

SENATE BILL REPORT

SJR 8214

As of February 10, 2014

Brief Description: Amending the state Constitution to state that the Governor is subject to public records requests.

Sponsors: Senators Roach and Padden.

Brief History:

Committee Activity: Governmental Operations: 2/04/14, 2/06/14 [DPF].

SENATE COMMITTEE ON GOVERNMENTAL OPERATIONS

Staff: Samuel Brown (786-7470)

Background: The Public Records Act (PRA), enacted by the voters 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. Every state office, department, division, bureau, board, commission, or other state agency is subject to the PRA. A public record includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency, regardless of physical form or characteristics.

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 must be interpreted liberally while the exemptions are interpreted narrowly to effectuate the general policy favoring disclosure. There is no explicit statutory exemption from disclosure for documents subject to an executive privilege.

In October 2013, the Washington Supreme Court (Court) issued an opinion in the case of *Freedom Foundation v. Gregoire*, finding that the Governor's Office may decline to produce certain records in response to a PRA request on the grounds of executive privilege. Under the Court's holding, the executive communications privilege exists to provide the Governor with candid advice to explore alternatives and formulate policy, based on the vesting of executive authority in the Governor by the state Constitution. The Court found that because the privilege arises from the state Constitution, it outweighs the PRA's statutory mandate for disclosure of public records unless an exemption applies.

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.

Summary of Bill: An amendment to Article III of the Constitution regarding the executive branch is submitted to the voters at the next general election for their approval and ratification or rejection. The constitutional amendment submitted to the voters states the following:

- the Governor is subject to public records requests; and
- the Governor does not possess an executive privilege to deny a public records request.

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: It would also be a good idea to open the Legislature to this kind of scrutiny. It is distressing that the Supreme Court would grant such a breathtakingly sweeping exemption to public records law. This has created a large loophole that this amendment would close. Existing exemptions in public records law would still be useful to the Governor. The people themselves are the ultimate political authority, and they should not be powerless to keep the executive branch in check. This amendment would correct the Supreme Court's error and make clear that people have access to records that allow them to responsibly exercise control over the executive branch. The current Governor has stated unequivocally that he will not invoke executive privilege. Without this amendment, the public is relying on the good faith of the executive branch. The public needs to know what the Governor is doing.

Persons Testifying: PRO: Senator Roach, prime sponsor; Bill Will, WA Newspaper Publishers Assn.; David Roland, Freedom Foundation; Rowland Thompson, Allied Daily Newspapers of WA; Arthur West, citizen.