

SENATE BILL REPORT

SB 6642

As Reported By Senate Committee On:
Higher Education, February 5, 1998

Title: An act relating to protection of research data.

Brief Description: Protecting research data.

Sponsors: Senators Wood, Winsley, Bauer, Hale, Prince and West.

Brief History:

Committee Activity: Higher Education: 2/3/98. 2/5/98 [DP].

SENATE COMMITTEE ON HIGHER EDUCATION

Majority Report: Do pass.

Signed by Senators Wood, Chair; Winsley, Vice Chair; Hale, Kohl, Patterson, Prince, B. Sheldon and West.

Staff: Jean Six (786-7423)

Background: Information held by a public agency is generally subject to public disclosure. Numerous exemptions to the public disclosure requirements are codified in statute. Some of the exemptions relate to records containing personal information and proprietary business information. State and local agencies are required to make records not falling within a statutory exemption available for public inspection and copying.

Summary of Bill: A new exemption is added to the public disclosure requirements.

Research data developed or received by a research university is exempt from public inspection and copying until the data is published or publicly distributed or a patent is issued. For purposes of the exemption, "research data" is defined as "facts and information collected for a specific purpose and derived from close, careful study, or from scholarly or scientific investigation or inquiry."

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: The future economy of this state is going to be built on intellectual property. Disclosure of hypotheses prior to their commercialization will impede the development of both ideas and products. People who participate in research as research subjects have a right to know that their personal information is protected.

The University of Washington (UW) faculty must be on a level playing field with their colleagues around the country. We must protect the hypotheses of our faculty. No other state requires the release of intellectual property at such an early stage, a fact that creates potentially insurmountable problems for collaborative research with other institutions across the country.

Senate Bill 6642 balances two public needs, access to information and protection of data. This legislation provides the research universities with the appropriate guardianship of their data until other means, such as copyrighting and patenting, are implemented. At that time, the public disclosure law would provide the same access to this information that is currently afforded in other situations.

Without this legislation there is considerable potential harm, especially as the UW technology transfer program grows and matures. UW believes wise public policy should be made prior to actual crises and damage occurring. UW further believes the public interest will be served by safeguarding faculty research data and materials during the conduct of research.

While the AG is officially neutral, the Assistant AG for UW pointed to three goals for the new exemption: clarification of the definition of "produced" versus "obtained;" the difficulty of demonstrating public loss private gain; and the inadequate protection of the five-year rule in RCW 42.17.310 (h).

Testimony Against: PAWS considers itself the unofficial watchdog for UW animal research program and wonders if it is because of them that this bill has been proposed. PAWS has used the PDC and the open meetings act to bring suit against UW to force them to open to public scrutiny all research meetings, research forms, and unfunded grant proposals. If PAWS is denied access to information, then the ability will be lost to monitor the animal research activities.

UW cannot prove that the current law actually causes them harm. Furthermore, UW has the reputation for denying access to both public meetings and public documents. UW will use the new exemption to deny access to currently available public information. The public has a right to evaluate public research.

The current exemption in RCW 42.17.310 (h) is sufficient and has protected UW and others in court. Are you debating the meanings of the terms "obtained" versus "proposed?" The burden is on UW to justify the need for an additional exemption because we believe that the current statute protects all scholarly articles.

Testified: PRO: Tom Rankin, WA Biotech and Biomedical Association; Al Berg, UW Medical School faculty, deputy faculty legislative representative; John Coulter, Assoc. Vice President, UW Health Sciences; Dr. John Harlan, UW Medical School faculty; Christine Hughes, AG, UW; CON: Mitchell Fox, PAWS; Diana Kramer, WA Newspaper Publishers Association; Mike Killeen, Allied Daily Newspapers, Davis Wright Tremaine; Jerry Sheehan, ACLU (with concerns).