



March 30, 1981

INHERENT DIFFICULTIES WITH S.B. 3600

Synopsis of Present Public Records Law (RCW 42.17.250 - 42.17.340) --

Under present law each agency (defined as any state or local agency) pursuant to published rules, is required to make public records available for public inspection and copying. In making public records available, an agency is required to delete identifying details to the extent required to prevent an unreasonable invasion of personal privacy (RCW 42.17.260(1)).

In addition, RCW 42.17.310(1) lists several kinds of information that are exempt from public inspection and copying. Included are such things as personal information in files maintained for employees, appointees, students, or elected officials; certain taxpayer information in connection with tax assessment or collection; intelligence information and investigative records; "valuable formulae, designs, drawings, and research data . . . when disclosure would produce private gain and public loss".

Determination of that which constitutes an unreasonable invasion of privacy and determination of what other information should remain exempt from public inspection and copying is decided in the courts on a case-by-case basis (RCW 42.17.340).

A court may enjoin the examination of any specific public record if the court finds that such examination "would clearly not be in the public interest and would substantially and irreparably damage any person, or would substantially and irreparably damage vital governmental functions" (RCW 42.17.330).

What S.B. 3600 Does --

1. S.B. 3600 exempts from the provisions outlined above of the Public Records Law information of a proprietary nature. "Proprietary information" is not defined in either S.B. 3600 or any other law. It is left entirely to the agency in S.B. 3600 to determine that which is of a proprietary nature and hence exempt from public inspection.

2. In any dispute concerning access to public records of a proprietary nature, S.B. 3600 gives to the agency in which the records exist the sole determination of what is exempt from public inspection. Under present law this determination is made de novo in a judicial review. The sidetracking of judicial review in S.B. 3600 in determining the outcome of any dispute involving public access to information which might be proprietary in nature is a serious blow to the public's right to full access to information concerning the conduct of government on every level.

In current law the courts are directed to take into account the policy that free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others. In S.B. 3600 judicial review is set aside in matters concerning proprietary information. Nothing in the bill admonishes agencies to exercise protection of the public interest in determining that which is proprietary and hence exempt from public inspection.

3. S.B. 3600 exempts from the Open Public Meetings Act those portions of a meeting during which an agency governing body is considering any public record exempt from public inspection. This language would apparently also exempt the agency discussion of whether the records are exempt from public inspection as well as the agency discussion of whether specific information was proprietary in nature.

S.B. 3600 guts the provisions of the Public Records Law so far as they apply to an undefined-body of proprietary information. It deserves to be voted down when it comes up for reconsideration in the Senate. Please give this matter your careful consideration.

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