

HOUSE BILL REPORT

SSB 5025

As Reported by House Committee On:
State Government & Tribal Affairs

Title: An act relating to making requests by or on behalf of an inmate under the public records act ineligible for penalties.

Brief Description: Concerning making requests by or on behalf of an inmate under the public records act ineligible for penalties.

Sponsors: Senate Committee on Human Services & Corrections (originally sponsored by Senators Hargrove, Becker, Sheldon, Litzow, Haugen, Carrell, White, King, Honeyford, Shin, Kilmer, Regala, Parlette, Conway, Tom, Rockefeller, Roach and Holmquist Newbry; by request of Attorney General).

Brief History:

Committee Activity:

State Government & Tribal Affairs: 3/14/11, 3/21/11 [DP].

Brief Summary of Substitute Bill

- Prohibits a court from awarding a penalty under the Public Records Act if the request for public records was made by an inmate in a correctional facility, unless the court finds that the public agency acted in bad faith.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL AFFAIRS

Majority Report: Do pass. Signed by 11 members: Representatives Hunt, Chair; Appleton, Vice 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 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

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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.

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.

The court may prohibit the examination of a specific public record if, upon motion by the agency or agency representative, the court finds that such examination would clearly not be in the public interest and would substantially and irreparably damage any person or a vital government function. The court may also prohibit all or part of a public records request, as well as future requests, by a person serving a criminal sentence if the court finds that:

- the request was made to harass or intimidate an agency or its employees;
- fulfilling the request would likely threaten the security of correctional facilities;
- fulfilling the request would likely threaten the safety or security of staff, inmates, family members of staff, family members of other inmates, or any other person; or
- fulfilling the request may assist criminal activity.

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 Bill:

A court is prohibited from awarding a monetary penalty to the person prevailing in a PRA appeal if the person making the records request was an inmate in a correctional facility on the date the records request was made. However, the court may award a monetary penalty if it finds that the agency acted in bad faith in denying the records request.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) Inmates in correctional facilities have been systematically burying public agencies in onerous PRA requests in order to profit from court penalties assessed against the agencies. Such inmate requests comprise two-thirds of records requests under the PRA. One inmate had 12 PRA court actions pending at one time. Under current law, inmates have a big financial incentive to file endless, frivolous PRA requests. This bill removes the financial incentive driving burdensome inmate requests. It does, however, allow penalties against agencies in the event an inmate can prove that an agency has acted in bad faith in failing to produce records. In any case, the bill does not limit an inmate's use of the PRA to obtain records.

(Opposed) The claim that inmates are using the PRA to strike it rich is false. Very few inmate records requests are frivolous. Most are pertinent to their cases, status, or conditions of confinement. The bill is unlikely to reduce litigation related to inmate requests. In fact, the bill could actually result in more litigation because it might encourage agencies to stonewall records requests from inmates. The law already provides remedies to agencies who face unduly burdensome or frivolous records requests.

Persons Testifying: (In support) Tim Lang, Office of the Attorney General.

(Opposed) Toby Nixon, Washington Coalition for Open Government.

Persons Signed In To Testify But Not Testifying: None.