

SENATE BILL REPORT

SHB 1298

As of March 28, 2013

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

Brief Description: Implementing the recommendations of the sunshine committee.

Sponsors: House Committee on Government Operations & Elections (originally sponsored by Representatives Springer, Hunt, Ryu and Pollet; by request of Public Records Exemptions Accountability Committee).

Brief History: Passed House: 3/04/13, 97-0.

Committee Activity: Governmental Operations: 3/28/13.

SENATE COMMITTEE ON GOVERNMENTAL OPERATIONS

Staff: Samuel Brown (786-7470)

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 while the exemptions are interpreted narrowly to effectuate the general policy favoring disclosure. Public records include legislative records, defined as the correspondence, amendments, reports, minutes of meetings, transcripts or records of hearings or supplementary written testimony, or data filed with legislative committees or subcommittees.

In 1972, voters approved Initiative 276. The initiative addressed, among other issues, access to public records. At the time the initiative was passed, there were ten exemptions from public records disclosure. Today, there are over 300 specific references in the PRA or other statutes that remove certain information from application of the PRA, provide exceptions to the public disclosure and copying of certain information, or designate certain information as confidential.

The Public Records Exemption Accountability Committee (Sunshine Committee), created by the Legislature in 2007, is charged with reviewing all exemptions from public disclosure. Members of the Sunshine Committee must include two representatives appointed by the Governor, two appointed by the Attorney General, four members of the public, and four members of the Legislature. The Sunshine Committee meets several times per year to

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discuss the exemptions and recommend the repeal or amendment of any exemption. For each public disclosure exemption, the Sunshine Committee must provide a recommendation as to whether the exemption should be continued without modification, modified, scheduled for sunset review at a future date, or terminated. By November 15 of each year, the Sunshine Committee must transmit its recommendations to the Governor, the Attorney General, and the appropriate committees of the Legislature.

Guardians Ad Litem. Under any proceeding related to terminating a parent-child relationship, the courts must appoint a guardian ad litem for any child. A guardian ad litem is an individual appointed by the court to represent the best interests of a child or incapacitated person involved in a case in superior court. Persons wishing to be a guardian ad litem must apply to the guardian ad litem program in each county. Counties must maintain background information, which is updated annually, for each guardian ad litem in the program. The background information must be provided to the parties or their attorneys involved in the action. The portion of the background information record containing the results of the criminal background check and the criminal history may not be disclosed to the parties or their attorneys, and may not include background information that includes identifying information that may be used to harm the guardian ad litem.

Personal Information. Certain personal information contained in the files of an agency is exempt from public inspection and copying under the PRA:

- credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial account numbers, except when disclosure is expressly required by or governed by another law;
- the names, residential addresses, residential telephone numbers, and other individually identifiable records relating to a vanpool, carpool, or other ride-sharing programs or services, except to other persons who apply for ride-matching services and need the information for purposes of ride sharing; and
- personally identifying information of persons who acquire and use transit passes or other fare payment media, except to entities responsible for payment of the cost of acquiring or using a transit pass or other fare payment media for the purpose of preventing fraud, or to the news media when reporting on public transportation or public safety.

Law Enforcement and Investigative Information. Certain information relating to investigative, law enforcement, and crime victims is exempt from public inspection and copying, including the following:

- information revealing the identity of child victims of sexual assault, stated as the child victim's name, address, location, or photograph, and in cases in which the child victim is a relative or stepchild of the alleged perpetrator, identification of the relationship between the child and the alleged perpetrator; and
- information contained in the statewide gang database.

Proprietary Information. All examination and proprietary reports and information obtained by the Washington Pollution Liability Insurance Program related to soliciting bids from insurers and in monitoring the insurer may not be disclosed.

Applications for Public Employment. Applications for public employment, including the names of applicants, resumes, and other related materials are exempt from public inspection and copying under the PRA.

Market Conduct Examination Reports. The market conduct examination report held in the Office of the Insurance Commissioner (OIC) is confidential and not filed for public inspection until after the hearing. Once adopted, the report is held private and confidential for five days, after which OIC may open the report for public inspection. OIC may withhold any examination or investigation report for so long as it deems it advisable.

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

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

Guardians Ad Litem. The prohibition on disclosure of information from a guardian ad litem background check to the parties and their attorneys is removed. The background information record for each guardian ad litem is available for public inspection and copying, subject to the court's discretion. Additional information must be included in the guardian ad litem background information record:

- any connection with an organization involved in the placement of children;
- the number of appointments as a guardian ad litem or court-appointed special advocate in other states;
- the name of any counties in any state where the person was removed from a registry due to a grievance action; and
- any complaints regarding the person, unless proven false.

Personal Information. The exemption related to personal information is amended to clarify that personal account balances, transactional information concerning an account, access codes, passwords, and social security numbers are exempt from public inspection and copying. Disclosure of information regarding participants in a rideshare program is limited to the participants' names, general locations, and email addresses. Information identifying a purchaser of a transit pass or smart card cannot be disclosed to the news media when reporting on public transportation or safety.

Law Enforcement and Investigative Information. Language is added clarifying that identifying information related to a child victim of sexual assault 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 disclosure.

Proprietary Information. Information obtained by the Director of the Washington Pollution Insurance Liability Program is public and subject to disclosure except in the case of proprietary reports or information.

Applications for Public Employment. Applications for public employment are exempt from disclosure subject to the following conditions:

- the applications of finalists applying for the highest management position in an agency with confidential reference information removed or redacted are not exempt from disclosure; and
- application materials not exempt from disclosure must be available to the public after the finalists are selected, but before the agency makes its decision.

Market Conduct Examination Reports. OIC must disclose market conduct examination reports for public inspection and copying five days after the report is adopted, unless a court order stays publication.

Legislative records are defined as the correspondence, amendments, reports, minutes of meetings, transcripts or records of hearings or supplementary written testimony, or data filed with legislative policy, fiscal, or operational committees or subcommittees, and are subject to public inspection and copying unless a specific exemption applies.

The Sunshine Committee is terminated on August 1, 2013.

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: The bill as passed the House was the product of hearing, testimony, and decisions the House made with regard to the recommendations we received from the Sunshine Committee. It passed out of committee and off the floor unanimously. The Sunshine Committee supports the bill as it came over from the House, but asks that the method of contact for people in ride-sharing programs be technology neutral. We may not have email in a few years, so we'd like the language to be technology neutral.

CON: The exemption for medical malpractice claims information harkens back to a 2006 agreement when we did medical malpractice reform so we could have a better idea of what is happening around medical malpractice. Part of that agreement was to submit information in a confidential manner. This is somewhat going against that agreement. Some entities not required to report will choose not to if there is no protection. OIC's report will not be complete because people will no longer share the information.

OTHER: We support the exemption of local gang databases, because that is a good law enforcement tool and we do not want that data shared. We have concerns about disclosure of applications for top management positions, because it reaches a long way down into county government offices. It may have a chilling effect on recruitment for those positions.

Persons Testifying: PRO: Representative Springer, prime sponsor; Rowland Thompson, Sunshine Committee.

CON: Lisa Thatcher, WA State Hospital Assn.

OTHER: Candice Bock, Assn. of WA Cities; Monty Cobb, WA Assn. of County Officials.