

HOUSE BILL REPORT

HB 2293

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

Title: An act relating to exempting election security information from public records disclosure.

Brief Description: Exempting election security information from public records disclosure.

Sponsors: Representatives Dolan, Ryu, Tarleton, Ormsby, Wylie, Doglio and Gregerson.

Brief History:

Committee Activity:

State Government & Tribal Relations: 1/21/20, 2/5/20 [DPS].

Brief Summary of Substitute Bill

- Exempts from disclosure under the Public Records Act (Act) certain information related to election security, operations, and infrastructure.
- Specifies that certain security risk assessments currently exempt from disclosure are exempt in their entirety.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL RELATIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Gregerson, Chair; Pellicciotti, Vice Chair; Goehner, Assistant Ranking Minority Member; Appleton, Dolan, Hudgins, Mosbrucker and Smith.

Minority Report: Without recommendation. Signed by 1 member: Representative Walsh, Ranking Minority Member.

Staff: Carrington Skinner (786-7192).

Background:

The Public Records Act (PRA) 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

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form they take unless a specific exemption applies. The PRA specifies that it is to be liberally construed; any exemptions to the disclosure requirement must be interpreted narrowly. 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.

There are a number of statutory exemptions for records or information contained in records, including those that involve security information. These exemptions include records related to preventing or responding to terrorist attacks, vulnerability assessments and emergency response plans for correctional facilities, and safe school plans. In addition, records related to public and private infrastructure of computer and telecommunications networks, which include security passwords, access codes, and security risk assessments, are also exempt from disclosure to the extent they identify specific system vulnerabilities.

As part of its emergency management duties, the Washington Military Department, through the Adjutant General, must maintain a copy of the continuity of operations plan for election operations for each county that has a plan available. These plans are developed to assist with continuing essential functions and services in response to emergencies and disasters. There is coordination among local, state, and federal entities, including the United States Department of Homeland Security, on election infrastructure issues including the security of voting systems, voter registration databases, and polling places.

Summary of Substitute Bill:

Two new election security exemptions to the PRA's disclosure requirements are created:

1. Continuity of operations plans for election operations, security risk assessments, and other audits and test results relating to physical security or cybersecurity of election operations or infrastructure are exempt in their entirety.
2. Portions of records related to election infrastructure, election security, or threats to election security that may increase risk to the integrity of election operations or infrastructure are exempt.

Security risk assessments related to public and private infrastructure and the security of computer and telecommunications networks that are currently exempt are specified to be exempt from disclosure in their entirety.

These exemptions will apply to any public records request made prior to the effective date for which disclosure has not yet occurred.

Substitute Bill Compared to Original Bill:

The substitute bill clarifies that portions of certain election security records that are exempt from public disclosure are those for which disclosure may increase risk to the integrity of election operations.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) This bill originated with the Thurston County Auditor and their public records attorney. There is disagreement on what records are exempted by the statute, so this bill makes the exemptions clear. These records provide a blueprint into our election system, so they should be protected. The election system is only as strong as its weakest component because everything is connected. Agencies will not want to do security assessments if these types of records are not protected.

(Opposed) None.

(Other) Election security is the top priority, so it is important to make clear what is required by this bill.

Persons Testifying: (In support) Representative Dolan, prime sponsor; and Mary Hall, Thurston County Auditor's Office.

(Other) Jay Jennings, Office of the Secretary of State.

Persons Signed In To Testify But Not Testifying: None.