



## Final Status of Bills Related to Open Government Considered During the 2011 Legislative Session

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### SUMMARY

The Washington Coalition for Open Government tracked the progress of 83 of the 2,165 bills, memorials, and resolutions (1,166 in the House, and 999 in the Senate) introduced in the Washington State Legislature during the 2011 legislative session. *Every one* of the 2,165 measures introduced were examined for impact on open government. The 83 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 83 bills tracked, 42 were considered "priority" bills to which the Coalition paid particular attention. These included bills that would:

- Eliminate the minimum daily penalty for violations of Public Records Act, allowing courts to award no penalty at all (**SHB 1899, SB 5685**);
- Prohibit inmates from receiving penalties if they win a public records lawsuit (**SSB 5025, HB 1034**);
- Exempt from disclosure all personal information of all children, adolescents, and students participating in all public programs (**ESSB 5098**);
- Automatically seal criminal and court records of juveniles without any court hearing or order of sealing, and limit how criminal history records can be used after they are obtained (**SHB 1793**);
- Allow a particular public agency to hold its "open to the public" board meetings anywhere in the world, or only by telephone with no requirement to accommodate the public (**ESB 5764**);
- Allow agencies to charge for searching for records if search time exceeds five hours in a calendar month, and demand advance deposits of estimated charges (**HB 1300, SB 5088**);
- Define the word "copy" so that agencies would no longer be required to provide electronic copies of electronic records, and so that metadata would not be considered part of the record (**SB 5693**);
- Require requesters to give agencies notice or hold a conference before a lawsuit is filed, so they can make the lawsuit moot by producing the records, thereby

- providing an incentive to wait for the warning before producing *any* records (**HB 1139, SB 5062**);
- Allow an agency to “run out the clock” on the statute of limitations to file a public records lawsuit by repeatedly saying it needs more time to find records (**HB 1033, SSB 5022**);
  - Make certain agencies and their board members completely immune from lawsuits under the Public Records Act (**SB 5677**);
  - Allow certain agencies to not permit drop-in inspection of public records and require requesters to make appointments (**HB 1389, SB 5294**);
  - Require all agencies to produce a summary of the cost of handling every public records request, and produce an annual report to the public of the total cost (**HB 1675**);
  - Exempt from disclosure signatures of individuals (except public employees acting in their official capacity) wherever they appear in all public records (**HB 1989**);
  - Exempt from disclosure records of vacated convictions, records of arrests where probable cause was not found, charges resolved by bail forfeiture, and charges dismissed pursuant to a stipulated order of continuance (**HB 1235, SB 5019, HB 1299, HB 5089**);
  - Seal court records and exempt from disclosure all records related to deferred prosecutions that have been successfully completed (**SB 5591**);
  - Exempt from disclosure the voter registration information of employees of criminal justice agencies (**SB 5007**);
  - Exempt death certificates from disclosure (**HB 1241**);
  - Exempt higher education institutions from paying their share of the cost of operating the State Archives (**HB 1962**);
  - Create an administrative appeals process for public records disputes (**HB 1044, SB 5237**);
  - Increase transparency of the health professions disciplinary process (**SHB 1493, SB 5775**);
  - Enhance campaign finance disclosure, such as prohibiting layering of PACs to conceal the actual contributors to campaigns (**ESSB 5021**);
  - Implement the recommendations of the Sunshine Committee (**SB 5049**);
  - Eliminate the disclosure exemption for jail booking photos (**SHB 1689, SB 5721**);
  - Prevent the sealing of court records pertaining to hazards to the public (**SB 5054**);
  - Require agencies to post notices of special meetings on their web sites, and require certain agencies to allow individuals to subscribe to receive such notices by email (**SB 5355**);
  - Require the Legislature to make the language of certain fiscal bills available to the public at least 24 hours before any hearing or vote on them (**SB 5419**);
  - Require agencies to make public records available online (**SB 5512**);
  - Require agencies to post online all meeting agendas and minutes, and a list of board members (**SSB 5553**);

- Require telephone campaign advertising to identify the sponsor (**HB 1038**);

**Of these priority bills, seven passed.** Two of them enhanced open government. **SHB 1493** significantly increases the ability of people who file complaints against license health care professionals to track their complaints through the process. **ESSB 5021** extends disclosure requirements for political action committees and creates new limits on contributions between PACs to reduce the creation of multiple “layers” of PACs to try to conceal who is funding them.

Unfortunately, these gains are greatly offset by the losses. **The other five priority bills that passed are all negative, with potentially serious consequences for open government.** **SHB 1899** eliminates the \$5 minimum daily penalty award to requesters who win PRA lawsuits; it remains to be seen whether courts use this only to let agencies off the hook for technical violations, or if they use it to take retribution against unsympathetic requesters. **SSB 5025** immediately goes after the most unsympathetic requesters, by barring courts from awarding inmates any penalties at all. **ESSB 5098** creates an extremely broad new PRA exemption for *all* personal information of *all* children, adolescents and students in *all* public and non-profit programs, likely interfering with the ability to hold such programs accountable. **SHB 1793** sets a horrible precedent of infringing on how information in public records may be used after being lawfully obtained, by telling credit reporting agencies that they cannot include criminal history record information in credit reports except under certain conditions; it also creates a task force to study limiting access to juvenile records, but the task force includes *only* government agencies, and, despite repeated requests, does not include *any* organizations advocating for open government on the task force. **ESB 5764** creates a new state agency to manage technology transfer from research universities to private entities; although it requires meetings of the board of directors to be open to the public, it allows the board to hold its meetings anywhere in the world, and also allows meetings to be held only by telephone without any requirement that the public be allowed to dial in to the meetings (and telephone meetings are no substitute for face-to-face meetings when it comes to observing what is *really* going on). **ESB 5764** sets a dangerous precedent that, if it becomes more widespread, could seriously erode the Open Public Meetings Act.

Of the remaining 41 tracked bills, 5 passed and 36 failed. **The bills that passed included new exemptions to disclosure under the Public Records Act** (either directly in RCW 42.56 or in other statutes), including:

- Records provided by insurers provided to the Insurance Commissioner for enforcement on new oversight of insurer investment strategies (**SHB 1257**);
- Confidential financial and trade secret information provided by contractors providing services to crime victims under the Crime Victims Compensation Program (**SSB 5691**);
- Salary survey information provided by private employers which identifies specific employers with the salary rates paid to their employees (**SB 5931**).

These new exemptions were not opposed by WCOG.

**This was a difficult legislative session for supporters of open government. It could have been much worse, as can be seen from the list of priority bills that didn't pass.** It continues to be very difficult to achieve positive change to expand access or undo previous negative changes by the legislature or the courts, due in large part to fierce opposition by organizations that represent government agencies such as the Association of Washington Cities, Washington State Association of Counties, Washington State School Directors Association, and Washington Public Ports Association – but at least their most onerous proposals were once again defeated.

Summaries of all 83 tracked bills appear below, beginning with the 42 priority bills. 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 PASSED (7)

**SHB 1493** ([link](#)) [Companion Bill SB 5775] - **Providing greater transparency to the health professions disciplinary process (Pedersen)** – Amends the health care professions uniform disciplinary act, RCW 18.130, adding a new section requiring that people making complaints against health care professionals can request copies of non-exempt portions of the complaint file, supplement the information in the file. have an opportunity to be heard prior to final disposition of the complaint, be informed of the final disposition of the complaint, and have an opportunity to request reconsideration of the final disposition including supplemental information.

- **Comments:** Provides much more transparency into the handling of complaints against health care professionals for the person making the complaint. Substitute provides license holder opportunities for access and response similar to complainant.
- **Recommended Action:** **SUPPORT.**
- **Status:** Introduced 1/24/11. Referred to Health Care & Wellness. Public hearing scheduled 2/2/11 8AM. Substitute bill voted out of committee 9-2 on 2/10/11. Referred to Health & Human Services Appropriations & Oversight. Public hearing and execution session on 2/16/11. Voted out of committee 5-4 on 2/16/11. Placed on second reading calendar 2/26/11. **Substitute bill Passed House 68-29 on 3/1/11.** Referred to Health & Long-Term Care. Public hearing scheduled 3/17/11 1:30PM. Voted out of committee 5-4 with amendments on 3/24/11. **Amended bill Passed Senate 47-1 on 4/7/11.** Returned to House for concurrence with amendments. House concurred, and **Passed House 61-35 on 4/13/11. Signed by Governor 4/22/11.**

**SHB 1793** ([link](#)) - **Restricting access to juvenile records (Darnielle)** – Prohibits consumer reporting agencies from disseminating information mined from juvenile records to any third parties, unless identifying information about the juvenile is removed. Requires that the official juvenile court file, the social file, and records of the court and any other agency in the case, be sealed automatically within one hundred twenty days of becoming eligible for sealing, without any requirement for a court hearing or order for sealing.

- **Comments:** Article 1 Section 10 of the state constitution requires justice to be administered openly. Automatic sealing of court records and other records without any proceeding whatsoever is a violation of that fundamental principle of transparency. The substitute bill eliminates the automatic sealing of records, and requires the Administrative Office of the Courts to convene a workgroup to develop a mechanism for automatic sealing of juvenile court records; WCOG is not listed among the groups to be included in the work group.
- **Recommended Action:** **OPPOSE. Request an amendment requiring that WCOG be included in the workgroup. Senate amendment requires automatic destruction of records of pardoned individuals.**
- **Status:** Introduced 2/2/11. Referred to Early Learning & Human Services. Public hearing scheduled 2/11/11 1:30PM. Substitute bill voted out of committee 8-1 on 2/17/11. Referred to General Government Appropriations & Oversight. Public hearing and executive action taken on 2/18/11. Placed on 2nd Reading calendar 2/26/11. **Substitute bill Passed House 56-41 on 3/5/11.** Referred to Human Services & Corrections. Public hearing scheduled 3/17/11 10AM. Voted out of committee with amendments 5-1 on 3/24/11. **Amended bill Passed Senate 41-7 on 4/8/11.** Returned to House for concurrence. House refused to concur 4/15/11. Senate referred to recede 4/19/11. Conference committee created. Conference report **Passed Senate 26-20 on 4/22/11.** Conference report **Passed House 65-31 on 4/22/11. Signed by Governor 5/12/11. The workgroup does not include any advocates for open records.**

**SHB 1899** ([link](#)) - **Changing penalty amounts for public records violations (Miloscia)** – Amends the Public Records Act, RCW 42.56.550, to eliminate the \$5 minimum penalty (per record, per day) for PRA violations and increase the maximum penalty from \$100 to \$500 per day.

- **Comments:** Increasing the maximum penalty to \$500 per day is consistent with a long-standing position held by WCOG, reflecting inflation since the \$100 maximum was established. Having a specified maximum penalty specified does preserve having a range (\$0 to \$500, in this case), which means that the *Yousoufian* analysis would still be meaningful (because there is an “entire penalty

range” to consider). However, eliminating the minimum penalty may result in more PRA violations (or at least risk-taking) by agencies that assume courts will favor their positions, particularly when handling requests from persons they assume will be unpopular (such as prison inmates or frequent requesters), and a \$500 maximum may not be high enough to deter an agency from delaying release of records relevant to an election, public hearing, or other event occurring in the near future. The substitute bill eliminates the increase of the maximum penalty to \$500, leaving it at \$100, but reduces the minimum penalty to \$0.

- **Recommended Action: OPPOSE.**
- **Status:** Introduced 2/9/11. Referred to State Government & Tribal Affairs. Public hearing scheduled 2/16/11 8AM. Substitute bill voted out of committee unanimously on 2/16/11. Placed on 2nd Reading calendar 2/25/11. **Substitute bill Passed House 96-2 on 3/1/11.** Referred to Government Operations, Tribal Relations & Elections. Public hearing scheduled 3/17/11 10AM. Voted out of committee unanimously 3/21/11. Placed on 2nd Reading Calendar 3/31/11. **Amended bill Passed Senate 49-0 on 4/6/11.** Returned to House for concurrence. House refused to concur in Senate amendments. Senate receded from amendments. **Passed Senate 47-0 on 4/21/11. Governor signed 5/5/11.**

**ESSB 5021** ([link](#)) - **Enhancing election campaign disclosure requirements to promote greater transparency for the public (Pridemore)** – Amends the Public Disclosure Act (RCW 42.17A). No two political committees could have the same name, and the name of PACs would have to include the name of the individual or entity that created the committee; if the committee was created to support or oppose a specific candidate, it would also have to include the name of that candidate, party affiliation, office sought, and election year. Reduces the threshold for reporting of “electioneering communications” from \$5,000 to \$1,000. Creates a rebuttable presumption that a single person or entity creating more than one PAC is attempting to conceal the identity of the source of the contributions., and requires persons creating more than one PAC to prove otherwise. Reduces the threshold at which electronic campaign finance filing becomes mandatory from \$10,000 to \$5,000. Prohibits PACs from making contributions to other PACs. Intentional violation of the Public Disclosure Act would be punishable not just by civil penalties, but would become a crime: a single violation could be prosecuted as a misdemeanor, three violations within five years as a gross misdemeanor, and any false or forged document could be prosecuted as a Class C felony. The civil penalty limit is also increased from \$4,200 to \$10,000 for each violation.

- **Comments:** WCOG supports campaign and lobbyist disclosure under the Public Disclosure Act, including insuring that the public knows who is actually providing the funds in support of or opposition to political candidates and ballot measures, since this funding can influence acts of public officials. This bill addresses specific concerns raised in the 2010 legislative campaign, including the creation by Moxie Media of dozens of political committees to try to conceal the source of support or opposition to particular candidates, and running of insincere campaign ads (such as supporting an unknown Republican candidate in order to defeat an incumbent Democratic senator in the top-two primary). We support this bill to the extent that it makes more information available to the public about the funding of political campaigns, although it’s not clear that all of its provisions (such as harsh criminal penalties) are necessary to achieve that goal.
- **Recommended Action: SUPPORT.**
- **Status:** Prefiled 12/23/10. Introduced 1/10/11. Referred to Government Operations, Tribal Relations & Elections. Public hearing scheduled 1/13/11 10AM. Scheduled for executive session 2/15/11 1:30PM. Substitute bill voted out of committee 6-1 on 2/16/11. Referred to Ways & Means. Public hearing scheduled 2/22/11 1:30PM. Voted out of committee 18-2 on 2/24/11. **Engrossed substitute bill Passed Senate 46-0 on 3/3/11.** Referred to State Government & Tribal Affairs. Public hearing scheduled 3/16/11 8AM. Voted out of committee 6-4 with amendments on 3/21/11. Referred to General Government Appropriations & Oversight. Public hearing scheduled 3/28/11 1:30PM. Voted out of committee 8-5 on 3/28/11. **Amended bill Passed House unanimously on 4/9/11.** Returned to Senate for concurrence. Senate concurred, and **Passed Senate 46-0 on 4/14/11. Governor signed 4/22/11.**

**SSB 5025** ([link](#)) [**Companion Bill HB 1034**] - **Making requests by or on behalf of an inmate under the public records act ineligible for penalties (Hargrove; by request of the Attorney General)** – Amends the

Public Records Act, RCW 42.56.550, adding a new subsection saying that courts shall not award penalties if the request was made “by or on behalf of a person serving a criminal sentence in a state, local, or privately operated correctional facility.” The provision takes effect immediately upon being signed by the governor, and applies to any lawsuits in which final judgment has not already been entered.

- **Comments:** This is a follow-on to the 2009 bill (now RCW 42.56.565) that allows agencies to obtain injunctions blocking PRA requests from inmates, validating WCOG’s concern that it is a slippery slope and will result in more erosion of the right to access records, first for inmates and then for others. We continue to be concerned about this erosion; however, to the extent this bill helps to eliminate the contention that some requesters use the Public Records Act for personal enrichment rather than to access records, it *may* help to slow down other “reforms” that would have more negative impact on non-inmate users of the PRA. Inmates can still seek access to records and recover attorney fees and costs, but not receive penalties. In our experience, only a very few inmates pursue public records requests primarily in pursuit of fee awards, and this bill is unlikely to produce the reduction in PRA requests or lawsuits that is the goal of its sponsors. In the substitute bill, the penalty prohibition language is moved into RCW 42.56.565, and penalties can still be awarded to prisoners if the records were denied in bad faith by the agency. **House floor amended removes emergency clause.**
- **Recommended Action: OPPOSE.**
- **Status:** Prefiled 12/28/10. Introduced 1/10/11. Referred to Human Services & Corrections. Public hearing scheduled 1/13/11 at 10AM. Substitute bill voted out of committee unanimously 2/4/11. **Substitute bill Passed Senate 45-4 on 3/2/11.** Referred to State Government & Tribal Affairs. Public hearing scheduled 3/14/11 1:30PM. Voted out of committee unanimously 3/24/11. **Amended bill Passed House unanimously on 4/6/11.** Returned to Senate for concurrence. Senate concurred, and **Passed Senate 47-0** on 4/15/11. **Governor signed 5/10/11.**

**ESSB 5098 ([link](#)) - Exempting personal information of minors in parks and recreation programs from public inspection and copying (Carrell)** –Amends the Public Records Act, RCW 42.56.230(1), to create a new exemption for “Personal information in any files maintained for ... persons under eighteen years of age in a parks and recreation program”.

- **Comments:** The bill as written is flawed and will likely not achieve the desired result, because public “parks and recreation programs” generally do not “maintain files” for users of their programs the way other institutions mentioned in 42.56.230 (schools, health agencies, welfare departments) do – and if they do, the users and their parents would likely be shocked to find out. The intent of the legislation is most likely to prevent sex offenders or others from obtaining lists of names and contact information (such as email addresses) of users of recreation programs; if so, a blanket exemption is excessive. The desired result could be obtained by exempting less information, such as names, email addresses, street addresses, and telephone numbers. Such an exemption would preserve the ability to analyze program enrollment to determine, for example, the percentage of users inside the city versus outside, although it would be more difficult to determine usage by neighborhood; it would also make it difficult for users to contact each other to organize concerted action. **Substitute bill greatly expands the exemption language** to read “Personal information in any files maintained for a participant in a community-based program including, but not limited to, parks and recreation programs, youth development programs, and after-school programs”. The amendment adopted in the House committee addresses some concerns, such as no longer referring to “files” and listing specific information that is exempt from disclosure, but still is extremely broad in that it covers all public programs “serving or pertaining to children, adolescents, and students”. It is very difficult to predict at this point what information will be encompassed in this very broad exemption.
- **Recommended Action: OPPOSE.** Potentially work with sponsor to craft a narrow exemption if in fact a real problem can be documented.
- **Status:** Introduced 1/13/11. Referred to Government Operations, Tribal Relations & Elections. Public hearing scheduled 1/24/11 10AM. Executive session scheduled 2/1/11 1:30PM. Substitute bill voted out of committee unanimously 2/2/11. Placed on 2nd Reading calendar 3/2/11. **Engrossed substitute bill Passed Senate 47-1 on 3/7/11.** Referred to State Government & Tribal Affairs. Public hearing on 3/14/11 1:30PM. Voted out of committee 8-3 with amendments on

3/24/11. Placed on 2nd Reading Calendar 3/31/11. **Amended bill Passed House unanimously on 4/6/11.** Returned to Senate for concurrence. Senate concurred, and **Passed Senate 45-1** on 4/14/11. **Governor signed 4/27/11.**

**ESB 5764** ([link](#)) - **Creating innovate Washington (Kastama)** – Consolidates the functions of the Spokane Intercollegiate Research and Technology Institute and the Washington Technology Center into a new agency known as Innovate Washington, to facilitate technology transfer to private industry for economic development. Section 2(6) says that meetings of the board of the agency are subject to the OPMA, but that the board may conduct meetings by teleconference as allowed for private corporation boards in RCW 23B.08.200. Section 14 amends the Open Public Meetings Act, RCW 42.30.110(1), to create a new allowed purpose for executive sessions (“To consider in the case of innovate Washington, the substance of grant or loan applications and grant or loan awards if public knowledge regarding the discussion would reasonably be expected to result in private loss to the providers of this information”). Section 15 amends the Public Records Act, RCW 42.56.270, to create a new exemption for “Financial, commercial, operations, and technical and research information and data submitted to or obtained by innovate Washington in applications for, or delivery of, grants and loans under chapter 43.--- RCW (the new chapter created in section 18 of this act), to the extent that such information, if revealed, would reasonably be expected to result in private loss to the providers of this information.”

- **Comments:** The new allowed executive session purpose, and the new PRA exemption, are both consistent with similar exemptions for similar agencies that consider confidential proprietary information of private entities. The provision that allows the board to conduct meetings by teleconference is inconsistent with the OPMA, in that it allows the board to hold a meeting that is not actually open to the public to observe. Even if the public were allowed to dial in and listen to the board teleconferences, there is no meaningful way for the public to know which board member is talking, or to observe non-verbal communication between board members such as facial expressions, gestures, notes being passed, side conversations via instant message, etc. If the legislature wants to update the OPMA to enable governing boards of agencies to conduct meetings electronically, it should undertake a complete study of all the issues involved and include all stakeholders in the discussion, and not try to create a one-off teleconferencing capability by allowing a *public agency* to meet under a statute provided only for *private corporation boards of directors*. The substitute bill does not address WCOG’s concerns. **The engrossed bill does not address WCOG’s concerns.**
- **Recommended Action:** NEUTRAL on the substance of the bill. **STRONGLY OPPOSE** the provision allowing the board to have teleconference meetings inconsistent with the OPMA.
- **Status:** Introduced 2/10/11. Referred to Economic Development, Trade & Innovation. Public hearing scheduled 2/16/11 8AM. Substitute bill voted out of committee unanimously 2/18/11. Referred to Ways & Means. Public hearing scheduled 2/24/11 1:30PM. Voted out of committee 17-1 on 2/25/11. **Engrossed bill Passed Senate 46-2 on 3/2/11.** Referred to Higher Education. Public hearing scheduled 3/16/11 8AM. Voted out of committee 11-2 with amendments on 3/24/11. Referred to Ways & Means. Public hearing on 3/31/11. Failed to pass House during regular session. In special session, 2nd Engrossed bill **Passed Senate 43-0** on 4/27/11. Referred to House Ways & Means. **No public hearing held.** Voted out of committee with amendments 20-6 on 5/11/11. Amended bill **Passed House 53-35** on 5/22/11. Senate concurred, and **Passed Senate 45-2** on 5/23/11. Delivered to Governor. **The onerous provisions allowing “public” meetings by teleconference were retained.**

## PRIORITY BILLS FAILED (35)

**HB 1033** ([link](#)) [Companion Bill SB 5022] - **Clarifying the statute of limitations for any court action brought under RCW 42.56.550 (Eddy; by request of the Attorney General)** – Amends the language of the statute of limitations under the Public Records Act (RCW 42.56.550(6)) to say that it is one year from the date that an agency claims an exemption, provides the records responsive to a request, or indicates that there are no responsive records, whichever occurs last. Consequently, if an agency produces records on a partial or installment basis, the statute of limitations will not begin to run until the last record is provided on that basis or an exemption is claimed, whichever is later. Likewise, if the agency provides a single response either by claiming an exemption, producing records, or indicating no responsive records have been located, an action must be filed within one year of the date of that response.

- **Comments:** The proposed language is reasonable and consistent with existing interpretation of the PRA by the courts.
- **Recommended Action:** **SUPPORT**. The bill should be carefully monitored to ensure that no adverse amendments are added.
- **Status:** Prefiled 12/15/10. Introduced 1/10/11. Referred to State Government & Tribal Affairs. Public hearing scheduled 1/20/11 10AM. **Died in committee.**

**HB 1034** ([link](#)) [Companion Bill SB 5025] - **Making requests by or on behalf of an inmate under the public records act ineligible for penalties (Takko; by request of the Attorney General)** – Amends the Public Records Act, RCW 42.56.550, adding a new subsection saying that courts shall not award penalties if the request was made “by or on behalf of a person serving a criminal sentence in a state, local, or privately operated correctional facility.” The provision takes effect immediately upon being signed by the governor, and applies to any lawsuits in which final judgment has not already been entered.

- **Comments:** This is a follow-on to the 2009 bill (now RCW 42.56.565) that allows agencies to obtain injunctions blocking PRA requests from inmates, validating WCOG’s concern that it is a slippery slope and will result in more erosion of the right to access records, first for inmates and then for others. We continue to be concerned about this erosion; however, to the extent this bill helps to eliminate the contention that some requesters use the Public Records Act for personal enrichment rather than to access records, it *may* help to slow down other “reforms” that would have more negative impact on non-inmate users of the PRA. Inmates can still seek access to records and recover attorney fees and costs, but not receive penalties. In our experience, only a very few inmates pursue public records requests primarily in pursuit of fee awards, and this bill is unlikely to produce the reduction in PRA requests or lawsuits that is the goal of its sponsors.
- **Recommended Action:** **Neutral with concerns.**
- **Status:** Prefiled 12/15/10. Introduced 1/10/11. Referred to State Government & Tribal Affairs. Public hearing scheduled 1/20/11 10AM. **Died in committee.**

**HB 1038** ([link](#)) - **Disclosure of telephone campaign advertising in state and local election campaigns (Appleton; by request of Public Disclosure Commission)** – Amends the Public Disclosure Act, RCW 42.17A, to require “timely sponsor identification of telephone advertising including persuasive polls commonly known as push polls”. Political telephone calls are made in the year before an election would have to clearly state the sponsor name, city, and state at the beginning of the call.

- **Comments:** WCOG supports campaign and lobbyist disclosure under the Public Disclosure Act. Sponsor identification is already required for written, radio, and television advertising, but is not clearly required for telephone advertising, although telephone calling has long been a significant part of political campaigns. There is clear public benefit in being informed of who is paying for political advertising.
- **Recommended Action:** **SUPPORT**.
- **Status:** Prefiled 12/16/10. Introduced 1/10/11. Referred to State Government & Tribal Affairs. Public hearing scheduled 1/13/11 10AM. **Died in committee.**

**HB 1044** ([link](#)) [Companion Bill SB 5237] - **Creating the office of open records (Hurst; by request of the Attorney General and State Auditor)** – Amends the Public Records Act (RCW 42.56) to create an

independent “Office of Open Records” within the Office of Administrative Hearings. This office would provide for an alternative mechanism for requesters seeking resolution of PRA disputes with agencies, intended to be faster and at lower cost than filing a lawsuit in superior court. Agencies must voluntarily agree to allow their PRA disputes to be handled by the OAH. For agencies that have opted-in to the OAG process, records requesters decide whether or not a particular case goes to OAH rather than to superior court; the agency cannot force the requester to take the complaint to OAH for review. Requesters must file for review with OAH within 30 days after an agency claim of exemption, delivery of records, or unreasonable time estimate for delivering records. The filing fee will be established by rule. The office must issue a final order within 30 days of receiving the complaint, unless a hearing is requested. The office can require parties to meet and confer to try to reach settlement, and parties can agree to mediation. The office may not award attorney fees, costs, or penalties. All final orders must be posted on the office’s web site. Final orders are binding and enforceable in superior court. Final orders can be reviewed in superior court (de novo) if a request for review is filed within 30 days. See the bill for additional provisions.

- **Comments:** WCOG is concerned about the inevitable imbalance of power that would exist in the OAH process: agencies would inevitably be represented by legal counsel, but because of the inability to recover attorney fees and court costs, requesters, particular individuals, would be much less likely to be represented or even to obtain legal advice before entering the administrative process. This could potentially be ameliorated by WCOG or other organizations expanding the legal advice available to requesters, and could be significantly helped by having a “public counsel” or “ombudsman” to assist requesters in the process. Even without that assistance, however, this mechanism will provide an opportunity for review of agency actions in cases where requesters might otherwise get no review at all because they cannot afford an attorney and none are available or willing to take their case on a pro bono or contingent fee basis. We also question whether many requesters would be able to successfully navigate the process because of its complexity, and whether the complexity of the process will make it difficult for the office to comply with the quick deadlines required. But because it is entirely at the requester’s discretion to file for review with OAH, and because the ability to go to superior court and receive attorney fees, costs, and penalties would not be impaired, WCOG does not oppose establishment of this mechanism to see if it will be used and how effective it turns out to be.
- **Recommended Action:** **SUPPORT with concerns.** If the bill moves forward, recommend a clarifying amendment in section 2(4)(g) as follows: “The administrative law judge may accept or order the submission of any records, or portions thereof, for in camera review. Records reviewed in camera for appeals before the office are ~~((exempt from))~~ not subject to disclosure under this chapter solely because the records have been reviewed by an administrative law judge.”
- **Status:** Prefiled 12/28/10. Introduced 1/10/11. Referred to State Government & Tribal Affairs. Public hearing scheduled 1/20/11 10AM. **Died in committee.**

**HB 1139** ([link](#)) [**Companion Bill SB 5062**] - **Concerning providing agencies notice of a dispute under the public records act and an opportunity to cure error in the production of public records (Armstrong; by request of the Attorney General)** – Amends the Public Records Act to add a new section allowing a requester to provide notice to an agency of a claim that the requester believes the agency has made an error by improperly withholding or redacting records. The agency has 21 days to respond to the claim and produce the records or reject the claim in whole or in part. The statute of limitations is suspended during this 21-day period. No penalties are payable on records produced during the 21-day period. Notice of a “claim” is not mandatory, but if a PRA lawsuit is filed against the agency without providing it notice, the agency has 30 days after it is served with the lawsuit to produce records the lawsuit claims were improperly denied, and no penalty is payable for records produced during that 30-day period.

- **Comments:** The term “penalty” is not adequately defined in the bill. It references RCW 42.56.550(4), but it is not clear if it refers to only the per-day, per-document “amount” that is “awarded” to the requester (the word “penalty” is never used in 550(4)), or also to attorney fees and court costs. Enables agencies to significantly delay release of time-critical records. Creates incentives for agencies to delay producing records to see if the requester is serious enough to file a lawsuit. Forces requesters to pay unrecoverable attorney expenses to file a detailed pre-lawsuit “claim”. Complicates the process of determining agency culpability by allowing agencies to partially “cure” a failure to disclose documents after a lawsuit is already filed. Ignores the existing voluntary process

for appeal to an agency for review of a denial under RCW 42.56.520 and to the attorney general under 42.56.530. A court can already award minimal penalties if it believes a requester delayed filing a lawsuit for no good reason. Defenders of open government already compromised by agreeing to reduce the statute of limitations on PRA claims from five years to one year in exchange for increasing the minimum penalty from \$5 to \$25 per day, but agencies reneged on the deal by removing the penalty increase from the 2005 legislation but keeping the shorter statute of limitations.

- **Recommended Action: STRONGLY OPPOSED.**
- **Status:** Introduced 1/13/11. Referred to State Government & Tribal Affairs. Public hearing scheduled 1/20/11 10AM. Public hearing scheduled 1/27/11 10AM. **Died in committee.**

**HB 1235** ([link](#)) - **Concerning the privacy of nonconviction records (Moscoso)** – Amends the Criminal Records Privacy Act (RCW 10.97) to include records of vacated convictions in the definition of non-conviction records, and to prevent dissemination of non-conviction data unless the subject of the record has given permission. A “record of exonerating disposition” must be kept confidential if requested by the subject of the record, including any record of a probable cause hearing where the court found there was no probable cause, a charge was resolved by acceptance of bail forfeiture, or a charge was dismissed pursuant to a stipulated order of continuance.

- **Comments:** The bill language is identical to the Proposed Substitute bill for SB 5019, but is not considered a companion bill because it is not identical to SB 5019 as originally introduced. The arguments for the bill are the same as SB 5019, however. The concern intended to be addressed by this legislation is that some employers and landlords are using commercial online services to check aggregated public records, including court records, when doing background checks before hiring or renting to individuals, and are basing hiring or rental decisions on records of arrests, charges, protection orders, and other legal matters for which there is no conclusion that the person was guilty of any crime. Advocates for these individuals say that it is unfair for them to be denied employment or housing when there is not currently a conviction on the books, while employers and landlords say that people with arrests, charges, protection orders, and other matters on their record have more problems than others and that they should be free to include such considerations in their hiring or rental decisions. Whichever position is correct, there is a strong possibility that this legislation is unconstitutional under Article I Section 10 of the state constitution, which requires justice to be administered openly, since a large swath of records of court actions would become secret. It is also likely unconstitutional under separation of powers. If passed, it would become more difficult for the public to examine the performance of their law enforcement agencies, prosecuting attorneys, and courts if records that didn’t result in a conviction became inaccessible.
- **Recommended Action: OPPOSE.**
- **Status:** Introduced 1/17/11. Referred to Public Safety & Emergency Preparedness. Public hearing scheduled 2/2/11 1:30PM. **Died in committee.**

**HB 1241** ([link](#)) - **Limiting the disclosure of death certificates (Orcutt)** –Amends the Vital Records statute, RCW 70.58.104, to say that copies of death certificates are available only to certain relatives of the deceased, others if they can demonstrate they need to protect a personal or property right, or licensed private investigators, within 50 years after death. Government agencies can also obtain death records as part of official duties for statistical or research purposes. Agencies that receive copies of death certificates may not make them available for inspection or copying. Death certificates may be released if personal identifying information is redacted. Also amends the Public Records Act, RCW 42.56.360, to exempt death certificates from disclosure to the extent required by 70.58.104.

- **Comments:** Death certificates are important documentation for news media and for genealogical research, and a blanket prohibition on disclosure except to selected people is excessive.
- **Recommended Action: OPPOSE.**
- **Status:** Introduced 1/17/11. Referred to State Government & Tribal Affairs. Referred to Health Care & Wellness. **Died in committee.**

**HB 1299** ([link](#)) [**Companion Bill SB 5089**] - **Regarding conferences for public records requests disputes (Takko)** – Amends the Public Records Act, RCW 42.56.550, to create a “conference” provision before a PRA lawsuit may be filed. The requester and agency “may” confer, and a lawsuit “should” not be filed until at least 15 days after the conference. The statute of limitations and penalties are tolled during the 15-day period. If a lawsuit is filed, a “certification” must be included as to whether or not a conference was held, and if not, why not. If the conference is not held, or a lawsuit is filed before the 15 day period expires, the court has discretion to reduce or eliminate penalty and cost awards. The court must consider whether the records were needed in less than 15 days, whether the request would have been futile, and whether the request was in “the public interest”.

- **Comments:** This is virtually identical to SB 6368 (2009) which was also introduced by Sen. Hatfield, but adds the “public interest” provision. All of last year’s problem remain. The potential to lose penalties and costs will make the conferences mandatory. In the vast majority of PRA cases, there has already been significant back-and-forth communication between the requester and agency before the requester tries to find an attorney and file a lawsuit. The attorney will invest considerable work into investigating the situation. If the attorney is required to convene a conference prior to filing a lawsuit, the “conference” just becomes a chance for the agency to get a warning that a lawsuit is about to be filed and cough up the documents they should have produced previously – and by doing so, make the case “moot”, with the requester being out of pocket for their attorney fees and costs. Agencies will say that this conference provision will help them avoid the “gotcha” lawsuits in which a requester notices a violation, intentionally waits until just before the statute of limitations expires in order to run up penalties, and springs a lawsuit at the last minute. What the change will actually do is change the risk calculation for agencies; if they know they’re always going to get a warning before a lawsuit is filed, they will withhold more records and turn them over only if they’re “invited” to a conference and warned that a lawsuit is coming. We shouldn’t be amending the PRA to encourage agencies to delay.
- **Recommended Action:** **STRONGLY OPPOSE**
- **Status:** Introduced 1/18/11. Referred to State Government & Tribal Affairs. Public hearing scheduled 1/31/11 1:30PM. **Died in committee.**

**HB 1300** ([link](#)) [**Companion Bill SB 5088**] - **Regarding the recovery of the costs of production and copying of public records (Moeller)** – Amends the Public Records Act, RCW 42.56.120, to allow agencies to charge requesters if the handling of their PRA requests requires more than five person-hours of work in a calendar month for search and copying tasks. The requester may decline to pay, in which case the agency can limit the work on behalf of that requester to no more than five hours per month, and spread the remaining work over future months. Charges are based on actual salary and benefit costs. The agency may not charge for attorney legal review time. Payment for the work must be made before the records are disclosed, and the agency may require an advance deposit of up to 10% of the total estimated charges.

- **Comments:** There are many problems with this proposal. A five hour-limit is completely arbitrary. If applied across multiple requesters, it may completely overwhelm the resources of a small agency, and yet be trivial to a large agency. It is easily circumvented by a requester who uses multiple email accounts, or a group of requesters working together on parts of a large request. Enforcement would lead to agencies requiring positive identification of requesters, sworn statements that requesters are not collaborating with other requesters, and other unacceptable measures. The bill would eliminate incentives for agencies to store records efficiently and employ practices and technologies to reduce costs, and create incentives to stretch out work and create artificially high estimates to attempt to discourage requesters – which would itself inspire more legal action against agencies for unreasonable estimates.
- **Recommended Action:** **STRONGLY OPPOSE.**
- **Status:** Introduced 1/13/11. Referred to State Government & Tribal Affairs. Public hearing scheduled 1/31/11 1:30PM. Executive session scheduled 2/17/11. No action taken. **Died in committee.**

**HB 1389** ([link](#)) [**Companion Bill SB 5294**] - **Regarding hours of availability of special purpose districts for inspection and copying of public records (Haler)** – Amends the Public Records Act, RCW 42.56.090, to

modify the requirement regarding the hours that agencies must make records available for public inspection, by adding “Special purpose districts that customarily do not maintain office hours for a minimum of thirty hours per week are not required to do so and must post on the agency headquarters location or web site directions on how to contact agency personnel to inspect or copy public records.”

- **Comments:** While it is reasonable to accommodate agencies that have no regular office hours or whose office hours are less than 30 hours per week, it is NOT acceptable to completely eliminate ALL drop-in inspection of records for agencies whose office hours are less than 30 hours per week. The requirement to post how to contact the agency to make records requests is good, but should not be the only remedy unless the agency has NO regular office hours.
- **Recommended Action:** **OPPOSE** in current form. Propose an amendment that agencies that have *some* regular office hours, but less than 30 hours, must make public records available during those regular office hours.
- **Status:** Introduced 1/20/11. Referred to State Government & Tribal Affairs. **Died in committee.**

**HB 1675** ([link](#)) - **Requiring agencies to disclose the estimated costs of compliance with public records requests (Reykdal)** – Amends the Public Records Act, RCW 42.56.070, to require agencies to provide every requester of public records a statement of the estimated costs incurred by the agency in complying with the request, including personnel, copying, mailing, and other direct costs, whether or not those charges are paid by the requester. Agencies are required to produce an annual report of the total costs of public records requests and make it available to the public.

- **Comments:** Producing these detailed mandatory cost estimates for each and every public records request will itself substantially drive up the costs of handling those requests. This is just another unfunded mandate upon agencies by the legislature. Nothing prevents agencies from producing and compiling this information now, if they see value in doing so. This proposal exhibits hostility toward public records disclosure by singling it out for such mandatory reporting, while other costs of government do not mandate separate cost reporting. It also invites hostility and retribution against records requesters by identifying the cost of their requests, while not separating out the costs of providing other services to individuals. Agencies should work harder to implement efficiencies in storing, retrieving, reviewing, and producing records, rather than continuing to whine about the costs of complying with the fundamental right of the people to know what their government is doing.
- **Recommended Action:** **STRONGLY OPPOSE.**
- **Status:** Introduced 1/28/11. Referred to State Government & Tribal Affairs. Public hearing scheduled 2/7/11 1:30PM. Voted out of committee 6-4 on 2/16/11. Referred to Ways & Means. **Died in committee.**

**SHB 1689** ([link](#)) [**Companion Bill SB 5721**] - **Allowing booking photographs and electronic images at jails to be open to the public (Hurst)** – Amends the city and county jails act, RCW 70.48.100, to provide that booking photographs or electronic images of booked into jail shall be open to the public.

- **Comments:** Most states make these photographs available to news media and others. The substitute bill allows the photographs to be released only after charges are filed.
- **Recommended Action:** **SUPPORT.**
- **Status:** Introduced 1/31/11. Referred to Public Safety & Emergency Preparedness. Public hearing scheduled 2/11/11 8AM. Substitute bill voted out of committee unanimously 2/16/11. Placed on 2nd Reading calendar 2/3/11. **Substitute bill Passed House 77-19 on 3/7/11.** Referred to Government Operations, Tribal Relations & Elections. Public hearing scheduled 3/21/11. Executive session scheduled 3/24/11. **Died in committee.**

**HB 1962** ([link](#)) - **Reducing burdens on institutions of higher education (Hunter)** – Exempts or relaxes several requirements as applied to colleges and universities, including threshold limits for personal services contracts, sole source contracts, and purchasing; fuel economy requirements for vehicles; and time limits on equipment maintenance contracts. Section 3 exempts personal services contracts entered into by higher education institutions from being included in the master list of such contracts maintained by OFM. Section 4 exempts higher education institutions from paying a share of the cost of operating the State Archives.

- **Comments:** Exempting higher education personal services contracts from inclusion in the OFM list will reduce transparency and make it harder for the public to hold these agencies accountable. Exempting higher education institutions from paying a share of the costs of operating the State Archives will significantly impact the budget of the Archives and hamper their ability to process, preserve, and store records and educate agencies on proper records management practices.
- **Recommended Action:** **OPPOSE** so long as Sections 3 and 4 remain in their current form.
- **Status:** Introduced 2/15/11. Referred to Higher Education. Public hearing held 2/16/11. **Died in committee.**

**HB 1989** ([link](#)) - **Protecting signatures of citizens from public disclosure by agencies to prevent criminal use of the signatures (Shea)** – Amends the Public Records Act, RCW 42.56.230, to create a new exemption from disclosure for “Signatures of individuals, excluding signatures of agency employees acting in their official capacity”.

- **Comments:** This proposal is likely being driven by the Referendum 71 case and by Tim Eyman’s desire to exempt from disclosure all initiative and referendum petitions. This exemption would greatly hinder the ability for the public to independently verify the work of any agency that verifies signatures, such as the Secretary of State processing of initiatives and referendums, county auditor processing of mail ballot envelopes, and many other agencies that process petitions (such as for annexations). It may make sense to limit the posting of documents online so that they can be accessed by anyone in the world (such as the posting of images of signed mortgage documents and property deeds), but this bill goes far beyond that.
- **Recommended Action:** **OPPOSE.**
- **Status:** Introduced 2/17/11. Referred to State Government & Tribal Affairs. **Died in committee.**

**SB 5007** ([link](#)) - **Public inspection and copying of voter registration information of criminal justice agency employees or workers (Honeyford)** – Amends the voter registration law (RCW 29A.08.710) to provide that addresses of employees of criminal justice agencies contained in the voter registration database are exempt from public disclosure for a two year period upon presenting proof of qualifying employment to the county auditor.

- **Comments:** This continues the attempts to establish criminal justice employees – not just certified law enforcement officers, but *every* employee of *every* court, jail, prison, police department, sheriff’s office, prosecuting attorney’s office, probation or parole office, etc. – as a special class of citizen entitled to special privacy of public records that name them. Previous attempts would have been astoundingly difficult and expensive to implement, because they would have broadly exempted criminal justice employee information in *all* public records. This bill is more focused, but could still be extremely burdensome and expensive to implement. Every county auditor and the secretary of state would be required to establish systems to allow automatic redaction of addresses of selected voters whenever a copy of the voter registration database (or portions of it) are provided, including an automatic expiration date for each individual redaction. They would need to create procedures for criminal justice employees to provide proof of their employment, and then process such requests from potentially tens of thousands of persons every year. And yet there has been no evidence that the voter registration database has ever been used to target criminal justice employees for any kind of attack; it certainly had nothing to do with the Lakewood shootings or any other known attack on police officers or others. Exemption of voter addresses would greatly hinder independent efforts to verify the correctness of voter registrations and to hold the county auditors and secretary of state accountable for their work in that regard.
- **Recommended Action:** **OPPOSE.**
- **Status:** Prefiled 12/13/10. Introduced 1/10/11. Referred to Government Operations, Tribal Relations & Elections. Public hearing scheduled 1/13/11 10AM. **Died in committee.**

**SB 5019** ([link](#)) - **Privacy of nonconviction records (Regala)** – Amends the Criminal Records Privacy Act (RCW 10.97) to say that it also applies to courts, and to require courts to withhold from public access, including online access, records of cases prior to the filing of charges, if a case is dismissed prior to adjudication, if the defendant is acquitted, if criminal charges are resolved by acceptance of bail forfeiture, or

if criminal convictions have been vacated, and to consolidate all records of a single case under a single case number. Also amends the Domestic Violence Prevention statute (RCW 26.50) to require that courts withhold from online access any information about protection orders if they would disclose the identity or location of the party protected by the order, or if the order was withdrawn or not issued after being requested; such information can be shared with other courts and criminal justice agencies.

- **Comments:** The concern intended to be addressed by this legislation is that some employers and landlords are using commercial online services to check aggregated public records, including court records, when doing background checks before hiring or renting to individuals, and are basing hiring or rental decisions on records of arrests, charges, protection orders, and other legal matters for which there is no conclusion that the person was guilty of any crime. Advocates for these individuals say that it is unfair for them to be denied employment or housing when there is not currently a conviction on the books, while employers and landlords say that people with arrests, charges, protection orders, and other matters on their record have more problems than others and that they should be free to include such considerations in their hiring or rental decisions. Whichever position is correct, there is a strong possibility that this legislation is unconstitutional under Article I Section 10 of the state constitution, which requires justice to be administered openly, since a large swath of records of court actions would become secret. It is also likely unconstitutional under separation of powers. If passed, it would become more difficult for the public to examine the performance of their law enforcement agencies, prosecuting attorneys, and courts if all records that didn't result in a conviction became inaccessible. The substitute bill moves most the language out of 10.97 into a new chapter in Title 10, and provides a model court order including consideration of the Ishikawa factors.
- **Recommended Action: OPPOSE.** If the bill does move forward, recommend that Section 2(1) be amended to align the definition of "criminal history record information" with that in RCW 43.43.705 by adding "'Criminal history record information' shall not include intelligence, analytical, or investigative reports and files.", and by adding to 43.43.705 the previous amendments in RCW 10.97.030.
- **Status:** Prefiled 12/23/10. Introduced 1/10/11. Referred to Human Services & Corrections. Public hearing scheduled 1/13/11 10AM. Substitute bill voted out of committee 4-3 on 2/18/11. Referred to Ways & Means. Public hearing schedule 2/24/11 1:30PM. **Died in committee.**

**SSB 5022** ([link](#)) [**Companion Bill HB 1033**] - **Clarifying the statute of limitations for any court action brought under RCW 42.56.550 (Kilmer; by request of Attorney General)** – Amends the language of the statute of limitations under the under the Public Records Act (RCW 42.56.550(6)) to say that it is one year from the date that an agency claims an exemption, provides the records responsive to a request, or indicates that there are no responsive records, whichever occurs last. Consequently, if an agency produces records on a partial or installment basis, the statute of limitations will not begin to run until the last record is provided on that basis or an exemption is claimed, whichever is later. Likewise, if the agency provides a single response either by claiming an exemption, producing records, or indicating no responsive records have been located, an action must be filed within one year of the date of that response.

- **Comments:** The proposed language is reasonable and consistent with existing interpretation of the PRA by the courts. Substitute bill adds a retroactivity clause, carves out on an additional one year statute of limitations from the effective date of the act for those persons who relied on the *Tobin* decision whose statute of limitations would have expired between the date of the decision of the *Tobin* case and the effective date of the act, adds an emergency clause, and adds that in the instance where an agency does not respond with one of the listed responses, then the action must be filed within one year of the public record request. The addition of the "default" language that basically allows an agency to stonewall or string a request along while the clock runs out is simply unacceptable. The agency should be required to give a definitive denial in order for the clock to start.
- **Recommended Action:** The bill should be carefully monitored to ensure that no adverse amendments are added. WCOG's original position on the bill was SUPPORT, but given the amendments that significantly change the statute of limitations, our position is now **OPPOSE**.
- **Status:** Prefiled 12/28/10. Introduced 1/10/11. Referred to Judiciary. Public hearing scheduled 1/19/11 1:30PM. Substitute bill voted out of committee 6-2 on 2/9/11. **Substitute bill Passed**

**Senate 47-0 on 3/4/11.** Referred to State Government & Tribal Affairs. Public hearing scheduled 3/14/11 1:30PM. **Died in committee.**

**SB 5049** ([link](#)) - **Implementing recommendations of the sunshine committee (Kline)** – With one exception (section 7), proposes amendments to several statutes to implement recommendations of the Sunshine Committee. **Section 1** implements modification C from the 2010 recommendations, expanding information available about court-appointed special advocates. **Section 2** implements modification D from 2010, explicitly exempting social security numbers and other personal identifying information as defined in the identity theft law. **Section 3** implements non-unanimous modifications 1 and 2 from 2008, which allows disclosure of applications for the highest management position in an agency and excludes applications for unpaid volunteer service from the exemption for employment applications. **Section 4** implements non-unanimous modification 3 from 2008, which reduces the information that participants in rideshare programs can receive from other participants for ride-matching purposes, limiting it to name, email address, and general location, and also allowing participants to specify individuals to whom their contact information should not be released. **Section 5** implements recommendation 7 from 2009, to allow the Insurance Commissioner to withhold insurance examination reports from public inspection for more than five days only if a specific time limit is specified and the delay is justified. **Section 6** implements modification A from 2010, limiting the information exempt from disclosure by the Washington State Pollution Liability Insurance Agency. **Section 7** would codify the state Supreme Court’s *Hangartner* decision, exempting from disclosure all communication between public agencies and their attorneys seeking or providing legal advice.

- **Comments:** The inclusion of Section 7 in this bill, with the title “Implementation recommendations of the Sunshine Committee”, is *very misleading and improper*. The text proposed was *not* a recommendation of the Sunshine Committee. It was included in a *minority report* attached to the Sunshine Committee’s 2008 report; that minority report reflected the opinion of only 3 of the 10 committee members voting! As written, Section 7 would codify the *Hangartner* decision in statute, excluding the public from knowing if their elected officials are asking for legal advice when they should, whether their public attorneys are providing accurate and timely advice, and whether elected officials are following the advice they receive. The *majority* report on this topic in the 2008 Sunshine Committee report, which was the actual *recommendation* of the Sunshine Committee, was that the attorney-client communication exemption should be restored to its interpretation prior to the *Hangartner* decision: that communication between public agencies and their attorneys is exempt from disclosure only within the context of an actual or threatened lawsuit, and that advice on routine matters is subject to disclosure.
- **Recommended Action:** Support sections 1 through 6, but express CONCERNS about Section 4 regarding the cost of implementing the provision allowing participants to specify a list of individuals who are excluded from receiving their contact information, which is not necessary if only email addresses are being released. **STRONGLY OPPOSE SECTION 7** and demand that it be removed from the bill, preferably replaced by language restoring the pre-*Hangartner* status of the attorney-client communication exemption. **Substitute bill deletes Section 7, and also amends Section 4 to eliminate the costly provision allowing individuals to specify who cannot receive their information. With the changes to the substitute, WCOG SUPPORTS the bill.**
- **Status:** Introduced 1/12/11. Referred to Government Operations, Tribal Relations & Elections. Public hearing scheduled 1/24/11 10AM. Executive session scheduled 2/1/11 at 1:30PM. Substitute bill voted out of committee unanimously 2/3/11. Placed on 2nd Reading calendar 3/4/11. **Failed to pass Senate.**

**SB 5054** ([link](#)) - **Regulating legal proceedings involving public hazards (Kline)** – Amends RCW 4.24 to provide that records of lawsuits related to “public hazards”, which it defines as “a condition of a product 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”, cannot be sealed if they would conceal the existence of a public hazard, and bans settlement provisions that require such confidentiality agreements.

- **Comments:** The state constitution requires justice to be administered openly. Sealing of court records should occur only in very limited circumstances. This bill would strengthen the requirements that must be met before lawsuit records can be sealed, if doing so would have the effect of concealing the existing of a public hazard from the people.

- **Recommended Action: SUPPORT.**
- **Status:** Introduced 1/12/11. Referred to Judiciary. **Died in committee.**

**SB 5062** ([link](#)) [**Companion Bill HB 1139**] - **Concerning providing agencies notice of a dispute under the public records act and an opportunity to cure error in the production of public records (Pridemore; by request of the Attorney General)** – Amends the Public Records Act to add a new section allowing a requester to provide notice to an agency of a claim that the requester believes the agency has made an error by improperly withholding or redacting records. The agency has 21 days to respond to the claim and produce the records or reject the claim in whole or in part. The statute of limitations is suspended during this 21-day period. No penalties are payable on records produced during the 21-day period. Notice of a “claim” is not mandatory, but if a PRA lawsuit is filed against the agency without providing it notice, the agency has 30 days after it is served with the lawsuit to produce records the lawsuit claims were improperly denied, and no penalty is payable for records produced during that 30-day period.

- **Comments:** The term “penalty” is not adequately defined in the bill. It references RCW 42.56.550(4), but it is not clear if it refers to only the per-day, per-document “amount” that is “awarded” to the requester (the word “penalty” is never used in 550(4)), or also to attorney fees and court costs. Enables agencies to significantly delay release of time-critical records. Creates incentives for agencies to delay producing records to see if the requester is serious enough to file a lawsuit. Forces requesters to pay unrecoverable attorney expenses to file a detailed pre-lawsuit “claim”. Complicates the process of determining agency culpability by allowing agencies to partially “cure” a failure to disclose documents after a lawsuit is already filed. Ignores the existing voluntary process for appeal to an agency for review of a denial under RCW 42.56.520 and to the attorney general under 42.56.530. A court can already award minimal penalties if it believes a requester delayed filing a lawsuit for no good reason. Defenders of open government already compromised by agreeing to reduce the statute of limitations on PRA claims from five years to one year in exchange for increasing the minimum penalty from \$5 to \$25 per day, but agencies reneged on the deal by removing the penalty increase from the 2005 legislation but keeping the shorter statute of limitations.
- **Recommended Action: STRONGLY OPPOSED.**
- **Status:** Introduced 1/12/11. Referred to Government Operations, Tribal Relations & Elections. Public hearing scheduled 1/24/11 10AM. **Died in committee.**

**SB 5088** ([link](#)) [**Companion Bill HB 1300**] - **Regarding the recovery of the costs of production and copying of public records (Haugen)** – Amends the Public Records Act, RCW 42.56.120, to allow agencies to charge requesters if the handling of their PRA requests requires more than five person-hours of work in a calendar month for search and copying tasks. The requester may decline to pay, in which case the agency can limit the work on behalf of that requester to no more than five hours per month, and spread the remaining work over future months. Charges are based on actual salary and benefit costs. The agency may not charge for attorney legal review time. Payment for the work must be made before the records are disclosed, and the agency may require an advance deposit of up to 10% of the total estimated charges.

- **Comments:** There are many problems with this proposal. A five hour-limit is completely arbitrary. If applied across multiple requesters, it may completely overwhelm the resources of a small agency, and yet be trivial to a large agency. It is easily circumvented by a requester who uses multiple email accounts, or a group of requesters working together on parts of a large request. Enforcement would lead to agencies requiring positive identification of requesters, sworn statements that requesters are not collaborating with other requesters, and other unacceptable measures. The bill would eliminate incentives for agencies to store records efficiently and employ practices and technologies to reduce costs, and create incentives to stretch out work and create artificially high estimates to attempt to discourage requesters – which would itself inspire more legal action against agencies for unreasonable estimates.
- **Recommended Action: STRONGLY OPPOSE.**
- **Status:** Introduced 1/13/11. Referred to Government Operations, Tribal Relations & Elections. Public hearing scheduled 1/24/11 10AM. **Died in committee.**

**SB 5089** ([link](#)) [**Companion Bill HB 1299**] - **Regarding conferences for public records requests disputes (Hatfield)** – Amends the Public Records Act, RCW 42.56.550, to create a “conference” provision before a PRA lawsuit may be filed. The requester and agency “may” confer, and a lawsuit “should” not be filed until at least 15 days after the conference. The statute of limitations and penalties are tolled during the 15-day period. If a lawsuit is filed, a “certification” must be included as to whether or not a conference was held, and if not, why not. If the conference is not held, or a lawsuit is filed before the 15 day period expires, the court has discretion to reduce or eliminate penalty and cost awards. The court must consider whether the records were needed in less than 15 days, whether the request would have been futile, and whether the request was in “the public interest”.

- **Comments:** This is virtually identical to SB 6368 (2009) which was also introduced by Sen. Hatfield, but adds the “public interest” provision. All of last year’s problem remain. The potential to lose penalties and costs will make the conferences mandatory. In the vast majority of PRA cases, there has already been significant back-and-forth communication between the requester and agency before the requester tries to find an attorney and file a lawsuit. The attorney will invest considerable work into investigating the situation. If the attorney is required to convene a conference prior to filing a lawsuit, the “conference” just becomes a chance for the agency to get a warning that a lawsuit is about to be filed and cough up the documents they should have produced previously – and by doing so, make the case “moot”, with the requester being out of pocket for their attorney fees and costs. Agencies will say that this conference provision will help them avoid the “gotcha” lawsuits in which a requester notices a violation, intentionally waits until just before the statute of limitations expires in order to run up penalties, and springs a lawsuit at the last minute. What the change will actually do is change the risk calculation for agencies; if they know they’re always going to get a warning before a lawsuit is filed, they will withhold more records and turn them over only if they’re “invited” to a conference and warned that a lawsuit is coming. We shouldn’t be amending the PRA to encourage agencies to delay.
- **Recommended Action:** **STRONGLY OPPOSE**
- **Status:** Introduced 1/13/11. Referred to Government Operations, Tribal Relations & Elections. Public hearing scheduled 1/24/11 10AM. **Died in committee.**

**SB 5099** ([link](#)) - **Concerning the inspection or copying of nonexempt public records by persons incarcerated (Carrell)** –Amends the Public Records Act, RCW 42.56.565, to change the ability to obtain an injunction to block persons “serving criminal sentences” from accessing records to persons “incarcerated”.

- **Comments:** That’s it – all it changes is the three words “serving criminal sentences” to “incarcerated”. There’s no explanation of the need for the change, such as an intent section, so we’ll have to wait for the bill to figure out why this change is needed. Perhaps there are people incarcerated in our prison system for reasons other than serving a criminal sentence?
- **Recommended Action:** Review bill analysis when available. If it turns out this is just a technical change, such as if the term “serving criminal sentences” is not well-defined in statute, then WCOG can be neutral on the bill. If it turns out that this change expands the scope of the ability of agencies to obtain injunctions, then WCOG would oppose the bill.
- **Status:** Introduced 1/13/11. Referred to Human Services & Corrections. Public hearing scheduled 1/20/11 10AM. **Died in committee.**

**SB 5237** ([link](#)) [**Companion Bill HB 1044**] - **Creating the office of open records (White; by request of the Attorney General and State Auditor)** – Amends the Public Records Act (RCW 42.56) to create an independent “Office of Open Records” within the Office of Administrative Hearings. This office would provide for an alternative mechanism for requesters seeking resolution of PRA disputes with agencies, intended to be faster and at lower cost than filing a lawsuit in superior court. Agencies must voluntarily agree to allow their PRA disputes to be handled by the OAH. For agencies that have opted-in to the OAG process, records requesters decide whether or not a particular case goes to OAH rather than to superior court; the agency cannot force the requester to take the complaint to OAH for review. Requesters must file for review with OAH within 30 days after an agency claim of exemption, delivery of records, or unreasonable time estimate for delivering records. The filing fee will be established by rule. The office must issue a final order within 30 days of receiving the complaint, unless a hearing is requested. The office can require parties to meet and confer to

try to reach settlement, and parties can agree to mediation. The office may not award attorney fees, costs, or penalties. All final orders must be posted on the office's web site. Final orders are binding and enforceable in superior court. Final orders can be reviewed in superior court (de novo) if a request for review is filed within 30 days. See the bill for additional provisions.

- **Comments:** WCOG is concerned about the inevitable imbalance of power that would exist in the OAH process: agencies would inevitably be represented by legal counsel, but because of the inability to recover attorney fees and court costs, requesters, particular individuals, would be much less likely to be represented or even to obtain legal advice before entering the administrative process. This could potentially be ameliorated by WCOG or other organizations expanding the legal advice available to requesters, and could be significantly helped by having a “public counsel” or “ombudsman” to assist requesters in the process. Even without that assistance, however, this mechanism will provide an opportunity for review of agency actions in cases where requesters might otherwise get no review at all because they cannot afford an attorney and none are available or willing to take their case on a pro bono or contingent fee basis. We also question whether many requesters would be able to successfully navigate the process because of its complexity, and whether the complexity of the process will make it difficult for the office to comply with the quick deadlines required. But because it is entirely at the requester’s discretion to file for review with OAH, and because the ability to go to superior court and receive attorney fees, costs, and penalties would not be impaired, WCOG does not oppose establishment of this mechanism to see if it will be used and how effective it turns out to be.
- **Recommended Action:** **SUPPORT with concerns.** If the bill moves forward, recommend a clarifying amendment in section 2(4)(g) as follows: “The administrative law judge may accept or order the submission of any records, or portions thereof, for in camera review. Records reviewed in camera for appeals before the office are ~~((exempt from))~~ not subject to disclosure under this chapter solely because the records have been reviewed by an administrative law judge.”
- **Status:** Introduced 1/19/11. Referred to Government Operations, Tribal Relations & Elections. Public hearing scheduled 2/7/11 10AM. **Died in committee.**

**SB 5294** ([link](#)) [**Companion Bill HB 1389**] - **Regarding hours of availability of special purpose districts for inspection and copying of public records (Swecker)** – Amends the Public Records Act, RCW 42.56.090, to modify the requirement regarding the hours that agencies must make records available for public inspection, by adding “Special purpose districts that customarily do not maintain office hours for a minimum of thirty hours per week are not required to do so and must post on the agency headquarters location or web site directions on how to contact agency personnel to inspect or copy public records.”

- **Comments:** While it is reasonable to accommodate agencies that have no regular office hours or whose office hours are less than 30 hours per week, it is NOT acceptable to completely eliminate ALL drop-in inspection of records for agencies whose office hours are less than 30 hours per week. The requirement to post how to contact the agency to make records requests is good, but should not be the only remedy unless the agency has NO regular office hours. Substitute bill also applies to cities and towns in addition to special purpose districts; defines notice by mail; requires responses within five days of the agency’s next regularly scheduled meeting.
- **Recommended Action:** **OPPOSE** in current form. Propose an amendment that agencies that have *some* regular office hours, but less than 30 hours, must make public records available during those regular office hours. **NEUTRAL** on substitute bill.
- **Status:** Introduced 1/20/11. Referred to Government Operations, Tribal Relations & Elections. Public hearing scheduled 2/7/11 10AM. Executive session scheduled 2/15/11 6:00PM. Substitute bill voted out of committee 5-1 on 2/16/11. **Failed to pass Senate.**

**SB 5355** ([link](#)) - **Regarding notice requirements for special meetings of public agencies (Morton)** – Amends the Open Public Meetings Act, RCW 42.30.080, to require that in addition to current notice requirements, notices of special meetings of the government board of an agency must be posted on the agency web site (if any), displayed at the agency’s principal office, displayed at the meeting site. Also, if there are fewer than 1000 registered voters in the district, the agency must accept requests from individuals to receive notice of special meetings by email, fax, or telephone message.

- **Comments:** WCOG supports expansion of notice of special meetings. The limit of 1000 registered voters was likely proposed to hold down the expense of accepting notice requests in larger jurisdictions, but large agencies have just as many problems with inadequate notice as small agencies. The substitute bill removes the requirement that individuals be allowed to subscribe to receive notice of special meetings; the remaining provisions are helpful, but not nearly as helpful as individual notice.
- **Recommended Action:** **SUPPORT**. Propose an amendment to extend the ability of individuals to subscribe to special meeting notices to *all* agencies.
- **Status:** Introduced 1/21/11. Referred to Government Operations, Tribal Relations & Elections. Public hearing scheduled 2/7/11 10AM. Executive session scheduled 2/15/11 6PM. Substitute bill voted out of committee unanimously on 2/17/11. Placed on 2nd Reading calendar 3/2/11. **Failed to pass Senate.**

**SB 5419** ([link](#)) - **Providing mandatory notice and waiting periods before legislative action (Becker)** –

Requires that budget, tax, and fee bills, and any substitutes or striking amendments, be publicly available at least 24 hours prior to a public hearing, executive action, or vote on the floor. Such bills may not be voted on for at least 24 hours after being placed on the floor calendar. May be suspended by two-thirds recorded vote.

- **Comments:** Would provide greater transparency and notice, and provide an opportunity for citizens to review bills and contact their legislators before a final vote.
- **Recommended Action:** **SUPPORT**.
- **Status:** Introduced 1/25/11. Referred to Government Operations, Tribal Relations & Elections. Public hearing scheduled 2/10/11 10AM. **Died in committee.**

**SB 5512** ([link](#)) - **Increasing public access to public records (Roach)** – Amends the Public Records Act to require all agencies to make all public records accessible at no cost through computer terminals located at the agency or another agency by agreement. Exempt information must be redacted from the posted records. Section 3 requires all agencies to inform requesters whose requests are denied that they may request review by the attorney general. Section 4 makes penalties under the PRA mandatory rather than discretionary on the part of judges.

- **Comments:** The language seems to apply retroactively to existing records, not just to records created after its enactment; the very high cost for scanning and redacting all existing records will be a challenge for its passage. The idea that every record should be proactively stored in disclosable form is one that WCOG has been promoting as a way to save costs on records production. It seems unnecessary to require every agency to undertake the expense of providing terminals for access, when simply posting non-exempt records on the web would make them accessible to everyone either through their own terminals or through free access available at nearly all public libraries. An alternative, especially for small agencies, would be to expand use of the Digital Archives and allow all agencies to submit records there for public access. Expanding the attorney general review to local agencies (in addition to state agencies) is positive. Eliminating judicial discretion on penalties will be strongly opposed by agencies.
- **Recommended Action:** **SUPPORT**. Work with the sponsor on refinements.
- **Status:** Introduced 1/27/11. Referred to Government Operations, Tribal Relations & Elections. **Died in committee.**

**SSB 5553** ([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 that agencies post agendas of their regular meetings on their web sites at least 72 hours before each meeting, and agendas of special and emergency meetings at least 24 hours before the meeting. If the agenda includes consideration of an ordinance, rule, or regulation, the text must be posted at the same time as the agenda. The minutes of all meetings must be posted on web sites within 15 days of the meeting, even if only in draft form, and remain online for at least a year. Agencies must include on their web sites a list of their governing board members, their positions, constituencies, and terms. The provisions do not apply to counties with populations less than 20,000, cities less than 8,000, or school or special purpose district with constituencies less than 1,000. It also does not apply to agencies that do not have web sites.

- **Comments:** There is no advance notice require for emergency meetings, so it may be difficult for agencies to comply with that provision. The exemption for small agencies is not necessary; a better solution would be for the state to provide a central web sites for such agencies to post this information at no cost to the agency, and mandate that all agencies without their own web sites also post their information to this site. The substitute bill requires minutes to be posted within 15 days of approval (not draft); the requirements do not apply to any county with population less than 30,000 or the school districts or special purpose districts within them; and exempts actions related to bond sales.
- **Recommended Action:** **SUPPORT**. Work with the sponsor on refinements.
- **Status:** Introduced 1/28/11. Referred to Government Operations, Tribal Relations & Elections. Public hearing scheduled 2/8/11 1:30PM. Executive session scheduled 2/17/11 10AM. Substitute bill voted out of committee unanimously on 2/17/11. Placed on 2nd Reading calendar 3/4/11. **Substitute bill Passed Senate 48-1 on 3/7/11**. Referred to State Government & Tribal Affairs. Public hearing on 3/24/11. **Died in committee**.

**SB 5591** ([link](#)) - **Concerning the dissemination of information pertaining to a deferred prosecution (Benton)** – Amends RCW 10.05 (Deferred prosecution – courts of limited jurisdiction) to provide that “If a petitioner has successfully completed a deferred prosecution program under this chapter, no criminal justice agency may disseminate any criminal history or court record information pertaining to the charges underlying the deferred prosecution petition or the fact of the deferred prosecution.”

- **Comments:** This chapter covers not only traffic offenses, but also misdemeanors and gross misdemeanors, which can be serious crimes. Automatically sealing all record of such charges and their disposition is onconsistent with the requirement of Article 1 Section 10 of the state constitution that justice be administered openly.
- **Recommended Action:** **OPPOSE**.
- **Status:** Introduced 1/31/11. Referred to Judiciary. **Died in committee**.

**SB 5677** ([link](#)) - **Regarding the immunity of unincorporated area councils and their volunteers from lawsuits under the public records act (Nelson)** –Amends the Public Records Act to declare that “Unincorporated area councils” are not agencies, and to declare that such councils and their “volunteer members” are immune from PRA lawsuits.

- **Comments:** In King County, six Unincorporated Area Councils (UACs) exist to improve communication between county government and the residents of unincorporated areas. Executive Order PRE-7-1 (AEO) (Dec. 1994), the Citizens Participation Initiative, includes the requirements for King County's recognition of a UAC, and King County Motion 9643 (Aug. 1995) provides policy direction. In 2010, a citizen (and member of WCOG) asserted that the Vashon UAC was subject to the OPMA and PRA. The state Attorney General's Office and the King County Prosecuting Attorney both affirmed in written opinions that UACs were subject to these laws. This resulted in all nine members of the board of directors of the Vashon UAC *resigning* rather than be required to conduct their meetings in public and disclose their records, including emails. The UACs are recognized by the county government, given specific governmental tasks and authority within various processes, and must be subject to the same laws as other agencies.; if they want to operate as independent non-profit groups, they would have to dispense will all official recognition and authority and become truly private organizations. They should not be granted an exception from open government laws, which would establish a dangerous precedent that could lead to other public agencies seeking such exceptions.
- **Recommended Action:** **STRONGLY OPPOSE**.
- **Status:** Introduced 2/4/11. Referred to Government Operations, Tribal Relations & Elections. Public hearing scheduled 2/17/11 10AM. Executive session scheduled 2/21/11 10AM. Voted out of committee unanimously 2/21/11. Referred to Ways & Means. Referred to Rules. Placed on 2nd Reading calendar 2/25/11. **Failed to pass Senate**.

**SB 5685** ([link](#)) - **Specifying penalties for public records violations (Swecker)** – Amends the Public Records Act, RCW 42.56.550, to eliminate both the \$5 minimum penalty (per record, per day) for PRA

violations *and* the maximum penalty of \$100 per day, leaving monetary penalties entirely up to court discretion. Section 1 of the bill also expresses legislative desire that the courts use the *Yousoufian* analysis when determining penalties.

- **Comments:** Eliminating the maximum penalty allows courts to adequately penalize short-time high-impact improper withholding of documents, such as when they would have informed an election or public hearing (such as was the case in *Yousoufian*). However, having no penalty range gives courts no guidance on what the penalty should be for egregious violations, allowing agencies to argue that, say, a \$50 penalty would be very severe; eliminating the maximum would also make the *Yousoufian* analysis more difficult, because there would be no “entire penalty range” for the court to consider. Eliminating the minimum penalty may result in more PRA violations (or at least risk-taking) by agencies that assume courts will favor their positions, particularly when handling requests from persons they assume will be unpopular (such as prison inmates or frequent requesters). The reference to the *Yousoufian* factors doesn’t add much to their applicability, since they are already binding precedent on all courts. The substitute bill leaves the maximum penalty at \$100 while eliminating the minimum penalty.
- **Recommended Action: STRONGLY OPPOSE.**
- **Status:** Introduced 2/7/11. Referred to Government Operations and Tribal Relations & Elections. Public hearing held on 2/7/11. Executive session scheduled 2/15/11 6:00PM. Substitute bill voted out of committee 4-0 on 2/15/11. Placed on 2nd Reading calendar 3/4/11. **Failed to pass Senate.**

**SB 5693** ([link](#)) - **Defining "copy" for purposes of the public records act (Swecker)** – Amends the Public Records Act, RCW 42.56.010, to add a definition of “copy”: “a reproduction of a record, either in paper or electronic format, that includes all content of a record that relates to the conduct of government or the performance of any governmental or proprietary function. An agency satisfies its obligations under this chapter when it produces a copy that meets this definition or where any differences between the original record and the copy have been automatically generated by a computer system in the ordinary course of business”.

- **Comments:** This appears to be an attempt to undo the court decisions in the *Mechling v. City of Monroe* and *O’Neill v. City of Shoreline* cases. It would permit agencies to produce alleged “copies” that do not include original metadata –paper copies of electronic records, PDF documents instead of Word documents or email PSTs, stripping off the metadata, hidden text, tracked changes, and similar data by declaring them as “not related to the conduct of government or the performance of any governmental or proprietary function”. This would make it difficult to track the authorship or revision history of electronic documents, and would make it more difficult to do electronic keyword searches or otherwise work with large volumes of documents. Instead, agencies should be required to produce electronic copies of electronic documents in their native format with all metadata and other embedded information intact, and not modify or strip off any content even if it is “automatically generated by a computer system in the ordinary course of business”.
- **Recommended Action: STRONGLY OPPOSE.**
- **Status:** Introduced 2/7/11. Referred to Government Operations, Tribal Relations & Elections. Scheduled for public hearing and executive session 2/21/11 10AM. Voted out of committee unanimously 2/21/11. Placed on 2nd Reading calendar 3/4/11. **Failed to pass Senate.**

**SB 5721** ([link](#)) [**Companion Bill HB 1689**] - **Allowing booking photographs and electronic images at jails to be open to the public (Swecker)** – Amends the city and county jails act, RCW 70.48.100, to provide that booking photographs or electronic images of booked into jail shall be open to the public.

- **Comments:** Most states make these photographs available to news media and others.
- **Recommended Action: SUPPORT.**
- **Status:** Introduced 2/9/11. Referred to Government Operations, Tribal Relations & Elections. **Died in committee.**

**SB 5775** ([link](#)) [**Companion Bill HB 1493**] - **Providing greater transparency to the health professions disciplinary process (Chase)** – Amends the health care professions uniform disciplinary act, RCW 18.130, adding a new section requiring that people making complaints against health care professionals can request

copies of non-exempt portions of the complaint file, supplement the information in the file. have an opportunity to be heard prior to final disposition of the complaint, be informed of the final disposition of the complaint, and have an opportunity to request reconsideration of the final disposition including supplemental information.

- **Comments:** Provides much more transparency into the handling of complaints against health care professionals for the person making the complaint.
- **Recommended Action:** SUPPORT.
- **Status:** Introduced 2/11/11. Referred to Health & Long-Term Care. **Died in committee.**

## NON-PRIORITY BILLS PASSED (5)

**SHB 1257 ([link](#)) [Companion Bill SB 5121] - Adopting the investments of insurers model act (Stanford; by request of the Insurance Commissioner)** – The declared purpose of this bill is “to protect and to further the interests of insureds, creditors, and the general public by providing, with minimum interference with management initiative and judgment, prudent standards for the development and administration of insurer investment programs.” It substantially limits the types of investments insurers can make, and the mix of those investments. Section 12 requires insurers to provide many types of financial disclosures to the Commissioner to permit enforcement of the regulations. Section 16 says “The investment policy, or information related to the investment policy provided to the commissioner for review under this chapter shall be considered confidential and shall not be a public record or subject to subpoena”, thereby creating a new exemption under the Public Records Act for all information provided under the new law. Section 20 creates a new subsection in the Public Records Act, RCW 42.56.400, to reference the new exemption created in Section 16.

- **Comments:** The new exemption would be consistent with similar exemptions for confidential, proprietary information provided by insurers to the Commissioner as part of regulatory oversight.
- **Recommended Action:** NEUTRAL.
- **Status:** Introduced 1/14/11. Referred to Business & Financial Services. Public hearing scheduled 1/21/11 1:30PM. Executive session scheduled 1/25/11 1:30PM. Substitute bill voted out of committee unanimously 1/25/11. **Substitute bill Passed House 98-0 on 3/5/11.** Referred to Financial Institutions, Housing & Insurance. Public hearing scheduled 3/15/11 10AM. Voted out of committee unanimously with amendments 3/17/11. Placed on 2nd Reading calendar 4/8/11. Engrossed bill **Passed Senate 47-0 on 4/11/11. House concurred in Senate amendments. Passed House 97-0 on 4/14/11.** Delivered to Governor. Partial veto, which did not affect the PRA provisions. **Signed by Governor 4/29/11.**

**E2SSB 5073 ([link](#)) [Companion Bill HB 1100] - Concerning the medical use of cannabis (Kohl-Welles)** – Amends the state medical marijuana law so that patients and providers will no longer be subject to arrest or prosecution for medical use of marijuana, provide access to a supply of medical marijuana, and enable health care providers to prescribe medical marijuana without fear of criminal or civil sanctions. Section 901 establishes an optional registration system for patients, Section 902 establishes a licensing system for producers and processors, and Section 903 establishes a licensing system for dispensers; records in the registration and licensing databases are exempt from disclosure under the PRA. In addition to the disclosure exemption, Section 905 establishes civil penalties, payable to the person named in the record, for any disclosure of the records in the databases.

- **Comments:** The strong confidentiality provisions will make citizen oversight of the department of agriculture regulation of producers and processors and the department of health regulation of dispensers impossible (which is a common problem with regulatory agencies). The bill makes no statement of intent or purpose for these extreme confidentiality protections and disclosure exemptions for producers, processors, or dispensers.
- **Recommended Action:** NEUTRAL on the overall bill. Express **CONCERNS** regarding the secrecy of licensing records and the resulting lack of citizen oversight over government regulatory agencies. Request, at a minimum, provisions for release of records in aggregate form with identifying information redacted. WCOG’s concerns were not addressed in the substitute bill. **The Engrossed bill includes WCOG’s recommendation of release of registry information with personal identifying information redacted, so WCOG’s position on the bill is changed to NEUTRAL.**
- **Status:** Introduced 1/12/11. Referred to Health & Long Term Care. Public hearing scheduled 1/20/11 1:30PM. Executive session scheduled 2/7/11 1:30PM. Substitute bill voted out of committee 7-2 on 2/9/11. Referred to Ways & Means. Public hearing scheduled 2/23/11 1:30PM. Second substitute bill voted out of committee 13-7 on 2/24/11. **Engrossed second substitute bill Passed Senate 29-20 on 3/2/11.** Referred to Health Care & Wellness. Public hearing scheduled 3/14/11 1:30PM. Voted out of committee 6-5 with amendments on 3/23/11. Referred to Ways & Means. Voted out of committee 14-13 on 3/31/11. Placed on 2nd Reading calendar 4/7/11. Engrossed bill **Passed House 54-43 on 4/11/11.** Senate concurred, and **Passed Senate 27-21 on 4/21/11. Governor signed 4/29/11.**

**ESSB 5124** ([link](#)) [**Companion Bill HB 1079**] - **Modifying elections by mail provisions (White; by request of the Secretary of State)** – Amends the state election code, Title 29A RCW, to eliminate all voting at polling places and require all voting to be by mail with the exception of accessible voting machines. Section 35 amends RCW 29A.40.130 to eliminate the requirement that county auditors make available lists of voters who have made requests for absentee ballots, and replace it with a requirement that auditors make available a list of all registered voters who have voted or not yet voted. Requests for the list must be handled as public records requests under the Public Records Act.

- **Comments:** Campaigns want to know which voters have already voted so that they can stop sending ads and making phone calls to voters who have already voted, so they can save cost and focus resources of voters who haven't yet voted. They want to be able to get access to this list on a daily basis. It's not clear why the bill would say that requests for this list must be handled as PRA requests, which is a much more cumbersome process than the way auditors normally handled requests for this list, and permits undesirable delays in releasing the list.
- **Recommended Action:** NEUTRAL on the overall bill.
- **Status:** Introduced 1/14/11. Referred to Government Operations, Tribal Relations & Elections. Public hearing scheduled 1/18/11 1:30PM. Executive session scheduled 1/31/11 10AM. Substitute bill voted out of committee 4-1 on 2/1/11. **Engrossed substitute bill Passed Senate 26-23 on 3/4/11.** Referred to State Government & Tribal Affairs. Public hearing scheduled 3/10/11 10AM. Voted out of committee 6-4 on 3/10/11. **Passed House 52-43 on 3/25/11. Delivered to Governor 4/1/11. Signed by Governor 4/5/11.**

**SSB 5691** ([link](#)) - **Streamlining the crime victims' compensation program (Hargrove)** – Makes a variety of amendments to the crime victims compensation program, RCW 7.68, with the intent of streamlining and providing flexibility, including separating it from the workers compensation program. Section 501(10) creates a new exemption in to the Public Records Act for “confidential financial and valuable trade information” of contractors providing service to crime victims, should such records come into possession of the state.

- **Comments:** The new exemption is consistent with other exemptions for similar confidential proprietary financial information of private entities; however, the bill does not reference the new exemption in the PRA itself.
- **Recommended Action:** NEUTRAL on the substance of the bill. **Propose an amendment to the bill to reference the new exemption directly in RCW 42.56.270.**
- **Status:** Introduced 2/7/11. Referred to Human Services & Corrections. Public hearing scheduled 2/15/11 1:30PM. Substitute bill voted out of committee unanimously 2/18/11. **Substitute bill Passed Senate 46-2 on 3/4/11.** Referred to Public Safety & Emergency Preparedness. Public hearing scheduled 3/15/11 10AM. Voted out of committee 9-2 with amendments on 3/22/11. Referred to Ways & Means. Voted out of committee unanimously 3/31/11. **Amended bill Passed House unanimously 4/7/11.** Returned to Senate for concurrence. Senate concurred, and **Passed Senate 47-0** on 4/21/11. Partial veto does not affect the PRA provisions. **Governor signed 5/12/11.**

**SB 5931** ([link](#)) - **Reorganizing and streamlining central service functions, powers, and duties of state government (Baumgartner)** – Reorganizes many of the state central service agencies. Creates the Department of Enterprise Services (DES), Consolidated Technology Services (CTS), and the Office of the Chief Information Officer (OCIO). Section 411(4) creates a new PRA exemption for “salary survey information collected from private employers which identifies a specific employer with salary rates which the employer pays to its employees”.

- **Comments:** Similar exemptions already exist for salary survey information collected by other agencies.
- **Recommended Action:** NEUTRAL.
- **Status:** Introduced 4/11/11. Referred to Ways & Means. Public hearing held 4/14/11. Substitute bill voted out of committee 13-9 on 5/17/11. Engrossed bill **Passed Senate 29-18** on 5/17/11. Referred to House Ways & Means. Public hearing held 5/20/11. Voted out of committee with amendments

14-12 on 5/23/11. 2nd Engrossed Bill **Passed House 54-42** on 5/25/11. Senate concurred in House amendments and **Passed Senate 31-13** on 5/25/11. Delivered to Governor. Partially vetoed (does not affect open government aspects). **Signed by Governor 6/15/11.**

## NON-PRIORITY BILLS FAILED (36)

**HB 1079** ([link](#)) [**Companion Bill SB 5124**] - **Modifying elections by mail provisions (Hunt; by request of the Secretary of State)** – Amends the state election code, Title 29A RCW, to eliminate all voting at polling places and require all voting to be by mail with the exception of accessible voting machines. Section 35 amends RCW 29A.40.130 to eliminate the requirement that county auditors make available lists of voters who have made requests for absentee ballots, and replace it with a requirement that auditors make available a list of all registered voters who have voted or not yet voted. Requests for the list must be handled as public records requests under the Public Records Act.

- **Comments:** Campaigns want to know which voters have already voted so that they can stop sending ads and making phone calls to voters who have already voted, so they can save cost and focus resources of voters who haven't yet voted. They want to be able to get access to this list on a daily basis. It's not clear why the bill would say that requests for this list must be handled as PRA requests, which is a much more cumbersome process than the way auditors normally handled requests for this list, and permits undesirable delays in releasing the list.
- **Recommended Action:** NEUTRAL on the overall bill.
- **Status:** Prefiled 1/7/11. Introduced 1/10/11. Referred to State Government & Tribal Affairs. Public hearing scheduled 1/12/11 8AM. Executive session scheduled 1/19/11 8AM. Substitute bill voted out of committee 6-4 on 1/31/11. Placed on second reading calendar 2/22/11. **Failed to pass House.**

**HB 1100** ([link](#)) [**Companion Bill SB 5073**] - **Concerning the medical use of cannabis (Moeller)** – Amends the state medical marijuana law so that patients and providers will no longer be subject to arrest or prosecution for medical use of marijuana, provide access to a supply of medical marijuana, and enable health care providers to prescribe medical marijuana without fear of criminal or civil sanctions. Section 901 establishes an optional registration system for patients, Section 902 establishes a licensing system for producers and processors, and Section 903 establishes a licensing system for dispensers; records in the registration and licensing databases are exempt from disclosure under the PRA. In addition to the disclosure exemption, Section 905 establishes civil penalties, payable to the person named in the record, for any disclosure of the records in the databases.

- **Comments:** The strong confidentiality provisions will make citizen oversight of the department of agriculture regulation of producers and processors and the department of health regulation of dispensers impossible (which is a common problem with regulatory agencies). The bill makes no statement of intent or purpose for these extreme confidentiality protections and disclosure exemptions for producers, processors, or dispensers.
- **Recommended Action:** NEUTRAL on the overall bill. Express **CONCERNS** regarding the secrecy of licensing records and the resulting lack of citizen oversight over government regulatory agencies. Request, at a minimum, provisions for release of records in aggregate form with identifying information redacted.
- **Status:** Introduced 1/12/11. Referred to Health Care & Wellness. **Died in committee.**

**HB 1216** ([link](#)) - **Concerning digital copy machines used by public agencies (Hudgins)** – Creates a new chapter in Title 40 RCW requiring that when digital copy machines used by state agencies are sold that any internal storage device be erased to protect confidential information. Section 3(2) of the bill says "Records stored on a digital copy machine that contain confidential or sensitive information and are considered a public record must be handled consistent with the provisions of chapter 42.56 RCW."

- **Comments:** It's not clear exactly what provision of RCW 42.56 the bill is referring to. It's highly unlikely that the only or official copy of a record would be the one retained in the memory of a copy machine, so the retention requirements of RCW 40.14 probably don't apply, and it's also unlikely anyone would specifically request to inspect or copy the image of a document retained in the memory of a digital copier (or if they even would know they exist). It certainly makes sense to require the memory of a surplus digital copier to be erased before the machine is transferred out of agency use, but it seems odd that an entire new chapter of law is needed to require that.

- **Recommended Action:** NEUTRAL. Work with the bill sponsors, the state archives, and others to determine the retention and disclosure provisions that might possibly apply to such document images.
- **Status:** Introduced 1/17/11. Referred to State Government & Tribal Affairs. Public hearing scheduled 1/31/11 1:30PM. **Died in committee.**

**EHB 1234** ([link](#)) [**Companion Bill SB 5244**] - **Addressing law enforcement crime prevention efforts regarding security alarm systems and crime watch programs for residential and commercial locations (Moscoso)** –Amends the Public Records Act, RCW 42.56.240, creating a new exemption for “Information collected by law enforcement agencies pursuant to local security alarm system ordinances or programs and vacation crime watch programs”, with the provision that “Nothing in this subsection shall be interpreted so as to prohibit the legal owner of a residence or business from accessing information regarding his or her residence or business.”

- **Comments:** It probably makes sense to exempt from disclosure information that the police may have regarding which homes and businesses have burglar alarms, and residences which have informed the police that they are on vacation, since this information could be useful to thieves. However, the language of the bill is far too broad to accomplish such purposes. There is no need for *all information* about such programs to be exempt from disclosure, even in aggregate form or with personal identifying information redacted. The engrossed bill exempts only personally identifying information.
- **Recommended Action:** **CONCERNS.** Recommend amending the bill to exempt only the necessary information rather than *all* information about these programs. WCOG recommendations were not included in the bill voted out of committee. Because WCOG recommendations were included in the engrossed bill, WCOG’s position is changed to **NEUTRAL.**
- **Status:** Introduced 1/17/11. Referred to State Government & Tribal Affairs. Public hearing scheduled 1/31/11 1:30PM. Executive session scheduled 2/9/11 8AM. Voted out of committee unanimously on 2/9/11. **Engrossed bill Passed House 97-0 on 2/25/11.** Referred to Government Operations, Tribal Relations & Elections. Public hearing scheduled 3/14/11 10AM. Voted out of committee unanimously 3/18/11. Placed on 2nd Reading calendar 4/11/11. **Failed to pass Senate.**

**HB 1293** ([link](#)) [**Companion Bill SB 5314**] - **Regarding public disclosure of information relating to provision of child care and early learning services (Miloscia; by request of Department of Early Learning)** –Amends the Public Records Act, RCW 42.56.230, to create a new exemption for “Personal information in any files maintained for a child who is receiving child care or early learning services”.

- **Comments:** This parallels the long-standing exemption for files maintained for students in public schools. One could probably make an argument that the records are already exempt under that provision, but it’s probably not worth the effort to try to shoehorn it in.
- **Recommended Action:** **NEUTRAL.**
- **Status:** Introduced 1/18/11. Referred to State Government & Tribal Affairs. Referred to Early Learning & Human Services. Public hearing scheduled 2/1/11 1:30PM. Voted out of committee unanimously 2/4/11. Placed on suspension calendar 2/11/11. **Passed House 94-0 on 2/14/11.** Referred to Senate Government Operations, Tribal Relations & Elections. **Died in committee (but is encompassed in SB 5098 as amended).**

**HB 1320** ([link](#)) [**Companion Bill SB 5238**] - **Establishing the Washington investment trust (Hasegawa)** – Establishes an “investment trust”—actually, the equivalent of a bank owned and operated by the state. All state funds would be deposited in the trust. It would directly make loans to businesses and farms, for public infrastructure, student loans, and many other purposes. It would lend capital to other banks, credit unions, and non-profits. It may accept deposits from other government institutions. It would be exempt from all taxes and fees paid by other banks, and exempt from all the regulations that apply to private banks that accept deposits of public funds. Section 17 of the bill amends RCW 42.56.270 to exempt from disclosure financial information and records supplied by businesses or individuals during application for loans or services of the trust. Section 18 of the bill amends RCW 42.56.400 to exempt from disclosure examination reports and information obtained by the department of financial institutions from the trust.

- **Comments:** It's really hard to believe that private-sector financial services companies will sit back while the state creates a government-run competitor, but we'll see. If this state-run bank is created, then the exemption it creates for information provided by loan applicants is reasonable. However, the new exemption in RCW 42.56.400 is *not* reasonable. All of the other institutions protected by RCW 42.56.400 are *private*, but the trust would be publicly owned, and examinations of a publicly-owned bank should be public.
- **Recommended Action:** NEUTRAL on the overall bill. **OPPOSED** to the new exemption in RCW 42.56.400.
- **Status:** Introduced 1/18/11. Referred to Business & Financial Services. Public hearing scheduled 1/25/11 1:30PM. **Died in committee.**

**HB 1370** ([link](#)) [**Companion Bill SB 5234**] - **Creating a statewide program for the collection, transportation, and disposal of unwanted medicines (Van De Wege)** –Creates a program for collection and disposal of leftover medicines. Every company that produces medicine sold in the state will be charged a share of the cost of operating the program; the mechanism to apportion the costs among producers is not defined in the bill. Section 19 of the bill creates a new exemption under the Public Records Act for “Producer information provided to the association or to the board of pharmacy... to determine apportionment of costs”.

- **Comments:** This is similar in nature to the state program for disposal of electronic waste such as televisions and computers, which is funded by fees paid by producers. Presumably the producer information would be confidential, proprietary information of the producers regarding the types and amounts of drugs shipped into Washington and exempting it would be similar to other exemptions for proprietary information provided to regulatory agencies.
- **Recommended Action:** NEUTRAL on the bill. However, there is no need for the new exemption to create an entirely new section in RCW 42.56; WCOG will recommend that the new exemption be created as a subsection of RCW 42.56.270 (Financial, commercial, and proprietary information) instead.
- **Status:** Introduced 1/19/11. Referred to Environment. Public hearing scheduled 2/3/11 8AM. Executive session scheduled 2/10/11 8AM. **Died in committee.**

**HB 1429** ([link](#)) - **Consolidating veterans' programs and benefits into one title (Anderson)** – Recodifies a large number of sections and parts of sections of law, currently scattered throughout the RCW, into a new chapter in Title 73 RCW (Veterans and veteran affairs). One of those sections is RCW 42.56.440, the PRA exemptions regarding veteran discharge papers. Section 14 of the bill makes minor technical amendments to 42.56.440, and section 26 moves it to the new chapter.

- **Comments:** WCOG has a long-standing position that exemptions to the Public Records Act should be declared within the PRA itself, or, at the very least, have a reference within the PRA. The bill as written moves the exemption out of the PRA entirely, not even leaving a reference behind.
- **Recommended Action:** NEUTRAL on the overall bill, but **OPPOSE** removing the exemption entirely from the PRA. Propose an amendment to either leave the exemption within the PRA or at least leave a reference to it.
- **Status:** Introduced 1/21/11. Referred to State Government & Tribal Affairs. Public hearing scheduled 2/14/11 1:30PM. **Died in committee.**

**HB 1430** ([link](#)) - **Creating the Puget Sound port authority (Anderson)** – Creates a consolidated port authority for King, Pierce, and Snohomish counties., governed by a combination of elected and appointed commissioners. Section 401 of the bill says “The Puget Sound port authority, its officers, and the board of commissioners, created under this act, are subject to the general laws regulating local governments and local governmental officials including, but not limited to, applicable requirements under chapters 42.17, 42.23, 42.30, 42.41, and 43.09 RCW.”

- **Comments:** The omission of RCW 42.56 from the list is glaring! Having the list at all is not required, but if it exists, 42.56 must be included.
- **Recommended Action:** NEUTRAL on the overall bill. Request that RCW 42.56 be included in Section 401.
- **Status:** Introduced 1/21/11. Referred to Local Government. **Died in committee.**

**HB 1606** ([link](#)) [**Companion Bill SB 5478**] - **Concerning minimum renewable fuel content requirements (Jacks; by request of the Department of Agriculture)** – Amends the motor fuel quality act, RCW 19.112, to require standards for biodiesel, require all diesel sold in Washington to be at least 2% biodiesel escalating to 5% when sufficient fuel supply is available, and other measures related to use of biodiesel. Section 7 requires biodiesel producers to provide records to the Department of Agriculture on the volume of biodiesel produced in Washington and the feedstocks from which it was produced. Subsection 7(5) creates a new exemption to the Public Records Act exempting disclosure of information identifiable to a specific producer. Section 8 amends the Public Records Act, RCW 42.56.270, to reference the biodiesel reports exemption in subsection 7(5).

- **Comments:** The exemption is consistent with other exemptions for confidential proprietary and financial information submitted by regulated businesses to regulatory agencies. It's nice to see the reference in the PRA created without having to ask for it.
- **Recommended Action:** NEUTRAL.
- **Status:** Introduced 1/26/11. Referred to Technology, Energy & Communications. Public hearing scheduled 2/4/11 8AM. Substitute bill voted out of committee 12-7 on 2/9/11. Placed on 2nd Reading Calendar 2/15/11. 3rd Reading 2/22/11. Held on 3rd Reading. **Failed to pass House.**

**HB 1642** ([link](#)) - **Enhancing the production of Pacific salmon (McCune)** – Creates a new chapter in Title 15 RCW (Agriculture and marketing) establishing, if requested by the industry, a new Puget Sound commercial salmon commission, empowered to collect from harvesters and processors of salmon an assessment of 5% or more of the value of the salmon harvested or processed; the assessments are to be used to pay for salmon enhancement projects. Section 20 adds records submitted to this commission to the existing public records exemption in RCW 42.56.380 for “production or sales records required to determine assessment levels and actual assessment payments to commodity boards and commissions”.

- **Comments:** This is consistent with other agricultural commodity commission exemptions for confidential financial and proprietary information submitted by producers.
- **Recommended Action:** NEUTRAL.
- **Status:** Introduced 1/27/11. Referred to Agriculture & Natural Resources. **Died in committee.**

**HB 1720** ([link](#)) [**Companion Bill SB 5503**] - **Reorganizing and streamlining central service functions, powers, and duties of state government (Hunt; by request of Governor Gregoire)** – Creates the Department of Enterprise Services. Abolishes the Department of General Administration and the public printer and transfers their functions to the new department, along with certain functions of the Department of Information Services, the Department of Personnel, and OFM. Section 412 of the bill creates a new section in the state civil service act, RCW 41.06, requiring creation of a new classification system for state employees. The director can use salary surveys of public and private employers to establish market compensation rates. Subsection 412(4) creates a new exemption from public records disclosure for salary survey information collected from private employers, but no corresponding reference to the new exemption is created in the Public Records Act.

- **Comments:** An exemption for the confidential proprietary and financial information submitted in the salary surveys is consistent with other exemptions and necessary to promote voluntary participation in the surveys. However, it should not be necessary for the survey data to be entirely exempt from disclosure, but only to insure that the data cannot be related back to any specific employer. Also, the new exemption should be cross-referenced in RCW 42.56. The substitute bill does NOT include WCOG's recommendations.
- **Recommended Action:** NEUTRAL on the overall bill. Request that a cross-reference to the new exemption be created in RCW 42.56.270. Also, request that the exemption language be clarified that the survey data is subject to disclosure but information that would identify specific private employers must be redacted.
- **Status:** Introduced 1/31/11. Referred to State Government & Tribal Affairs. Public hearing scheduled 2/7/11 1:30PM. Executive session scheduled 2/14/11 1:30PM. Substitute bill voted out of committee 7-2 on 2/14/11. Referred to Ways & Means. **Failed to pass out of committee, but may be considered Necessary to Implement the Budget.**

**HB 2028** ([link](#)) - **Transferring executive ethics responsibilities to the public disclosure and ethics commission (Hudgins)** – Eliminates the executive ethics board, and transfers all of its powers, duties, and functions to a renamed “Public Disclosure and Ethics Commission”.

- **Comments:** The PDC already performs similar functions in many respects for local governments. Interestingly, this would give the PDC authority to enforce the provisions of RCW 42.52.050, which includes making it an ethics violation for a state employee to knowingly withhold a non-exempt public record. The [fiscal note](#) shows a savings of approximately \$250K per biennium, with 3.7 FTEs eliminated from the Attorney General office and 3.0 FTEs added to the PDC. The PDC does not currently have staff to perform this function, and already has a tough time keeping up with enforcement of the campaign finance disclosure, personal finance disclosure, and lobbyist disclosure responsibilities it already has. Even if full funding is provided, transferring investigation and enforcement of executive ethics laws to the PDC will further dilute the focus of the PDC staff and burden the members of the Commission.
- **Recommended Action:** **CONCERNS.**
- **Status:** Introduced 3/22/11. Referred to State Government & Tribal Affairs. Public hearing and executive session scheduled on 3/31/11. Executive session scheduled 4/6/11. Voted out of committee 6-5 on 4/6/11. Referred to Ways & Means. **Died in Committee.**

**HB 2039** ([link](#)) - **Creating the Washington economic prosperity bank (Hudgins)** – Establishes a single state agency to manage all programs that make loans and grants to business and government agencies in Washington. Section 401 amends the Open Public Meetings Act, RCW 42.30.110, to enable the board of the agency to consider information provided with applications for loans and grants, if disclosure of the information would result in private loss. Section 402 amends the Public Records Act, RCW 42.56.270, to exempt from disclosure financial information and records supplied by businesses or individuals during application for loans or grants, if disclosure would result in private loss.

- **Comments:** This is apparently an increment step in the direction of creating the state-run bank proposed in HB 1320/SB 5238. The exemptions created for executive sessions to discuss information provided by loan applicants, and for confidential proprietary and financial information associated with loan and grant applications, are reasonable and consistent with other similar provisions for existing agencies that handle these loans and grants.
- **Recommended Action:** NEUTRAL.
- **Status:** Introduced 3/29/11. Referred to Business & Financial Services. **Dead for this session unless deemed “necessary to implement the budget”. Died in committee.**

**SB 5056** ([link](#)) - **Concerning bail and pretrial release practices (Kline)** – Amends various statutes related to bail and pretrial release practices. Amongst its many provisions, it enables courts to request information on mental health services received by defendants when considering whether they should be released prior to trial, and can exclude the public from such hearings and seal records related to mental health services.

**Section 18** of the bill says “The Legislature intends, in response to *Koenig v. Thurston County*, 155 Wn. App. 398 (2010), to clarify that public inspection of or access to information related to mental health is subject to chapter 71.05 RCW and not the public records act, chapter 42.56 RCW.” Section 19 amends the Public Records Act, RCW 42.56.360(2), to add a reference to RCW 71.05 and declare mental health records exempt from disclosure.

- **Comments:** *Koenig v. Thurston County* related in part to disclosure of evaluations of defendants being considered for a Special Sex Offender Sentencing Alternative (SSOSA). The courts have so far ruled that SSOSA evaluations can be disclosed under the PRA, although this has been appealed by Thurston County to the state Supreme Court. Section 18 presumably is intended to overrule the court of appeals, declare SSOSA evaluations to be mental health information, and exempt them from disclosure. The substitute bill does not change the portions to which WCOG is opposed.
- **Recommended Action:** **OPPOSE** the provisions related to making SSOSA evaluations exempt from disclosure. **NEUTRAL** on the remainder of the bill.

- **Status:** Introduced 1/12/11. Referred to Judiciary. Public hearing *already held* on 1/12/11 at 1:30PM. Substitute bill voted out of committee unanimously 2/11/11. Referred to Ways & Means. Public hearing scheduled 2/24/11 1:30PM. **Died in committee.**

**SB 5120 ([link](#)) [Companion Bill HB 1220] - Regulating insurance rates (Keiser; by request of the Insurance Commissioner)** – Amends provisions of law related to insurance rate filings. Eliminates general language applicable to all insurance commission records requiring that “Actuarial formulas, statistics, and assumptions submitted in support of a rate or form filing by an insurer, health care service contractor, or health maintenance organization or submitted to the commissioner upon his or her request shall be withheld from public inspection in order to preserve trade secrets or prevent unfair competition.” Clarifies that all information submitted about insurance scoring models is trade secret and exemption from disclosure.

- **Comments:** Does not appear to substantially change what information is available to the public, but needs careful review.
- **Recommended Action:** Review bill analysis when available.
- **Status:** Introduced 1/14/11. Referred to Financial Institutions, Housing & Insurance. Referred to Health & Long-Term Care. Public hearing scheduled 2/7/11 1:30PM. **Died in committee.**

**SB 5121 ([link](#)) [Companion Bill HB 1257] - Adopting the investments of insurers model act (Hobbs; by request of the Insurance Commissioner)** – The declared purpose of this bill is “to protect and to further the interests of insureds, creditors, and the general public by providing, with minimum interference with management initiative and judgment, prudent standards for the development and administration of insurer investment programs.” It substantially limits the types of investments insurers can make, and the mix of those investments. Section 12 requires insurers to provide many types of financial disclosures to the Commissioner to permit enforcement of the regulations. Section 16 says “The investment policy, or information related to the investment policy provided to the commissioner for review under this chapter shall be considered confidential and shall not be a public record or subject to subpoena”, thereby creating a new exemption under the Public Records Act for all information provided under the new law. Section 20 creates a new subsection in the Public Records Act, RCW 42.56.400, to reference the new exemption created in Section 16.

- **Comments:** The new exemption would be consistent with similar exemptions for confidential, proprietary information provided by insurers to the Commissioner as part of regulatory oversight.
- **Recommended Action:** NEUTRAL.
- **Status:** Introduced 1/14/11. Referred to Financial Institutions, Housing & Insurance. Public hearing scheduled 1/19/11 1:30PM. Voted out of committee unanimously 1/25/11 with amendments. **Failed to pass Senate.**

**SB 5146 ([link](#)) - Concerning the disclosure of certain information regarding patented or trademarked fruit (Honeyford)** –Amends the Public Records Act, RCW 42.56.380, to create an exception to existing exemptions for information provided by packers and shippers of fruits and vegetables. Under the exception, “information about the production, interstate trade, and export of patented or trademarked fruit must be provided upon request to the holder of the patent or trademark to verify export volumes, but not for other commercial purposes”.

- **Comments:** It is not clear why these patent or trademark holders must obtain this information from the state rather than directly from their licensees. Perhaps the purpose of the exception is to try to enforce patents and trademark restrictions on non-licensees. The bill doesn’t explain, and neither does the bill report.
- **Recommended Action:** NEUTRAL.
- **Status:** Introduced 1/17/11. Referred to Agriculture & Rural Economic Development. Public hearing scheduled 1/24/11 10AM. **Died in committee.**

**SB 5191 ([link](#)) - Providing flexibility in the education system (Hobbs)** – Proposes a wide variety of measures intended to enable public schools to reduce costs, such as suspending a variety of legislatively-mandated course elements. Many have to do with enabling information to be provided online rather than in mandatory paper handouts to parents, unless a parent specifically requests information in paper form. One of these is RCW 28A.320.160, which requires school districts to inform parents of victims of alleged sexual

misconduct by a school employee of their right to use the Public Records Act to obtain information disciplinary records of school employees, and also requires this information to be provided to all parents annual. Section 13 of the bill allows online posting of this information to substitute for the annual notice.

- **Comments:** The fact is, most parents probably just discard that big pile of papers they get on the first day of school anyway. The most important notification is the one received when the alleged misconduct occurs, and that direct notification is preserved.
- **Recommended Action:** NEUTRAL.
- **Status:** Introduced 1/18/11. Referred to Early Learning & K-12 Education. Public hearing scheduled 1/31/11 1:30PM. Voted out of committee unanimously 2/1/11. Placed on 2nd Reading calendar 3/2/11. **Failed to pass Senate.**

**SB 5234** ([link](#)) [**Companion Bill HB 1370**] - **Creating a statewide program for the collection, transportation, and disposal of unwanted medicines (Kline)** –Creates a program for collection and disposal of leftover medicines. Every company that produces medicine sold in the state will be charged a share of the cost of operating the program; the mechanism to apportion the costs among producers is not defined in the bill. Section 19 of the bill creates a new exemption under the Public Records Act for “Producer information provided to the association or to the board of pharmacy... to determine apportionment of costs”.

- **Comments:** This is similar in nature to the state program for disposal of electronic waste such as televisions and computers, which is funded by fees paid by producers. Presumably the producer information would be confidential, proprietary information of the producers regarding the types and amounts of drugs shipped into Washington and exempting it would be similar to other exemptions for proprietary information provided to regulatory agencies.
- **Recommended Action:** NEUTRAL on the bill. However, there is no need for the new exemption to create an entirely new section in RCW 42.56; WCOG will recommend that the new exemption be created as a subsection of RCW 42.56.270 (Financial, commercial, and proprietary information) instead. WCOG’s recommendations were included in the substitute bill.
- **Status:** Introduced 1/18/11. Referred to Health & Long-Term Care. Public hearing scheduled 1/27/11 1:30PM. executive session scheduled 2/7/11 1:30PM. Voted out of committee 6-4 on 2/7/11. Placed on 2nd Reading calendar 2/28/11. **Failed to pass Senate.**

**SB 5238** ([link](#)) [**Companion Bill HB 1320**] - **Establishing the Washington investment trust (Prentice)** – Establishes an “investment trust”—actually, the equivalent of a bank owned and operated by the state. All state funds would be deposited in the trust. It would directly make loans to businesses and farms, for public infrastructure, student loans, and many other purposes. It would lend capital to other banks, credit unions, and non-profits. It may accept deposits from other government institutions. It would be exempt from all taxes and fees paid by other banks, and exempt from all the regulations that apply to private banks that accept deposits of public funds. Section 17 of the bill amends RCW 42.56.270 to exempt from disclosure financial information and records supplied by businesses or individuals during application for loans or services of the trust. Section 18 of the bill amends RCW 42.56.400 to exempt from disclosure examination reports and information obtained by the department of financial institutions from the trust.

- **Comments:** It’s really hard to believe that private-sector financial services companies will sit back while the state creates a government-run competitor, but we’ll see. If this state-run bank is created, then the exemption it creates for information provided by loan applicants is reasonable. However, the new exemption in RCW 42.56.400 is *not* reasonable. All of the other institutions protected by RCW 42.56.400 are *private*, but the trust would be publicly owned, and examinations of a publicly-owned bank should be public.
- **Recommended Action:** NEUTRAL on the overall bill. **OPPOSED** to the new exemption in RCW 42.56.400.
- **Status:** Introduced 1/19/11. Referred to Financial Institutions, Housing & Insurance. Public hearing scheduled 1/25/11 10AM. **Died in committee.**

**SSB 5244** ([link](#)) [**Companion Bill HB 1234**] - **Addressing law enforcement crime prevention efforts regarding security alarm systems and crime watch programs for residential and commercial locations (Fraser)** –Amends the Public Records Act, RCW 42.56.240, creating a new exemption for “Information

collected by law enforcement agencies pursuant to local security alarm system ordinances or programs and vacation crime watch programs”, with the provision that “Nothing in this subsection shall be interpreted so as to prohibit the legal owner of a residence or business from accessing information regarding his or her residence or business.”

- **Comments:** It probably makes sense to exempt from disclosure information that the police may have regarding which homes and businesses have burglar alarms, and residences which have informed the police that they are on vacation, since this information could be useful to thieves. However, the language of the bill is far too broad to accomplish such purposes. There is no need for *all information* about such programs to be exempt from disclosure, even in aggregate form or with personal identifying information redacted. The substitute bill exempts only personal identifying information contained in the records.
- **Recommended Action:** **CONCERNS.** Recommend amending the bill to exempt only the necessary information rather than *all* information about these programs. **NEUTRAL** on substitute bill.
- **Status:** Introduced 1/19/11. Referred to Government Operations, Tribal Relations & Elections. Public hearing scheduled 2/7/11 10AM. Executive session scheduled 2/15/11 6PM. Substitute bill voted out of committee unanimously 2/17/11. Placed on 2nd Reading calendar 2/22/11. **Substitute bill Passed Senate 46-0 on 2/28/11.** Referred to State Government & Tribal Affairs. Public hearing scheduled 3/14/11 1:30PM. **Died in committee (but companion is still alive).**

**SB 5310** ([link](#)) - **Concerning false claims against the government (Kline)** – Adds the “Washington false claims act” as a new chapter in Title 4 RCW. establishing penalties for presenting fraudulent claims for payment to government agencies and several other types of fraudulent transactions involving agencies. Complaints under the chapter must be submitted to court under seal and reviewed in camera. Section 4 of the bill creates a new exemption to the Public Records Act, saying “Any information furnished pursuant to this chapter is exempt from disclosure under the public records act, chapter 42.56 RCW, until final disposition and all court ordered seals are lifted.” Section 13(31) of the bill creates a new exemption to the PRA, saying “Any documentary material, answers to written interrogatories, or oral testimony provided under any civil investigative demand issued under subsection (1) or (2) of this section are exempt from disclosure under the public records act, chapter 42.56 RCW.” The bill does not create any exemption language or reference within the PRA itself.

- **Comments:** WCOG has a long-standing position that exemptions to the Public Records Act should be declared within the PRA itself, or, at the very least, have a reference within the PRA. The bill creates two new exemptions, both of which are potentially very broad, with no direct reference from the PRA. The new exempt material may already be exempt under the existing investigative records exemption, but in any case should be referenced from the PRA. The substitute bill does NOT include the amendment proposed by WCOG.
- **Recommended Action:** NEUTRAL on the overall bill. Propose an amendment to reference the new exemptions from within the PRA.
- **Status:** Introduced 1/20/11. Referred to Judiciary. Public hearing scheduled 2/4/11 1:30PM. Voted out of committee 7-2 on 2/16/11. Referred to Ways & Means. Scheduled for public hearing 2/24/11 1:30PM. **Died in committee.**

**SB 5314** ([link](#)) [**Companion Bill HB 1293**] - **Regarding public disclosure of information relating to provision of child care and early learning services (Nelson; by request of Department of Early Learning)** –Amends the Public Records Act, RCW 42.56.230, to create a new exemption for “Personal information in any files maintained for a child who is receiving child care or early learning services”.

- **Comments:** This parallels the long-standing exemption for files maintained for students in public schools. One could probably make an argument that the records are already exempt under that provision, but it’s probably not worth the effort to try to shoehorn it in. The substitute bill greatly expands the exemption to cover “Personal information in any files maintained for a participant in an agency or community-based program including, but not limited to, early learning or child care services, parks and recreation programs, youth development programs, and after school programs”. It is flawed in some respects because it exempts only information “in any files maintained for” the participants, but not information about them that is outside of specific files for each participant.

- **Recommended Action: NEUTRAL.**
- **Status:** Introduced 1/20/11. Referred to Government Operations, Tribal Relations & Elections. Public hearing scheduled 2/7/11 10AM. Executive session scheduled 2/14/11 10AM. Substitute bill voted out of committee 4-1 on 2/14/11. **Failed to pass Senate.**

**SB 5322** ([link](#)) - **Creating a commission to restructure state government (Kastama)** – Establishes the “Agency Reallocation and Realignment of Washington (ARROW) commission”. Appoints Booth Gardner, John Spellman, Sid Snyder, Slade Gorton, Dan Evans, and Ruth Walsh McIntyre to the commission. Over a six-year period, the commission will examine state government operations and organization, evaluate restructuring possibilities, and make proposals for reducing expenditures, eliminating duplication and overlapping services and functions, consolidating services and functions, abolishing unnecessary services and functions, eliminating unnecessary agencies, creating new agencies, and reorganizing agencies, etc. Section 2 of the bill adds a new subsection to the Open Public Meetings Act, RCW 42.30.110, to allow *all* meetings of the commission to be in secret (executive session) except for final action on any matter, saying “To consider, in the case of the agency reallocation and realignment of Washington commission, any matters within the purview of the commission on any matter.” Section 3 of the bills adds a new section to the Public Records Act, RCW 42.56, exempting *all* records of the commission from disclosure, saying “Documents, materials, and information obtained or produced by the agency reallocation and realignment of Washington commission are not subject to disclosure under this chapter.”

- **Comments:** The proposal seems to duplicate in many ways the performance audit functions of the State Auditor and the Joint Legislative Audit Review Committee. Allowing the commission to conduct all of its business in secret will not engender confidence amongst the citizens of the state. Such significant matters ought to be discussed in the full light of day, and records ought to be available.
- **Recommended Action:** NEUTRAL on the overall bill. **STRONGLY OPPOSED** to the blanket exemptions from the OPMA and PRA.
- **Status:** Introduced 1/20/10. Referred to Government Operations, Tribal Relations & Elections. Referred to Economic Development, Trade & Innovation on 2/15/11. Voted out of committee 6-3 on 2/17/11. Referred to Ways & Means. Scheduled for public hearing 2/22/11 1:30PM. **Died in committee.**

**SB 5329** ([link](#)) - **Creating a division of special investigations within the office of the state auditor (Carrell)** – Establishes a special investigations division in the State Auditor’s office to conduct and supervise independent and objective investigations relating to allegations of fraud or abuse in any program or service administered by the department, provide leadership and coordination in recommending policies and procedures designed to detect and prevent fraud and abuse; and make recommendations to the auditor and the legislature about vulnerabilities and deficiencies relating to the detection and prevention of fraud or abuse. The DSHS division of fraud investigation is transferred to the new unit. Section 5 requires the division to provide a biennial report to the legislature on its activities, and requires that it contain only “disclosable information”; that term is defined in Section 1, as “public information that (a) is not exempt from disclosure under chapter 42.17 RCW; (b) does not pertain to an ongoing investigation; and (c) has not previously been disclosed in a public record.”

- **Comments:** It probably makes sense for a report to the legislature to not contain any exempt information or that would *jeopardize* and ongoing investigation, but exclusion of any information *pertaining* to an ongoing investigation is probably too broad, and excluding any information that has not already been disclosed is too limiting.
- **Recommended Action:** NEUTRAL on the overall bill. Propose an amendment to the definition of “disclosable information” to make it more narrow and permit the report to the legislature to be more timely and complete.
- **Status:** Introduced 1/20/11. Referred to Human Services & Corrections. Public hearing scheduled 2/33/11 10AM. **Died in committee.**

**SB 5458** ([link](#)) - **Concerning medicaid fraud (Keiser)** – Creates a new chapter in Title 74 RCW known as the “Medicaid false claims act”, establishing procedures for prosecuting false Medicaid claims. Complaints under the chapter must be submitted to court under seal and reviewed in camera. Section 8 of the bill creates a new

exemption to the Public Records Act, saying “Any information furnished pursuant to this chapter is exempt from disclosure under the public records act, chapter 42.56 RCW, until final disposition and all court ordered seals are lifted.” Section 17(31) of the bill creates a new exemption to the PRA, saying “Any documentary material, answers to written interrogatories, or oral testimony provided under any civil investigative demand issued under subsection (1) or (2) of this section are exempt from disclosure under the public records act, chapter 42.56 RCW.” The bill does not create any exemption language or reference within the PRA itself.

- **Comments:** WCOG has a long-standing position that exemptions to the Public Records Act should be declared within the PRA itself, or, at the very least, have a reference within the PRA. The bill creates two new exemptions, both of which are potentially very broad, with no direct reference from the PRA. The new exempt material may already be exempt under the existing investigative records exemption, but in any case should be referenced from the PRA.
- **Recommended Action:** NEUTRAL on the overall bill. Propose an amendment to reference the new exemptions from within the PRA. WCOG’s recommendations were not included in the substitute bill.
- **Status:** Introduced 1/26/11. Referred to Health & Long-Term Care. Public hearing scheduled 2/3/11 1:30PM. Substitute bill voted out of committee 8-1 on 2/11/11. Referred to Ways & Means. Public hearing scheduled 2/24/11 1:30PM. Second substitute bill voted out of committee 19-2 on 2/25/11. Placed on 2nd Reading calendar 3/2/11. **Failed to pass Senate.** In special session, brought to floor on 5/3/11, and 2nd Substitute bill substituted, but was held on second reading.

**SB 5478** ([link](#)) [**Companion Bill HB 1606**] - **Concerning minimum renewable fuel content requirements (Holmquist-Newbry; by request of the Department of Agriculture)** – Amends the motor fuel quality act, RCW 19.112,, to require standards for biodiesel, require all diesel sold in Washington to be at least 2% biodiesel escalating to 5% when sufficient fuel supply is available, and other measures related to use of biodiesel. Section 7 requires biodiesel producers to provide records to the Department of Agriculture on the volume of biodiesel produced in Washington and the feedstocks from which it was produced. Subsection 7(5) creates a new exemption to the Public Records Act exempting disclosure of information identifiable to a specific producer. Section 8 amends the Public Records Act, RCW 42.56.270, to reference the biodiesel reports exemption in subsection 7(5).

- **Comments:** The exemption is consistent with other exemptions for confidential proprietary and financial information submitted by regulated businesses to regulatory agencies. It’s nice to see the reference in the PRA created without having to ask for it. Substitute bill did not change public records provisions.
- **Recommended Action:** NEUTRAL.
- **Status:** Introduced 1/26/11. Referred to Environment, Water & Energy. Public hearing scheduled 2/4/11 8AM. Substitute bill voted out of committee 6-3 on 2/18/11. Placed on 2nd Reading calendar 3/2/11. **Failed to pass Senate.**

**SB 5503** ([link](#)) [**Companion Bill HB 1720**] - **Reorganizing and streamlining central service functions, powers, and duties of state government (Pridemore; by request of Governor Gregoire)** – Creates the Department of Enterprise Services. Abolishes the Department of General Administration and the public printer and transfers their functions to the new department, along with certain functions of the Department of Information Services, the Department of Personnel, and OFM. Section 412 of the bill creates a new section in the state civil service act, RCW 41.06, requiring creation of a new classification system for state employees. The director can use salary surveys of public and private employers to establish market compensation rates. Subsection 412(4) creates a new exemption from public records disclosure for salary survey information collected from private employers, but no corresponding reference to the new exemption is created in the Public Records Act.

- **Comments:** An exemption for the confidential proprietary and financial information submitted in the salary surveys is consistent with other exemptions and necessary to promote voluntary participation in the surveys. However, it should not be necessary for the survey data to be entirely exempt from disclosure, but only to insure that the data cannot be related back to any specific employer. Also, the new exemption should be cross-referenced in RCW 42.56.
- **Recommended Action:** NEUTRAL on the overall bill. Request that a cross-reference to the new exemption be created in RCW 42.56.270. Also, request that the exemption language be clarified that

the survey data is subject to disclosure but information that would identify specific private employers must be redacted.

- **Status:** Introduced 1/27/11. Referred to Government Operations, Tribal Relations & Elections. **Died in committee.**

**SB 5521** ([link](#)) - **Regarding commercialization of state university technology (Tom)** – Expands the ability of state universities to create, administer, or assist funding programs for companies that will commercialize technology developed at state universities. Includes the ability to assist in funding companies that do not use such technology transfers, so long as the majority of funds invested or loaned is to companies that do so. Directors and managers of these funding entities may be state employees. Section 2 of the bill adds a new exemption to the Public Records Act, RCW 42.56.270, for “Financial and commercial information, business plans, technical, technological or research information and data, and private investor identifying information, submitted to or obtained by a state university in connection with any funding programs established under RCW 28B.10.630 and 28B.10.631.”

- **Comments:** The proposed exemption is consistent with other similar exemptions, so long as it is limited to the confidential proprietary and financial information and not general information about program participants. Programs such as this, in which government employees are intimately involved in directing potential large amounts of funding to private entities, are subject to abuse and favoritism, and it is important that as much information as possible be available to the public to avoid or expose corruption.
- **Recommended Action:** NEUTRAL.
- **Status:** Introduced 1/28/11. Referred to Higher Education & Workforce Development. Public hearing scheduled 2/9/11 1:30PM. Voted out of committee unanimously on 2/17/11. **Passed Senate 48-0 on 3/1/11.** Referred to State Government & Tribal Affairs. Public hearing scheduled 3/16/11 8AM. **Died in committee.**

**SSB 5558** ([link](#)) - **Regulating dissemination of juvenile records by consumer reporting agencies (Hargrove)** – Prohibits consumer reporting agencies from disseminating information mined from juvenile records to any third parties, unless identifying information about the juvenile is removed.

- **Comments:** This bill is similar to HB 1793, but without the automatic sealing of records. The substitute bill prohibits JIS from accepting money from consumer reporting agencies to access juvenile records.
- **Recommended Action:** NEUTRAL.
- **Status:** Introduced 1/31/11. Referred to Human Services & Corrections. Public hearing scheduled 2/10/10 10AM. Substitute bill voted out of committee unanimously on 2/17/11. Referred to Ways & Means. Referred to Rules. Placed on 2nd Reading calendar 3/4/11. **Failed to pass Senate.**

**SB 5733** ([link](#)) - **Concerning economic development through the establishment of an international contact database (Kastama)** – Authorizes the department of commerce to develop and maintain a database, to be known as the “international contact database”, to be used as a resource for citizens, businesses, and other entities seeking contacts in international trade markets overseas. Section 2 amends the Public Records Act, RCW 42.56.230, to create a new exemption for “Personal information in files maintained in a database”.

- **Comments:** It makes no sense to create a contact database, and then exempt from disclosure the information in the database; the very purpose of the database is to provide “personal” contact information such as names, address, email address, and telephone numbers. There is *no* reason for this database to contain *any* information that would be highly offensive to a reasonable person and not of legitimate concern to the public, which is required for a privacy exemption under the PRA. Unless the proponents of the bill can explain the nature of the private information that would be included in the database and why it needs to be collected and stored in the first place, the exemption should be removed from the bill.
- **Recommended Action:** NEUTRAL on creation of the database. **OPPOSE** the proposed PRA exemption.

- **Status:** Introduced 2/9/11. Referred to Economic Development, Trade & Innovation. Public hearing scheduled 2/14/11 1:30PM. Executive session scheduled 2/16/11, but no action taken. **Died in committee.**

**SB 5768** ([link](#)) - **Creating the department of heritage, arts, and culture (Haugen)** – The Department of Archaeology and Historic Preservation is renamed the Department of Heritage, Arts, and Culture. The functions of the Washington Tourism Commission, Arts Commission, and the Film Office are transferred from the Department of Commerce to the new department. The State Archives, State Library, Washington Legacy Project, Oral History program, and several other functions are transferred from the Secretary of State to the department.

- **Comments:** This strips many responsibilities (perhaps half of his current duties) from the Secretary of State, and puts them under the authority of the governor. The only duty of the Secretary of State specifically enumerated in the state constitution is to “keep a record of the official acts of the legislature, and executive department of the state”; it may thus be *unconstitutional* to move these official record-keeping functions from under the Secretary of State to the Governor. The founders had a very specific intent in assigning the record-keeping function to a separate elected official who is directly accountable to the people.
- **Recommended Action:** **OPPOSE** moving the State Archives and records management from under the Secretary of State. NEUTRAL with regard to other elements for the time being, but further analysis is underway.
- **Status:** Introduced 2/10/11. Referred to Government Operations, Tribal Relations & Elections. **Died in committee.**

**SB 5826** ([link](#)) - **Concerning the screening of prospective tenants (Kohl-Welles)** – Requires landlords to notify prospective tenants in advance if they use a tenant screening service, the types of information considered and the criteria that may be used to deny a rental application, and the right to obtain a copy of a report in case of a denial and to challenge information on the report. Prohibits tenant screening reports from including information about eviction actions that did not result in a finding that the tenant was the responsible party, and legal actions for victim protection. Section 4 of the bill mandates sealing of court records if the court finds that “Unfettered public access to the record of the action is likely to materially diminish the defendant's ability to obtain rental housing in the future”.

- **Comments:** The problem, of course, is that Article 1 Section 10 of the state constitution requires justice to be administered openly, and court records should not be sealed except under extraordinary circumstances. It should be sufficient to ban consideration of certain legal actions in determining tenant qualification (which the bill does) and to ban inclusion of such information in tenant screening reports (which the bill does); it is not necessary to also seal the court records that landlords are barred from considering.
- **Recommended Action:** **OPPOSE** so long as the sealing of court records remains in the bill.
- **Status:** Introduced 2/17/11. Referred to Financial Institutions, Housing & Insurance. **Died in committee.**

**SB 5955** ([link](#)) - **Concerning the medical use of cannabis (Kohl-Welles)** – Allows local governments to adopt ordinances allowing nonprofit patient cooperatives to distribute cannabis in their jurisdictions, and provides various rules for operation of the coops. Establishes a Medical Cannabis Registry administered by the Department of Health. Sections 8 and 9 create a new PRA exemption for “records containing names and other personally identifiable information relating to qualifying patients, designated providers, collective gardens, and nonprofit patient cooperatives”.

- **Comments:** Presumably, records on providers, gardens, and coops is exempt from disclosure to prevent criminals from using the records to target theft attempts. However, many other types of businesses with high-value inventory are not exempt from disclosure, such as dealers in precious metals, firearms, liquor, pharmaceuticals, etc. Exempting these records from disclosure will prevent news media and others from investigative reporting on individuals or businesses participating in the marijuana trade or the impact of these businesses on the communities in which they locate.

- **Recommended Action: OPPOSE** the PRA exemption for registry information related to providers, gardens, and coops.
- **Status:** Introduced 5/10/11. Referred to Ways & Means. Public hearing held 5/11/11. **Died in Committee.**

**SB 5960** ([link](#)) - **Concerning medicaid fraud (Keiser)** – Revised statutes related to Medicaid fraud, establishing higher penalties, treble damages, whistleblower protections, and *qui tam* actions (allowing private individuals who bring such actions to receive up to 30 percent of recoveries, effectively setting up a Medicaid “bounty hunter” program). Section 10 of the bill creates a new exemption to the Public Records Act, saying “Any information furnished pursuant to this chapter is exempt from disclosure under the public records act, chapter 42.56 RCW, until final disposition and all court ordered seals are lifted.” Section 19(31) of the bill creates a new exemption to the PRA, saying “Any documentary material, answers to written interrogatories, or oral testimony provided under any civil investigative demand issued under subsection (1) or (2) of this section are exempt from disclosure under the public records act, chapter 42.56 RCW.” The bill does not create any exemption language or reference within the PRA itself.

- **Comments:** WCOG has a long-standing position that exemptions to the Public Records Act should be declared within the PRA itself, or, at the very least, have a reference within the PRA. The bill creates two new exemptions, both of which are potentially very broad, with no direct reference from the PRA. The new exempt material may already be exempt under the existing investigative records exemption, but in any case should be referenced from the PRA.
- **Recommended Action:** NEUTRAL on the overall bill. Propose an amendment to reference the new exemptions from within the PRA. WCOG’s recommendations were not included in the substitute bill.
- **Status:** Introduced 5/18/11. Referred to Ways & Means. **No public hearing held.** Substitute bill voted out of committee 15-5 on 5/19/11. Engrossed bill **Passed Senate 41-5** on 5/19/11. Referred to House Ways & Means. Public hearing held 5/20/11. Voted out of committee with amendments unanimously on 5/23/11. Placed on 2nd Reading calendar 5/24/11. **Failed to pass House.**