

SENATE BILL REPORT

SB 5169

As Reported by Senate Committee On:
Governmental Operations, February 11, 2013

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

Brief Description: Implementing the recommendations of the sunshine committee.

Sponsors: Senators Roach and Hasegawa; by request of Public Records Exemptions Accountability Committee.

Brief History:

Committee Activity: Governmental Operations: 2/07/13, 2/11/13 [DPS].

SENATE COMMITTEE ON GOVERNMENTAL OPERATIONS

Majority Report: That Substitute Senate Bill No. 5169 be substituted therefor, and the substitute bill do pass.

Signed by Senators Roach, Chair; Benton, Vice Chair; Braun and Rivers.

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.

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

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members of the Legislature. The Sunshine Committee meets several times per year to 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.

In 2007, the Sunshine Committee report did not contain recommendations for the Legislature to consider. In 2008, the Sunshine Committee report contained 12 recommendations for consideration. Eight of the recommendations were unanimous. The four non-unanimous recommendations related to applications for public employment, the definition of employment, rideshare records, work product, and attorney client-privilege. The eight unanimous recommendations were enacted in 2010.

In 2009, the Sunshine 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 (OIC), and a five-year limitation on future exemptions.

In 2010, the Sunshine Committee report contained 20 recommendations to retain exemptions without modification and four recommendations requiring modification relating to the Washington Pollution Insurance Liability Program, non-conviction data, court appointed special advocates, and financial information.

In 2011, the Sunshine Committee reviewed 34 exemptions. The Sunshine Committee voted to recommend that all of the considered exemptions but three would be retained without modification. In 2012, the Sunshine Committee reviewed four exemptions, but did not vote to make any recommendations.

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

- The exemption related to personal information is amended to clarify that personal account balances, transactional information concerning an account, access codes, and passwords are exempt from public inspection and copying.
- Public access is permitted to applications for some executive positions. Applications of finalists for the highest management position in a public agency, county, or local government department, except for confidential reference information are not exempt from disclosure. Application materials not exempt from inspection and copying must be available to the public after finalists are selected, but before the authority makes its decision. For these records, 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 a stipend for expenses.
- The exemption related to rideshare information is amended to narrow the exception so that it only allows the release of limited information of a participant's name, general location, and e-mail address. Additionally, information that identifies a

- person who purchased a transit pass or smart card cannot be disclosed to the news media when reporting on public transportation or safety.
- Five days after the adoption of a market conduct examination by the Insurance Commissioner, the report must be open for public inspection unless a court stays the report's publication.
 - 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.
 - 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.

EFFECT OF CHANGES MADE BY GOVERNMENTAL OPERATIONS COMMITTEE (Recommended Substitute): 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.

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 Original Bill: PRO: A broad-minded group of individuals agreed that some of these exemptions need to be removed. Adding Social Security numbers into the category of protected financial information puts the statute in line with a directive from the Attorney General. If reports of the Insurance Commissioner are needed for criminal investigations, it would not be difficult to move to stay publication. There is some confusing wording in the Washington Pollution Insurance Liability Program statute, so this clarifies that work product would still be disclosed.

OTHER: The section about application materials of finalists is drafted in a way that is very broad and could include positions beyond the chief official. This could have a chilling effect on the ability to recruit applicants for those other positions. Applicants could be concerned

that they might jeopardize their existing job. If the Insurance Commissioner is required to make market conduct examinations public, that might jeopardize their ability to refer prosecutions. Occasionally, solvency issues arise, so if information becomes public immediately, that could make it harder to rehabilitate a company.

Persons Testifying: PRO: Senator Roach, prime sponsor; Rowland Thompson, Sunshine Committee.

OTHER: Candice Bock, Assn. of WA Cities; James McMahan, WA Assn. of County Officials; Drew Bouton, OIC.