

# SENATE BILL REPORT

## SB 5246

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As of January 18, 2019

**Title:** An act relating to sunshine committee recommendations.

**Brief Description:** Concerning sunshine committee recommendations.

**Sponsors:** Senators Hunt and Zeiger.

**Brief History:**

**Committee Activity:** State Government, Tribal Relations & Elections: 1/18/19.

### Brief Summary of Bill

- Requires public disclosure for personal information where the subject of the information consents to disclosure.
- Removes exemption from public disclosure requirements for applications for vacancies in elective office.
- 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.
- Exempts financial information from public disclosure only if the information is marked confidential and accompanied by a statement describing the expected harm, loss, or unfair private gain disclosure would cause.
- 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.

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## SENATE COMMITTEE ON STATE GOVERNMENT, TRIBAL RELATIONS & ELECTIONS

**Staff:** Samuel Brown (786-7470)

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*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.*

**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 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.

Timeshare and Condominium Owner Lists. Lists of members or owners of timeshare projects, subdivisions, camping resorts, condominiums, land developments, and associated communities in the possession of the Department of Licensing are exempt from disclosure requirements under the PRA.

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 zip code of the residential address of a public employee or volunteer is not exempt from public disclosure requirements. Applications for vacancies in elective office are 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. Financial, commercial, and proprietary information is only exempt from public disclosure if the information is submitted to the agency with a designation as confidential and an explanation for the expected harm disclosure would cause, or the agency determines that disclosure is substantially likely to cause public or private loss or unfair private gain. 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.

Timeshare and Condominium Owner Lists. The exemption from disclosure for lists of members or owners of timeshare projects, subdivisions, camping resorts, condominiums, land developments, and associated communities is removed.

**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 reflects a balance of interests and compromise. The most important provision concerns proprietary information. When a

requestor seeks information that a business considers proprietary, there is no way for the agency to know that, so the business goes to court to enjoin disclosure, putting everyone through a costly and inefficient process. This would limit third-party lawsuits and provide fee-shifting so that whoever defends the public interest has the same opportunity to recover attorneys' fees. The personal information exemption change was written by a public employee. This will remove confusion about how to handle requests for applications to fill unexpired terms in elective office. Parties should be able to recover fees when large corporations try to inhibit disclosure.

CON: Releasing personal identifiers is a significant expansion. Public employees do not surrender all expectations of privacy. Angry constituents and threats are common. The idea that the state would make it easier to track down public employees at home is scary for employees, women, and families.

**Persons Testifying:** PRO: Senator Sam Hunt, Prime Sponsor; Arthur West, citizen; Kathy George, Sunshine Committee; Rowland Thompson, Sunshine Committee.

CON: Dennis Eagle, Washington Federation of State Employees.

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