

# SENATE BILL REPORT

## SB 5049

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As of January 24, 2011

**Title:** An act relating to implementing recommendations of the sunshine committee.

**Brief Description:** Implementing recommendations of the sunshine committee.

**Sponsors:** Senators Kline, Roach and Keiser.

**Brief History:**

**Committee Activity:** Government Operations, Tribal Relations & Elections: 1/24/11.

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### SENATE COMMITTEE ON GOVERNMENT OPERATIONS, TRIBAL RELATIONS & ELECTIONS

**Staff:** Sharon Swanson (786-7447)

**Background:** In 2007 the Legislature created the 13-member Public Records Exemption Accountability Committee, known as the Sunshine Committee (Committee), to review all public records exemptions and make annual recommendations to the Legislature whether to maintain the exemption, modify the exemption, schedule it for sunset review at some later time, or terminate the exemption.

By November 15 of each year, the Committee is required to transmit its recommendations to the Governor, the Attorney General, and the appropriate committees of the Legislature. In 2007 the Committee report did not contain recommendations for the Legislature to consider. In 2008 the Committee report contained 12 recommendations for consideration, eight of the recommendations were unanimous. The four non-unanimous recommendations related to:

- applications for public employment;
- definition of employment;
- rideshare records; and
- work product and attorney client-privilege.

The eight unanimous recommendations were enacted in 2010.

In 2009 the Committee report contained eight recommendations, five of which were recommendations to retain existing exemptions. The remaining recommendations related to:

- legislative records;
- the Office of the Insurance Commissioner; and

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- a five year limitation on future exemptions.

In 2010 the Committee report contained 20 recommendations to retain exemptions without modification and four recommendations requiring modification relating to:

- Washington Pollution Insurance Liability Program;
- non-conviction data;
- Court Appointed Special Advocates (CASA); and
- financial information.

**Summary of Bill:** Based on the recommendations of the Committee, the following changes are made to public disclosure and copying of the following records:

2010 Recommendations. Court Appointed Special Advocates. The Committee recommends that RCW 13.34.100 be amended to provide for disclosure to the public the background information containing the results of the criminal background check and the criminal history of the court appointed special advocates.

Personal/Financial Information. The Committee recommends that the Public Records Act exemption related to personal information, RCW 42.56.230, be amended to clarify that financial information, including social security numbers, is information that agencies may withhold in response to a public records request.

Underground Petroleum Storage Tanks. The Committee recommends amending RCW 70.148.060 so that information is public and subject to disclosure except in the case of proprietary reports or information obtained by the Director of the Washington Pollution Insurance Liability Program.

2009 Recommendation. Office of the Insurance Commissioner. The Committee recommends that the exemption in RCW 48.03.050 be amended to require the Commissioner to include a time limit on how long the report can be withheld, and must state why continued confidentiality of the report is necessary. The exemption in RCW 48.03.050 allows the Insurance Commissioner to withhold reports of market conduct examination from public disclosure for five days, or for longer if the Commissioner believes it appropriate,

2008 Recommendations (Adopted by the Committee but not unanimously). Applications for Public Employment. The Committee recommends that RCW 42.56.250 (2) be amended to permit public access to some applications for executive positions. Applicants for the highest management position in a public agency, county, or local government department with confidential reference information removed or redacted is not exempt from inspection and copying. Application materials not subject to exemption must be made available to the public after the finalists are selected, but before the agency, county, or local government makes its decision.

Employment is defined as not including service on boards or commissions where the individual does not receive pay or benefits, even if that individual may receive minimal reimbursement or stipend for expenses.

*Rideshare records.* The Committee recommends that RCW 42.56.330 be amended to narrow the exception so that it only allows the release of limited information of a participants name, general location, and email address. Additionally, participants are allowed, for the purpose of personal safety, to identify individuals they do not want their information disclosed to. Language is added to clarify that the agency is not liable if it erroneously releases the information, except upon proof of willful or wanton misconduct.

*Attorney/Client Privilege.* The Committee recommended that the state of applicable law in Washington State, in regard to attorney-client privilege and the work-product rule, should be essentially what it was before the state Supreme Court's 2004 *Hangartner* ruling and its 2007 *Soter* ruling. A new section is added to RCW 42.56 stating that records reflecting communications transmitted in confidence between a public official, representative, or employee of a public agency acting in the performance of his or her duties, and an attorney serving in the capacity of legal advisor for the purpose of rendering or obtaining legal advice, and records prepared by the attorney or a public official, representative, or employee of a public agency in furtherance of the request for or rendition of legal advice are exempt from inspection and copying.

If an agency elects to produce a record that is otherwise privileged under the attorney-client privilege, privilege is waived only as to the specific records produced.

**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:** PRO: A tremendous amount of work has gone into the Sunshine Committee and these recommendations. The section of the bill that addresses the attorney-client privilege has been worked and worked for years. At this point, the Committee should not spend additional time on that matter. It can either stay in the bill or come out; but either way, the issue should not be re-addressed by the Committee.

OTHER: The section of the bill that references how long the Insurance Commissioner may withhold a report relating to market conduct should be in a different RCW section. The section of the bill that relates to attorney client privilege was not agreed to by the Sunshine Committee and many members have not seen this language before now. The section of the bill that relates to the release of applications for candidates for the highest management position of a public agency, county, or local government department will have a chilling effect on applicants. What if an applicant has not or does not want their current employer to know they are seeking employment elsewhere? Even if that applicant were not a finalist and simply applied, that information would become public. This will cause good applicants to think twice before they apply. The section of the bill that relates to the rideshare program will actually cost a great deal of money. Currently, the information may be released; there is no requirement that the information be released upon request. The bill would change to allow individual participants to identify people who they do not want their personal information

released to. This creates a need to develop a system to flag the parties whose information is not to be released and to whom.

The bill is moving in the right direction but does need some clarifications and technical fixes.

**Persons Testifying:** PRO: Senator Kline, prime sponsor; Brian Lagerberg, Washington Department of Transportation.

OTHER: Arthur West, citizen; John Boesenberg, State Board for Community Colleges; Tim Douglas, Trustee Whatcom Community College; Rowland Thompson, Allied Daily Newspapers; Fank Garred, Sunshine Committee; Drew Bouton, Office of Insurance Commissioner.