

HOUSE BILL REPORT

HB 1692

As Reported by House Committee On: State Government & Tribal Relations

Title: An act relating to protecting information concerning agency employees who have filed a claim of harassment or stalking.

Brief Description: Protecting information concerning agency employees who have filed a claim of harassment or stalking.

Sponsors: Representatives Jinkins, Caldier, Fitzgibbon, Doglio, Cody, Macri, Gregerson, Riccelli, Kilduff, Bergquist, Dolan, Appleton, Davis, Ryu, Robinson, Morgan, Blake, Stanford, Frame, Ormsby, Tarleton, Tharinger, Fey, Kloba, Valdez, Orwall, Callan, Harris, Kirby, Ortiz-Self, Senn, Goodman, Peterson and Reeves.

Brief History:

Committee Activity:

State Government & Tribal Relations: 2/5/19, 2/19/19 [DPS].

Brief Summary of Substitute Bill

- Exempts from public disclosure certain records concerning agency employees who have made a claim of workplace sexual harassment or stalking if the requestor is the person alleged in the claim to have harassed or stalked the employee and the agency reasonably believes, after having conducted an investigation, the alleged act occurred.
- Requires an agency to notify an agency employee who has made a claim of workplace sexual harassment upon any request for records concerning that agency employee, authorizes that employee to enjoin, by court order, the disclosure of certain records concerning that agency employee.
- Subjects a person to civil liability who requests and obtains a record concerning an agency employee who has made a claim of workplace sexual harassment and uses it, or provides it to someone who uses it, to harass, stalk, threaten, or intimidate that agency employee.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL RELATIONS

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.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Gregerson, Chair; Pellicciotti, Vice Chair; Walsh, Ranking Minority Member; Goehner, Assistant Ranking Minority Member; Appleton, Dolan, Hudgins, Mosbrucker and Smith.

Staff: Desiree Omlı (786-7105).

Background:

The Public Records Act (PRA) requires state and local agencies to make their written records available to the public for inspection and copying upon request, unless the information fits into one of the various specific exemptions under the PRA or as otherwise provided in law. The stated policy of the PRA favors disclosure and requires narrow application of the listed exemptions.

Certain employment information is exempt from public inspection and copying, including information held by an agency in personnel records, public employment related records, volunteer rosters, or information included in any mailing list of employees or volunteers of any public agency. Examples include:

- examination data such as test questions or scoring keys;
- applications for public employment;
- residential addresses, personal phone numbers or email addresses, Social Security numbers, driver's license or identification card numbers, and emergency contacts of the employee or volunteer; and
- information relating to an active investigation of a possible unfair practice claim, which may include sexual harassment under certain circumstances.

In addition, certain personal information is exempt from public inspection and copying, such as personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy.

A person's "right to privacy" is invaded or violated if disclosure of information about the person: (1) would be highly offensive to a reasonable person; and (2) is not of legitimate concern to the public.

Summary of Substitute Bill:

Records Exempt.

Unless by court order, an agency is prohibited from disclosing records concerning an agency employee who has made a claim of workplace sexual harassment or stalking with the employing agency, if the record is requested by a person alleged in the claim to have sexually harassed or stalked the agency employee and the agency reasonably believes, after having conducted an investigation, that the alleged act occurred. A "record concerning an agency employee" does not include work product created by the agency employee as part of his or her official duties. A court order authorizing disclosure must be based on a finding by the court that, in consideration of the totality of the circumstances, disclosure would not violate

the agency employee's right to privacy. It is presumed highly offensive to a reasonable person to disclose, directly or indirectly, records concerning an agency employee who has made a claim of workplace sexual harassment or stalking with the agency to persons alleged in the claim, and who the agency reasonably believes after having conducted an investigation, to have sexually harassed or stalked the agency employee.

Action for Injunction.

Upon any request for records concerning an agency employee who has made a claim with the employing agency of harassment or stalking, the agency must immediately notify the agency employee of the request. The agency employee may enjoin disclosure if:

- the agency employee brings an action within the required five day period for agencies to respond to PRA requests;
- notifying the agency upon filing an action for an injunction; and
- obtaining a court ordered injunction, after a court finds that, in consideration of the totality of the circumstances, disclosure would violate the agency employee's right to privacy. It is presumed highly offensive to a reasonable person to disclose, directly or indirectly, records concerning an agency employee who has made a claim of workplace sexual harassment or stalking with the agency to persons alleged in the claim, and who the agency reasonably believes after having conducted an investigation, to have sexually harassed or stalked the agency employee.

The time for agencies to respond to PRA requests is suspended during the pendency of the action filed by the agency employee for an injunction.

Civil Liability.

Any person who requests and obtains a record concerning an agency employee who has made a claim with the employing agency of workplace sexual harassment or stalking is subject to civil liability if he or she uses the record or the information in the record to harass, stalk, threaten, or intimidate that agency employee. Such a person is also liable if he or she provides the record or information in the record to a person who uses it to harass, stalk, threaten, or intimidate that agency employee.

An aggrieved party, the Attorney General, or a prosecuting attorney may sue in superior court for violation of this provision. The court may order an appropriate civil remedy, including up to \$1,000 for each record used in violation of this provision, as well as costs and reasonable attorney's fees.

Substitute Bill Compared to Original Bill:

The term "harassment" is narrowed to mean workplace sexual harassment. The prohibition on disclosure takes effect after the agency has conducted an investigation. The presumption that disclosure is highly offensive is modified to specify that it is highly offensive to disclose records to a person who the agency reasonably believes, after having conducted an investigation, to have sexually harassed or stalked the employee.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(In support) There was a situation where an employee was harassed at work and the person alleged to have done the harassing was terminated. The person alleged to have done the harassing then started making numerous personnel public records requests concerning the employee including video tapes of times the employee was exiting the building, times when the employee's badge was used, and information about travel as a part of employment. State employees are asked to put themselves in vulnerable positions, and the state needs to protect their employees who do tough jobs. This bill would ensure that the person alleged to have done the harassing cannot continue to harass after the agency did an investigation and found the person to have harassed the employee. A person's harasser should not be able to gain personal information about someone to continue harassing behavior.

Sexual harassment is underreported because of fear of retaliation, harassment, and of their personal information being made public. The state needs to create a space where people feel safe to come forward. The bill removes a key obstacle to reporting by confirming that agency employees will be protected from harm.

Although this is a good step in the right direction, there's an opportunity to include the perspective of bystanders and witnesses. There are also concerns about how long investigations will take and the burden on victims to get a court order.

(Opposed) Some individuals who have been accused of sexual harassment have difficulty accessing any information to defend themselves. Personnel policies give you the right to gather evidence to defend yourself. In addition, state employees do not have a privacy interest. There is a two-prong test for privacy that is not always met in these cases.

(Other) The bill may be going too far. There is a need to get to the point to not trample on the constitutional right to petition the government and protecting information that would be used for no legitimate purpose. Everyone needs to feel safe and not be harassed, but there needs to be a balance. There are two potential abuses of power at play: the first is the abuse of power between employees; the second is the ability for an agency to persecute employees without the employee having the ability to access information that could be used to defend themselves against unfounded charges.

In addition, agencies cannot make a finding of harassment. A person also has the option to get a temporary restraining order if harassment is found.

Persons Testifying: (In support) Representative Jinkins, prime sponsor; Seamus Petrie, Washington Public Employees Association; Dennis Eagle, Washington Federation of State Employees; Joe Stohr, Washington Department of Fish and Wildlife; and Lauren Burnes.

(Opposed) Steve Majerick.

(Other) Rowland Thompson, Allied Daily Newspapers of Washington; and Arthur West.

Persons Signed In To Testify But Not Testifying: None.