

HOUSE BILL REPORT

SHB 1899

As Amended by the Senate

Title: An act relating to penalties for public records violations.

Brief Description: Changing penalty amounts for public records violations.

Sponsors: House Committee on State Government & Tribal Affairs (originally sponsored by Representatives Miloscia, Overstreet, Hurst, Taylor, Hunt, Armstrong, McCoy and Condotta).

Brief History:

Committee Activity:

State Government & Tribal Affairs: 2/16/11 [DPS].

Floor Activity:

Passed House: 3/1/11, 96-2.

Senate Amended.

Passed Senate: 4/6/11, 49-0.

Brief Summary of Substitute Bill

- Changes the range of the monetary penalty that may be assessed against an agency under the Public Records Act from a minimum of \$0 up to a maximum of \$100 for each day the agency has unlawfully failed to provide requested records.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL AFFAIRS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Hunt, Chair; Taylor, Ranking Minority Member; Overstreet, Assistant Ranking Minority Member; Alexander, Condotta, Darneille, Dunshee, Hurst, McCoy and Miloscia.

Staff: Thamas Osborn (786-7129).

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

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

Responding to PRA Requests.

An agency must respond to requests for public records promptly. Within five business days of a request, an agency must:

- provide the record; or
- acknowledge receipt of the request and provide a reasonable estimate of the time that is required to respond to the request; or
- deny the request.

The agency may take additional time 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.

Judicial Remedies.

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 of maintaining the action, including reasonable attorney fees. In addition, it is within the court's discretion to assess a monetary penalty against the agency and award the proceeds to the prevailing party. The penalty must be an amount of not less than \$5, and not more than \$100, for each day the person was unlawfully denied the opportunity to inspect or copy the requested records.

Summary of Substitute Bill:

The lower range of the daily monetary penalty that may be assessed by a superior court against an agency for violation of the PRA is revised. The per-day penalty may range from a minimum of \$0 up to a maximum of \$100 for each day the agency has unlawfully failed to provide the records, subject to the discretion of the court.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendment clarifies that the court has the discretion to make no monetary award to the prevailing party in a legal action for noncompliance with the Public Records Act.

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) The PRA requests are often the source of vital information for newspapers and the public in general. Higher penalties against agencies for noncompliance are a necessary incentive to encourage agencies to provide records in a timely manner. Without higher penalties, it is more likely that agencies will ignore the records production requirements of the PRA.

(Opposed) None.

Persons Testifying: Rowland Thompson, Allied Daily Newspapers.

Persons Signed In To Testify But Not Testifying: (In support) John Worthington.

(With concerns) Victoria Lincoln, Association of Washington Cities.

(Opposed) Christina Beusch, Office of the Attorney General.