

SENATE BILL REPORT

SHB 1899

As Reported by Senate Committee On:
Government Operations, Tribal Relations & Elections, March 21, 2011

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: Passed House: 3/01/11, 96-2.

Committee Activity: Government Operations, Tribal Relations & Elections: 3/17/11, 3/21/11 [DPA].

SENATE COMMITTEE ON GOVERNMENT OPERATIONS, TRIBAL RELATIONS & ELECTIONS

Majority Report: Do pass as amended.

Signed by Senators Pridemore, Chair; Prentice, Vice Chair; Swecker, Ranking Minority Member; Benton, Chase and Nelson.

Staff: Diane Smith (786-7410)

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 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 (1) provide the records, (2) provide a reasonable estimate of the time the agency will take to respond to this request, or (3) 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

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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 private.

Any person who prevails against an agency in any action in the courts seeking the right to inspect or copy any public record must be awarded all costs, including reasonable attorneys' fees. In addition, the court has the discretion to award such person no less than \$5 and no more than \$100 for each day that person 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.

Summary of Bill (Recommended Amendments): The court's discretion to award a monetary amount to the prevailing person in a law suit under the PRA is changed to an amount not to exceed \$100 per day.

EFFECT OF CHANGES MADE BY GOVERNMENT OPERATIONS, TRIBAL RELATIONS & ELECTIONS COMMITTEE (Recommended Amendments): No substantive change is made. The intent to allow a judge to order no daily penalty is clarified.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony on Substitute House Bill: PRO: While the approaches of the other PRA bills this session were different and each had merit, this bill is a good compromise. It addresses the disingenuous use of the PRA for personal gain, allowing the court to impose no penalties in appropriate circumstances. The requirement that the judge must assess a minimum of \$5 for each day works a disproportionate hardship on small jurisdictions, especially considering how long the legal process takes. However, this bill would not be supported if the penalty range were increased above the current \$100.

CON: Without also increasing the upper limit of the judge's discretion, this bill is not equitable and could have unintended consequences. This is especially the case considering that an agreement of prior years was only partly honored. To correct that occurrence, the penalty should go up to \$500. If jurisdictions don't want to be assessed penalties, all they have to do is obey the PRA.

Persons Testifying: PRO: Christina Beusch, Attorney General's Office; Brian Enslow, Washington State Association of Counties; Charlie Brown, Puget Sound School Coalition; Rowland Thompson, Allied Daily Newspapers; Frank DeVaul, DeVaul Publishing, Incorporated.

CON: Toby Nixon, Washington Coalition for Open Government.