

# SENATE BILL REPORT

## SB 5088

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As of February 9, 2011

**Title:** An act relating to recovering costs of production and copying of public records.

**Brief Description:** Regarding the recovery of the costs of production and copying of public records.

**Sponsors:** Senators Haugen, Swecker, Hobbs, Hatfield, Harper, Shin, Rockefeller, Parlette and Tom.

**Brief History:**

**Committee Activity:** Government Operations, Tribal Relations & Elections: 1/24/11.

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### SENATE COMMITTEE ON GOVERNMENT OPERATIONS, TRIBAL RELATIONS & ELECTIONS

**Staff:** Diane Smith (786-7410)

**Background:** The Public Records Act (PRA) requires that all state and local government agencies make all public records available for public inspection and copying unless they fall within certain statutory exemptions. The provisions requiring public records disclosure must be interpreted liberally and the exemptions narrowly in order to effectuate a general policy favoring disclosure.

The PRA requires agencies to respond to public records requests within five business days. The agency must either (1) provide the records, (2) provide a reasonable estimate of the time the agency will take to respond to this request, or (3) deny the request. Additional time may be required to respond to a request where the agency needs to notify third parties or agencies affected by the request or to determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request.

The agency may not charge a fee for locating the public records and making them available. The agency may charge up to an amount that reimburses the agency for its costs directly incident to copying, for example, a per page charge for photocopies.

For practical purposes, the law treats a failure to properly respond as denial. A denial of a public records request must be accompanied by a written statement of the specific reasons for denial. Any person who is denied the opportunity to inspect or copy a public record may file

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a motion to show cause in superior court why the agency has refused access to the record. The burden of proof rests with the agency to establish that the refusal is consistent with the statute that exempts or prohibits disclosure. Judicial review of the agency decision is de novo and the court may examine the record in private.

Any person who prevails against an agency in any action in the courts seeking the right to inspect or copy any public record must be awarded all costs, including reasonable attorney fees. In addition, the court has the discretion to award such person no less than \$5 and no more than \$100 for each day that person was denied the right to inspect or copy the public record. The court's discretion lies in the amount per day, but the court may not adjust the number of days for which the agency is fined.

**Summary of Bill:** If the time the agency takes to produce the records exceeds five person-hours per month, the agency may require payment for the personnel costs to complete the search and make the copies. If the requester does not wish to pay these costs, then the agency must complete the request at a rate of five hours per month.

The personnel costs may not exceed the actual salary and benefit costs of the personnel required to search, review, and copy the records. Personnel costs do not include attorney's review or preparation of the exemption log.

The requester must pay the fees before the records are disclosed. The agency may require up to a 10 percent deposit before undertaking the search.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

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

**Staff Summary of Public Testimony:** PRO: The school districts get broad, vague requests that are expensive and time consuming to respond to. This bill is a nice response to this problem while still providing public access. Counties are reducing public services so that they have the funds needed to respond to records requests. Agencies are not staffed to the levels necessary to do their programmatic work, in addition to fulfilling public records requests. This is a different approach, in that if resolved, the disputes may not need to go to court. The harassing minority have broken the system that serves the majority of public records requestors. A new abuse is appearing where the Act is used for blackmail, for instance, unless the person gets an agency's fee waived, he or she will make a large public records request. The vast majority of requests are fulfilled in less than five hours. The records developed by the Department of Financial Institutions (DFI) in regulating state-chartered banks and credit unions does not have the exemption from public disclosure that applies to the Federal Deposit Insurance Corporation. DFI is in litigation about this. The litigation is part of the costs to the regulated entities that fully pay the costs of their regulation. This bill allows management of workloads and recoupment of costs.

CON: The Attorney General's model rules cover the situation this bill addresses. The PRA itself provides ways for agencies to protect themselves from what is characterized as abusive requests. They may provide records in installments and ask for a percentage of the copying costs before records are produced. People's time requirements may not be met by having to wait until next month, or later, for the records. Attorney's fees are the biggest cost. The PRA should be reformed to provide for graduated penalties. The court should have a more specific act to enforce and less discretion.

**Persons Testifying:** PRO: Charlie Brown, Washington School District Association; Brian Enslow, Washington Association of Counties; Ramsey Ramerton, Washington Association of Public Records Officers; Rick Phillips, WSDOT.

CON: Rowland Thompson, Allied Daily Newspapers; Bill Will, Washington Newspaper Publishers' Association; Arthur West, citizen.