

HOUSE BILL REPORT

ESHB 1692

As Amended by the Senate

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 Jinkins, 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:

Committee Activity:

State Government & Tribal Relations: 2/5/19, 2/19/19 [DPS].

Floor Activity:

Passed House: 3/7/19, 98-0.

Senate Amended.

Passed Senate: 4/15/19, 44-1.

Brief Summary of Engrossed Substitute Bill

- Prohibits from disclosure in response to a public records request certain records concerning state agency employees who have made a claim of workplace sexual harassment or stalking, or are named as the victim in the claim, if the requestor is the person alleged in the claim to have harassed or stalked the victim and the agency issued discipline to the requestor as a result of the claim after an investigation was conducted.
- Requires a state agency to notify a state agency employee who has made a claim of workplace sexual harassment or stalking, or is named as the victim in the claim, upon any public records request for certain records concerning that agency employee, and authorizes that employee to enjoin, by court order, the disclosure of records.
- Subjects a person to civil liability who requests and obtains a record concerning a state agency employee who has made a claim of workplace sexual harassment or stalking, or is named as a victim in the claim, and uses

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it, or provides it to someone who uses it, to harass, stalk, threaten, or intimidate that agency employee.

- Requires the Attorney General to create model policies by January 1, 2020, for the implementation of this act.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL RELATIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Gregerson, Chair; Pellicciotti, Vice Chair; Walsh, Ranking Minority Member; Goehner, Assistant Ranking Minority Member; Appleton, Dolan, Hudgins, Mosbrucker and Smith.

Staff: Desiree Omli (786-7105).

Background:

The Public Records Act (PRA) requires state and local agencies to make their written records available to the public for inspection and copying upon request, unless the record is prohibited from disclosure or fits into one of the various specific exemptions under the PRA or as otherwise provided in law. The stated policy of the PRA favors disclosure and requires narrow application of the listed exemptions.

Certain employment information is exempt from public inspection and copying, including information held by an agency in personnel records, public employment related records, volunteer rosters, or information included in any mailing list of employees or volunteers of any public agency. Examples include:

- examination data such as test questions or scoring keys;
- applications for public employment;
- residential addresses, personal phone numbers or email addresses, Social Security numbers, driver's license or identification card numbers, and emergency contacts of the employee or volunteer; and
- information relating to an active investigation of a possible unfair practice claim, which may include sexual harassment under certain circumstances.

In addition, certain personal information is exempt from public inspection and copying, such as personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy.

A person's "right to privacy" is invaded or violated if disclosure of information about the person: (1) would be highly offensive to a reasonable person; and (2) is not of legitimate concern to the public.

The Attorney General adopts advisory model rules to provide guidance on the public records process. The model rules are non-binding and provide best practices for requestors and agencies.

Summary of Engrossed Substitute Bill:

Limits on Disclosure.

Unless by court order, a state agency is prohibited from disclosing records in response to a public records request concerning a state agency employee who has made a claim of workplace sexual harassment or stalking with the employing agency, or is named as the victim in the claim, if:

1. the requestor is the person alleged in the claim to have sexually harassed or stalked the agency employee who is named as the victim in the claim; and
2. after having conducted an investigation, the agency issued discipline to the requestor as a result of the claim of workplace sexual harassment or stalking.

A record concerning an agency employee does not include work product created by the agency employee as part of his or her official duties.

Upon any public records request for records concerning a state agency employee who has made a claim with the employing agency of harassment or stalking with the employing agency, or is named as the victim in the claim, the agency must immediately notify the agency employee of the request-if:

1. the agency conducted an investigation of the claim of workplace sexual harassment or stalking involving the agency employee; and
2. the agency issued discipline as a result of the claim.

Upon notice from the agency, the state agency employee may bring an action to enjoin disclosure, but must immediately notify the agency upon filing the action. Upon notice from the state agency employee, the agency may not disclose the record unless by a court order. Except for the five-day notification requirement for agencies to acknowledge a public records request, the time for the agency to process the public records request is suspended during the pendency of the action for an injunction.

A court may order the release of some or all of the records requested after finding that, in the totality of the circumstances, disclosure would not violate the right to privacy for the state agency employee. As it pertains to actions filed pursuant to the bill, it is presented to be highly offensive to a reasonable person to disclose, directly or indirectly, records concerning a state agency employee who has made a claim of workplace sexual harassment or stalking with the agency, or is named as the victim in the claim, to persons alleged in the claim to have sexually harassed or stalked the victim named in the claim where the agency issued discipline resulting from the claim after conducting an investigation.

Civil Liability.

Any person who requests and obtains a record concerning a state agency employee who has made a claim with the employing agency of workplace sexual harassment or stalking, or is named as the victim in the claim, is subject to civil liability if he or she uses the record or the information in the record to harass, stalk, threaten, or intimidate that agency employee. Such a person is also liable if he or she provides the record or information in the record to a person who uses it to harass, stalk, threaten, or intimidate that agency employee. An aggrieved party, the Attorney General, or a prosecuting attorney may sue in superior court for violation of this provision. The court may order an appropriate civil remedy, including up to \$1,000

for each record used in violation of this provision, as well as costs and reasonable attorney's fees.

Other.

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

A state agency may not disclose lists of names of agency employees who have made a claim of workplace sexual harassment or stalking with the agency, or are named as a victim in the claim, that is maintained by the agency to administer the provisions of the bill.

An agency may disclose records concerning an agency employee who has filed a claim of workplace sexual harassment or stalking, or is named as a victim in the claim, if the agency employee provides written consent to disclose the records.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendment:

- requires that the agency notify the agency employee upon receipt of a public records request for records concerning that agency employee if the requestor is someone other than the person alleged in the claim to have harassed or stalked the agency employee, rather than upon the receipt of any such public records request;
- authorizes an agency employee to bring an action for an injunction upon the agency's notice of the receipt of a public records request from a person other than the person alleged in the claim to have harassed or stalked the employee, rather than upon the agency's notice of the receipt of any such public request;
- authorizes an agency to disclose a requested record concerning the agency employee if the agency employee filed for an injunction and the court dismisses the action without granting an injunction, in addition to when a court orders disclosure;
- specifies that the presumption related to situations that are presumed to be highly offensive may be rebutted upon a showing of clear, cogent, and convincing evidence that disclosure of the requested record or information to persons alleged in the claim to have sexually harassed or stalked the agency employee named as the victim in the claim is not highly offensive; and
- requires that a person who requests and obtains information concerning an agency employee and provides the information to a person who uses it to harass, stalk, threaten, or intimidate the agency employee, know of the receiver's intent to use the information to harass, stalk, threaten, or intimidate the agency employee in order to be subject to civil liability.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) There was a situation where an employee was harassed at work and the person alleged to have done the harassing was terminated. The person alleged to have done the harassing then started making numerous personnel public records requests concerning the employee including video tapes of times the employee was exiting the building, times when the employee's badge was used, and information about travel as a part of employment. State employees are asked to put themselves in vulnerable positions, and the state needs to protect their employees who do tough jobs. This bill would ensure that the person alleged to have done the harassing cannot continue to harass after the agency did an investigation and found the person to have harassed the employee. A person's harasser should not be able to gain personal information about someone to continue harassing behavior.

Sexual harassment is underreported because of fear of retaliation, harassment, and of their personal information being made public. The state needs to create a space where people feel safe to come forward. The bill removes a key obstacle to reporting by confirming that agency employees will be protected from harm.

Although this is a good step in the right direction, there's an opportunity to include the perspective of bystanders and witnesses. There are also concerns about how long investigations will take and the burden on victims to get a court order.

(Opposed) Some individuals who have been accused of sexual harassment have difficulty accessing any information to defend themselves. Personnel policies give you the right to gather evidence to defend yourself. In addition, state employees do not have a privacy interest. There is a two-prong test for privacy that is not always met in these cases.

(Other) The bill may be going too far. There is a need to get to the point to not trample on the constitutional right to petition the government and protecting information that would be used for no legitimate purpose. Everyone needs to feel safe and not be harassed, but there needs to be a balance. There are two potential abuses of power at play: the first is the abuse of power between employees; the second is the ability for an agency to persecute employees without the employee having the ability to access information that could be used to defend themselves against unfounded charges.

In addition, agencies cannot make a finding of harassment. A person also has the option to get a temporary restraining order if harassment is found.

Persons Testifying: (In support) Representative Jinkins, prime sponsor; Seamus Petrie, Washington Public Employees Association; Dennis Eagle, Washington Federation of State Employees; Joe Stohr, Washington Department of Fish and Wildlife; and Lauren Burnes.

(Opposed) Steve Majerick.

(Other) Rowland Thompson, Allied Daily Newspapers of Washington; and Arthur West.

Persons Signed In To Testify But Not Testifying: None.