

HOUSE BILL REPORT

2SHB 1888

As Amended by the Senate

Title: An act relating to protecting employee information from public disclosure.

Brief Description: Protecting employee information from public disclosure.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Hudgins and Valdez).

Brief History:

Committee Activity:

State Government & Tribal Relations: 1/14/20, 2/7/20 [DPS];
Appropriations: 2/10/20, 2/11/20 [DP2S(w/o sub SGOV)].

Floor Activity:

Passed House: 2/14/20, 91-7.
Senate Amended.
Passed Senate: 3/4/20, 36-10.

Brief Summary of Second Substitute Bill

- Exempts month and year of birth, photographs, and payroll deduction information of government employees and volunteers held in certain personnel files from public disclosure, but permits the news media to have access to full dates of birth and photographs.
- Exempts certain personal demographic details of individual state employees from public disclosure.
- Requires a governmental entity to notify an employee when a records request has been made for the employee's personal information.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL RELATIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Gregerson, Chair; Pellicciotti, Vice Chair; Goehner, Assistant Ranking Minority Member; Appleton, Dolan, Hudgins and Smith.

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.

Minority Report: Without recommendation. Signed by 2 members: Representatives Walsh, Ranking Minority Member; Mosbrucker.

Staff: Carrington Skinner (786-7192).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on State Government & Tribal Relations. Signed by 24 members: Representatives Ormsby, Chair; Robinson, 1st Vice Chair; Bergquist, 2nd Vice Chair; Rude, Assistant Ranking Minority Member; Caldier, Chopp, Cody, Dolan, Fitzgibbon, Hansen, Hoff, Hudgins, Kilduff, Macri, Pettigrew, Pollet, Ryu, Senn, Springer, Steele, Sullivan, Tarleton, Tharinger and Ybarra.

Minority Report: Do not pass. Signed by 7 members: Representatives Stokesbary, Ranking Minority Member; Chandler, Corry, Kraft, Mosbrucker, Schmick and Sutherland.

Minority Report: Without recommendation. Signed by 1 member: Representative Dye.

Staff: David Pringle (786-7310).

Background:

The Public Records Act (Act) requires all state and local governmental entities to make available to the public all public records, which are records prepared or retained by a governmental entity that relate to the conduct of government or the performance of governmental or proprietary functions. This general rule applies to records regardless of the form they take unless a specific exemption applies. The Act specifies that it is to be liberally construed; any exemptions to the disclosure requirement must be interpreted narrowly.

There are a number of statutory exemptions for records or information contained in records, including certain records containing personal information and records that raise privacy concerns. Several of these exemptions apply to medical information, contact information, financial information, and other personally identifying information. Other records included in personnel and volunteer records, such as residential addresses, telephone numbers, electronic mail addresses, and social security numbers are also exempted.

Photographs and month and year of birth of employees and workers of criminal justice agencies in personnel files are exempt from public disclosure. However, the news media have access to photographs and full dates of birth.

A court may enjoin the release of a record if it determines that examination of the record would clearly not be in the public interest and would substantially and irreparably damage a person or vital government functions. A governmental agency is generally given the option to notify persons named in the record or to whom the record pertains that the release of a record has been requested, unless the agency is required to do so by law.

In October 2019 the Washington Supreme Court held that public records containing birth dates of state employees are not exempt from disclosure under the Act, and their release does not violate the state Constitution's guarantee of privacy.

Summary of Second Substitute Bill:

Month and year of birth and photographs of public agency employees in personnel files are exempt from public disclosure. The news media is permitted to have access to full dates of birth and photographs. Payroll deduction information of public agency employees or volunteers that is in certain records held by agencies are exempt from disclosure. Personal demographic details of individual state employees that are voluntarily submitted to and maintained by a state agency or higher education institution are also exempt from disclosure.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendment:

- modifies the records request notice requirement such that an agency must provide notice only when receiving a request for information exclusively in an employee's personnel, payroll, supervisor, or training file;
- alters information provided in the notice to include a statement that the agency will release only nonexempt information in certain employee files and that such release will occur at least 10 days after the notice is made, rather than 10 days after the notice is mailed; and
- moves notice requirements from RCW 42.56.230, relating to personal information exemptions, to RCW 42.56.250, relating to employment and licensing information exemptions.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony (State Government & Tribal Relations):

(In support) This bill originated with state employees who had concerns about the way their information was being handled. Providing notice will allow employees to know that their privacy and security may be in danger. Survivors of domestic violence have concerns about personal information that can be made public. State employees are at risk of identity theft and harassment, and need to keep their information from being disclosed. The Secretary of State address-protection program does not always prevent disclosure. The law is outdated and needs to be updated to protect public employees due to modern cybersecurity concerns.

(Opposed) A free press needs access to information to hold institutions accountable. There is room for reasonable exemptions to support privacy, but they cannot interfere with the ability of the media to inform the public about government. This bill will diminish investigative reporting because dates of birth are used to distinguish between state employees with similar

names. Dates of birth are already publicly available. Genuinely sensitive information cannot be disclosed. Current law provides protections for employees who have fears of being exposed, like the confidentiality program operated by the Secretary of State. As the State Supreme Court found, there is no compelling reason to keep employee dates of birth private.

(Other) The Department of Retirement Systems would have a difficult time providing notice to all people in its systems in an effective way. If curtailments to First Amendment activity are allowed, liberty is harmed.

Staff Summary of Public Testimony (Appropriations):

(In support) This is a contentious issue, but after meeting with stakeholders, two major concerns were identified: that the media wanted to be able to seek out malfeasance; and that public employees are concerned about personal safety. The draft finds a way to address both of these concerns. The state shouldn't be sending out thousands of birthdates, but the media sometimes needs to be able to identify individuals. The cost is driven by the notification requirement, and vulnerable people need notice in order to protect themselves. The Service Employees International Union 925 members include involuntary treatment workers, those working in residential facilities, and with people that deal with stalkers and dangerous individuals. One worker, T.J., was held hostage by her ex-spouse at gunpoint—real and specific safety concerns. The large media outlets have portrayed this as a spat between unions and the Freedom Foundation, and that is false. Anyone can request this information at any time. Giving out this kind of information is unsafe, and it is ridiculous. Employees have been contacted by unfriendly entities using information from their employer. This is based on a law drafted in 1972—that predates the Internet, and modern information aggregation.

(Opposed) The Freedom Foundation is not convinced a change needs to be made. This issue has been debated in the courts for years, and although there are certainly some terrible stories, no connection between the information being available and those acts has been convincingly drawn. This has been the law for many years—and we are not just now entering the digital age. There are already protections and exceptions, like the confidentiality program. The exceptions could be strengthened. Much of this information is available through the voter registration database anyway.

Persons Testifying (State Government & Tribal Relations): (In support) Representative Hudgins, prime sponsor; Lucinda Young, Washington Education Association; Erin Haick, Service Employees International Union 925; Andrea Vaughn and Mike Yestramski, Washington Federation of State Employees; Kati Thompson, Employment Security Department; Serena Davis, Teamsters 117; and Stephen Baker.

(Opposed) Andy Hobbs, Sound Publishing; Jonathan Martin and Ray Rivera, Seattle Times; Dale Phelps, The News Tribune; Rowland Thompson, Allied Daily Newspapers of Washington; Mark Allen, Washington State Association of Broadcasters; Maxford Nelsen, Freedom Foundation; and Juli Buning, Washington Coalition for Open Government.

(Other) Arthur West; and Shawn Merchant, Department of Retirement Systems.

Persons Testifying (Appropriations): (In support) Representative Hudgins, prime sponsor; Erin Haick, Service Employees International Union 925; and Kati Thompson.

(Opposed) Maxford Nelsen, Freedom Foundation.

Persons Signed In To Testify But Not Testifying (State Government & Tribal Relations): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.