

SENATE BILL REPORT

SB 5049

As of February 9, 2012

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, 2/01/11 [DPS]; 1/31/12.

SENATE COMMITTEE ON GOVERNMENT OPERATIONS, TRIBAL RELATIONS & ELECTIONS

Majority Report: That Substitute Senate Bill No. 5049 be substituted therefor, and the substitute bill do pass.

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

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.

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 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
- 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.

In 2011 the Sunshine Committee reviewed 34 exemptions. The Committee voted to recommend that all of the considered exemptions but three would be retained without modification.

Summary of Bill: The bill as referred to committee not considered.

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

2011 Recommendations. Language is added to clarify that identifying information related to a child sexual assault victim includes, but is not limited to, the child's name, address, location or photograph. Information contained in a local or regionally maintained gang database is exempt from public disclosure. The exemption related to medical malpractice closed claims be repealed.

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.

Appropriation: None.

Fiscal Note: Available.

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: The Sunshine Committee has spent years working through the exemptions to the Public Records Act. The work is tedious but thorough and thoughtful. The recommendations of the Committee should be enacted and this bill should pass. The intent of the CASA language was to allow for more transparency for the public in how certain CASAs are chosen and potential conflicts of interest that may arise. The Committee heard testimony that in some instances CASA volunteers may have a financial relationship that could impact their impartiality. The language in the bill related to CASAs is an attempt to open that program up to scrutiny.

CON: The portion of the bill that opens the criminal background checks for CASA's to the public is a very bad idea. The information contained is sensitive and should remain private. CASAs often deal with disgruntled parties and angry parents. CASA's need their privacy protected so they will not be placed in danger. The screening process that a CASA volunteer goes through is quite rigorous and the background check is only one small portion. The Court gets the information and that should be how it remains.

Persons Testifying: PRO: Bill Will, WA Newspaper Publishers Assn.; Rowland Thompson, Allied Newspapers.

CON: Dianne Schultheis, WA State CASA Assn.