

# SENATE BILL REPORT

## SB 5171

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As Reported by Senate Committee On:  
Governmental Operations, February 12, 2013

**Title:** An act relating to implementing recommendations of the sunshine committee.

**Brief Description:** Implementing the recommendations of the sunshine committee.

**Sponsors:** Senators Roach and Hasegawa; by request of Public Records Exemptions Accountability Committee.

**Brief History:**

**Committee Activity:** Governmental Operations: 2/11/13, 2/12/13 [DP].

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### SENATE COMMITTEE ON GOVERNMENTAL OPERATIONS

**Majority Report:** Do pass.

Signed by Senators Roach, Chair; Benton, Vice Chair; Braun, Conway and Hasegawa, Ranking Member.

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

**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 while the exemptions are interpreted narrowly to effectuate the general policy favoring disclosure.

In 1972, voters approved Initiative 276. The initiative addressed, among other issues, access to public records. At the time the initiative was passed, there were ten exemptions from public records disclosure. Today, there are over 300 specific references in the PRA or other statutes that 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 Public Records Exemption Accountability Committee (Sunshine Committee), created by the Legislature in 2007, is charged with reviewing all exemptions from public disclosure. Members of the Sunshine Committee must include two representatives appointed by the Governor, two appointed by the Attorney General, four members of the public, and four

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members of the Legislature. The Sunshine Committee meets several times per year to discuss the exemptions and recommend the repeal or amendment of any exemption. For each public disclosure exemption, the Sunshine Committee must provide a recommendation as to whether the exemption should be continued without modification, modified, scheduled for sunset review at a future date, or terminated. By November 15 of each year, the Sunshine Committee must transmit its recommendations to the Governor, the Attorney General, and the appropriate committees of the Legislature.

In 2007, the Sunshine Committee report did not contain recommendations for the Legislature to consider. In 2008, the Sunshine Committee report contained 12 recommendations for consideration. Eight of the recommendations were unanimous. The four non-unanimous recommendations related to applications for public employment, the definition of employment, rideshare records, work product, and attorney client-privilege. The eight unanimous recommendations were enacted in 2010.

In 2009, the Sunshine Committee report contained eight recommendations, five of which were recommendations to retain existing exemptions. The remaining recommendations related to legislative records, the Office of the Insurance Commissioner, and a five-year limitation on future exemptions.

In 2010, the Sunshine Committee report contained 20 recommendations to retain exemptions without modification and four recommendations requiring modification relating to the Washington Pollution Insurance Liability Program, non-conviction data, court appointed special advocates, and financial information.

In 2011, the Sunshine Committee reviewed 34 exemptions. The Sunshine Committee voted to recommend that all of the considered exemptions but three would be retained without modification. In 2012, the Sunshine Committee reviewed four exemptions, but did not vote to make any recommendations.

**Summary of Bill:** Based on the recommendations of the Sunshine Committee, the following changes are made to public disclosure and copying of the following public records:

- Language is added to clarify that identifying information related to a child sexual assault victim includes, but is not limited to, the child's name, address, location, or photograph.
- Information contained in a local or regionally maintained gang database is exempt from public disclosure.
- The exemption from disclosure for data on closed medical malpractice claims that may reveal the identity of a claimant, health care provider, health care facility, insuring entity, or self-insurer is repealed.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**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 recommendations regarding child sexual assault victim information and gang databases were made unanimously by the Sunshine Committee. Public hospital districts are different. The Sunshine Committee felt that the exemption for public hospital districts was a way to shield payouts when they are being made. If a payout is made from public hospital funds, the public should know about it so that corrective action is taken.

CON: Part of the tort reform agreement between the trial bar, doctors, and hospitals was that the medical community would submit information to the Insurance Commissioner about malpractice claims so policymakers could better understand the dynamics. This bill undermines that agreement. It is essential that that information remain confidential. This bill would create an unlevel playing field where information is disclosed about public hospitals that is not disclosed about private hospitals. If the public is trying to better understand what's happening, they're only going to know about a certain part of the sector. Entities reporting medical malpractice data voluntarily might not continue to share the information. Some confidential matters and privileged communications would have to be reported.

OTHER: If confidentiality provisions applying to data reported to the Insurance Commissioner are struck, then there will be fewer reports and the Insurance Commissioner's report to the Legislature will be less meaningful.

**Persons Testifying:** PRO: Senator Roach, prime sponsor; Rowland Thompson, Sunshine Committee.

CON: Lisa Thatcher, WA State Hospital Assn.; Jackie Der, UW Medicine; Carl Nelson, WSMA.

OTHER: Drew Bouton, Office of the Insurance Commissioner.