

HOUSE BILL REPORT

HB 1288

As Passed House:

March 3, 2009

Title: An act relating to exempting the annual parental declaration of intent to home school from the public disclosure act.

Brief Description: Exempting the annual parental declaration of intent to home school from the public disclosure act.

Sponsors: Representatives Upthegrove, McCune, Simpson, Herrera, Newhouse, Armstrong, Roach, Quall, Orwall, Pettigrew, Bailey, Shea, Smith, Orcutt, Sullivan, Eddy, Johnson, Nelson, Ormsby, Kretz and Kristiansen.

Brief History:

Committee Activity:

State Government & Tribal Affairs: 1/30/09, 2/10/09 [DP].

Floor Activity

Passed House: 3/3/09, 96-1.

Brief Summary of Bill

- Exempts the declaration of intent to provide home-based instruction filed by parents annually from disclosure under the Public Records Act.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL AFFAIRS

Majority Report: Do pass. Signed by 6 members: Representatives Hunt, Chair; Appleton, Vice Chair; Armstrong, Ranking Minority Member; Alexander, Hurst and Miloscia.

Staff: Tracey O'Brien (786-7196)

Background:

The Public Records Act.

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

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statutory exemptions. The provisions requiring public records disclosure must be interpreted liberally and the exemptions narrowly in order to effectuate a general policy favoring disclosure.

The PRA requires agencies to respond to public records requests within five business days. The agency must either provide the records, provide a reasonable estimate of the time the agency will take to respond to this request, or deny the request. Additional time may be required to respond to a request where the agency needs to notify third parties or agencies affected by the request or to determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request. For practical purposes, the law treats a failure to properly respond as denial. A denial of a public records request must be accompanied by a written statement of the specific reasons for denial.

Any person who is denied the opportunity to inspect or copy a public record may file a motion to show cause in superior court why the agency has refused access to the record. The burden of proof rests with the agency to establish that the refusal is consistent with the statute that exempts or prohibits disclosure. Judicial review of the agency decision is de novo and the court may examine the record in camera. Any person who prevails against an agency in any action in the court seeking the right to inspect or copy any public record shall be awarded all costs, including reasonable attorney fees. In addition, the court has the discretion to award such person no less than \$5 but not to exceed \$100 for each day he or she was denied the right to inspect or copy the public record. The court's discretion lies in the amount per day, but the court may not adjust the number of days for which the agency is fined.

An agency or its representative, or a person who is named in the record or to whom the record specifically pertains, may file a motion or affidavit asking superior court to enjoin disclosure of the public record. The court may issue an injunction if it finds that such examination would clearly not be in the public interest and would substantially and irreparably damage any person, or would substantially and irreparably damage vital government functions.

Home-based Instruction.

In May 1985 the Governor signed into law chapter 441, Laws of 1985 (Substitute Senate Bill 3279) which allows a child to receive home-based instruction instead of attending a public school, an approved private school, or an education center. Home-based instruction consists of planned and supervised instructional and related activities, including curriculum and instruction in the basic skills of occupational education, science, mathematics, language, social studies, history, health, reading, writing, spelling, and the development of an appreciation of art and music provided for a number of hours per grade level established for approved private schools and if such activities are provided by a qualified parent.

Each parent whose child is receiving home-based instruction has the duty to: ensure that a standardized achievement test approved by the State Board of Education is administered annually to the child by a qualified individual or that an annual assessment of the student's academic progress is written by a certificated person who is currently working in the field of education; and file annually a signed declaration of intent that he or she is planning to cause his or her child to receive home-based education. The annual declaration of intent must

include the name and age of the child, shall specify whether a certificated person will be supervising the instruction and shall be in the written format prescribed by the Office of the Superintendent of Public Instruction. The declaration of intent, which is printed on the local school district's form, stationery or letterhead, must be filed with the local school district superintendent by September 15 of the school year or within two weeks of the beginning of any public school quarter, trimester, or semester.

In the 2008-09 school year, 10,787 families registered to provide home-based instruction to 16,577 children.

Summary of Bill:

The annual declaration of intent to provide home-based instruction filed by a parent shall not be subject to public disclosure.

A statutory reference to the definition of public records is corrected.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) Washington has a compulsory education law that requires a child attend public school unless he or she attends a private school or receives home-based instruction. A parent must file an annual declaration of intent to provide home-based instruction with the superintendent of the local school district. By notifying the school that the child is receiving home-based instruction, the school district knows that the child is not truant. This is the only purpose in filing the annual declaration of intent. Student records are not protected under the Federal Educational Rights and Privacy Act (FERPA) unless the child is in attendance at the educational agency or institution. As a result, the annual declaration of intent is not a protected student record under FERPA because that child is receiving home-based instruction instead of public school instruction. As current state and federal law does not prevent public access to the Declaration of Intent to Provide Home-Based Instruction form, school districts have been releasing the form and the personal information on the form to any requestor. As a result, homeschooling families have been receiving unsolicited contacts from merchants and academics.

(In support with concerns) The receipt of unsolicited mail is not unique to homeschooling families. Many public school students receive unwelcome solicitations as well. The solution to this problem is not creating another exemption to the PRA. The solution is to tighten up the allowable uses for public records. Current law prohibits the commercial use of public records; however, the law lacks an adequate enforcement provision. This would be a better approach than creating another exemption.

(Opposed) None.

Persons Testifying: (In support) Representative Upthegrove, prime sponsor; DiAnna Brannan, Christian Homeschool Network; Sarah Pollock; Joyce Fiess; Sherry Stacy; Susie Aasen; and Karen Veldheer.

(In support with concerns) Toby Nixon, Washington Coalition for Open Government.

Persons Signed In To Testify But Not Testifying: None.