

# HOUSE BILL REPORT

## HB 1153

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### As Reported by House Committee On:

State Government

**Title:** An act relating to the confidential nature of public records transferred to the state archives.

**Brief Description:** Managing confidential records.

**Sponsors:** Representatives Haigh, Miloscia, Armstrong, Hunt, Nixon and Shabro; by request of Secretary of State.

### Brief History:

#### Committee Activity:

State Government: 1/23/03, 2/7/03 [DPS].

#### Brief Summary of Substitute Bill

- Records that are confidential, privileged, or exempt from public disclosure retain that status after they are transferred to the State Archives.
- Records can become available to the public 75 years after they are created if the State Archivist and the originating jurisdiction agree that they should be open to the public.
- Records can become available to the public before 75 years if the originating jurisdiction determines that the confidential, privileged, or exempt status will end at some point before 75 years.

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### HOUSE COMMITTEE ON STATE GOVERNMENT

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Haigh, Chair; Miloscia, Vice Chair; Armstrong, Ranking Minority Member; Shabro, Assistant Ranking Minority Member; Hunt, McDermott, Nixon, Tom and Wallace.

**Staff:** Katie Blinn (786-7114).

### Background:

The Division of Archives and Records Management (State Archives), a division of the Office of the Secretary of State, was created to ensure that state public records will be properly managed and safeguarded. All public records that are not required in the current operation of a state agency, department, commission or other entity and which may be destroyed or discontinued must be transferred to the State Archives for preservation and to provide a centralized location for historical records. Public records include papers, correspondence, forms, record books, photographs, film, sound recordings, maps, compact discs, and machine-readable material. The State Archives must:

- manage and centralize the archives for reference and preservation purposes;
- inspect, inventory, catalog, and arrange retention and transfer schedules for all records of all state agencies and departments;
- ensure the maintenance and security of all state public records, and safeguard against unauthorized removal or destruction;
- establish rules for the archival process;
- assist and train state and local agencies in the archival process; and
- solicit, accept, and expend donations for the State Archives.

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### **Summary of Substitute Bill:**

Records that are confidential, privileged, or exempt from public disclosure retain that status after they are transferred to the State Archives. Records can become available to the public 75 years after they are created if the State Archivist (Archivist) and the originating jurisdiction agree that they should be open to the public. If the originating agency no longer exists, the Archivist must decide whether the records can become available to the public. If the originating jurisdiction determines that a record is confidential, privileged, or exempt for a period of less than 75 years, the records will be open to the public at the end of that period.

### **Substitute Bill Compared to Original Bill:**

If the Archivist and the originating jurisdiction agree that confidential, privileged, and exempt records should be available to the public, they are only available 75 years after they are created rather than immediately. A provision is made for agencies that no longer exist, allowing the Archivist to determine whether the records should be available to the public. If the originating jurisdiction determines that a record is confidential for a period of less than 75 years, the records will be open to the public at the end of that period.

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**Appropriation:** None.

**Fiscal Note:** Not Requested.

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

**Testimony For:** The Secretary of State has historically preserved state records and made them available to the public. Once a record is characterized as confidential, it is confidential forever, even if it originated in the territorial years. There is an effort to bring more sunshine and access to public records. There is also an effort to streamline the archiving process so it is simpler to administer. Confidentiality rules in other states range between 30 and 75 years. A period of 75 years is in line with the national foreign relations laws. The census rule is 72 years. Opening the records to the public will allow for future use of the records. The bill will apply to records currently in the State Archives that are more than 75 years old.

**Testimony Against:** The word "confidential" is not defined. The public records act uses the term "exempt." It is unclear who or what will qualify as an "originating jurisdiction." For example, does the administration of the current Governor qualify as the originating jurisdiction for a prior Governor? The term confidential can currently apply to documents of personal information and documents of state information.

**Testified:** (In support) Representative Haigh, prime sponsor; and Jerry Handfield, State Archivist.

(With concerns) Rowland Thompson, Allied Daily Newspapers of Washington.