

HOUSE BILL REPORT

HB 2583

As Reported by House Committee On:
State Government & Tribal Affairs
General Government Appropriations

Title: An act relating to conferences regarding public records requests violations.

Brief Description: Concerning conferences prior to filing actions alleging a public records request violation.

Sponsors: Representatives Haigh, Armstrong, Moeller and Chase.

Brief History:

Committee Activity:

State Government & Tribal Affairs: 1/19/10, 1/21/10 [DPS];

General Government Appropriations: 2/4/10, 2/5/10 [DP2S(w/o sub SGTA)].

Brief Summary of Second Substitute Bill

- Establishes a procedure for the requester of a public record and an agency to confer on disputes prior to filing court action.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL AFFAIRS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Hunt, Chair; Appleton, Vice Chair; Armstrong, Ranking Minority Member; Alexander, Flannigan, Hurst and Miloscia.

Minority Report: Do not pass. Signed by 1 member: Representative Taylor.

Staff: Marsha Reilly (786-7135).

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

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liberally and the exceptions narrowly in order to effectuate a general policy favoring disclosure.

Responses to requests for public records must be made promptly. Within five business days of a request, an agency must:

- provide the record;
- acknowledge receipt of the request and provide a reasonable estimate of the time that is required to respond to the request. Additional time may be taken to clarify the intent of the request, to locate the requested information, to notify third persons or agencies affected by the request, or to determine whether the requested information is protected by an exemption; or
- deny the request.

Whenever a records request is denied, the person making the request may seek an opinion from the Attorney General on whether or not the denied record is exempt.

A person who is denied a public record or who believes an agency's time estimate is unreasonable may appeal the agency decision in the superior court of the county in which the record is maintained. In such court actions, the agency has the burden to prove, by a preponderance of the evidence, that the agency action was valid. If the person prevails in the action, he or she must be awarded all costs, including reasonable attorney fees. The person may also be awarded an amount between \$5 and \$100 per day that the person was denied access to a public record.

Summary of Substitute Bill:

Prior to filing court action alleging a violation of the PRA, the requester of a public record and the agency may confer in person or by telephone regarding the dispute. For claims requiring an agency to show cause for refusal to produce a record, no action shall be commenced until 15 days after the conference. The one-year statute of limitation and daily penalties shall be tolled during this period.

The party filing suit must include a certification that a conference was held or the reasons why a conference was not held. If a requester or agency elects to file suit without conducting the conference, or if the lawsuit is filed without waiting 15 days after the conference, the court has the discretion to reduce or eliminate any award for costs, including daily penalties. In making its decision, the court may consider the following nonexclusive factors: whether the requester had need to obtain the records in less than 15 days; and whether a conference would have been futile.

Substitute Bill Compared to Original Bill:

The substitute bill makes clear that the one-year statute of limitation on filing court action and the application of daily penalties do not apply to the 15-day period for conference.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The purpose of the bill is to keep disputes out of the courts. Washington Public Ports supports the bill. It is a simple approach that will allow disputes to be resolved in many cases. The 15-day accrual was to make sure that the time delay could not be abused. The judicial discretion in this bill is similar to another bill that has the same trigger in that no penalties may be assessed if a conference does not take place. The Association of Washington Cities supports the bill. The proposal came about from public agency groups meeting over the interim in order to find a way to cut costs while not impeding either transparency or the opportunity to go forward with court action.

(Opposed) The last thing newspapers want to do is to go to court. This is a backdoor attempt to rewrite the public records laws. The easiest way to avoid court is to supply the records. Going to court is only done if the record is one that absolutely should be released, and when it is clear that we would win. The penalty clock starts to run at the moment the agency denies the record. If you get to the point where you are going to court, a conference is futile. The 15-day stay-of-penalties would be abused by agencies as a stalling tactic and it would be a mistake to adjust the law.

Persons Testifying: (In support) Representative Armstrong; Ginger Eagle, Washington Public Ports Association; and Victoria Lincoln, Association of Washington Cities.

(Opposed) Bill Will, Washington Newspaper Publishers.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on State Government & Tribal Affairs. Signed by 9 members: Representatives Darneille, Chair; Takko, Vice Chair; Blake, Dunshee, Hudgins, Kenney, Pedersen, Sells and Van De Wege.

Minority Report: Do not pass. Signed by 4 members: Representatives McCune, Ranking Minority Member; Klippert, Short and Williams.

Staff: Charlie Gavigan (786-7340).

Summary of Recommendation of Committee On General Government Appropriations Compared to Recommendation of Committee On State Government & Tribal Affairs:

A definition of a "conference" is added.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Second Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill attempts to make the public disclosure laws more expeditious and less controversial. A coalition of local government groups supports this proposal as a way to make the open government rules more efficient. The voluntary meeting in the bill can be bypassed if the requestor believes the conference would be futile or if the information is needed in a timely fashion. This is a cost-effective way of approaching the issue and will save money for local and state agencies. The Department of Corrections fiscal note estimate is surprising, but they may be in a unique situation because most of the requestors are incarcerated. There may be costs for the public request officer to go out to all the prisons to meet with the requestors. Other agencies would not have this problem as they can arrange for phone or in-person conferences.

(Opposed) This is a further impediment for individual citizens when asking for a public record without being required to give their name or the reason for asking for those records. It can be hard enough for individual citizens to make public record requests, and this just creates an additional hurdle for them. It is also unclear how a citizen would go about certifying that a conference has occurred. When newspapers request a public record, it is needed very quickly. This conference process will really encumber the public disclosure process. If an agency asks for a conference, the agency may not be able to ask who the requestor is or why they want the record. If an agency does, it could be evidence that it is trying to block one of these requests. Currently an agency can request a clarification of what the requestor is looking for, which is essentially the same thing that the bill requires. The fiscal note represents an honest answer from the Department of Corrections related to the extra workload that this will create. The fiscal note doesn't identify costs for all other state agencies. Additional FTEs will be needed to facilitate conferences for every public records request in which there is some sort of dispute. There will also be additional costs for lawyers during the conferences. This bill also adds workload in the courts and those costs are not accounted for in the fiscal note.

Persons Testifying: (In support) Victoria Lincoln, Association of Washington Cities; and Ginger Eagle, Washington Public Ports Association.

(Opposed) Rowland Thompson, Allied Daily Newspapers.

Persons Signed In To Testify But Not Testifying: None.