

SENATE BILL REPORT

SHB 1160

As of March 15, 2017

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

Brief Description: Enacting recommendations of the sunshine committee.

Sponsors: House Committee on State Govt, Elections & IT (originally sponsored by Representatives Springer, Kilduff and Pollet).

Brief History: Passed House: 2/15/17, 97-0.

Committee Activity: State Government: 3/15/17.

Brief Summary of Substitute Bill

- Requires public disclosure for personal information where the subject of the information consents to disclosure.
- Exempts public employee and volunteer passport and visa numbers from public disclosure.
- Exempts information regarding the ongoing investigations of employment-related discrimination from public disclosure until the agency provides notice of the investigation outcome.
- Exempts trade secrets from public disclosure.
- Allows an award of attorney's fees to any defendant who successfully defends against an injunction of public disclosure of financial, commercial, or proprietary records.

SENATE COMMITTEE ON STATE GOVERNMENT

Staff: Samuel Brown (786-7470)

Background: The Public Records Act (PRA), enacted in 1972 as part of Initiative 276, requires that all state and local government agencies make all public records available for public inspection and copying unless certain statutory exemptions apply. Over 500 specific references in the PRA or other statutes remove certain information from application of the PRA, provide exceptions to the public disclosure and copying of certain information, or

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designate certain information as confidential. The provisions requiring public records disclosure must be interpreted liberally while the exemptions are interpreted narrowly to effectuate the general policy favoring disclosure.

Personal Information. Personal information is exempt from disclosure in various circumstances within the PRA. A general category of exemptions for personal information includes childcare enrollment, public employees and officials, tax assessments, personal financial information, driver's license records, vehicle license information associated with certain agency conducting investigations, 911 emergency systems data, selective service declination, and claims to the Board of Industrial Insurance Appeals.

Public Employee Records. A separate exemption protects certain personal information of public employee personnel records from disclosure. Such information includes residential and email addresses, telephone numbers, social security and driver's license numbers, and emergency contact information. The exemption includes the same information of an employee's dependents. Records of an agency's active and ongoing investigation of an employment-related discrimination claim is also exempt.

Financial Information. A category of exemptions applies to certain kinds of sensitive financial, commercial, and proprietary information obtained by agencies. Some of the main exemptions in this category include valuable designs, codes, or data that would cause private gain and public loss if disclosed; information obtained for certain bidding processes; investment information related to public trust or retirement funds; proprietary vendor information related to state purchased health care; certain business related information collected by the Department of Commerce; and certain business information related to marijuana licensing and regulation.

State Procurement Records. State procurement law exempts bid submissions and evaluations of bids for goods and services contracts from disclosure until the agency announces the apparent successful bidder.

Trade Secrets. A trade secret is defined in law as information that is under efforts to remain secret and has economic value from not being generally known or ascertainable to other people who could use such information for economic value. The law protects trade secrets from misappropriation and courts may order injunctions and penalties against misappropriations of trade secrets.

Enjoining Disclosure. The PRA allows a procedure for an agency, or person whose name is in information subject to disclosure, to seek an injunction in superior court to stop the disclosure of a record. The court may enjoin disclosure if it finds that disclosure is clearly not in the public interest and would substantially and irreparably damage a person or vital governmental function.

Summary of Bill: Personal Information. The subject of personal information, or the parents or guardian of a child who is the subject of personal information, may provide consent to the agency for disclosure of the information.

Public Employee Records. The city, state, and first five digits of the zip code of the residential address of a public employee or volunteer is not exempt from public disclosure requirements. Employee and volunteer passport and visa numbers are exempt from public disclosure requirements. All identifying and contact information of public agency employee or volunteer dependents is exempt from public disclosure requirements. The exemption for information regarding the ongoing and active agency investigation of employment-related discrimination expressly includes the entire records of the ongoing investigation and lasts until the agency informs the complaining employee of the outcome of the investigation.

Financial Information. Trade secrets are exempt from public disclosure requirements. A court may award attorney's fees to any defendant, including an agency, who successfully defends against an action to enjoin disclosure of financial, commercial, and proprietary related records.

State Procurement Records. The exemption from disclosure of bid submissions and evaluations of bids for goods and services contracts until a successful bidder is announced is transferred to the PRA.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony: PRO: This bill contains the recommendations of the Sunshine Committee. It is designed to make the PRA work in a high-technology age.

CON: Data we provide to be compliant with our licensing requirements is sought by our competitors. Under this bill, we would have to sue to prevent its release, and pay the attorneys' fees of both the public agency and our competitors if we lose, and our competitors would ultimately get information about us for a competitive advantage.

OTHER: Disclosure of the city and zip code of public employees would provide access to their residential addresses, undermining the safety of public workers and their families.

Persons Testifying: PRO: Representative Larry Springer, Prime Sponsor.

CON: Bob Battles, AWB; Steve Gano, Uber.

OTHER: Matt Zuvich, Washington Federation of State Employees; Seamus Petrie, Washington Public Employees Association, UFCW Local 365.

Persons Signed In To Testify But Not Testifying: No one.