

HOUSE BILL REPORT

SSB 6439

As Reported by House Committee On:
Select Committee on Community Security
Appropriations

Title: An act relating to exemptions from disclosure of public records for domestic security purposes.

Brief Description: Protecting certain domestic security records.

Sponsors: Senate Committee on State & Local Government (originally sponsored by Senators Gardner, Haugen, McCaslin and Winsley; by request of Governor Locke and Attorney General).

Brief History:

Committee Activity:

Select Committee on Community Security: 2/28/02 [DPA];
Appropriations: 3/2/02, 3/4/02 [DPA(CSSC)].

Brief Summary of Substitute Bill
(As Amended by House Committee)

- Adds deployment plans to current public disclosure exemption for terrorism response plans and vulnerability assessments.
- Exempts from public disclosure, those records not subject to disclosure under federal law that are shared by federal or international agencies and information prepared from national security briefings provided to state and local government officials.
- Exempts information regarding infrastructure and security of computer and telecommunications networks from public disclosure.
- Requires review of exemptions by 2004.

HOUSE COMMITTEE ON SELECT COMMITTEE ON COMMUNITY SECURITY

Majority Report: Do pass as amended. Signed by 15 members: Representatives Hurst, Chair; Simpson, Vice Chair; Lisk, Ranking Minority Member; Ballasiotes, Barlean, Benson, Buck, Campbell, Haigh, Jackley, Kessler, Morris, O'Brien, Schmidt and Schual-Berke.

Staff: Caroleen Dineen (786-7156).

Background:

The Public Disclosure Act (PDA) requires agencies to make available for public inspection and copying all public records, unless the information falls within a specific exemption. The PDA is liberally construed, and its exemptions narrowly construed, to promote a public policy of keeping the public informed. The current exemptions are specific and focus generally on issues of personal privacy, personal safety, or vital governmental interests.

In 2001 the PDA was amended to exempt from public disclosure those portions of records containing specific and unique vulnerability assessments and specific and unique response plans intended to prevent or mitigate criminal terrorist acts, the disclosure of which would have a substantial likelihood of threatening public safety. The 2001 amendment references the definition of "terrorist act" in the State Explosives Act - an act that is intended to: (1) intimidate or coerce a civilian population; (2) influence the policy of a branch or level of government by intimidation or coercion; (3) affect the conduct of a branch of government by intimidation or coercion; or (4) retaliate against a branch or level of government for a policy or conduct of the government.

Summary of Amended Bill:

The Public Disclosure Act's (PDA) exemption for vulnerability assessments and response plan documents is amended to exempt from public disclosure those portions of records assembled, prepared, or maintained to prevent, mitigate, or respond to certain terrorism crimes (specified in SHB 2879 of the 2002 session), the public disclosure of which would have a substantial likelihood of threatening public safety. The terrorism crimes specified in SHB 2879 are terrorism in the first degree, terrorism in the second degree, unlawful use or possession of a weapon of mass destruction, threatening acts of terrorism in the first degree, providing material support or resources to terrorists, and unlawful possession of false identification for terrorist purposes. Specifically included within this exemption are deployment plans and underlying data within the plans collected in preparation of or essential to the assessments or to the response or deployment plans.

Another exemption from public disclosure is for records not subject to public disclosure under federal law that are shared by federal or international agencies, and information prepared from national security briefings provided to state or local government officials related to domestic preparedness for acts of terrorism.

A new PDA exemption is added for information regarding the infrastructure and security of computer and telecommunications networks to the extent that they identify specific system vulnerabilities. This information includes security passwords, security access

codes and programs, access codes for secure software applications, security and service recovery plans, security risk assessments, and security test results.

The Joint Legislative Audit and Review Committee (JLARC) is required to review the effect of these exemptions on state agency performance in responding to public disclosure requests. In conducting the review, the JLARC must select a representative sample of disclosure requests from up to five state agencies. The JLARC must complete this review by September 1, 2004, and report its findings to the Legislature no later than November 30, 2004.

Amended Bill Compared to Substitute Bill:

The striking amendment removes the exemption provision focused on specific intelligence information and specific investigative records shared by federal and international law enforcement agencies with state or local law enforcement and certain other state and local agencies. The striking amendment also changes the exemption provision for national security records to apply to all records not subject to disclosure under federal law that are shared by federal or international agencies with state or local government officials or to information (rather than records) prepared from national security briefings provided to state and local government officials. The striking amendment also adds the provisions requiring the review of the exemptions by the Joint Legislative Audit and Review Committee by 2004.

Appropriation: None.

Fiscal Note: Not Requested.

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

Testimony For: (With amendment) The Governor and the Attorney General support the striking amendment. The amendment strikes the appropriate balance between the public's right to know and the need to protect sensitive information that could be used by terrorists. The amendment also has a high level of consensus. This bill as amended will encourage federal agencies to share documents with state and local agencies.

Testimony Against: None.

Testified: (With amendment) Fred Hellberg, Governor's Office; and Kathy Mix, Attorney General's Office.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended by Committee on Select Committee on Community Security. Signed by 25 members: Representatives Sommers, Chair; Doumit, 1st Vice Chair; Fromhold, 2nd Vice Chair; Sehlin, Ranking Minority Member; Alexander, Boldt, Buck, Clements, Cody, Cox, Dunshee, Grant, Kagi, Kenney, Kessler, Linville, Lisk, Mastin, McIntire, Pearson, Pflug, Ruderman, Schual-Berke, Talcott and Tokuda.

Staff: Patricia Linehan (786-7178).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Select Committee on Community Security:

No new changes were recommended.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: One of the primary goals of the Governor and the Attorney General when they introduced this bill was to encourage the protection and sharing of information with federal agencies, such as federal law enforcement agencies and agencies responsible for domestic preparedness. The bill represents a consensus between the authors of the bill and all interested parties who worked on the bill. It meets the security needs of both state agencies and federal authorities, with respect to protecting sensitive documents and preventing and responding to terrorist acts.

Testimony Against: None.

Testified: Fred Hellberg, Office of the Governor; and Kathy Mix, Office of the Attorney General.