

for the fiscal year ending June 30, 1987, to the secretary of state to carry out the oral history program under RCW 40.14.020.

Passed the Senate March 9, 1986.

Passed the House March 5, 1986.

Approved by the Governor April 3, 1986, with the exception of certain items which are vetoed.

Filed in Office of Secretary of State April 3, 1986.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 2, Senate Bill No. 4712, entitled:

"AN ACT Relating to public records; amending RCW 40.14.020; adding a new section to Chapter 40.14 RCW; and making an appropriation."

This bill would establish a new program to record and document the experience of former state officials. In addition, a new statutory advisory committee would be created.

I have vetoed section 2 which creates a new statutory advisory committee. After reviewing this matter, I find that the purposes and functions of this bill can be fulfilled without creating, in statute, an additional advisory body.

With the exception of section 2, Senate Bill No. 4712 is approved."

CHAPTER 276

[Engrossed Substitute House Bill No. 1587]
PORT DISTRICTS—EXPORT TRADE

AN ACT Relating to port district sponsored trade expansion projects; amending RCW 42.17.310 and 42.30.110; providing an expiration date; and adding a new chapter to Title 53 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. It is declared to be the public policy of the state to promote and preserve the economic well-being of the citizens of this state by creating opportunities for expanded participation in international trade by state businesses and expanding international trade through state ports. Increased international trade of state products creates and retains jobs, increases the state's tax base, and diversifies the state's economy. Port districts, through economies of scale, are uniquely situated to promote and expand international trade and provide greater opportunities for state businesses to participate in international trade.

The legislature finds that significant public benefit, in the form of increased employment and tax revenues, can be realized through export trading companies without lending the credit of port districts, and without capital investment of public funds by port districts. The legislature finds that the use of port district funds to promote and establish export trading companies under this chapter constitutes trade promotion and industrial development within the meaning of Article VIII, section 8 of the state Constitution.

It is the purpose of this chapter: (1) To stimulate greater participation by private businesses in international trade; (2) to authorize port districts to promote and facilitate international trade more actively; (3) to make export services more widely available; (4) to generate revenue for port districts; and (5) to develop markets for Washington state goods and services. Port sponsored export trading companies can also assist small to medium-sized companies in achieving economies of scale in order to expand into the export market.

It is the intent of this chapter to enhance export trade and not to create outside competition for existing Washington state businesses. The primary intent of a port sponsored export trading company is to increase exports of Washington state products.

This chapter shall not be construed as modifying or restricting any other powers granted to port districts by law. The legislature does not intend by the enactment of this chapter for port districts to use export trading companies to create unfair competition with private business.

NEW SECTION. Sec. 2. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Port district" means any port district other than a county-wide port district in a class A or AA county, established under Title 53 RCW.

(2) "Export services" means the following services when provided in order to facilitate the export of goods or services through Washington ports: International market research, promotion, consulting, marketing, legal assistance, trade documentation, communication and processing of foreign orders to and for exporters and foreign purchasers, financing, and contracting or arranging for transportation, insurance, warehousing, foreign exchange, and freight forwarding.

(3) "Export trading company" means an entity created by a port district under section 4 of this act.

(4) "Obligations" means bonds, notes, securities, or other obligations or evidences of indebtedness.

(5) "Person" means any natural person, firm, partnership, association, private or public corporation, or governmental entity.

NEW SECTION. Sec. 3. (1) Public port districts, formed under chapter 53.04 RCW are authorized to establish export trading companies and a company so formed may contract with other public ports, financial institutions, freight forwarders, and public or private concerns within or outside the state to carry out the purposes of this chapter. A port district may participate financially in only one export trading company.

(2) A port district proposing to establish an export trading company shall adopt a business plan with safeguards and limitations to ensure that any private benefit to be realized from the use of funds of the export trading company are incidental to the purposes of this chapter. The business plan shall be adopted only after public hearing and shall be reviewed at least

once every two years. Amendments to the plan shall be adopted only after public hearing. The business plan shall include:

(a) A description of export promotion activities to be conducted during the period of the plan;

(b) A proposed budget of operations which shall include an itemized list of estimated revenues and expenditures;

(c) A description of the safeguards and limitations which ensure that the export trading company will best be used to enhance international trade and produce public benefit in the form of employment, capital investment, and tax revenues;

(d) A description of private competitors which may be capable of providing the functions in the business plan; and

(e) Such other matters as may be determined by the port district.

(3) A port district, for the purpose of establishing or promoting an export trading company under this chapter, may provide financial assistance to the export trading company. A port district may not provide such assistance or services for more than five years or in an amount greater than five hundred thousand dollars.

***NEW SECTION.** Sec. 4. (1) For the purpose of promoting international trade, export trading companies formed under this chapter may provide export services through:

(a) Holding and disposing of goods in international trade;

(b) *Entering into contracts, joint ventures, brokerage or other agreements with any person for the distribution of goods in trade, or*

(c) Taking title to goods.

All such activities engaged in or pursued by an export trading company shall be charged for in accordance with the customs of the trade at competitive market rates.

(2) Nothing contained in this chapter may be construed to authorize an export trading company to own or operate directly or indirectly any business which provides freight-forwarding, insurance, foreign exchange, or warehousing services. Nothing contained in this chapter may be construed to permit an export trading company to engage in the business of transporting commodities by motor vehicle, barge, ship, or rail for compensation.

(3) (a) Proceedings to form a public corporation designated as an export trading company shall be initiated by a resolution of the board of commissioners of a port district adopting a charter for the corporation. The charter shall contain such provisions as are authorized by law and include provisions for a board of directors which shall conduct the affairs of the export trading company. The board of directors shall include no fewer than three nor more than five members, all appointed by the port district board of commissioners. Commissioners of the port shall be eligible to serve as members of the board and shall constitute a majority of the board of directors at all times. Unless a later date is specified, the resolution shall take

effect on the thirtieth day after adoption. The corporation shall be deemed formed for all purposes upon filing in the office of the secretary of state a certified copy of the effective resolution and the charter adopted by the resolution.

(b) In any suit, action, or proceeding involving the validity or enforcement of or relating to any contract of the corporation, the corporation is conclusively presumed to be established and authorized to transact business and exercise its powers under this chapter upon proof of the adoption of the resolution creating the corporation by the governing body. A copy of the resolution duly certified by the secretary of the port district commission shall be admissible in evidence in any suit, action, or proceeding.

(c) A corporation created by a port district pursuant to this chapter may be dissolved by the district if the corporation (i) has no property to administer, other than funds or property, if any, to be paid or transferred to the district by which it was established; and (ii) all its outstanding obligations have been satisfied. Such a dissolution shall be accomplished by the governing body of the port district adopting a resolution providing for the dissolution.

(d) The creating port district may, at its discretion and at any time, alter or change the structure, organizational programs, or activities of the corporation, including termination of the corporation if contracts entered into by the corporation are not impaired. Subject to any contractual obligations, any net earnings of the corporation shall inure only to the benefit of the creating port district. Upon dissolution of the corporation, all assets and title to all property owned by the corporation shall vest in the creating port district.

(4) A port district may contract with an export trading company to provide services on a reimbursement basis at current business rates to the export trading company, including but not limited to accounting, legal, clerical, technical, and other administrative services. Separate accounting records prepared according to generally accepted accounting principles shall be maintained by the export trading company.

(5) Any obligation of an export trading company shall not in any manner be an obligation of the port district nor a charge upon any revenues or property of the port district.

(6) An export trading company may borrow money or contract indebtedness and pledge, in whole or in part, any of its revenues or assets not subject to prior liens or pledges. An export trading company may not pledge any revenue or property of a port district or other municipal corporation and no port district or other municipal corporation may pledge its revenues or property to the payment thereof. An export trading company has no power to issue general obligation bonds, levy taxes, or exercise power of eminent domain.

(7) An export trading company shall not import any goods or products grown, produced, or mined outside the state of Washington without concurrence of the director of the department of agriculture or the director of the department of trade and economic development, or both, nor shall it import timber without concurrence of the Washington department of trade and economic development. Concurrence as required in this section shall not be unreasonably withheld. The departments shall, by rule, provide a means whereby such concurrence may be sought. An export trading company shall not import goods or products for in-state sale in competition with products grown, mined, or produced in Washington state. The Washington public ports association shall, upon request, report to the legislative committee on economic development established in chapter 44.52 RCW with details of the impact of export trading companies on the state's economy.

*Sec. 4 was partially vetoed, see message at end of chapter.

NEW SECTION. Sec. 5. All financial and commercial information and records supplied by private persons to an export trading company with respect to export projects shall be kept confidential unless such confidentiality shall be waived by the party supplying the information or by all parties engaged in the discussion.

NEW SECTION. Sec. 6. An export trading company may apply for and hold a certificate of review provided for under 15 U.S.C. Secs. 4001 through 4021, the federal export trading company act of 1982.

Sec. 7. Section 31, chapter 1, Laws of 1973 as last amended by section 8, chapter 414, Laws of 1985 and RCW 42.17.310 are each amended to read as follows:

(1) The following are exempt from public inspection and copying:

(a) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, welfare recipients, prisoners, probationers, or parolees.

(b) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy.

(c) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would (i) be prohibited to such persons by RCW 82.32.330 or (ii) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer.

(d) Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy.

(e) Information revealing the identity of persons who file complaints with investigative, law enforcement, or penology agencies, other than the public disclosure commission, if disclosure would endanger any person's life, physical safety, or property: PROVIDED, That if at the time the complaint is filed the complainant indicates a desire for disclosure or nondisclosure, such desire shall govern: PROVIDED, FURTHER, That all complaints filed with the public disclosure commission about any elected official or candidate for public office must be made in writing and signed by the complainant under oath.

(f) Test questions, scoring keys, and other examination data used to administer a license, employment, or academic examination.

(g) Except as provided by chapter 8.26 RCW, the contents of real estate appraisals, made for or by any agency relative to the acquisition or sale of property, until the project or prospective sale is abandoned or until such time as all of the property has been acquired or the property to which the sale appraisal relates is sold, but in no event shall disclosure be denied for more than three years after the appraisal.

(h) Valuable formulae, designs, drawings, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss.

(i) Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended except that a specific record shall not be exempt when publicly cited by an agency in connection with any agency action.

(j) Records which are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts.

(k) Records, maps, or other information identifying the location of archaeological sites in order to avoid the looting or depredation of such sites.

(l) Any library record, the primary purpose of which is to maintain control of library materials, or to gain access to information, which discloses or could be used to disclose the identity of a library user.

(m) Financial information supplied by or on behalf of a person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for (a) a ferry system construction or repair contract as required by RCW 47.60.680 through 47.60.750 or (b) highway construction or improvement as required by RCW 47.28.070.

(n) Railroad company contracts filed with the utilities and transportation commission under RCW 81.34.070, except that the summaries of the contracts are open to public inspection and copying as otherwise provided by this chapter.

(o) Financial and commercial information and records supplied by private persons pertaining to export services provided pursuant to sections 1 through 6 of this 1986 act.

(2) Except for information described in subsection (1)(c)(i) of this section and confidential income data exempted from public inspection pursuant to RCW 84.40.020, the exemptions of this section are inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital governmental interests, can be deleted from the specific records sought. No exemption may be construed to permit the nondisclosure of statistical information not descriptive of any readily identifiable person or persons.

(3) Inspection or copying of any specific records exempt under the provisions of this section may be permitted if the superior court in the county in which the record is maintained finds, after a hearing with notice thereof to every person in interest and the agency, that the exemption of such records is clearly unnecessary to protect any individual's right of privacy or any vital governmental function.

(4) Agency responses refusing, in whole or in part, inspection of any public record shall include a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld.

Sec. 8. Section 11, chapter 250, Laws of 1971 ex. sess. as last amended by section 2, chapter 366, Laws of 1985 and RCW 42.30.110 are each amended to read as follows:

(1) Nothing contained in this chapter may be construed to prevent a governing body from holding an executive session during a regular or special meeting:

(a) To consider matters affecting national security;

(b) To consider the selection of a site or the acquisition of real estate by lease or purchase when public knowledge regarding such consideration would cause a likelihood of increased price;

(c) To consider the minimum price at which real estate will be offered for sale or lease when public knowledge regarding such consideration would cause a likelihood of decreased price. However, final action selling or leasing public property shall be taken in a meeting open to the public;

(d) To review negotiations on the performance of publicly bid contracts when public knowledge regarding such consideration would cause a likelihood of increased costs;

(e) To consider, in the case of an export trading company, financial and commercial information supplied by private persons to the export trading company;

(f) To receive and evaluate complaints or charges brought against a public officer or employee. However, upon the request of such officer or

employee, a public hearing or a meeting open to the public shall be conducted upon such complaint or charge;

~~((f))~~ (g) To evaluate the qualifications of an applicant for public employment or to review the performance of a public employee. However, subject to RCW 42.30.140(4), discussion by a governing body of salaries, wages, and other conditions of employment to be generally applied within the agency shall occur in a meeting open to the public, and when a governing body elects to take final action hiring, setting the salary of an individual employee or class of employees, or discharging or disciplining an employee, that action shall be taken in a meeting open to the public;

~~((g))~~ (h) To evaluate the qualifications of a candidate for appointment to elective office. However, any interview of such candidate and final action appointing a candidate to elective office shall be in a meeting open to the public;

~~((h))~~ (i) To discuss with legal counsel representing the agency matters relating to agency enforcement actions, or to discuss with legal counsel representing the agency litigation or potential litigation to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party, when public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the agency.

(2) Before convening in executive session, the presiding officer of a governing body shall publicly announce the purpose for excluding the public from the meeting place, and the time when the executive session will be concluded. The executive session may be extended to a stated later time by announcement of the presiding officer.

NEW SECTION. Sec. 9. Sections 1 through 6 of this act shall constitute a new chapter in Title 53 RCW.

NEW SECTION. Sec. 10. Sections 1 through 6 of this act shall expire July 1, 1991, and shall be subject to review under chapter 43.131 RCW.

NEW SECTION. Sec. 11. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the House March 11, 1986.

Passed the Senate March 10, 1986.

Approved by the Governor April 3, 1986, with the exception of certain items which are vetoed.

Filed in Office of Secretary of State April 3, 1986.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to portions of section 4, Engrossed Substitute House Bill No. 1587, entitled:

"AN ACT Relating to port district sponsored trade expansion projects."

In passing the federal Export Trading Company Act of 1982, Congress recognized that "ETCs will periodically have to engage in importing, barter, third party

trade, and related activities." [See: Conference Report to accompany S. 734, Rept. No. 97-924, 97th Cong, 2nd Session (1982).]

Given this recognition of Export Trading Company functioning, the section 4(7) prohibition on importation of goods or products for in-state sale in competition with Washington grown, mined or produced products could prove to be economically crippling to the newly-created companies and could violate the purposes of the federal act, even though an import activity was incidental to an export trading company's principal exporting objectives and activity.

In addition, this section may violate federal trade treaties to which the United States is a signatory, such as the General Agreement on Trade and Tariffs. The section furthermore may be unconstitutional as it delegates legislative power to state agencies without sufficiently specific legislative standards.

The section would also be costly and difficult to implement for the following reasons:

1) In order to identify goods that compete with Washington products, the agencies named must identify all goods currently grown, produced or mined in Washington. This is a potentially overwhelming task.

2) The departments must be knowledgeable of all goods imported into the state under this section. Currently, no state system exists for collection and evaluation of this information.

3) The departments would have to make evaluations about competitiveness of all goods imported versus all goods currently grown, produced or mined in Washington. I do not believe these judgments are practical or appropriate for state agencies to make, given the lack of information and specific statutory direction as to what would be competition and how great the protection would be. The potential for conflict and disagreement would be high.

Clearly, the legislation's specific intent is to increase exports of Washington products and enhance export trade — it is not the purpose of the new law to create outside competition for Washington State businesses.

I commend the Legislature for its wisdom and leadership in enacting legislation to allow ports to take advantage of the Export Trading Company Act; such ventures have been successful in other regions of the country.

Section 4(1)(b) would authorize port districts to enter into contracts, joint ventures, brokerage or other agreements. This provision is redundant and would cause confusion in the interpretation of the provision. Section 3(1) of Engrossed Substitute House Bill No. 1587 provides the authority for port districts to establish export trading companies and to enter into contracts with other public and private organizations for the provision of services. Section 4(1)(b) of Engrossed Substitute House Bill No. 1587 restates the same authority.

With the exception of sections 4(1)(b) and 4(7), Engrossed Substitute House Bill No. 1587 is approved."

CHAPTER 277

[Engrossed Substitute House Bill No. 1678]

TELEPHONE SOLICITATION

AN ACT Relating to telephone solicitation; adding a new section to chapter 80.36 RCW; creating a new section; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that certain kinds of telephone solicitation are increasing and that these solicitations interfere