

HOUSE BILL REPORT

ESHB 2411

As Passed House:

February 16, 2002

Title: An act relating to exemptions from disclosure of public records for domestic security purposes.

Brief Description: Protecting certain domestic security records.

Sponsors: By House Committee on Select Committee on Community Security (originally sponsored by Representatives Haigh, Schmidt, Hurst and Buck; by request of Governor Locke and Attorney General).

Brief History:

Committee Activity:

Select Committee on Community Security: 1/24/02; 2/6/02 [DPS].

Floor Activity:

Passed House: 2/16/02, 96-2.

Brief Summary of Engrossed Substitute Bill

- Adds deployment plans to current public disclosure exemption for terrorism response plans and vulnerability assessments.
- Includes specific information and recipients to current disclosure exemption.
- Exempts national security records and records from national security briefings from public disclosure.
- Exempts information regarding infrastructure and security of computer and telecommunications networks from public disclosure.
- Requires review of exemptions by 2004.

HOUSE COMMITTEE ON SELECT COMMITTEE ON COMMUNITY SECURITY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Hurst, Chair; Simpson, Vice Chair; Lisk, Ranking Minority Member; Ballasiotes, Barlean, Buck, Campbell, Haigh, Jackley, Kessler, Morris, O'Brien and Schual-Berke.

Minority Report: Without recommendation. Signed by 1 member: Representative Benson.

Staff: Caroleen Dineen (786-7156).

Background:

The Public Disclosure Act (PDA) requires agencies to make available for public inspection and copying all public records, unless the information falls within a specific exemption. The PDA is liberally construed, and its exemptions narrowly construed, to promote a public policy of keeping the public informed. The current exemptions are specific and focus generally on issues of personal privacy, personal safety, or vital governmental interests.

In 2001 the PDA was amended to exempt from public disclosure those portions of records containing specific and unique vulnerability assessments and specific and unique response plans intended to prevent or mitigate criminal terrorist acts, the disclosure of which would have a substantial likelihood of threatening public safety. The 2001 amendment references the definition of "terrorist act" in the State Explosives Act - an act that is intended to:

- intimidate or coerce a civilian population;
- influence the policy of a branch or level of government by intimidation or coercion;
- affect the conduct of a branch of government by intimidation or coercion; or
- retaliate against a branch or level of government for a policy or conduct of the government.

Summary of Engrossed Substitute Bill:

The Public Disclosure Act's (PDA) exemption for vulnerability assessments and response plan documents is amended to exempt from public disclosure those portions of records assembled, prepared, or maintained to prevent, mitigate, or respond to certain terrorism crimes (specified in SHB 2879 of the 2002 session), the public disclosure of which would have a substantial likelihood of threatening public safety. The terrorism crimes specified in SHB 2879 are terrorism in the first degree, terrorism in the second degree, unlawful use or possession of a weapon of mass destruction, threatening acts of terrorism in the first degree, providing material support or resources to terrorists, and unlawful possession of false identification for terrorist purposes. Specifically included within this exemption are deployment plans and underlying data within the plans used solely for the assessments or the response or deployment plans.

Another exemption from public disclosure is for national security information not subject

to public disclosure under federal law that is shared by federal agencies, including information obtained from national security briefings provided to state or local government officials related to domestic preparedness for acts of terrorism.

A new PDA exemption is added for information regarding the infrastructure and security of computer and telecommunications networks to the extent that they identify specific system vulnerabilities. This information includes security passwords, security access codes and programs, access codes for secure software applications, security and service recovery plans, security risk assessments, and security test results.

The Joint Legislative Audit and Review Committee (JLARC) is required to review the effect of these exemptions on state agency performance in responding to public disclosure request. In conducting the review, the JLARC must select a representative sample of disclosure requests from up to five state agencies. The JLARC must complete this review by September 1, 2004, and report its findings to the Legislature no later than November 30, 2004.

Appropriation: None.

Fiscal Note: Not Requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: (Original bill) This bill is needed to protect state citizens against terrorism. We need to feel safe if we are going to maintain the economy, and the impacts on society of terrorism danger is very real. Federal officials fear releasing sensitive information to Washington law enforcement officials because they believe it is not covered by our state's current Public Disclosure Act (PDA) exemptions. The Emergency Management Division has been refused federal planning information because of PDA concerns. This bill provides a specific exemption -- a needed clarification to intelligence gathering -- that will assure federal officials they can release this information to Washington law enforcement officials.

Security information is maintained electronically. This bill protects electronic information and security codes that would allow access to information needed for protecting public safety and to respond to terrorism. Actions and planning for terrorist attacks have to be protected, especially at the local level. The narrow PDA exemption enacted in 2001 has proven not to be sufficient since September 11, 2001.

Washington cherishes open government, and we have to carefully craft any new exemptions to the PDA to maintain our freedom. The exemptions need to be specific. The bill balances concerns regarding legitimate protections for information that can provide terrorist advantages and ensuring the legitimate interests of citizens in obtaining

information.

Testimony Against: (Original bill) The exemptions to the Public Disclosure Act (PDA) are very specifically drawn and do not address broad categories of records. The definition of terroristic intent has to be carefully drawn so standard political dialogue can continue. Data and data bases are not defined. Expanding existing exemptions can have negative impacts.

Information can be used for good or evil. The line between information related to terrorism and any other emergency is thin and fuzzy. Although people are concerned after September 11, 2001, about keeping some information secret, people still want and need to know information important to them, such as locations of pipelines and toxic waste dumps. We are being asked as a country to respond to a tragedy in an emotional way. Ignorance is not security -- the public needs to know what the government is doing.

This bill makes an entirely unnecessary change in the PDA. Federal documents are already covered by federal regulations. The current PDA exemption for law enforcement information is very broad.

Testified: (In support) Representative Haigh, prime sponsor; Christine Gregiore, Washington State Attorney General; Fred Hellberg, Governor's Office; Gary Robinson, Department of Information Services; Chief Ronal Serpas, Washington State Patrol; Glen Woodbury, Military Department, Emergency Management Division; and Bob Mack, city of Tacoma.

(Opposed) Scott Wilson, Port Townsend Leader; Ken Bunting, Seattle P.I.; David Zeeck, Tacoma News Tribune; Alex MacLeod, Seattle Times; Diana Kramer, Washington Newspaper Publishers Association; and Roland Thompson, Allied Daily Newspapers of Washington.