

SENATE BILL REPORT

SB 5246

As of January 20, 2020

Title: An act relating to sunshine committee recommendations.

Brief Description: Concerning sunshine committee recommendations.

Sponsors: Senators Hunt and Zeiger.

Brief History:

Committee Activity: State Government, Tribal Relations & Elections: 1/18/19, 1/17/20.

Brief Summary of Bill

- Requires public disclosure for personal information where the subject of the information consents to disclosure.
- Exempts trade secrets from public disclosure.
- Exempts financial information from public disclosure only if the information is marked confidential and accompanied by a statement describing the expected harm, loss, or unfair private gain disclosure would cause.
- Allows an award of attorney's fees to any defendant who successfully defends against an injunction of public disclosure of financial, commercial, or proprietary records.

SENATE COMMITTEE ON STATE GOVERNMENT, TRIBAL RELATIONS & ELECTIONS

Staff: Samuel Brown (786-7470)

Background: 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

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disclosure must be interpreted liberally while the exemptions are interpreted narrowly to effectuate the general policy favoring disclosure.

Personal Information. Personal information is exempt from disclosure in various circumstances under the PRA. Personal information exempt from PRA disclosure requirements includes childcare enrollment, tax assessments, personal financial information, driver's license records, certain vehicle license information associated with agency investigations, 911 emergency systems data, selective service declination, and claims to the Board of Industrial Insurance Appeals.

Public Employee Records. Residential and email addresses, telephone numbers, social security and driver's license numbers, and emergency contact information of public employees and their dependents when appearing in public employee personnel records are exempt from the PRA's disclosure requirements.

Financial Information. Certain kinds of sensitive financial, commercial, and proprietary information obtained by agencies are exempt from PRA disclosure requirements. This category of exemptions includes valuable designs, codes, or data that would cause private gain and public loss if disclosed; information obtained for certain bidding processes; investment information related to public trust or retirement funds; proprietary vendor information related to state purchased health care; certain business related information collected by the Department of Commerce; and certain business information related to marijuana licensing and regulation.

State Procurement Records. State procurement law exempts bid submissions and evaluations of bids for goods and services contracts from disclosure until the agency announces the apparent successful bidder.

Trade Secrets. A trade secret is information that is under efforts to remain secret and has economic value from not being generally known or ascertainable to other people who could use such information for economic value. Trade secrets are protected from misappropriation and courts may order injunctions and penalties against persons who misappropriate trade secrets.

Enjoining Disclosure. The PRA allows a procedure for an agency, or person whose name is in information subject to disclosure, to seek an injunction in superior court to stop the disclosure of a record. The court may enjoin disclosure if it finds that disclosure is clearly not in the public interest and would substantially and irreparably damage a person or vital governmental function.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Substitute): Personal Information. The subject of personal information, or the parents or guardian of a child who is the subject of personal information, may provide consent to the agency for disclosure of the information.

Public Employee Records. The city, state, and zip code of the residential address of a public employee or volunteer is not exempt from public disclosure requirements. Employee and volunteer passport and visa numbers are exempt from public disclosure requirements.

Financial Information. Financial, commercial, and proprietary information is only exempt from public disclosure if the information is submitted to the agency with a designation as confidential and an explanation for the expected harm disclosure would cause, or the agency determines that disclosure is substantially likely to cause public or private loss or unfair private gain. Trade secrets are exempt from public disclosure requirements.

A court may award attorney's fees to any defendant, including an agency, who successfully defends against an action to enjoin disclosure of financial, commercial, and proprietary related records.

State Procurement Records. The exemption from disclosure of bid submissions and evaluations of bids for goods and services contracts until a successful bidder is announced is transferred to the PRA.

Appropriation: None.

Fiscal Note: Not requested.

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

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

Staff Summary of Public Testimony on Original Bill (Regular Session 2019): PRO: This bill reflects a balance of interests and compromise. The most important provision concerns proprietary information. When a requestor seeks information that a business considers proprietary, there is no way for the agency to know that, so the business goes to court to enjoin disclosure, putting everyone through a costly and inefficient process. This would limit third-party lawsuits and provide fee-shifting so that whoever defends the public interest has the same opportunity to recover attorneys' fees. The personal information exemption change was written by a public employee. This will remove confusion about how to handle requests for applications to fill unexpired terms in elective office. Parties should be able to recover fees when large corporations try to inhibit disclosure.

CON: Releasing personal identifiers is a significant expansion. Public employees do not surrender all expectations of privacy. Angry constituents and threats are common. The idea that the state would make it easier to track down public employees at home is scary for employees, women, and families.

Persons Testifying: PRO: Senator Sam Hunt, Prime Sponsor; Arthur West, citizen; Kathy George, Sunshine Committee; Rowland Thompson, Sunshine Committee.

CON: Dennis Eagle, Washington Federation of State Employees.

Persons Signed In To Testify But Not Testifying: No one.

Staff Summary of Public Testimony on Proposed Substitute (Regular Session 2020):

PRO: This bill includes proposals that had the unanimous support of the Sunshine Committee, reflecting a cross-section of stakeholders. Changes will balance the scales and reduce the need for litigation over commercial information contained within governmental records, benefiting business, government, and requestors. This will help government understand what proprietary information needs to be protected.

OTHER: We have concerns about access to public employee addresses and dates of birth. This access allows a stalker or harasser to find their victims. Public employees have had to move to flee their abusers. Many of our members have to say "no" to state agency clients as part of their jobs, jeopardizing their personal safety.

Persons Testifying: **PRO:** Senator Sam Hunt, Prime Sponsor; Kathy George, Rowland Thompson, Sunshine Committee.

OTHER: Seamus Petrie, Washington Public Employees Association; Sandra Toussaint, Washington Federation of State Employees.

Persons Signed In To Testify But Not Testifying: No one.