – Amends the Open Public Meetings Act, RCW 42.30, to enable agencies to record executive sessions. Recordings would be exempt from disclosure under the Public Records Act. If an agency is found by a court to have intentionally violated the OPMA, it can be ordered to record its executive session for a period of two years. Agencies would be exempted from liability for improper executive sessions if they self-disclose that the first opportunity, no final action has been taken on the illegal action, and no litigation related to the action has been filed or is anticipated. The attorney general is required to develop OPMA model rules (similar to existing PRA model rules) and a certified training program on the OPMA. Every elected or appointed member of a body subject to the OPMA is required to complete OPMA training within 90 days of adoption of the model rules, and those who take office after the adoption of the rules are required to complete training within 90 days of taking office.

- **Comments:** The recording provisions are an incremental step in the direction of WCOG’s agenda item requiring recording of all executive sessions. The mandatory OPMA training is a consistent with WCOG’s agenda item on mandatory training.
- **Recommended Action:** **SUPPORT.** Need to understand how the exemption from liability provision would work in detail.
- **Status:** Introduced 1/27/09. Referred to State Government & Tribal Affairs. Scheduled for public hearing on 2/17/09 at 1:30PM. **Died in committee.**

**HB 1784** ([link](#)) - **Expanding the authority of the public disclosure commission to include the open public meetings act and the open public records act (Liias)** – Empowers the Public Disclosure Commission to enforce RCW 42.56 and RCW 42.30 in addition to RCW 42.17. The PDC would also issue interpretive opinions on these chapters, and provide confidential consultation to agencies on their duties under the chapters. Recodifies the sections that define the PDC and its enforcement powers as a new chapter in Title 43, and corrects references. Section 109 amends the OPMA to add the PDC as an additional enforcement mechanism. Section 110 amends the PRA to add the PDC as an additional enforcement mechanism, although the enforcement power is limited to disagreement over exemption of records and does not appear to include other elements of the PRA.

- **Comments:** This is an idea that has been discussed many times by open government advocates. However, it should be studied in the context of a thorough examination of the options for improving enforcement of the PRA and OPMA as envisioned in HB 1017. If the bill does move forward, WCOG would need to actively engage to ensure that the existing ability for citizens to enforce through the courts is unimpaired and that the PDC powers are well-defined.
- **Recommended Action:** **OBJECT** to the bill moving forward in its current form and request significant stakeholder input.
- **Status:** Introduced 1/29/09. Referred to State Government & Tribal Affairs. Scheduled for public hearing on 2/10/09 at 1:30PM. **Died in committee.**

**HB 2259** ([link](#)) - Regarding the application of the public records act to persons working or serving sentences at correctional facilities and criminal justice agencies. (Pearson) – Prohibits *any* prison or jail inmate from using the Public Records Act to inspect or copy *any* record. *Prohibits* criminal justice agencies from releasing to *anyone* photographs, residential addresses or telephone numbers, wireless numbers, email addresses, social security numbers, and dates of birth of current or former employees, their spouses and dependents, and former spouses and dependents.

**Comments:** This goes far beyond the provisions of HB 1181 or 1316 in that it doesn't even require the requester to be harassing or even annoying; just being an inmate means you are *prohibited* from inspecting or copying records! The prohibition on release of personal information of employees is largely redundant except that it is not an exemption but a mandatory prohibition on disclosure, includes photographs and birthdates (which are disclosable under current law), and includes former spouses with custody of an employees children.

- **Recommended Action: STRONGLY OPPOSE.** Birthdates of public employees must be disclosable to uniquely identify them. Inmates should not be prohibited from accessing public records.
- **Status:** Introduced 2/19/09. Referred to State Government & Tribal Affairs. **Died in committee.**

**SB 5119** ([link](#)) - Eliminating the public exemptions accountability committee (Fairley) – Argues extensively that the Sunshine Committee has been ineffective, and calls for it to be eliminated.

- **Comments:** It's clear that the Sunshine Committee has drawn the ire of agencies and organizations that represent agencies because of its examination of the continued utility of exemptions to the Public Records Act, and they are now making a move to eliminate it rather than have to continue to defend their ability to operate in secrecy. The committee has now refined its processes and should be allowed to continue its important work.
- **Recommended Action: STRONGLY OPPOSE.**
- **Status:** Introduced 1/14/09. Referred to Government Operations & Elections. Scheduled for public hearing on 1/20/09 at 1:30PM. **Died in committee.**

**SB 5249** ([link](#)) - Changing public records request provisions (Fairley) – Amends the Public Records Act, RCW 42.56.520, to provide that a request may be denied by the agency if the requesting party has an outstanding balance with the agency for unpaid charges for records previously provided.

- **Comments:** While it may make sense to prevent a requester from ordering copies of records when they have unpaid charges outstanding for copies they previously authorized and requested, the fact is that no agency is required to provide copies "on credit" in the first place. This bill is squarely aimed at being able to block requesters from making additional requests when an agencies is attempting to charge them for copies the requester didn't ask for in the first place, and may interfere with requesters being able to access records while a previous request is being disputed. The bill also presumes that the agency knows the identity of the requester, which could lead us toward requiring requesters to prove their identity in order to access records. There are better ways to deal with this problem.
- **Recommended Action: STRONGLY OPPOSE.**
- **Status:** Introduced 1/19/09. Referred to Government Operations & Elections. Public hearing on 1/20/09 at 1:30PM. **Died in committee.**

**SB 5250** ([link](#)) - Increasing the maximum per page copying charge under the public records act. (Fairley) – Amends the Public Records Act to increase the maximum default per-copy charge (when the agency has not calculated actual costs) from 15 cents to 25 cents.

- **Comments:** The title of the bill is inaccurate in that 15 cents is not the maximum amount that can be charged for copies under the PRA, but is the maximum agencies are allowed to charge when they refuse to calculate their actual cost for copies; agencies can charge more than 15 cents now, if they can document it. The fact is that any agency that is actually paying 25 cents (or even 15 cents) for copies should be audited, since profitable commercial photocopy shops charge less than 10 cents, and often 6 cents or less. A better solution would be to *reduce* the default copy charge from 15 cents to 10 cents or 5 cents, to encourage agencies to calculate their actual copying costs and to reflect improvements in technology that have greatly reduced the cost of photocopies. The PRA does not allow agencies to recover the cost of document retrieval or redaction through copying charges, and PRA copying charges should not become a profit center for agencies.
- **Recommended Action: STRONGLY OPPOSE.**
- **Status:** Introduced 1/19/09. Referred to Government Operations & Elections. Public hearing on 1/20/09 at 1:30PM. **Died in committee.**

**SB 5251** ([link](#)) - **Defining per page cost for the purpose of copying costs under the public records act (Fairley)** – Amends the Public Records Act to enable agencies to charge requesters for all copies made in the process of fulfilling a request, even if the copies are not taken by the requester.

- **Comments:** Agencies routinely make photocopies of documents that have been neither requested nor authorized by the requester, such as during the redaction process, or speculatively produce large volumes of records in order to avoid being accused of concealing responsive documents. The PRA (RCW 42.56.120) does not allow agencies to charge for *inspection* of records, but only for copies actually requested and authorized by the requester. The practical effect of this bill would be to establish a charge for inspecting records, which requesters would have to pay even if they had no interest in taking possession of any copies. There are much better ways to deal with this problem, such as making records available electronically, improving electronic redaction of records, limiting the production of copies that have not been specifically authorized by the requester, and using the PRA provisions that encourage requesters and agencies to narrow requests rather than producing large volumes of records which may be of no interest to the requester.
- **Recommended Action:** **STRONGLY OPPOSE.**
- **Status:** Introduced 1/19/09. Referred to Government Operations & Elections. Public hearing on 1/20/09 at 1:30PM. **Died in committee.**

**SB 5294** ([link](#)) - **Implementing the nonunanimous recommendations of the public records exemptions accountability committee (Kline)** – Proposes three amendments to the Public Records Act to implement non-unanimous recommendations of the Sunshine Committee, regarding applications for employment (the majority recommendation), access to ride-share program participant information (the majority recommendation), and attorney-client communications (the *minority* recommendation).

- **Comments:** Section 1 of the bill regarding applications for employment is acceptable. Section 2 regarding ride-share information contains a provision that would require agencies to maintain a list for each participant of other individuals to whom they do not want their information released, which could be very complex and expensive to implement. Section 3 would enact the onerous *Hangartner* interpretation of attorney-client privilege.
- **Recommended Action:** **STRONGLY OPPOSE**, particularly Section 3. **Request removal of Section 3, and possibly amend Section 2, if the bill moves forward.**
- **Status:** Introduced 1/20/09. Referred to Government Operations & Elections. **Died in committee.**

**SB 5295** ([link](#)) - **Implementing unanimous recommendations of the public records exemptions accountability committee (Kline)** – Proposes implementation of ten recommendations of the Sunshine Committee in such areas as child mortality reviews, agricultural regulatory information, criminal history checks on applications for the state investment board, employee wellness programs, applicants to the workforce training and education coordinating board, users of transit passes, etc.

- **Comments:** These recommendations have been thoroughly studied and unanimously supported by the Sunshine Committee. It would be advisable to carefully review the language of the bill to ensure that it accurately reflects the intent of the Committee.
- **Recommended Action:** **SUPPORT.**
- **Status:** Introduced 1/20/09. Referred to Government Operations & Elections. Scheduled for public hearing 2/9/09 at 10:00AM. Substitute bill voted out of committee 6-1 on 2/19/09 (substitute adds technical provisions regarding child mortality reviews). **Passed Senate 42-0 on 3/7/09.** Referred to House State Government & Tribal Affairs. Scheduled for public hearing on 3/17/09 at 1:30PM. Voted out of committee unanimously on 3/26/09 with amendments (the proposed amendment would remove the section that says if a conflict exists between the summary of an exemption in the PRA and the language in the referenced statute, the reference statute controls). **Failed to pass House before opposite-house cutoff.**

**SB 5339** ([link](#)) [**Companion Bill HB 1017**] - **Creating a committee to study the feasibility of creating a board with public records act and open public meetings act responsibilities (Kilmer; requested by the Attorney General and State Auditor)** – Creates a committee to study and report, by November 15, 2009, on creating a state board to adjudicate complaints of violations of the Public Records Act and the Open Public Meetings Act. The committee would have 13 members: 3 appointed by the governor (1 representing the governor, 1 local government, and 1 the public), 3 by the attorney general (1 representing the AG, 1 a statewide media organization, and 1 the public), 3 by the state auditor (1 representing the auditor, and 2 the public), 2 senators, and 2 representatives. The board would have power to adjudicate PRA and OPMA complaints, enforce the PRA and OPMA, provide alternative dispute resolution mechanisms, issue interpretive opinions on the PRA and OPMA, provide confidential consultation on the acts, provide training of the public, recommend legislative improvements, adopt rules to implement its powers. Staff for the committee would be provided by the AG and auditor. The board would examine best practices of other states.

- **Comments:** This sounds very similar to the powers the current Public Disclosure Commission has with regard to campaign finance reporting and limits and lobbying reporting. The bill does not say how the powers of the new state board would interact with the existing ability of individuals to sue agencies for violations, to recover attorney fees and costs, or the disposition of penalties. WCOG would have to be an active participant in the committee's work to ensure that the interests of the public are protected and the incentives for agencies to obey the PRA and OPMA are not diminished in the committee's recommendations.
- **Recommended Action:** **SUPPORT** but with concerns about this potential impact on requesters, the possible loss of individual enforcement power, and our continued support for an independent ombudsman with responsibility to help and represent the public.
- **Status:** Introduced 1/20/09. Referred to Government Operations & Elections. **Died in committee.**

**SB 5588** ([link](#)) - **Administering, suspending, and eliminating boards and commissions (Pridemore)** – Suspends 158 boards and commissions for the duration of the 2009-2011 biennium. Section 125 suspends the Sunshine Committee for the biennium.

- **Comments:** It is ridiculous that this bill was introduced and heard in committee *on the same day*, providing no opportunity for grass-roots activists to prepare; only professional lobbyists for a small number of groups were able to react and participate in the hearing.
- **Recommended Action:** **STRONGLY OPPOSE** with regard to the Sunshine Committee. **We should also complain to Senate leadership about the repeated suspension of rules in Government Operations & Elections providing no notice of hearings on bills.**
- **Status:** Introduced 1/27/09. Referred to Government Operations & Elections. Public hearing on 1/27/09 at 1:30PM. Substitute bill voted out of committee 4-2 on 2/24/09 (63 boards were removed from the substitute bill. Section 75 of the substitute suspends the Sunshine Committee until July 1, 2011). Bill is not dead (necessary to implement the budget). **Died in Rules.**

## BILLS PASSED (19)

**HB 1030** ([link](#)) [**Companion Bill SB 5014**] - **Concerning the exemption of the special commitment center under the public records act (Appleton; requested by the Department of Social and Health Services)** – Adds secure commitment facilities for sexually violent predators to the exemption in RCW 42.56.420 from disclosure of vulnerability assessments and emergency and escape response plans. This includes both the commitment center on McNeil Island, and secure community transition facilities such as the one in south Seattle.

- **Comments:** The proposal is consistent with the existing exemption for similar information regarding city and county jails, state prisons, and juvenile correction facilities. It can be argued that these facilities would be even more secure if their plans were open to public scrutiny (a maxim of security experts is “security by obscurity is no security at all”), but the existing security measures were not designed with such scrutiny in mind. While the SCC and SCTF are not prisons, the public expects them to be as secure as prisons.
- **Recommended Action:** Neutral.
- **Status:** Prefiled 12/8/08. Introduced 1/12/09. Referred to State Government & Tribal Affairs. Scheduled for public hearing 1/20/09 at 1:30PM. Scheduled for executive session 1/29/09 at 8:00AM. Voted out of committee unanimously on 1/29/09. Placed on second reading calendar 2/19/09. **Passed House 94-0 on 2/23/09.** Referred to Senate Human Services & Corrections. Scheduled for public hearing on 3/13/09 at 8:00AM. Voted out of committee unanimously on 3/18/09. Placed on second reading calendar on 3/26/09. **Passed Senate 46-0 on 4/3/09. Signed by Governor on 4/13/09.**

**SHB 1078** ([link](#)) [**Reference SB 6032**] – **Concerning Exchange Facilitators (Financial Institutions & Insurance (originally Kelley))** – Creates a statutory framework that provides some consumer protections to those who entrust money or property to persons acting as exchange facilitators. Section 14 requires exchange facilitators to report on their activities to the Department of Financial Institutions, and exempts information in the reports from disclosure under the Public Records Act except in aggregate form. Section 14(2) refers to an exemption in RCW 42.56.270 for such information.

- **Comments:** The original HB 1078 did not include the new exemption; it appears in the substitute bill. The proposed exemption is consistent with similar confidential, proprietary financial information exempted from disclosure. However, it is not clear which subsection of 42.56.270 is being referenced in Section 14(2), and a reference should be added to 42.56.270 that explicitly points to the new Section 14. Appears similar to HB 1078.
- **Recommended Action:** Neutral on the bill. **Request an explicit reference be added in RCW 42.56.270 to the new Section 14.**
- **Status:** Prefiled 1/7/09. Introduced 1/12/09. Referred to Financial Institutions & Insurance. Public hearing on 1/22/09. Substitute bill voted out of committee 8-2 on 2/17/09 (substitute bill added the new PRA exemption). Referred to General Government Appropriations. Public hearing on 1/26/09. Second substitute bill voted out of committee 12-1 on 2/26/09 (second substitutes adds null and void clause if not funded in the budget). Placed on second reading calendar on 3/5/09. **Amended bill passed House 96-0 on 3/9/09.** Referred to Senate Financial Institutions, Housing & Insurance. Scheduled for public hearing on 3/24/09 at 10:00AM. Voted out of committee unanimously on 3/25/09. **Passed Senate 45-0 on 4/2/09. Signed by Governor on 4/13/09.**

**HB 1254** ([link](#)) [**Companion Bill SB 5076**] - **Creating the Washington grain commission (Schmick)** – Creates an eleven-member commission to replace the existing separate wheat and barley commissions. Section 37 of the bill amends RCW 42.56.380 to add this commission to the list of commodity regulatory commissions for which production records and other financial information submitted to the commission are exempt from disclosure. Section 24 of the bill points to the exemption in 42.56.380. Section 11 of the bill says that the commission must publish its regular meeting schedule as required by RCW 42.30.075, that it may call special meetings as permitted in 42.30.080, and that meetings must be open to the public as required in 42.30.

- **Comments:** This exemption is consistent with provisions for other commodity commissions which have already been reviewed by the Sunshine Committee. The references in Section 11 to the OPMA are not necessary, but also not problematical.
- **Recommended Action:** Neutral
- **Status:** Introduced 1/16/09. Referred to Agriculture & Natural Resources. Scheduled for public hearing 1/27/09 at 1:30PM. Scheduled for executive session on 1/30/09. Substitute bill voted out of committee unanimously on 1/30/09. Placed on second reading calendar 2/9/09. **Substitute bill passed House 97-0 on 2/23/09.** Referred to Senate Agriculture & Rural Economic Development. Scheduled for public hearing 3/19/09 at 3:30PM. Voted out of committee unanimously on 3/25/09. Placed on second reading calendar on 3/26/09. **Passed Senate 45-0 on 4/1/09. Signed by Governor on 4/9/09.**

**HB 1288** ([link](#)) [**Companion Bill SB 5661**] - **Exempting the annual parental declaration of intent to home school from the public disclosure act (Upthegrove)** – Amends the Public Records Act, RCW 42.56.320, to exempt from disclosure the statement that must be filed annual by parents declaring their intention to teach their children at home (RCW 28A.200.010(1)(a)).

- **Comments:** Presumably, this exemption is being requested as a privacy issue by the parents who must file them. We may find out at the hearing that these declarations are being mined by providers of instructional materials for direct marketing purposes.
- **Recommended Action:** Expressed concerns regarding the potential loss of accountability of school districts that could occur if this information is not subject to disclosure.
- **Status:** Introduced 1/16/09. Referred to State Government & Tribal Affairs. Scheduled for public hearing 1/30/09 at 1:30PM. Voted out of committee unanimously on 2/10/09. Placed on second reading calendar 2/26/09. **Passed House 96-1 on 3/3/09.** Referred to Senate Early Learning & K-12 Education. Scheduled for public hearing on 3/23/09 at 1:30PM. Voted out of committee unanimously on 3/24/09. **Passed Senate 45-0 on 4/9/09. Signed by Governor 4/23/09.**

**HB 1419** ([link](#)) - **Revising provisions affecting sexually aggressive youth (Kagi)** – Makes treatment for sexually aggressive children available under expanded circumstances. Adds a new subsection 5 to RCW 74.13.075 that creates a new exemption to the Public Records Act (“A juvenile's status as a sexually aggressive youth, and any protective plan, services, and treatment plans and progress reports provided with these funds are confidential and not subject to public disclosure by the department. This information shall be shared with relevant juvenile care agencies, law enforcement agencies, and schools, but remains confidential and not subject to public disclosure by those agencies.”).

- **Comments:** The new exemption is not identified as an exemption to the PRA and no reference to it is created in RCW 42.56. We should not create new exemptions without explicitly referencing them in the PRA.
- **Recommended Action:** Neutral on the bill. **Strongly requested that the exemption be referenced in RCW 42.56.**
- **Status:** Introduced 1/21/09. Referred to Early Learning & Children’s Services. Scheduled for public hearing on 2/5/09 at 8:00AM. Executive action taken by committee on 2/6/09. Voted out of committee unanimously on 2/6/09. Referred to Health and Human Services Appropriations. Public hearing on 2/25/09. Substitute bill voted out of committee unanimously on 2/25/09 (substitute bill *does not* include WCOG recommendation). **Passed House 96-0 on 3/10/09.** Referred to Senate Human Services & Corrections. Scheduled for public hearing on 3/26/09 at 3:30PM. Voted out of committee unanimously on 3/26/09. **Passed Senate 47-0 on 4/13/09. Signed by Governor 4/28/09.**

**HB 1475** ([link](#)) - **Requiring state agency rule-making information to be posted on each state agency’s web site (Orcutt)** – Requires all state agencies to provide rule-making information on their web site, including the complete text of all proposed rules, emergency rules, and permanent rules proposed or adopted within the past twelve months, or links to the state register web site containing the same information. For proposed rules, the time, date, and place for the rule-making hearing and the procedures and timelines for submitting written comments and supporting data must be posted on the web site.

- **Comments:** This would make such information much easier to find and for affected people to know about possible changes to administrative rules that impact them.
- **Recommended Action:** **SUPPORT. Suggest an amendment to require every rule-making agency to maintain an email list, RSS feed, or both, to which interested people can subscribe to be informed when the rulemaking information is updated.**
- **Status:** Introduced 1/21/09. Referred to State Government & Tribal Affairs. Scheduled for public hearing on 2/3/09 at 1:30PM. Voted out of committee unanimously on 2/10/09. Placed on second reading calendar 2/19/09. **Passed House 92-0 on 2/23/09.** Referred to Senate Government Operations & Elections. Scheduled for public hearing on 3/19/09 at 3:30PM. Voted out of committee unanimously on 3/23/09. **Passed Senate 44-0 on 4/7/09. Signed by Governor on 4/15/09.**

**HB 1552** ([link](#)) - **Regarding public access at open public meetings (Kretz)** – Amends the Open Public Meetings Act to require that every public meeting (excluding executive sessions) held by an agency be recorded or that minutes be taken, and that the recording or minutes be a public record. Also requires that “before the adoption of any ordinance, resolution, rule, regulation, order, or directive, a formal public testimony period must be allowed”.

- **Comments:** A number of agencies have held that the recordings they make of meetings are only for the convenience of the clerk in preparing minutes and are not public records. WCOG is also often contacted by citizens inquiring why they are not permitted to speak at “public” meetings. Many WCOG members would like to require that minutes and recordings be posted on agency web sites, which is not currently mandated.
- **Recommended Action:** **SUPPORT.** If the bill receives a hearing, recommend that it be amended to require minutes and recordings be made available on the agency web site.

- **Status:** Introduced 1/23/09. Referred to State Government & Tribal Affairs. Scheduled for public hearing on 2/20/09 at 1:30PM. Substitute bill voted out of committee unanimously on 2/20/09 (Substitute bill eliminates the requirement that rulemaking hearings be recorded, but retains the requirement that testimony be taken so that all attendees can hear all comments.) **Passed House 95-0 on 3/4/09.** Referred to Senate Government Operations & Elections. Voted out of committee unanimously on 3/26/09 with amendments. **Amended bill passed Senate 45-0 on 4/9/09. Amended bill passed House 97-0 on 4/18/09. Signed by Governor 5/5/09.**

**HB 1621** ([link](#)) [Companion Bill SB 5759] - **Regulating the business practices of consumer loan companies for compliance with the secure and fair enforcement for mortgage licensing act of 2008 (Kirby)** – Amends the state Consumer Loan Act to implement provisions of the federal “Safe and Fair Enforcement for Mortgage Licensing Act”. Section 26 contains very convoluted language that seems to create a new exemption from public disclosure of information required to be kept confidential under the SAFE Act.

- **Comments:** Section 26 is some of the most confusing statutory language ever put on a printed page. It’s completely unclear how it relates to RCW 42.56, since it doesn’t reference any specific exemption or create one directly in 42.56. **WCOG should insist that the language in Section 26 be clarified, and that if a new exemption is created that it be referenced in the PRA.** Appears to be similar to HB 1749.
- **Recommended Action:** Neutral on the core purpose of the bill, but **OPPOSE** unless Section 26 is significantly reworked.
- **Status:** Introduced 1/26/09. Referred to Financial Institutions & Insurance. Scheduled for public hearing on 2/3/09 at 8:00AM. Scheduled for executive session on 2/12/09 at 1:30PM. Substitute bill voted out of committee unanimously on 2/12/09 (substitute bill *does not* include WCOG recommended changes). Referred to General Government Appropriations. Scheduled for public hearing on 2/25/09 at 1:30PM. Substitute bill voted out of committee unanimously on 2/25/09. Placed on second reading calendar on 3/6/09. **Passed House 97-0 on 3/9/09.** Referred to Senate Financial Institutions, Housing & Insurance. Scheduled for public hearing on 3/24/09 at 10:00AM. Voted out of committee unanimously on 3/25/09. **Passed Senate 41-3 on 4/8/09. Signed by Governor on 4/17/09.**

**HB 1640** ([link](#)) [Companion Bill SB 5526] - **Modifying disclosure requirements for private investment information received by the University of Washington consolidated endowment fund (Kessler; requested by University of Washington)** – Would amend the Public Records Act to exempt from disclosure financial and commercial information received by the UW endowment fund from private investment funds if disclosure would result in loss to the endowment fund or the private fund. The endowment fund would be required to disclose the names of the private funds in which it invests, the amount and performance of the investments.

- **Comments:** UW claims that it has been locked out of investment in the highest-performing private funds because the funds refuse to provide their proprietary information if it would be subject to public disclosure. They claim that similar exemptions exist for the state investment board, life sciences fund, and other university endowments.
- **Recommended Action:** Neutral.
- **Status:** Introduced 1/26/09. Referred to State Government & Tribal Affairs. Scheduled for public hearing on 2/10/09 at 1:30PM. Scheduled for executive session on 2/20/09 at 1:30PM. Voted out of committee unanimously on 2/20/09. **Passed House 95-1 on 3/5/09.** Referred to Senate Higher Education & Workforce Development. Scheduled for public hearing on 3/20/09 at 1:30PM. Voted out of committee unanimously on 3/23/09 with amendments (the amendments add a requirement for a conflict of interest policy). Placed on second reading calendar on 3/26/09. **Amended bill passed Senate 44-0 on 4/3/09. Amended bill passed House 94-3 on 4/18/09. Signed by Governor 5/7/09.**

**HB 1749** ([link](#)) [Companion Bill SB 5749] - **Regulating the business practices of consumer loan companies for compliance with the secure and fair enforcement for mortgage licensing act of 2008 (Bailey)** – Amends the state Consumer Loan Act to implement provisions of the federal “Safe and Fair Enforcement for Mortgage Licensing Act”. Section 26 contains very convoluted language that seems to create a new exemption from public disclosure of information required to be kept confidential under the SAFE Act.

- **Comments:** Section 26 is some of the most confusing statutory language ever put on a printed page. It’s completely unclear how it relates to RCW 42.56, since it doesn’t reference any specific exemption or create one directly in 42.56. **WCOG should insist that the language in Section 26 be clarified, and that if a new exemption is created that it be referenced in the PRA.** Appears to be similar to HB 1621.
- **Recommended Action:** Neutral on the core purpose of the bill, but **OPPOSE** unless Section 26 is significantly reworked.
- **Status:** Introduced 1/28/09. Referred to Financial Institutions & Insurance. Scheduled for public hearing on 2/3/09 at 8:00AM. Scheduled for executive session on 2/12/09 at 1:30PM. Substitute bill voted out of

committee unanimously on 2/12/09 (substitute bill **does not** include WCOG recommended changes). Referred to General Government Appropriations. Scheduled for public hearing on 2/25/09 at 1:30PM. Substitute bill voted out of committee unanimously on 2/25/09. **Passed House 97-0 on 3/5/09**. Referred to Senate Financial Institutions, Housing & Insurance. Scheduled for public hearing on 3/24/09 at 10:00AM. Voted out of committee unanimously on 3/25/09 with amendments. Placed on second reading calendar on 3/26/09. **Amended bill passed Senate 48-0 on 3/31/09. Amended bill passed House 97-0 on 4/18/09. Signed by Governor 5/18/09.**

**HB 2040** ([link](#)) [**Companion Bill SB 6027**] - **Concerning the work of the joint select committee on beer and wine regulation (Conway)** – Clarifies provisions regarding the work of the joint select committee on beer and wine regulation. Eliminates the prohibition of cross-ownership of beer and wine distributors and retailers. Allows industry to provide branded promotional items of nominal value to retailers, but not to end customers. Eliminates the requirement that distributors post price lists with the government. Eliminate the mandatory 10% price markup. Section 7 eliminates the exemption from disclosure under RCW 42.56.240(1) for price lists, since the lists will no longer be submitted to the government.

- **Comments:** It makes sense to eliminate the exemption if the data will no longer exist.
- **Recommended Action:** Neutral.
- **Status:** Introduced 2/6/09. Referred to Commerce & Labor. Scheduled for public hearing on 2/13/09 at 8:00AM. Scheduled for executive session on 2/18/09 at 1:30PM. Voted out of committee unanimously on 2/20/09. Placed on second reading calendar on 3/4/09. **Amended bill passed House 92-3 on 3/9/09**. Referred to Senate Labor, Commerce & Consumer Protection. Public hearing on 3/19/09. Voted out of committee unanimously on 3/23/09. Placed on second reading calendar on 3/26/09. **Amended bill passed Senate 45-1 on 4/1/09. Signed by Governor 5/15/09.**

**HB 2327** ([link](#)) [**Companion Bill SB 6149**] - **Eliminating or reducing the frequency of reports prepared by state agencies (Linville; requested by Office of Financial Management)** – Eliminates 21 reports, and reduces the frequency of 12 others. Requires all reports to the legislature and all annual and biennial reports to be submitted in electronic format only. Requires the legislature web site to provide links to all of these reports and organize them so they are easily accessible to legislators, staff, and the public.

- **Comments:** The elimination of some reports may make it somewhat more difficult for legislators and the public to determine the effectiveness of some government programs, but the improved access to all of the other reports due to their availability in electronic form through the legislature's web site means far more information will be available.
- **Recommended Action:** **SUPPORT.**
- **Status:** Introduced 3/31/09. Referred to Ways & Means. Public hearing 4/2/09. Substitute bill voted out of committee unanimously on 4/14/09. **Amended bill passed House 97-0 on 4/15/09**. Referred to Senate Ways & Means. Public hearing on 4/18/09 at 8:00AM. Voted out of committee unanimously on 4/19/09 with proposed amendment. **Amended bill passed Senate 46-1 on 4/20/09. Amended bill passed House 94-0 on 4/23/09. Signed by Governor on 5/15/09 with partial veto (which did not affect open government provisions).**

**SB 5030** ([link](#)) [**Companion Bill HB 1035**] - **Concerning militia records, property, command, and administration (Kilmer; requested by the Washington Military Department)** – Amends RCW 38.12.020 that defines the duties of the adjutant general (head of the state military department). Clarifies that the adjutant general must “supervise the preparation and submission of any records required by the federal government, the governor, or as otherwise required by law” and “maintain records of the organized militia and state military department as required by law.” It adds a provision that “the adjutant general may deposit records with the state archivist for historical purposes.” Makes a number of additional clarifications.

- **Comments:** This appears to be mostly a technical bill that makes no substantive changes. However, there is a lawsuit currently pending against the military department in which the adjutant general is arguing that some of their records are not disclosable under the state Public Records Act but only under the federal Freedom of Information Act. One wonders if that lawsuit may have prompted some of these changes, and what non-obvious side-effects may be caused by the changes.
- **Recommended Action:** The impact of this bill on the disclosure of records of the military department needs to be carefully studied to ensure that public access is maintained or enhanced. The WCOG position on this bill is pending this study.
- **Status:** Prefiled 12/9/08. Introduced 1/12/09. Referred to Government Operations & Elections. Scheduled for public hearing 1/15/09 at 3:30PM. Scheduled for executive session 1/19/09 at 10:00AM. Substitute bill voted out of committee 4-2 on 1/19/09. **Passed Senate 48-0 on 3/5/09**. Referred to House State Government & Tribal Affairs. Scheduled for public hearing on 3/17/09 at 1:30PM. Voted out of committee unanimously on

3/20/09. Placed on second reading calendar on 3/27/09. **Passed House 96-1 on 3/30/09. Signed by Governor on 4/8/09.**

**SB 5195** ([link](#)) - **Adopting the life settlements model act (Berkey)** – Updates RCW 48.102 which regulates brokers of “life settlements”, in which someone, such as a terminally-ill person, accepts up-front payment in return for signing over the proceeds of their life insurance policy. Section 20 of the bill amends RCW 42.56.400 to exempt from disclosure records of regulated brokers obtained by the insurance commissioner during compliance examinations.

- **Comments:** This is consistent with similar exemptions for all other types of examinations performed by the insurance commissioner.
- **Recommended Action:** Neutral.
- **Status:** Introduced 1/16/09. Referred to Financial Institutions, Housing & Insurance. Scheduled for public hearing 1/28/09 at 3:30PM. Scheduled for public hearing 2/3/09 at 10:00AM. Substitute bill voted out of committee unanimously on 2/10/09. Placed on second reading calendar 2/17/09. **Passed Senate 46-1 on 3/2/09.** Referred to House Financial Institutions & Insurance. Scheduled for public hearing on 3/17/09 at 8:00AM. Scheduled for executive session on 3/19/09 at 1:30PM. Voted out of committee unanimously on 3/19/09. Referred to General Government Appropriations. Public hearing on 3/24/09. Voted out of committee 14-1 on 3/26/09. **Passed House 98-0 on 4/7/09. Signed by Governor on 4/16/09.**

**SB 5248** ([link](#)) [**Companion Bill HB 1075**] - **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 the compact creates an “interstate commission on education opportunity for military children” which includes one representative from each state. Subsections F through H of Article IX requires meetings of the commission to be open to the public, but provide 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, and give the commission discretion in determining when its records will be released to the public.

- **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, and the commission is given far more discretion in determining which of its records are open to the public than would a similar Washington state commission. Since the commission is a “joint agency of the member states”, it should not 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. **Recommend that Washington’s implementation of the compact include a provision that Washington’s representative on the commission advocate for keeping open to the public all business and records that would be required to be open under RCW 42.30 and 42.56.**
- **Status:** Introduced 1/19/09. Referred to Early Learning & K-12 Education. Scheduled for public hearing 1/21/09 at 8:00AM. **Scheduled for executive session 1/26/09 at 1:30PM.** Voted out of committee unanimously. Referred to Ways & Means. Scheduled for public hearing in Ways & Means on 2/5/09 at 1:30PM. Substitute bill voted out of committee on 3/2/09 (substitute bill adds null and void clause). Placed on second reading calendar on 3/6/09. **Passed Senate 45-0 on 3/10/09.** Referred to House Education. Scheduled for public hearing on 3/24/09 at 10:00AM. Voted out of committee unanimously on 3/25/09 with amendments (removed Null and Void clause). Referred to Education Appropriations. Voted out of committee unanimously on 4/1/09. **Amended bill passed House 98-0 on 4/13/09. Amended bill passed Senate 43-1 on 4/20/09. Signed by Governor on 5/7/09.**

**SB 5277** ([link](#)) - **Regarding fees allowed as court costs in district courts (Hatfield)** – Establishes charges for a number of additional services provided by district court clerks. These includes charges of 50 cents per page for non-certified photocopies, and 25 cents per page for *electronic* copies (*plus* \$20 for the compact disc to hold the copies). Clerks may also charge up to \$20 per hour or portion of an hour for document searches.

- **Comments:** Courts should be subject to the Public Records Act, particularly when making available routine non-certified copies of documents. It is especially unreasonable to charge 25 cents per page for *electronic* copies, and \$20 for compact discs that cost only a few cents to purchase. Rather than ramping up district court fees to match superior court fees, the superior court fees should be reduced.
- **Recommended Action:** **OPPOSE.**
- **Status:** Introduced 1/19/09. Referred to Judiciary. Public hearing on 1/14/09. Executive session on 1/21/09. **Voted out of committee unanimously on 1/21/09.** Voted out of committee unanimously 1/21/09. Placed on second reading calendar 2/24/09. **Passed Senate 34-15 on 3/3/09.** Referred to House Judiciary. Scheduled for public hearing on 3/16/09 at 1:30PM. Scheduled for executive session on 3/19/09 at 10:00AM. Voted out of committee 8-3 on 3/19/09. Placed on second reading calendar 3/27/09. **Amended bill passed House 59-39 on 4/7/09. Amended bill passed Senate 33-12 on 4/18/09. Signed by Governor 5/6/09.**

**SB 5889** ([link](#)) [**Companion Bill HB 2167**] - **Providing flexibility in the education system (Hobbs)** – Eliminates or suspends a number of “unfunded mandates” on public school systems. These included mandatory education on Washington state history and the state Constitution, mandatory Student Learning Plans, mandatory provision of information about a number of items including immunizations, driving safety, who may request high school transcripts, Running Start, etc. Section 22 eliminates the requirement in RCW 28A.320.160 that school districts provide parents with information regarding their rights under the Public Records Act regarding access to school employee discipline records for sexual misconduct whenever a complaint is filed about such misconduct, and only requires the information to be provided upon request.

- **Comments:** When a parent files a complaint about sexual misconduct by a school employee, they *should* be automatically informed about their ability to get access to the employee’s records.
- **Recommended Action:** **OPPOSE. Complain about the suspension of the 5-day rule and lack of notice on the hearing; bills should *not* be heard the same day they are introduced. Recommended that information on the PRA be required to be provided to parents of alleged victims of sexual misconduct.**
- **Status:** Introduced 2/5/09. Referred to Early Learning & K-12 Education. **Public hearing already held on 2/5/09 under suspension of the 5-day rule.** Substitute bill voted out of committee 10-1 on 2/18/09 (WCOG recommendation *not* included in substitute bill). **Amended bill passed Senate 46-1 on 3/10/09.** Referred to House Education. Scheduled for public hearing on 3/20/09 at 8:00AM. Voted out of committee unanimously on 3/27/09 with amendments. Referred to Education Appropriations. Voted out of committee unanimously on 4/3/09. **Amended bill passed House 97-1 on 4/13/09. Amended bill passed Senate 49-0 on 4/25/09. Signed by Governor on 5/19/09.**

**SB 6104** ([link](#)) - **Addressing state agency hours of operation (Prentice; requested by Office of Financial Management and Department of Personnel)** – Amends RCW 42.04.060 to require state offices to be open at least 40 hours per week, rather than 8AM to 5PM Monday through Friday. Amends RCW 42.56.090 to require state offices to make public records available at least 30 hours per week rather than 9AM to Noon and 1PM to 4PM Monday through Friday.

- **Comments:** The bill allows for flexibility in scheduling agency office hours, while insuring that the total number of hours available for access by the public remains at least what it was before the bill. However, now that there will be no consist hours for all state agencies, agencies should be required to post their office hours on their web sites so that people don’t waste time driving to visit a closed office.
- **Recommended Action:** Neutral. **Request sponsors to add notice requirements for offices that choose unusual hours.**
- **Status:** Introduced 2/26/09. Referred to Ways & Means. Public hearing on 2/27/09. Voted out of committee 19-2 on 3/2/09. **Passed Senate 44-0 on 3/10/09.** Referred to House State Government & Tribal Affairs. Scheduled for public hearing on 3/24/09 at 8:00AM. Voted out of committee unanimously on 3/26/09 with amendments (amendment requires office hours to be posted on web sites). **Amended bill passed House 98-0 on 4/8/09. Amended bill passed Senate 49-0 on 4/22/09. Signed by Governor on 5/8/09.**

**SB 6122** ([link](#)) [**Companion Bill HB 2310**] - **Reducing costs of the elections division of the office of the secretary of state (Prentice; requested by Secretary of State)** – Proposes a number of cost reduction measures, most of which do not affect open government or public education. Sections 1 and 2 eliminate the requirement that notices of state ballot measures (except constitutional amendments) be printed in newspapers around the state and broadcast on radio and television. Other sections substantially reduce the maximum number of words in candidate statements and in ballot measure explanatory statements and fiscal impact statements in the voter’s pamphlet.

- **Comments:** This proposal must be considered in the context of other bills that propose to establish public funding of campaigns. It seems counter-productive to reduce the amount of information available to voters through the least-expensive and most widely-read and trust source of election information (the voter pamphlet) and with the other hand to be giving away money directly to candidates to use for direct mail and other forms of advertising that are more likely to be “negative”.
- **Recommended Action:** Express **CONCERNS** about the reduction in information available to citizens.
- **Status:** Introduced 3/12/09. Referred to Ways & Means. Public hearing scheduled on 3/17/09 at 3:30PM. **Substitute bill passed Senate 44-0 on 4/23/09** (In the substitute, the length of statements in the Voters’ Pamphlet is not reduced, the Election Administration and Certification Board is not eliminated, and legal advertising in newspapers is not reduced or eliminated). **Amended bill passed House 90-4 on 4/25/09. Amended bill passed Senate 42-5 on 4/26/09. Signed by Governor on 5/8/09 with partial veto** (vetoed exemption for requirement that statewide voters pamphlet be printed by the state printer).

## BILLS FAILED (63)

**HB 1029** ([link](#)) [**Companion Bill SB 5029**] - **Recodifying and making technical clarifications to campaign funding and disclosure laws (Armstrong; requested by the Public Disclosure Commission)** – Reorganizes and clarifies the Public Disclosure Act, RCW 42.17, with no intent to make any substantive changes. Amends the definitions section of the Public Records Act, RCW 42.56.010, by moving the definition of “person in interest” from 42.17.020, and refers to the 42.56 definition of “public record”. Also, the definition of “Writing” is deleted from 42.17.020, since it duplicated the definition in 42.56.

- **Comments:** The proposed changes in the Public Records Act are technical only.
- **Recommended Action:** Neutral.
- **Status:** Prefiled 12/8/08. Introduced 1/12/09. Referred to State Government & Tribal Affairs. Scheduled for public hearing 1/16/09 at 1:30PM. Placed on second reading calendar 3/11/09. Referred to Rules Committee 3/12/09. **Died in committee.**

**HB 1035** ([link](#)) [**Companion Bill SB 5030**] - **Concerning militia records, property, command, and administration (Hurst; requested by the Washington Military Department)** – Amends RCW 38.12.020 that defines the duties of the adjutant general (head of the state military department). Clarifies that the adjutant general must “supervise the preparation and submission of any records required by the federal government, the governor, or as otherwise required by law” and “maintain records of the organized militia and state military department as required by law.” It adds a provision that “the adjutant general may deposit records with the state archivist for historical purposes.” Makes a number of additional clarifications.

- **Comments:** This appears to be mostly a technical bill that makes no substantive changes. However, there is a lawsuit currently pending against the military department in which the adjutant general is arguing that some of their records are not disclosable under the state Public Records Act but only under the federal Freedom of Information Act. One wonders if that lawsuit may have prompted some of these changes, and what non-obvious side-effects may be caused by the changes.
- **Recommended Action:** The impact of this bill on the disclosure of records of the military department needs to be carefully studied to ensure that public access is maintained or enhanced. The WCOG position on this bill is pending this study.
- **Status:** Prefiled 12/9/08. Introduced 1/12/09. Referred to State Government & Tribal Affairs. Scheduled for public hearing 1/13/09 at 1:30PM. Voted out of committee unanimously on 1/29/09. **House bill is dead for this session, but companion bill passed Senate.**

**HB 1075** ([link](#)) [**Companion Bill SB 5248**] - **Enacting the Interstate Compact on Educational Opportunity for Military Children (Rolfes)** – 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 the compact creates an “interstate commission on education opportunity for military children” which includes one representative from each state. Subsections F through H of Article IX requires meetings of the commission to be open to the public, but provide 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, and give the commission discretion in determining when its records will be released to the public.

- **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, and the commission is given far more discretion in determining which of its records are open to the public than would a similar Washington state commission. Since the commission is a “joint agency of the member states”, it should not 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. **Recommended that Washington’s implementation of the compact include a provision that Washington’s representative on the commission advocate for keeping open to the public all business and records that would be required to be open under RCW 42.30 and 42.56.**
- **Status:** Prefiled 1/7/09. Introduced 1/12/09. Referred to Education. Scheduled for public hearing 1/27/09 at 10:00AM. Executive action by committee taken on 2/6/09. Voted out of committee unanimously on 2/6/09. Referred to Education Appropriations. Scheduled for public hearing 2/25/09 at 8:00AM. Voted out of committee 13-1 on 2/26/09. **Passed House 96-0 on 3/5/09.** Referred to Senate Early Learning & K-12 Education. Scheduled for public hearing on 3/23/09 at 1:30PM. Voted out of committee unanimously on 3/26/09. **Failed to pass Senate before opposite-house cutoff, but companion bill is moving.**

**HB 1099** ([link](#)) - **Logging the telephone calls of residents of the special commitment center (Kelley)** – Requires the special commitment center for sexually violent predators to maintain a log of calls made by residents of the center for the purpose of identifying residents who make harassing calls. Section 3 of the bill would exempt this call log from disclosure under the PRA.

- **Comments:** Presuming that keeping a log of calls is an effective means of limiting harassing calls by such predators and is determined to not be a violation of their civil rights, it seems reasonable that the log be exempt from disclosure under the PRA in order to protect the privacy of the residents when making legal, non-harassing calls.
- **Recommended Action:** Neutral
- **Status:** Prefiled 1/9/09. Introduced 1/12/09. Referred to Public Safety & Emergency Preparedness. Scheduled for public hearing 1/21/09 at 1:30PM. **Died in committee.**

**HB 1176** ([link](#)) [**Companion Bill SB 5532**] - **Modifying the administration and disciplining authority of the Washington state veterinary board of governors (Upthegrove)** – Modifies a number of provisions regarding this regulatory board, including its composition, processes, and sanction powers. Adds provisions (Sec. 1(6) and (7)) that written records must be kept of any closed disciplinary sessions, and that such records and worksheets used by reviewing board members are subject to disclosure under the Public Records Act.

- **Comments:** None. Most disciplinary records of professional regulatory boards are exempt from disclosure, so this would seem to be an exception.
- **Recommended Action:** Neutral.
- **Status:** Introduced 1/14/09. Referred to Agriculture & Natural Resources. Scheduled for public hearing on 2/5/09 at 8:00AM. Public hearing on 2/6/09 at 1:30PM. **Died in committee.**

**HB 1181** ([link](#)) [**Companion Bill SB 5130**] - **Regarding prisoner access to public records (Ross; by request of the Attorney General)** – Adds a new section to the Public Records Act that permit an agency or someone named in a record or to whom it pertains to seek an injunction against release of a record requested by an inmate in jail or prison. The injunction may be granted if the court finds that the request was intended to harass or intimidate the agency, its employees, or any person, or if disclosure would undermine penological interests, safety, or security. The court is allowed to consider factors including the requesters history of requests, the type of record sought, statements by the requester regarding the purpose of the request, potential harm to government interests, whether the number of documents requested is burdensome, potential impact on safety or security, etc. The court may also enjoin requests for the records made on behalf of the prison by third parties. Penalties for failing to disclose records do not apply while an injunction is in effect, including during any appeals, regardless of the outcome of the appeal.

- **Comments:** There are a small number of prisoners who have been abusing the Public Records Act, attempting to harass the Department of Corrections and other agencies as an end in itself or in hopes of catching the agency in a technical violation of the PRA and cashing in on penalties. Some mechanism needs to be created to end the harassment, but not at the risk of setting a precedent that agencies can question the motivations of requesters and allowing this to be a factor in deciding whether or not access is to be provided. If this language is adopted, it would be trivial to later amend it to provide this same agency injunction capability to *any* agency against *any* requester at *any* time the agency doesn't want to release a record and thinks it can make a case that the requester has asked one too many times.
- **Recommended Action:** **OPPOSE.**
- **Status:** Introduced 1/14/09. Referred to State Government & Tribal Affairs. Scheduled for public hearing on 1/20/09 at 1:30PM. Scheduled for executive session 1/29/09 at 8:00AM. **Died in committee.**

**HB 1293** ([link](#)) [**Companion Bill SB 5591**] - **Modifying whistleblower protection provisions (Liias)** – Amends the state whistleblower act, RCW 42.40, to encourage employees to report abuses of authority, and prohibits restricting public employees from speaking to elected officials, courts, or law enforcement agencies on matters of public concern or retaliating against employees who do so.

- **Comments:** Government employees should be encouraged to speak out, and, as citizens themselves, should not be restricted from communicating with public officials about matters of public concern.
- **Recommended Action:** **SUPPORT.**
- **Status:** Introduced 1/16/09. Referred to State Government & Tribal Affairs. Scheduled for public hearing on 1/22/09 at 8:00AM. Scheduled for executive session on 2/17/09. **Died in committee.**

**HB 1424** ([link](#)) - **Concerning health professions discipline (Appleton)** – Amends RCW 18.130 so that when a health professional is exonerated in a disciplinary proceeding, information on the web site of the disciplinary agency must clearly indicate that the license holder was exonerated. Section 1(4) of the bill requires that documents on the agency web site be “modified” to indicate the exoneration.

- **Comments:** The requirement to “modify” existing documents could easily be misinterpreted, resulting in improper changes to documentation related to the disciplinary procedure. The bill should be amended to clarify that records are not to be modified so as to conceal that a disciplinary process occurred, but that a proper record of the exoneration should be publicly posted on the web site.

- **Recommended Action:** Neutral on the bill. **Request an amendment that clarifies that records should not be “modified”.**
- **Status:** Introduced 1/21/09. Referred to Health Care & Wellness. **Died in committee.**

**HB 1425** ([link](#)) - **Prohibiting small loans (Appleton)** – Would prohibit “small loans”, also known as “pay day loans”, in Washington state, by eliminating the sections of law that allow such loans to be made. Section 7 amends RCW 42.56.540 to eliminate the exemption from disclosure of information submitted as part of an application to make small loans.

- **Comments:** If these sections of law are repealed, it makes sense to amend the PRA to eliminate the exemption for information submitted with applications for small loan endorsements. The bill does not appear to address the question of information already held by the government obtained through previous small loan endorsement applications.
- **Recommended Action:** Neutral.
- **Status:** Introduced 1/21/09. Referred to Financial Institutions & Insurance. Scheduled for public hearing on 2/10/09 at 8:00AM. **Died in committee.**

**HB 1428** ([link](#)) - **Establishing the field of dreams program (Chandler)** – Establishes a “Field of Dreams” program to provide college tuition funding for students working for agricultural employers. Section 3(2)(c) exempts from disclosure any information obtained from employer records. Section 4(2) exempts from disclosure all information about student applicants.

- **Comments:** The new exemptions are not identified as an exemption to the PRA and no reference to it is created in RCW 42.56. We should not create new exemptions without explicitly referencing them in the PRA.
- **Recommended Action:** Neutral on the bill. **Strongly request that the exemption be referenced in RCW 42.56.**
- **Status:** Introduced 1/21/09. Referred to Higher Education. Scheduled for public hearing 2/6/09 at 8:00AM. **Died in committee.**

**HB 1438** ([link](#)) - **Requiring reports to the legislature to be filed electronically (Hunter)** – Requires all reports submitted to the legislature to be provided only in electronic format, and requires the legislature to make all reports available through the legislature’s web site.

- **Comments:** The bill does not define “electronic format”. We know from past experience that many agencies – including the Sunshine Committee! – interpret this to mean that the document should be printed in hard copy and then scanned into a PDF file, which makes the document not searchable, not indexable online, and not usable by people with low vision using assistive reading software.
- **Recommended Action:** **SUPPORT. Request that the bill be amended to define “electronic format” to require that reports be in a format (or multiple formats) that is searchable, indexable, and accessible to text reading software, such as HTML, Text, Word, or PDF (but only if the PDF is created directly, not locked, and not scanned).**
- **Status:** Introduced 1/21/09. Referred to State Government & Tribal Affairs. **Died in committee.**

**HB 1471** ([link](#)) - **Removing the public records exemption for certain records addressing public sector collective bargaining (Chandler)** – Amends RCW 42.56.280 to require that “Any records which are created or presented by an agency in the course of collective bargaining, or which are received from the bargaining representative by the agency in the course of collective bargaining, are not exempt when the agency and the bargaining representative agree to the terms of a written collective bargaining agreement”.

- **Comments:** This is consistent with the principle that the deliberative process exemption no longer applies after deliberation is complete and a decision is made.
- **Recommended Action:** **SUPPORT.**
- **Status:** Introduced 1/21/09. Referred to State Government & Tribal Affairs. **Died in committee.**

**HB 1573** ([link](#)) [Companion Bill SB 5435] - **Protecting financial and medical information presented to the board of accountancy (Appleton; requested by State Board of Accountancy)** – Amends RCW 18.04.405 to create a new exemption under the Public Records Act for records submitted by certified public accountants to the Board of Accountancy during the course of an investigation, including both records of the CPA themselves and of their clients. In addition to being exempt from disclosure, the records are also privileged, not subject to discovery or subpoena, and may not be introduced in any civil action or arbitration.

- **Comments:** Exempting such personal, confidential, financial and proprietary information of accountants and their clients is consistent with other similar exemptions. However, the new exemption is identified as an exemption from RCW 42.56, but no reference to it is created in RCW 42.56. We should not create new exemptions without explicitly referencing them in the PRA.
- **Recommended Action:** Neutral. **Strongly request that the exemption be referenced in RCW 42.56.**

- **Status:** Introduced 1/23/09. Referred to State Government & Tribal Affairs. Scheduled for public hearing on 2/3/09 at 1:30PM. **Died in committee.**

**HB 1597** ([link](#)) [**Companion Bill SB 5569**] - **Concerning the administration of state and local tax programs**

**(Springer; requested by Department of Revenue)** – Amends a large number of RCW sections to improve clarity and consistency of tax incentive programs, including the the confidentiality and disclosure of tax information. Section 201 enables cities imposing a municipal B&O tax to exempt taxpayer information in the same manner as the state B&O tax. Section 202 amends the Public Records Act, RCW 42.56.230, to enable these municipal ordinances adopted under Section 201 to be treated as exemptions under the Public Records Act.

- **Comments:** This exemption is consistent with other exemptions protecting the privacy of information submitted by taxpayers. However, it's unclear why any city would *not* want this information to be confidential. It may be undesirable to establish a precedent that cities can pass a local ordinance to create an exemption from the Public Records Act, and preferable if state law simply exempted *all* municipal B&O taxpayer information rather than requiring every city in the state to individually pass such an ordinance.
- **Recommended Action:** Neutral. **Recommend eliminating the local ordinance requirement.**
- **Status:** Introduced 1/26/09. Referred to Finance. Scheduled for public hearing on 2/5/09 at 8:00AM. Scheduled for executive session on 3/2/09 at 8:00AM. Substitute bill voted out of committee 6-3 on 3/2/09. Placed on second reading calendar on 3/6/09. **Passed House 59-37 on 3/10/09.** Referred to Senate Ways & Means. Scheduled for public hearing on 3/16/09 at 3:30PM. Voted out of committee 12-6 on 3/20/09. **Failed to pass Senate before opposite-house cutoff.**

**HB 1645** ([link](#)) - **Designating English as the official language of the state (McCune)** – Designates English as the official language of Washington state. Would require that all “official public records” be in English, and that all “official public meetings” be conducted in English. Defines an “official public record” as any record that, among other things, is subject to disclosure under RCW 42.56, and an “official public meeting” as any meeting required to be open under RCW 42.30.

- **Comments:** Generic references to RCW 42.56 and 42.30 is not the best way to define an official public record or official public meeting. The bill is unlikely to be heard, however.
- **Recommended Action:** Neutral. **Suggest that more specific references to definitions be provided such as RCW 42.56.010(2) and RCW 42.30.020(4).**
- **Status:** Introduced 1/26/09. Referred to State Government & Tribal Affairs. **Died in committee.**

**HB 1666** ([link](#)) [**Companion Bill SB 5786**] - **Authorizing the creation of cultural access authorities (Kenney)** –

Authorizes counties or groups of counties to form “cultural access authorities” to provide support for local cultural organizations and cultural programs in public schools. Funding would be through a voter-approved 0.1% local sales tax. Section 602 states various laws to which the authorities would be subject, including “the open public record requirements under chapter 42.17 RCW, the prohibition on using its facilities for campaign purposes under RCW 42.17.130, [and] the open public meetings law under chapter 42.30 RCW”.

- **Comments:** It is not necessary to declare that any agency is subject to the PRA or OPMA, because they are subject to them unless specifically excluded. Nevertheless, such declarations exist in many places in the RCW. However, if such a declaration is to be made, it should at least be accurate.
- **Recommended Action:** Neutral. **Suggested that Section 602 be corrected to reference RCW 42.56 rather than 42.17.**
- **Status:** Introduced 1/27/09. Referred to Community & Economic Development & Trade. Scheduled for public hearing on 2/9/09 at 1:30PM. Scheduled for executive session on 2/16/09 at 1:30PM. Substitute bill voted out of committee 6-2 on 2/18/09 (the amendment suggested by WCOG is included in the substitute). Referred to Finance. Scheduled for public hearing on 2/24/09 at 8:00AM. **House bill is dead for this session. Senate companion is also dead.**

**HB 1684** ([link](#)) - **Placing restrictions on small loans (Kirby)** – Makes it illegal for pay-day lenders to lend more to a borrower if the total balances on all that borrower’s pay-day loans exceed 30% of their gross monthly income. To accomplish this, authorizes the Department of Financial Institutions to create a statewide database of *all* pay-day loans made in Washington, and charge a fee up to \$1 per pay-day loan transaction to cover the cost of creating and maintaining the system. Section 2(7) exempts data stored in this database from disclosure under the Public Records Act. Section 3 amends RCW 42.56.230 to reference the exemption created in Section 2(7).

- **Comments:** This is a classic example of an exemption having to be created to protect data that the government probably shouldn’t be collecting in the first place. But that said, if the bill moves forward, the exemption seems to be a reasonable protection for the privacy of very sensitive borrower information.
- **Recommended Action:** Neutral.
- **Status:** Introduced 1/27/09. Referred to Financial Institutions & Insurance. Scheduled for public hearing on 2/10/09 at 8:00AM. Scheduled for executive session on 2/17/09 at 8:00AM. **Died in committee.**

**HB 1718 ([link](#)) - Reducing greenhouse gases in Washington (Upthegrove)** – A very large bill (159 pages, 145 sections) that authorizes strategies to reduce energy consumption, create compact and transit oriented developments, expand multimodal infrastructure and complete streets, establish various funding mechanisms intended to lower greenhouse gas emissions and reduce energy consumption, sets a statewide goal of achieving an 80 percent recycling rate by 2020, creates objectives for the comprehensive solid waste management plan, creates a product stewardship program at the Department of Ecology, and amends the Growth Management Act to achieve and support greenhouse gas emissions reductions. Sections 323, 327, 347, and 351 exempt from disclosure under the PRA proprietary information provided to the Department of Ecology by companies operating product stewardship programs in their annual reports. Section 339 inserts a reference to Sections 323, 327, 347, and 351 into RCW 42.56.270.

- **Comments:** The exemptions for proprietary information are consistent with similar exemptions in other regulatory programs. However, the references in Sections 323, 327, 347, and 351 are specifically to RCW 42.56.270 “being exempt from disclosure under RCW 42.56.270”, which is incorrect; 42.56.270 is an exemption, not a disclosure requirement. All four references should be changed to “RCW 42.56”.
- **Recommended Action:** Neutral. **Suggest changing “RCW 42.56.270” to “RCW 42.56” in those four places.**
- **Status:** Introduced 1/27/09. Referred to Ecology & Parks. Scheduled for public hearing on 1/30/09 at 8:00AM. **Died in committee.**

**HB 1819 ([link](#)) [Companion Bill SB 5735] - Reducing greenhouse gas emissions (Upthegrove; requested by Governor Gregoire)** – Creates a “cap and trade” program for carbon dioxide emissions; see the [bill analysis](#) for a complete explanation of the program design. Section 18 of the bill requires the Department of Ecology to public annual reports of emissions. In order to prevent market manipulation that could occur if different states release their reports at different times, the report and underlying data would be exempt from disclosure under the Public Records Act until a common posting date agreed with other states.

- **Comments:** The exemption created in Section 18 (which would become a new section in RCW 70.235) is not cross-referenced from RCW 42.56.
- **Recommended Action:** Neutral. **Requested that the new exemption be cross-referenced from RCW 42.56.**
- **Status:** Introduced 1/29/09. Referred to Ecology & Parks. Scheduled for public hearing on 2/3/09 at 10:00AM. Scheduled for executive session on 2/17/09 at 10:00AM. Substitute bill voted out of committee 9-5 on 2/17/09 (bill substantially change to primarily a study, and the new PRA exemption is eliminated). Referred to General Government Appropriations. Public hearing on 2/25/09. Second substitute bill voted out of committee 8-6 on 2/26/09. Placed on second reading calendar 3/9/09. Referred to Rules Committee on 3/12/09. **House bill is dead for this session; companion bill is moving.**

**HB 1892 ([link](#)) [Companion Bill SB 6093] - Concerning health care financing (Appleton)** – Establishes single-payer health care in Washington state, controlled by the “Washington health security trust”. Section 4 of the bill says “The board and its professional staff are subject to the public disclosure provisions of chapter 42.17 RCW.”

- **Comments:** While the intent may have been to require the trust to be subject to the campaign finance and lobbyist disclosure provisions, from the context the more likely intent was to make the trust subject to the Public Records Act, RCW 42.56.
- **Recommended Action:** Neutral. **Ask the sponsor to verify the intent and amend the bill if necessary to reference RCW 42.56, or eliminate the sentence because it is not necessary.**
- **Status:** Introduced 2/2/09. Referred to Health Care & Wellness. **Died in committee.**

**HB 1972 ([link](#)) - Regarding access to information for outdoor recreation and wildlife viewing opportunities (Dunshee)** – Increases the cost of a fish and wildlands vehicle use permit. Authorizes the department of fish and wildlife to make certain sections of its web site accessible only to holders of hunting and fishing licenses and vehicle use permits. Section 3 of the bill emphasizes that the limitations of access apply only to web-based access, and that information continues to be available under the Public Records Act, RCW 42.56.

- **Comments:** Looks like the department is trying to encourage more people to buy licenses and vehicle use permits – and raise revenue – by restricting access to more interesting information to people who pay for it. This would be disconcerting without Section 3. It could set a pattern that other agencies try to follow, and needs to be watched.
- **Recommended Action:** Neutral.
- **Status:** Introduced 2/4/09. Referred to Agriculture & Natural Resources. Scheduled for public hearing on 2/10/09 at 1:30PM. Scheduled for executive session on 2/17/09 at 1:30PM. Substitute bill voted out of committee unanimously on 2/19/09 (the access language in Section 3 is retained). Referred to General Government Appropriations. Scheduled for public hearing on 2/25/09 at 1:30PM. Substitute bill voted out of committee unanimously on 2/26/09. **Passed House 79-17 on 3/6/09. Voted reconsidered; passed House 65-30 on revote.** Referred to Senate Natural Resources, Ocean & Recreation. Scheduled for public hearing on

3/19/09 at 10:00AM. Voted out of committee unanimously on 3/24/09. **Failed to pass Senate before opposite-house cutoff.**

**HB 2016** ([link](#)) - **Concerning campaign contribution and disclosure laws (Flannigan)** – Modifies and reorganizes campaign finance disclosure laws, recodifying RCW 42.17 as RCW 42.17A. Section 102 removes the definition of “public record” in RCW 42.17.020 and instead references the definition in RCW 42.56.010. Section 1005 amends RCW 42.56.010 to add a definition of “Person in interest” matching the definition in RCW 42.17.020.

- **Comments:** The term “person in interest” is used in RCW 42.56.210, but due to a drafting oversight its definition was not copied from RCW 42.17 to RCW 42.56 when the PRA was created in 2005. It makes sense to have “public record” defined in the PRA and not in two separate chapters. This bill was probably requested by the Public Disclosure Commission but submitted with the wrong type of cover sheet.
- **Recommended Action:** Neutral.
- **Status:** Introduced 2/6/09. Referred to State Government & Tribal Affairs. Scheduled for public hearing on 2/12/09 at 8:00AM. Scheduled for executive session on 2/19/09 at 8:00AM. Substitute bill voted out of committee 5-2 on 2/19/09. Placed on second reading calendar on 3/4/09. Referred to Rules on 3/11/09. **Died in committee.**

**HB 2044** ([link](#)) - **Requiring Washington state ferries to create a comprehensive incident and accident investigation policy (Seaquist)** – Requires Washington state ferries to create a comprehensive incident and accident investigation policy and transmit a copy to the legislature by November 1, 2009. Section 2(6) requires the policy to include a process for keeping the public informed of an investigation and its outcomes, in compliance with collective bargaining agreements and the Public Records Act.

- **Comments:** It’s nice that the bill requires compliance with the PRA, although such an explicit callout is not necessary.
- **Recommended Action:** Neutral.
- **Status:** Introduced 2/6/09. Referred to Transportation. Public hearing on 2/16/09 at 3:30PM. Scheduled for executive session on 2/16/09 at 3:30PM. Voted out of committee unanimously on 2/19/09. Placed on second reading calendar on 2/27/09. **Amended bill passed House 95-0 on 3/4/09.** Referred to Senate Transportation. Scheduled for public hearing on 3/30/09 at 3:30PM. **Died in committee.**

**HB 2121** ([link](#)) - **Establishing the guaranteed health benefit program act (Morrell; requested by the Insurance Commissioner)** – Creates the guaranteed health benefit program to provide care to all Washington residents not enrolled in certain federal or state government programs or in a government-operated institution. Section 31 of the bill creates a new section in RCW 42.56 exempting from public disclosure several types of records associated with the program, including personal medical and financial information, actuarial formulas and financial information submitted to the health authority.

- **Comments:** It’s good that the new exemption is created in RCW 42.56. However, it’s not drafted well to be reside in 42.56, because it contains no references back to the chapter defining the authority. Also, some of the items exempted are already covered by existing exemptions and do not need to be exempted again (such as social security numbers).
- **Recommended Action:** Neutral. **If the bill receives a hearing, work with the sponsors and Insurance Commissioners to revise the language of Section 31 to make it consistent with the rest of RCW 42.56.**
- **Status:** Introduced 2/10/09. Referred to Health Care & Wellness. **Died in committee.**

**HB 2167** ([link](#)) [**Companion Bill SB 5889**] - **Providing flexibility in the education system (Maxwell)** – Eliminates or suspends a number of “unfunded mandates” on public school systems. These included mandatory education on Washington state history and the state Constitution, mandatory Student Learning Plans, mandatory provision of information about a number of items including immunizations, driving safety, who may request high school transcripts, Running Start, etc. Section 22 eliminates the requirement in RCW 28A.320.160 that school districts provide parents with information regarding their rights under the Public Records Act regarding access to school employee discipline records for sexual misconduct whenever a complaint is filed about such misconduct, and only requires the information to be provided upon request.

- **Comments:** When a parent files a complaint about sexual misconduct by a school employee, they *should* be automatically informed about their ability to get access to the employee’s records.
- **Recommended Action:** Neutral on the bill. **OPPOSE Section 22 and request that it be removed or amended.**
- **Status:** Introduced 2/11/09. Referred to Education. **Public hearing on 2/17/09. Substitute bill voted out of committee unanimously on 2/20/09 (Substitute bill removes the objectionable section 22).** Referred to Ways & Means. Public hearing on 2/27/09. Scheduled for executive session on 3/2/09 at 1:30PM. Voted out of committee unanimously on 3/2/09. Placed on second reading calendar on 3/6/09. **Passed House 96-1 on**

3/9/09. Referred to Senate Early Learning & K-12 Education. Scheduled for public hearing on 3/26/09 at 10:00AM. **Died in committee, but companion bill is moving.**

**HB 2290** ([link](#)) - **Concerning the nursing facility medicaid payment system (Cody)** – Repeals most of the details of the nursing facility medicaid payment system, and authorizes DSHS to establish rules to govern a replacement system. Establishes a nursing facility medicaid payment advisory council to advise DSHS on the rules. Section 11(37) repeals the requirement that rate-setting information be available to the public, and Section 11(65) repeals the requirement that cost reports and audit reports be available under RCW 42.56.

- **Comments:** The repeal of these two sections does not necessarily mean less access to the public, since the documents are required to be accessible to the public unless they are explicitly made exempt. There is no language in the bill that creates any exemption.
- **Recommended Action:** Neutral.
- **Status:** Introduced 2/24/09. Referred to Ways & Means. **Died in committee.**

**HB 2310** ([link](#)) [**Companion Bill SB 6122**] - **Reducing costs of the elections division of the office of the secretary of state (Sells; requested by Secretary of State)** – Proposes a number of cost reduction measures, most of which do not affect open government or public education. Sections 1 and 2 eliminate the requirement that notices of state ballot measures (except constitutional amendments) be printed in newspapers around the state and broadcast on radio and television. Other sections substantially reduce the size of candidate statements and of ballot measure explanatory statements and fiscal impact statements.

- **Comments:** This proposal must be considered in the context of other bills that propose to establish public funding of campaigns. It seems counter-productive to reduce the amount of information available to voters through the least-expensive and most widely-read and trust source of election information (the voter pamphlet) and with the other hand to be giving away money directly to candidates to use for direct mail and other forms of advertising that are more likely to be “negative”.
- **Recommended Action:** Express **CONCERNS** about the reduction in information available to citizens.
- **Status:** Introduced 3/11/09. Referred to State Government & Tribal Affairs. Scheduled for public hearing on 3/26/09 at 8:00AM. **Died in committee, but companion bill passed with amendments.**

**HB 2311** ([link](#)) [**Companion Bill SB 6123**] - **Concerning legal notices for constitutional amendments and state measures (Sells; requested by Secretary of State)** – Eliminates the requirement that notices of constitutional amendments and state ballot measures be printed in newspapers around the state and broadcast on radio and television. The measure is null and void if the accompanying constitutional amendment fails.

- **Comments:** This does reduce the amount of information available to citizens about constitutional amendments and state ballot measures on the upcoming ballot, although the information would still be available in the voter’s pamphlet. More people are likely to see the information in the voter pamphlet than in the newspapers.
- **Recommended Action:** Neutral.
- **Status:** Introduced 3/11/09. Referred to State Government & Tribal Affairs. Public hearing on 3/20/09. **Died in committee.**

**HJR 4212** ([link](#)) [**Companion Bill SJR 8217**] - **Changing the notice requirement for amendments submitted to the people (Sells; requested by Secretary of State)** – Amends the state constitution to replace the requirement that proposed constitutional amendments be published four times in every legal newspaper in the state with a requirement that explanatory statements be included in the state voter’s pamphlet.

- **Comments:** More people are likely to see the information in the voter pamphlet than in the newspapers.
- **Recommended Action:** Neutral.
- **Status:** Introduced 3/11/09. Referred to State Government & Tribal Affairs. Public hearing on 3/20/09. **Died in committee.**

**SB 5014** ([link](#)) [**Companion Bill HB 1030**] - **Concerning the exemption of the special commitment center under the public records act (McAuliffe; requested by the Department of Social and Health Services)** – Adds secure commitment facilities for sexually violent predators to the exemption in RCW 42.56.420 from disclosure of vulnerability assessments and emergency and escape response plans. This includes both the commitment center on McNeil Island, and secure community transition facilities such as the one in south Seattle.

- **Comments:** The proposal is consistent with the existing exemption for similar information regarding city and county jails, state prisons, and juvenile correction facilities. It can be argued that these facilities would be even more secure if their plans were open to public scrutiny (a maxim of security experts is “security by obscurity is no security at all”), but the existing security measures were not designed with such scrutiny in mind. While the SCC and SCTF are not prisons, the public expects them to be as secure as prisons.
- **Recommended Action:** Neutral.

- **Status:** Prefiled 12/8/08. Introduced 1/12/09. Referred to Human Services & Corrections. Scheduled for public hearing 1/20/09 at 1:30PM. Voted out of committee unanimously 1/20/09. Placed on second reading calendar on 2/10/09. **Amended bill passed Senate 48-0 on 3/3/09** (amended bill adds private detention facilities to the exemption). Referred to House State Government & Tribal Affairs. Scheduled for public hearing on 3/17/09 at 1:30PM. Voted out of committee unanimously on 3/27/09. **Failed to pass House before opposite-house cutoff, but companion bill is moving.**

**SB 5029** ([link](#)) [**Companion Bill HB 1029**] - **Recodifying and making technical clarifications to campaign funding and disclosure laws (Oemig; requested by the Public Disclosure Commission)** – Reorganizes and clarifies the Public Disclosure Act, RCW 42.17, with no intent to make any substantive changes. Amends the definitions section of the Public Records Act, RCW 42.56.010, by moving the definition of “person in interest” from 42.17.020, and refers to the 42.56 definition of “public record”. Also, the definition of “Writing” is deleted from 42.17.020, since it duplicated the definition in 42.56.

- **Comments:** The proposed changes in the Public Records Act are technical only.
- **Recommended Action:** Neutral.
- **Status:** Prefiled 12/8/08. Introduced 1/12/09. Referred to Government Operations & Elections. Scheduled for public hearing 1/22/09 at 3:30PM. Voted out of committee 5-1 on 1/29/09. **Bill is dead for this session; companion bill is also dead.**

**SB 5076** ([link](#)) [**Companion Bill HB 1254**] - **Creating the Washington grain commission (Schoesler)** – Creates an eleven-member commission to replace the existing separate wheat and barley commissions. Section 37 of the bill amends RCW 42.56.380 to add this commission to the list of commodity regulatory commissions for which production records and other financial information submitted to the commission are exempt from disclosure. Section 24 of the bill points to the exemption in 42.56.380. Section 11 of the bill says that the commission must publish its regular meeting schedule as required by RCW 42.30.075, that it may call special meetings as permitted in 42.30.080, and that meetings must be open to the public as required in 42.30.

- **Comments:** This exemption is consistent with provisions for other commodity commissions which have already been reviewed by the Sunshine Committee. The references in Section 11 to the OPMA are not necessary, but also not problematical.
- **Recommended Action: Neutral**
- **Status:** Introduced 1/12/09. Referred to Agriculture & Rural Economic Development. Scheduled for public hearing 1/27/09 at 1:30PM. Voted out of committee unanimously on 2/3/09. Placed on second reading calendar on 2/10/09. **Passed Senate 46-0 on 2/26/09.** Referred to House Agriculture & Natural Resources. Scheduled for public hearing on 3/13/09 at 1:30PM. Scheduled for executive session on 3/20/09 at 1:30PM. Voted out of committee unanimously on 3/20/09 with amendments. **Failed to pass House before opposite-house cutoff, but companion bill passed.**

**SB 5293** ([link](#)) - **Providing for in camera reviews of denials of public records requests (Kline)** – Amends the Public Records Act, RCW 42.56.520, to provide that a requester, after having been denied access to a record, may ask for a superior court to review the document in chambers for applicability of the exemption.

- **Comments:** This does not seem to grant any additional review rights beyond those already established in RCW 42.56.550, and would appear to only confuse the matter.
- **Recommended Action: OPPOSE.**
- **Status:** Introduced 1/20/09. Referred to Government Operations & Elections. **Died in committee.**

**SB 5435** ([link](#)) [**Companion Bill HB 1573**] - **Protecting financial and medical information presented to the board of accountancy (Marr; requested by State Board of Accountancy)** – Amends RCW 18.04.405 to create a new exemption under the Public Records Act for records submitted by certified public accountants to the Board of Accountancy during the course of an investigation, including both records of the CPA themselves and of their clients. In addition to being exempt from disclosure, the records are also privileged, not subject to discovery or subpoena, and may not be introduced in any civil action or arbitration.

- **Comments:** Exempting such personal, confidential, financial and proprietary information of accountants and their clients is consistent with other similar exemptions. However, the new exemption is identified as an exemption from RCW 42.56, but no reference to it is created in RCW 42.56. We should not create new exemptions without explicitly referencing them in the PRA.
- **Recommended Action:** Neutral. **Strongly request that the exemption be referenced in RCW 42.56.**
- **Status:** Introduced 1/22/09. Referred to Labor, Commerce & Consumer Protection. Scheduled for public hearing 2/3/09 at 1:30PM. Scheduled for executive session on 2/23/09 at 10:00AM. **Died in committee.**

**SB 5456** ([link](#)) - **Creating the office of the citizen advocate (Oemig)** – Creates a new office of the Citizen Advocate within the legislative branch, with power to investigate complaints about state agencies acting contrary to law. The Ombudsman offices that have been established in various executive branch agencies would all be abolished, and their functions taken over by the Citizen Advocate. Section 5(5) of the bill enables the committee formed to nominate the Citizen Advocate to conduct candidate interviews in executive session. Section 11(4) grants the Citizen Advocate access to virtually all records of all state agencies regardless of disclosure exemptions or confidentiality provision, with a few exceptions. Section 14 requires the Citizen Advocate to provide any adverse conclusion or recommendation to an agency for reply prior to public disclosure, and prohibits the agency from disclosing the conclusion or recommendation until it is released by the Citizen Advocate. Section 17(4) exempts all investigative records of the Citizen Advocate from disclosure under the PRA, except that legislators may have access to all Citizen Advocate records so long as the records are kept confidential. Section 24 adds a new section to the Public Records Act to reflect the exemptions from disclosure created in sections 14 and 17.

- **Comments:** Presumably, if the Citizen Advocate is created, it would also serve the role of Public Records Ombudsman, at least with regard to the state agencies over which it has oversight. It is this important for open government advocates to consider carefully the role and powers of the proposed Citizen Advocate on its impact on enforcement of open government laws. It would be beneficial if the proposal were examined as part of the study under HB 1017 / SB 5339 on how best to enforce open government laws. The exemptions for investigative information seem to be consistent with those currently established for various ombudsmen. The bill does not appear to adequately clean up ombudsman-related exemptions in RCW 42.56 that would become obsolete if the various ombudsman offices were eliminated.
- **Recommended Action: Request that the proposal be considered in the study to be created by HB 1017 / SB 5339, and not enacted during 2009.**
- **Status:** Introduced 1/22/09. Referred to Government Operations & Elections. Scheduled for public hearing on 2/23/09 at 10:00AM. **Died in committee.**

**SB 5506** ([link](#)) - **Concerning child care providers (Hatfield)** – Amends various provisions in law regarding child care, including raising the reimbursement rate for state-funded child care to the 75th percentile of actual costs by 2017, requiring child care centers to distribute parenting information, and requiring child care centers receiving subsidies to reserve space for children of child care employees. Section 3 amends RCW 42.56.250 to exempt information about child care employees from disclosure.

- **Comments:** Most child care employees are not government employees and thus their information would not be considered public records in the first place, but the state seems intent on granting near-employee status to private workers in fields that are heavily subsidized by taxpayers. This has already been done with home health care workers, and now appears to also be sought for child care workers.
- **Recommended Action:** Neutral.
- **Status:** Introduced 1/23/09. Referred to Early Learning & K-12 Education. Scheduled for public hearing on 2/11/09 at 8:00AM. Scheduled for executive session on 2/23/09 at 1:30PM. Substitute bill voted out of committee 8-2 on 2/23/09 (substitute bill delays funding). Referred to Ways & Means. **Dead for this session.**

**SB 5526** ([link](#)) [**Companion Bill HB 1640**] - **Modifying disclosure requirements for private investment information received by the University of Washington consolidated endowment fund (Fairley; requested by University of Washington)** – Would amend the Public Records Act to exempt from disclosure financial and commercial information received by the UW endowment fund from private investment funds if disclosure would result in loss to the endowment fund or the private fund. The endowment fund would be required to disclose the names of the private funds in which it invests, the amount and performance of the investments.

- **Comments:** UW claims that it has been locked out of investment in the highest-performing private funds because the funds refuse to provide their proprietary information if it would be subject to public disclosure. They claim that similar exemptions exist for the state investment board, life sciences fund, and other university endowments.
- **Recommended Action:** Neutral. **Recommend that the bill be re-referred to Government Operations & Elections, which has responsibility for the PRA.**
- **Status:** Introduced 1/26/09. Referred to Higher Education & Workforce Development. Scheduled for public hearing on 2/11/09 at 3:30PM. Substitute bill voted out of committee unanimously on 2/19/09 (substitute adds a requirement that UW establish a policy on conflicts of interest in regard to the private funds). **Senate bill is dead for this session, but companion bill is moving.**

**SB 5532** ([link](#)) [**Companion Bill HB 1176**] - **Modifying the administration and disciplining authority of the Washington state veterinary board of governors (Keiser)** – Modifies a number of provisions regarding this regulatory board, including its composition, processes, and sanction powers. Adds provisions (Sec. 1(6) and (7)) that written records

must be kept of any closed disciplinary sessions, and that such records and worksheets used by reviewing board members are subject to disclosure under the Public Records Act.

- **Comments:** None. Most disciplinary records of professional regulatory boards are exempt from disclosure, so this would seem to be an exception.
- **Recommended Action:** Neutral.
- **Status:** Introduced 1/26/09. Referred to Agriculture & Rural Economic Development. **Died in committee.**

**SB 5569** ([link](#)) [**Companion Bill HB 1597**] - **Concerning the administration of state and local tax programs (Hobbs; requested by Department of Revenue)** – Amends a large number of RCW sections to improve clarity and consistency of tax incentive programs, including the confidentiality and disclosure of tax information. Section 201 enables cities imposing a municipal B&O tax to exempt taxpayer information in the same manner as the state B&O tax. Section 202 amends the Public Records Act, RCW 42.56.230, to enable these municipal ordinances adopted under Section 201 to be treated as exemptions under the Public Records Act.

- **Comments:** This exemption is consistent with other exemptions protecting the privacy of information submitted by taxpayers. However, it's unclear why any city would *not* want this information to be confidential. It may be undesirable to establish a precedent that cities can pass a local ordinance to create an exemption from the Public Records Act, and preferable if state law simply exempted *all* municipal B&O taxpayer information rather than requiring every city in the state to individually pass such an ordinance.
- **Recommended Action:** Neutral. Consider eliminating the local ordinance requirement.
- **Status:** Introduced 1/27/09. Referred to Ways & Means. Public hearing on 2/19/09 at 1:30PM. Scheduled for executive session on 2/24/09 at 3:30PM. Substitute bill voted out of committee unanimously on 2/25/09. Placed on second reading calendar 3/9/09. **Senate bill is dead for this session, but companion bill is moving.**

**SB 5591** ([link](#)) [**Companion Bill HB 1293**] - **Modifying whistleblower protection provisions (Kline)** – Amends the state whistleblower act, RCW 42.40, to encourage employees to report abuses of authority, and prohibits restricting public employees from speaking to elected officials, courts, or law enforcement agencies on matters of public concern or retaliating against employees who do so.

- **Comments:** Government employees should be encouraged to speak out, and, as citizens themselves, should not be restricted from communicating with public officials about matters of public concern.
- **Recommended Action:** **SUPPORT.**
- **Status:** Introduced 1/27/09. Referred to Government Operations & Elections. **Died in committee.**

**SB 5661** ([link](#)) [**Companion Bill HB 1288**] - **Exempting the annual parental declaration of intent to home school from the public disclosure act (Pridemore)** – Amends the Public Records Act, RCW 42.56.320, to exempt from disclosure the statement that must be filed annual by parents declaring their intention to teach their children at home (RCW 28A.200.010(1)(a)).

- **Comments:** Presumably, this exemption is being requested as a privacy issue by the parents who must file them. We may find out at the hearing that these declarations are being mined by providers of instructional materials for direct marketing purposes.
- **Recommended Action:** Express concerns regarding the potential loss of accountability of school districts that could occur if this information is not subject to disclosure. **Recommend that bill be re-referred to Government Operations & Elections for review by experts on PRA.**
- **Status:** Introduced 1/28/09. Referred to Early Learning & K-12 Education. Scheduled for public hearing on 2/12/09 at 10:00AM. Voted out of committee unanimously on 2/19/09. Placed on second reading calendar on 2/24/09. **Passed Senate 49-0 on 3/3/09.** Referred to House State Government & Tribal Affairs. Scheduled for public hearing on 3/20/09 at 1:30PM. Voted out of committee unanimously on 3/20/09. **Failed to pass House before opposite-house cutoff, but companion bill passed.**

**SB 5735** ([link](#)) [**Companion Bill HB 1819**] - **Reducing greenhouse gas emissions (Rockefeller; requested by Governor Gregoire)** – Creates a “cap and trade” program for carbon dioxide emissions; see the [bill analysis](#) for a complete explanation of the program design. Section 18 of the bill requires the Department of Ecology to public annual reports of emissions. In order to prevent market manipulation that could occur if different states release their reports at different times, the report and underlying data would be exempt from disclosure under the Public Records Act until a common posting date agreed with other states.

- **Comments:** The exemption created in Section 18 (which would become a new section in RCW 70.235) is not cross-referenced from RCW 42.56.
- **Recommended Action:** Neutral. **Requested that the new exemption be cross-referenced from RCW 42.56.**
- **Status:** Introduced 1/29/09. Referred to Ecology & Parks. Scheduled for public hearing on 2/3/09 at 10:00AM. Scheduled for public hearing on 2/10/09 at 10:00AM. Substitute bill voted out of committee 6-5 on 2/24/09

(the substitute bill eliminates the new public records exemption). Referred to Ways & Means. Scheduled for public hearing on 2/27/09. Second substitute voted out of committee (non-unanimous) on 3/2/09 (second substitute adds null and void clause). **Amended bill passed Senate 29-19 on 3/11/09.** Referred to House Ecology & Parks. Scheduled for public hearing and executive session on 3/17/09 at 10:00AM. Scheduled for executive session on 3/27/09 at 8:00AM. Voted out of committee 9-5 on 3/27/09 with amendments (amendments do not affect the open government provisions). **Amended bill passed House 59-37 on 4/14/09. Senate failed to concur in House amendments.**

**SB 5749** ([link](#)) [**Companion Bill HB 1749**] - **Regulating the business practices of consumer loan companies for compliance with the secure and fair enforcement for mortgage licensing act of 2008 (Berkey)** – Amends the state Consumer Loan Act to implement provisions of the federal “Safe and Fair Enforcement for Mortgage Licensing Act”. Section 26 contains very convoluted language that seems to create a new exemption from public disclosure of information required to be kept confidential under the SAFE Act.

- **Comments:** Section 26 is some of the most confusing statutory language ever put on a printed page. It’s completely unclear how it relates to RCW 42.56, since it doesn’t reference any specific exemption or create one directly in 42.56. **WCOG should insist that the language in Section 26 be clarified, and that if a new exemption is created that it be referenced in the PRA.** Appears to be similar to HB 5759.
- **Recommended Action:** Neutral on the core purpose of the bill, but **OPPOSE** unless Section 26 is significantly reworked.
- **Status:** Introduced 1/28/09. Referred to Financial Institutions, Housing & Insurance. Scheduled for public hearing on 2/4/09 at 3:30PM. Executive action taken on 2/11/09. Substitute bill voted out of committee unanimously on 2/11/09 (substitute bill *does not* include WCOG recommended changes). **Senate bill is dead for this session, but companion bill is moving.**

**SB 5759** ([link](#)) [**Companion Bill HB 1621**] - **Regulating the business practices of consumer loan companies for compliance with the secure and fair enforcement for mortgage licensing act of 2008 (Berkey)** – Amends the state Consumer Loan Act to implement provisions of the federal “Safe and Fair Enforcement for Mortgage Licensing Act”. Section 26 contains very convoluted language that seems to create a new exemption from public disclosure of information required to be kept confidential under the SAFE Act.

- **Comments:** Section 26 is some of the most confusing statutory language ever put on a printed page. It’s completely unclear how it relates to RCW 42.56, since it doesn’t reference any specific exemption or create one directly in 42.56. **WCOG must insist that the language in Section 26 be clarified, and that if a new exemption is created that it be referenced in the PRA.** Appears to be similar to SB 5749.
- **Recommended Action:** Neutral on the core purpose of the bill, but **OPPOSE** unless Section 26 is significantly reworked.
- **Status:** Introduced 1/30/09. Referred to Financial Institutions, Housing & Insurance. Scheduled for public hearing on 2/4/09 at 3:30PM. Executive action taken on 2/11/09. Substitute bill voted out of committee unanimously on 2/11/09 (substitute bill *does not* include WCOG recommended changes). Placed on second reading calendar 3/9/09. **Senate bill is dead for this session, but companion bill is moving.**

**SB 5786** ([link](#)) [**Companion Bill HB 1666**] - **Authorizing the creation of cultural access authorities (Fraser)** – Authorizes counties or groups of counties to form “cultural access authorities” to provide support for local cultural organizations and cultural programs in public schools. Funding would be through a voter-approved 0.1% local sales tax. Section 602 states various laws to which the authorities would be subject, including “the open public record requirements under chapter 42.17 RCW, the prohibition on using its facilities for campaign purposes under RCW 42.17.130, [and] the open public meetings law under chapter 42.30 RCW”.

- **Comments:** It is not necessary to declare that any agency is subject to the PRA or OPMA, because they are subject to them unless specifically excluded. Nevertheless, such declarations exist in many places in the RCW. However, if such a declaration is to be made, it should at least be accurate.
- **Recommended Action:** Neutral. **Suggest that Section 602 be corrected to reference RCW 42.56 rather than 42.17.**
- **Status:** Introduced 2/2/09. Referred to Labor, Commerce & Consumer Protection. Scheduled for public hearing on 2/23/09 at 10:00AM. Substitute bill voted out of committee 6-1 on 2/24/09 (WCOG’s recommend amendment to Section 602 was included). Referred to Ways & Means. **Bill is dead for this session; companion bill is also dead.**

**SB 5818** ([link](#)) - **Regarding the disclosure of production and export information on patented or trademarked apples (Honeyford)** – Amends the Public Records Act, RCW 42.56.380, to require information about the export of patented or trademarked apples to be provided upon request to the holders of the patents or trademarks to verify export volumes, but not for other commercial purposes.

- **Comments:** The inclusion of this language in RCW 42.56 is inconsistent with RCW 42.56.080, which says “Agencies shall not distinguish among persons requesting records, and such persons shall not be required to provide information as to the purpose for the request except to establish whether inspection and copying would violate RCW 42.56.070(9) or other statute which exempts or prohibits disclosure of specific information or records to certain persons.”
- **Recommended Action: Express concerns** about the inconsistency created by putting this information directly in the Public Records Act, noting that the exemptions in the PRA are not prohibitions against disclosure, and suggest that the requirement that the records be provided in certain circumstances be incorporated directly into the statute where the information is collected rather than in RCW 42.56.
- **Status:** Introduced 2/3/09. Referred to Agriculture & Rural Economic Development. Scheduled for public hearing on 2/12/09 at 3:30PM. **Died in committee.**

**SB 5862** ([link](#)) - **Limiting the balance of small loans by a consumer enforced by a database (Tom)** – Authorizes the Department of Financial Institutions to establish a system under which it would be illegal for pay-day lenders to lend more to a borrower if the total balances on all that borrower’s pay-day loans exceed \$700. To accomplish this, authorizes the Department of Financial Institutions to create a statewide database of *all* pay-day loans made in Washington, and charge a fee up to \$1 per pay-day loan transaction to cover the cost of creating and maintaining the system. Section 3 amends RCW 42.56.230 to exempt from disclosure under the Public Records Act all information in the database.

- **Comments:** Similar in concept to HB 1684, but makes the pay-day loan limit \$700 rather than 30% of the borrower’s monthly gross income. If the bill moves forward, the exemption seems to be a reasonable protection for the privacy of very sensitive borrower information.
- **Recommended Action:** Neutral.
- **Status:** Introduced 2/4/09. Referred to Labor, Commerce & Consumer Protection. Scheduled for public hearing on 2/10/09 at 1:30PM. **Died in committee.**

**SB 5886** ([link](#)) - **Regulating legal proceedings involving public hazards (Kline)** – Prohibits the sealing of court records concerning litigation in which a “public hazard” was identified. Defines “public hazard” as “a condition of a product or a condition of land that has caused, or can be reasonably expected to cause death or serious bodily harm or other serious harm to a person unaware of the condition.”

- **Comments:** The state constitution requires court records to be open to the public except under limited circumstances, but this has been abused over the years and records sealed that should have been open. This bill would help ensure that the public is aware of hazardous products or conditions.
- **Recommended Action: SUPPORT.**
- **Status:** Introduced 2/5/09. Referred to Judiciary. Scheduled for public hearing on 2/17/09 at 10:00AM. Voted out of committee unanimously on 2/25/09. Placed on second reading calendar on 3/6/09. **Amended bill passed Senate 40-8 on 3/11/09.** Referred to House Judiciary. Scheduled for public hearing on 3/25/09 at 8:00AM. Scheduled for executive session on 3/26/09 at 10:00AM. **Died in committee.**

**SB 5897** ([link](#)) - **Creating the technology discovery fund (Pflug)** – Establishes a technology discovery fund authority to promote research and technology commercialization, to seek grants and to make grants for research projects. Modeled after the Life Sciences Discovery Fund which was specific to biomedical research. Section 10 adds an exemption to the Open Public Meetings Act, RCW 42.30.110, allowing the authority to review grant applications in executive session. Section 12 amends the Public Records Act, RCW 42.56.270, exempting confidential financial, technical, and research information submitted in grant applications from disclosure under the PRA.

- **Comments:** The OPMA and PRA amendments mirror similar provisions for grant applications made to the Life Sciences Discovery Fund.
- **Recommended Action:** Neutral.
- **Status:** Introduced 2/5/09. Referred to Economic Development, Trade & Innovation. **Died in committee.**

**SB 5919** ([link](#)) - **Creating the innovation discovery fund (Pflug)** – Establishes an innovation discovery fund authority to promote research and technology commercialization, to seek grants and to make grants for research projects. Modeled after the Life Sciences Discovery Fund which was specific to biomedical research. Section 10 adds an exemption to the Open Public Meetings Act, RCW 42.30.110, allowing the authority to review grant applications in executive session. Section 12 amends the Public Records Act, RCW 42.56.270, exempting confidential financial, technical, and research information submitted in grant applications from disclosure under the PRA.

- **Comments:** The OPMA and PRA amendments mirror similar provisions for grant applications made to the Life Sciences Discovery Fund. This bills seems the same as SB 5897 but for the name of the fund; it may be that 5897 was flawed in some way and a new name needed to be found.
- **Recommended Action:** Neutral.

- **Status:** Introduced 2/6/09. Referred to Economic Development, Trade & Innovation. Scheduled for public hearing on 2/12/09 at 10:00AM. Scheduled for executive session on 2/23/09 at 1:30PM. **Died in committee.**

**SB 5920** ([link](#)) - **Restricting the underwriting of small loans by financial institutions holding a check cashers license and small loan endorsement by including a cap of thirty percent of the borrower's gross monthly income on the combined outstanding principal balances of all small loans (Franklin)** – Makes it illegal for pay-day lenders to lend more to a borrower if the total balances on all that borrower's pay-day loans exceed 30% of their gross monthly income. To accomplish this, authorizes the Department of Financial Institutions to create a statewide database of *all* pay-day loans made in Washington, and charge a fee up to \$1 per pay-day loan transaction to cover the cost of creating and maintaining the system. Section 2(9) exempts data stored in this database from disclosure under the Public Records Act. Section 3 amends RCW 42.56.230 to reference the exemption created in Section 2(9).

- **Comments:** Similar to HB 1684, but not identical: it adds provisions to deal with transactions attempted with the database is inaccessible due to computer or network failures, and adds a prohibition against lenders using the database for any purposes other than intended. If the bill moves forward, the exemption seems to be a reasonable protection for the privacy of very sensitive borrower information.
- **Recommended Action:** Neutral.
- **Status:** Introduced 2/6/09. Referred to Labor, Commerce & Consumer Protection. Scheduled for public hearing on 2/10/09 at 1:30PM. Scheduled for executive session on 2/23/09 at 10:00AM. Substitute bill voted out of committee 4-3 on 2/23/09 (substitute bill does not affect open government provisions). Placed on second reading calendar on 3/3/09. **Bill is dead for this session.**

**SB 5927** ([link](#)) - **Regarding notice requirements for special meetings (Morton)** – Amends the Open Public Meetings Act, RCW 42.30.080, to change requirements for waiver of notice of special meetings by members of the affected board, require that notices of special meetings be delivered to newspapers and television stations, displayed at the agency's principal location and meeting location, and posted on the agency web site. Also, for agencies with fewer than 1,000 voters, require notice to be sent to individuals who subscribe to the receive notice.

- **Comments:** The additional notice requirements are an improvement, although we don't understand why the ability for individuals to subscribe to receive notice should be limited to jurisdictions with fewer than 1,000 voters.
- **Recommended Action:** **SUPPORT. If the bill receives a hearing, request that ability for individuals to subscribe to receive to special meeting notices be expanded to other agencies.**
- **Status:** Introduced 2/9/09. Referred to Government Operations & Elections. **Died in committee.**

**SB 6027** ([link](#)) [**Companion Bill HB 2040**] - **Concerning the work of the joint select committee on beer and wine regulation (Hewitt)** – Clarifies provisions regarding the work of the joint select committee on beer and wine regulation. Eliminates the prohibition of cross-ownership of beer and wine distributors and retailers. Allows industry to provide branded promotional items of nominal value to retailers, but not to end customers. Eliminates the requirement that distributors post price lists with the government. Eliminate the mandatory 10% price markup. Section 7 eliminates the exemption from disclosure under RCW 42.56.240(1) for price lists, since the lists will no longer be submitted to the government.

- **Comments:** It makes sense to eliminate the exemption if the data will no longer exist.
- **Recommended Action:** Neutral.
- **Status:** Introduced 2/16/09. Referred to Labor, Commerce & Consumer Protection. Public hearing on 2/19/09 at 3:30PM. Scheduled for executive session on 2/23/09 at 10:00AM. Voted out of committee unanimous on 2/23/09. Placed on second reading calendar 3/9/09. **Senate bill is dead for this session, but companion bill is moving.**

**SB 6032** ([link](#)) [**Reference SHB 1078**] - **Concerning Exchange Facilitators (Berkey)** – Creates a statutory framework that provides some consumer protections to those who entrust money or property to persons acting as exchange facilitators. Section 14 requires exchange facilitators to report on their activities to the Department of Financial Institutions, and exempts information in the reports from disclosure under the Public Records Act except in aggregate form. Section 14(2) refers to an exemption in RCW 42.56.270 for such information.

- **Comments:** The proposed exemption is consistent with similar confidential, proprietary financial information exempted from disclosure. However, it is not clear which subsection of 42.56.270 is being referenced in Section 14(2), and a reference should be added to 42.56.270 that explicitly points to the new Section 14. Appears similar to HB 1078.
- **Recommended Action:** Neutral on the bill. **Request an explicit reference be added in RCW 42.56.270 to the new Section 14.**
- **Status:** Introduced 2/16/09. Referred to Financial Institutions, Housing & Insurance. Scheduled for public hearing on 2/24/09 at 10:00AM. Substitute bill voted out of committee unanimously on 2/25/09 (the

exemption language is now in Section 15, but was not clarified as requested; no reference was added in RCW 42.56). **Amended bill passed Senate 46-0 on 3/6/09** (amendment did not change open government provisions). Referred to House Financial Institutions & Insurance. Scheduled for public hearing on 3/19/09 at 1:30PM. Scheduled for executive session on 3/24/09 at 1:30PM. Voted out of committee unanimously on 3/19/09. **Failed to pass House before opposite-house cutoff.**

**SB 6034** ([link](#)) - **Exempting institutions of higher education that do not use archives and records management services from payment for those services (Kilmer)** – Provides that institutions of higher education that do not use the services of the division of archives and records management are not subject to its cost allocation procedure or formula and are not required to pay the fees or charges in RCW 40.14.025.

- **Comments:** This will reduce service fees available for operation of the state archives. According to the archivist, these costs are covered by a transfer from OFM, and this exemption will not save the universities any money.
- **Recommended Action:** Neutral, but **CONCERNED** regarding the loss of revenue to the state archives. **Recommend that bill be considered in Government Operations & Elections, which is more familiar with the state archives funding model, and in Ways & Means.**
- **Status:** Introduced 2/16/09. Referred to Higher Education & Workforce Development. Scheduled for public hearing on 2/24/09 at 10:00AM. Voted out of committee 6-3 on 2/25/09. Referred to Ways & Means. Bill may still be alive as necessary to implement the budget. **Died in committee.**

**SB 6085** ([link](#)) - **Creating the Washington small business loan reserve program (Kastama)** – Creates the Washington small business loan reserve program to secure loans made by financial institutions to small businesses. Section 12 creates a new section in RCW 42.56 to exempt applications and registers of loans from public disclosure.

- **Comments:** The wording of Section 12 is not consistent with the other exemptions in RCW 42.56, and the exemption could be added to an existing section (such as section 42.56.270) instead of being a separate new section.
- **Recommended Action:** Neutral. **Request that the exemption be reworded and added to RCW 42.56.270.**
- **Status:** Introduced 2/23/09. Referred to Economic Development, Trade & Innovation. Public hearing on 2/23/09. Voted out of committee unanimously on 2/23/09. **Bill is dead for this session.**

**SB 6093** ([link](#)) [**Companion Bill HB 1892**] - **Concerning health care financing (Jacobsen)** – Establishes single-payer health care in Washington state, controlled by the “Washington health security trust”. Section 4 of the bill says “The board and its professional staff are subject to the public disclosure provisions of chapter 42.17 RCW.”

- **Comments:** While the intent may have been to require the trust to be subject to the campaign finance and lobbyist disclosure provisions, from the context the more likely intent was to make the trust subject to the Public Records Act, RCW 42.56.
- **Recommended Action:** Neutral. **Ask the sponsor to verify the intent and amend the bill if necessary to reference RCW 42.56, or eliminate the sentence because it is not necessary.**
- **Status:** Introduced 2/25/09. Referred to Health & Long-Term Care. **Died in committee.**

**SB 6098** ([link](#)) - **Requiring public agencies, special purpose districts, and municipalities to post certain information on their web sites (Roach)** – Amends the Open Public Meetings Act, RCW 42.30, to require public agencies, special purpose districts, and municipalities over a certain size that own or maintain public internet web sites to post certain information on their web sites, including meeting agendas and minutes, text of proposed rules or ordinances, a roster of board members, etc.

- **Comments:** It’s about time that this information was required to automatically be made available. Too bad the bill was introduced too late to be considered this session.
- **Recommended Action:** **SUPPORT.**
- **Status:** Introduced 2/25/09. Referred to Government Operations & Elections. **Died in committee.**

**SB 6101** ([link](#)) - **Updating public records provisions (Roach)** – Completely replaces RCW 40.14, Preservation and Destruction of Public Records.

- **Comments:** The bill doesn’t say that it was requested by the Secretary of State or the State Archivist, but it seems like it should have been. It also doesn’t declare that its intent is to simply reorganize RCW 40.14 without substantive changes. While the bill appears to restate 40.14 in a clearer and more organized form, it’s impossible to know its full impact without doing a word-by-word comparison to the existing statute to see what has changed. Since the bill was introduced so late in the session, it is unlikely to be heard.
- **Recommended Action:** Seek clarification from the sponsor and the state archivist regarding the genesis of the bill and its impact.
- **Status:** Introduced 2/25/09. Referred to Government Operations & Elections. **Died in committee.**

**SB 6123** ([link](#)) [**Companion Bill HB 2311**] - **Concerning legal notices for constitutional amendments and state measures (Prentice; requested by Secretary of State)** – Eliminates the requirement that notices of constitutional amendments and state ballot measures be printed in newspapers around the state and broadcast on radio and television. The measure is null and void if the accompanying constitutional amendment fails.

- **Comments:** This does reduce the amount of information available to citizens about constitutional amendments and state ballot measures on the upcoming ballot, although the information would still be available in the voter's pamphlet.
- **Recommended Action:** Express **CONCERNS** about the reduction in information available to citizens.
- **Status:** Introduced 3/12/09. Referred to Ways & Means. Public hearing scheduled on 3/17/09 at 3:30PM. **Died in committee.**

**SB 6149** ([link](#)) [**Companion Bill HB 2327**] - **Eliminating or reducing the frequency of reports prepared by state agencies (Regala; requested by Office of Financial Management)** – Eliminates 21 reports, and reduces the frequency of 12 others. Requires all reports to the legislature and all annual and biennial reports to be submitted in electronic format only. Requires the legislature web site to provide links to all of these reports and organize them so they are easily accessible to legislators, staff, and the public.

- **Comments:** The elimination of some reports may make it somewhat more difficult for legislators and the public to determine the effectiveness of some government programs, but the improved access to all of the other reports due to their availability in electronic form through the legislature's web site means far more information will be available.
- **Recommended Action:** **SUPPORT.**
- **Status:** Introduced 4/3/09. Referred to Ways & Means. Public hearing 4/6/09. **Died in committee, but companion bill passed with amendments.**

**SB 6174** ([link](#)) - **Concerning the disclosure of information regarding persons who are involved in executions** – Amends RCW 10.95.180 to exempt from disclosure under the PRA, and also from subpoena or discover in civil cases, any records that might lead to the discovery of the identity of people who participate in executions. Applies retroactively to all past executions. Includes an emergency clause.

- **Comments:** Review is needed to determine the impact on accountability of the Department of Corrections if this information is kept secret. The language should clarify that records are not exempt in their entirety if the identity information can be redacted and the remainder of the document released. The bill should include a cross-reference from RCW 42.56. Bill will likely not be considered this session due to being introduced after cutoff and not being necessary to implement the budget.
- **Recommended Action:** If bill is heard, express the concerns and recommend the amendment noted.
- **Status:** Introduced 4/16/09. Referred to Judiciary. **Died in committee.**

**SJR 8217** ([link](#)) [**Companion Bill HJR 4212**] - **Changing the notice requirement for amendments submitted to the people (Prentice; requested by Secretary of State)** – Amends the state constitution to replace the requirement that proposed constitutional amendments be published four times in every legal newspaper in the state with a requirement that explanatory statements be included in the state voter's pamphlet.

- **Comments:** More people are likely to see the information in the voter pamphlet than in the newspapers.
- **Recommended Action:** Neutral.
- **Status:** Introduced 3/12/09. Referred to Ways & Means. Public hearing scheduled on 3/17/09 at 3:30PM. **Died in committee.**