
State Government & Tribal Affairs
Committee

SSB 5022

Brief Description: Clarifying the statute of limitations for any court action brought under RCW 42.56.550.

Sponsors: Senate Committee on Judiciary (originally sponsored by Senators Kilmer, Regala, Pflug and Rockefeller; by request of Attorney General).

Brief Summary of Substitute Bill

- Revises and clarifies the one year statute of limitations pertaining to court actions stemming from an agency's violation of the Public Records Act.

Hearing Date: 3/14/11

Staff: Thamas Osborn (786-7129).

Background:

The Public Records Act (PRA) requires all state and local government agencies to make all public records available for public inspection and copying unless they fall within certain 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;
- 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.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

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 award such person an amount of not less than five dollars and not more than \$100 for each day he or she was denied the opportunity to inspect or copy the requested records.

Statute of Limitations for Seeking Judicial Remedies.

Court actions against an agency for noncompliance with the records production requirements of the PRA are subject to a one year statute of limitations, after which no appeal may be filed. This one year limitation period begins to run either on:

- the date of an agency's claim of exemption; or
- the date of the last production of a record being provided by an agency on a partial or installment basis.

The case of *Tobin v. Warden* (2010).

In *Tobin v. Warden*, 156 Wn. App 507 (2010), Division I of the Court of Appeals concluded that the statute of limitations for PRA cases does not begin to run unless one of two events occurs: (1) the agency claims an exemption; or (2) the agency produces the records on a partial or installment basis. In *Tobin*, the agency had produced all responsive records at one time and did not claim any exemptions. The requestor filed a lawsuit in August 2007, claiming violations of the PRA in response to requests both made and responded to in 2005.

Summary of Bill:

The statute of limitations for an action brought under the PRA is amended to require that the action be filed within one year of the latest of: (1) the agency's claim of exemption; (2) the last production of a record prior to the action being filed; (3) a response indicating no records have been located; or (4) a response indicating there are no additional records that will be produced on a partial or installment basis. If none of these events occurs, an action must be filed within one year of the public record request.

This act applies retroactively to all actions brought under RCW 42.56.550 in which final judgment has not been entered as of the effective date of this act. However, for an action where the agency produced records all at one time triggering the statute of limitations, and the one-year statute of limitations for the action would have expired between June 21, 2010, and the effective date of this act, then the one-year statute of limitations will run from the effective date of this act.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect immediately.