

# SENATE BILL REPORT

## ESHB 1692

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As of April 9, 2019

**Title:** An act relating to protecting information concerning agency employees who have filed a claim of harassment or stalking.

**Brief Description:** Protecting information concerning agency employees who have filed a claim of harassment or stalking.

**Sponsors:** House Committee on State Government & Tribal Relations (originally sponsored by Representatives Jenkins, Caldier, Fitzgibbon, Doglio, Cody, Macri, Gregerson, Riccelli, Kilduff, Bergquist, Dolan, Appleton, Davis, Ryu, Robinson, Morgan, Blake, Stanford, Frame, Ormsby, Tarleton, Tharinger, Fey, Kloba, Valdez, Orwall, Callan, Harris, Kirby, Ortiz-Self, Senn, Goodman, Peterson and Reeves).

**Brief History:** Passed House: 3/07/19, 98-0.

**Committee Activity:** State Government, Tribal Relations & Elections: 3/22/19, 3/29/19 [DPA-WM].

Ways & Means: 4/05/19.

### Brief Summary of Amended Bill

- Prohibits disclosure of certain records concerning state agency employees who are victims or have made a claim of workplace sexual harassment or stalking to the person alleged as perpetrator in the claim if the agency disciplined the requestor after an investigation.
- Imposes civil liability for records requestors who use or provide information concerning a state agency employee who is a victim or has made a claim of workplace sexual harassment or stalking to harass, stalk, threaten, or intimidate the employee.

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

**Majority Report:** Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators Hunt, Chair; Kuderer, Vice Chair; Zeiger, Ranking Member; Bailey, Hasegawa and Takko.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Staff:** Samuel Brown (786-7470)

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## SENATE COMMITTEE ON WAYS & MEANS

**Staff:** Amanda Cecil (786-7460)

**Background:** Public Records Act. The Public Records Act (PRA), enacted in 1972 as part of Initiative 276, requires that all state and local government agencies make all public records available for public inspection and copying unless certain statutory exemptions apply. Over 500 specific references in the PRA or other statutes remove certain information from application of the PRA, provide exceptions to the public disclosure and copying of certain information, or designate certain information as confidential. The provisions requiring public records disclosure are interpreted liberally while the exemptions are interpreted narrowly to effectuate the general policy favoring disclosure.

Records About Public Employees. Personal information in files maintained for employees, appointees, or elected officials of any public agency is exempt from public inspection and copying to the extent that disclosure would violate the employee's right to privacy. A court must find two elements to determine that a person's right to privacy is invaded: (1) the disclosure would be highly offensive to a reasonable person; and (2) the disclosure is not of legitimate concern to the public. Numerous court decisions have held that certain information in files maintained for public employees is of legitimate public concern and therefore not automatically exempt from disclosure under the PRA.

Various types of employment information are exempt from public disclosure requirements, including the residential addresses, phone numbers, email addresses, social security numbers, and emergency contact information of public agency employees or volunteers.

**Summary of Amended Bill:** Limits on Disclosure. State agencies may not disclose records, other than that employee's work product, concerning an employee who has made or is named as the victim in a claim of workplace sexual harassment or stalking with the agency in response to a public records request, unless by court order, if:

- the requestor is an alleged perpetrator in the claim; and
- the agency, after an investigation, disciplined the requestor as a result of the claim.

The agency must immediately notify the employee of the request if it conducted an investigation into the claim and issued discipline as a result.

Upon notice from the agency, the employee may bring an action to enjoin disclosure. If an injunction is sought, the agency may not disclose the record unless by a court order. The time for the agency to process the public records request, except for the requirement for the agency to acknowledge receipt of the public records request, is suspended during the pendency of the action for an injunction.

Courts may order the release of records requested after finding that, in the totality of the circumstances, disclosure would not violate the right to privacy for the state agency employee. Disclosure of records concerning an employee who has made or is named as the victim in a claim of workplace sexual harassment or stalking with the agency to alleged

perpetrators in the claim where the agency issued discipline resulting from the claim after conducting an investigation is presumed to be highly offensive to a reasonable person.

Civil Liability. A person who requests and obtains a record, other than the employee's work product, concerning an agency employee who made a claim of sexual harassment and uses the information to harass, stalk, threaten, or intimidate the employee is subject to civil liability of up to \$1,000 for each record used, in addition to costs and reasonable attorney's fees. Such a person is also liable if they provide the record or information in the record to a person who uses it to harass, stalk, threaten, or intimidate that agency employee. Any aggrieved party, the Attorney General, or prosecuting attorney may file suit.

Other. The Attorney General must create model policies for the implementation of this act by January 1, 2020.

State agencies may not disclose lists maintained to administer the provisions of the bill of names of agency employees who have made or are named as the victim in a claim of workplace sexual harassment or stalking.

**EFFECT OF STATE GOVERNMENT, TRIBAL RELATIONS & ELECTIONS COMMITTEE AMENDMENT(S):** Limits on Disclosure. Agencies must only notify the employee if the requestor is not a person disciplined as a result of the investigation.

If an injunction is sought, the agency may disclose the records if the action is dismissed without an injunction.

An alleged perpetrator in the claim where the agency issued discipline resulting from the claim after conducting an investigation may rebut the presumption that disclosure would be highly offensive to a reasonable person by clear, cogent, and convincing evidence.

Civil Liability. A person who provides records concerning an agency employee who made a claim or was a victim of workplace sexual harassment or stalking to a person who uses those records to harass, stalk, threaten, or intimidate the employee must know the other person's intent to use records for those purposes to be subject to civil liability.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** The bill takes effect on July 1, 2020.

**Staff Summary of Public Testimony on Engrossed Substitute House Bill (State Government, Tribal Relations & Elections):** *The committee recommended a different version of the bill than what was heard.* PRO: A constituent who told me of being sexually harassed at work, then her harasser made numerous public records requests about her at work. I thought I was doing a bill for one person, but once I filed the bill, the number of state employees who told me stories about this happening to them was truly shocking. It is

important that someone accused of harassment have the ability to fully come defend themselves, so this does not kick in until someone has actually been disciplined. Public employees face more scrutiny than private sector employees and should at the very least be able to protect their information from people who have been credibly accused of committing sexual harassment.

CON: Under this bill, there would be no way for the subject of a complaint to know who the complainant is and defend themselves. The legal definition of sexual harassment may differ from the investigating staff's understanding. During the process of trying to exonerate myself, I requested public records and uncovered evidence of the accuser's wrongdoing. This bill would let the alleged victim sue me for turning over evidence of her wrongdoing. The Equal Employment Opportunity Commission found that 56.4 percent of sexual harassment complaints had no cause.

OTHER: We are concerned that this would short-circuit the constitutional right to petition government and seek these records. Both victims and others should have the right to go to court and give their side of the argument.

**Persons Testifying (State Government, Tribal Relations & Elections):** PRO: Representative Laurie Jenkins, Prime Sponsor; Seamus Petrie, Washington Public Employees Association.

CON: Steve Majerick, citizen.

OTHER: Rowland Thompson, Allied Daily Newspapers of Washington.

**Persons Signed In To Testify But Not Testifying (State Government, Tribal Relations & Elections):** No one.

**Staff Summary of Public Testimony on the Bill as Amended by State Government, Tribal Relations & Elections (Ways & Means):** PRO: The union takes due process very seriously and this bill does not conflict with or have to do with an agency's wrongdoing. The DSHS fiscal note is questionable.

CON: This bill is about me taking down a corrupt management team at WATech. I was wrongfully terminated and I have two pending law suits against them. Based on the assumptions in the DSHS fiscal note, this bill will cost the state more than \$10 million per year to implement and much more in court cases.

**Persons Testifying (Ways & Means):** PRO: Seamus Petrie, Washington Public Employees Association.

CON: Steve Majerick, citizen.

**Persons Signed In To Testify But Not Testifying (Ways & Means):** No one.