

# SENATE BILL REPORT

## SB 5022

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As Reported by Senate Committee On:  
Judiciary, February 8, 2011

**Title:** An act relating to clarifying the statute of limitations for any court action brought under RCW 42.56.550

**Brief Description:** Clarifying the statute of limitations for any court action brought under RCW 42.56.550.

**Sponsors:** Senators Kilmer, Regala, Pflug and Rockefeller; by request of Attorney General.

**Brief History:**

**Committee Activity:** Judiciary: 1/26/11, 2/08/11 [DPS, w/oRec].

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### SENATE COMMITTEE ON JUDICIARY

**Majority Report:** That Substitute Senate Bill No. 5022 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kline, Chair; Harper, Vice Chair; Pflug, Ranking Minority Member; Hargrove, Kohl-Welles and Regala.

**Minority Report:** That it be referred without recommendation.

Signed by Senators Carrell and Roach.

**Staff:** Kim Johnson (786-7472)

**Background:** The Public Records Act (PRA) requires that all state and local government agencies make all public records available for public inspection and copying unless they fall within certain statutory exemptions. The provisions require public records disclosure must be interpreted liberally and the exemptions narrowly in order to effectuate a general policy favoring disclosure.

The PRA requires agencies to respond to public records requests within five business days. The agency must either (1) provide the records; (2) provide a reasonable estimate of the time the agency will take to respond to this request; or (3) deny the request. Additional time may be required to either respond to a request where the agency needs to notify third parties or agencies affected by the request, or to determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request.

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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.*

A denial of a public record request must be accompanied by a written statement of the specific reasons for denial. Any person who is denied the opportunity to inspect or copy a public record may file a motion to show cause in superior court as to why the agency has refused access to the record. The burden of proof rests with the agency to establish that the refusal is consistent with the statute that exempts or prohibits disclosure. The PRA provides that any action must be filed within one year of the agency's claim of exemption or the last production of a record on a partial or installment basis.

In *Tobin v. Warden*, 156 Wn. App 507 (2010), Division I of the Court of Appeals concluded that the statute of limitations for PRA cases does not begin to run unless one of two events occurs: (1) the agency claims an exemption; or (2) the agency produces the records on a partial or installment basis. In *Tobin*, the agency had produced all responsive records at one time and did not claim any exemptions. The requestor filed a lawsuit in August 2007, claiming violations of the PRA in response to requests both made and responded to in 2005.

**Summary of Bill (Recommended Substitute):** It is the Legislature's intent that this act clarify that the statute of limitations for any action brought under the PRA is one year from the date of events specified in this act.

The statute of limitations for an action brought under the PRA is amended to require that the action be filed within one year of the latest of (1) the agency's claim of exemption; (2) the last production of a record prior to the action being filed; (3) a response indicating no records have been located; or (4) a response indicating there are no additional records that will be produced on a partial or installment basis. If none of these events occurs, an action must be filed within one year of the public record request.

This act applies retroactively. However, for an action where the agency produced records all at one time triggering the statute of limitations, and the one-year statute of limitations for the action would have expired between June 21, 2010, and the effective date of this act, then the one-year statute of limitations will run from the effective date of this act.

**EFFECT OF CHANGES MADE BY JUDICIARY COMMITTEE (Recommended Substitute):** Provides a retroactivity clause and carves out on an additional one-year statute of limitations from the effective date of the act for those persons who relied on the *Tobin* decision whose statute of limitations would have expired between the date of the decision of the *Tobin* case and the effective date of the act.

Adds an emergency clause.

Clarifies that in the instance where an agency does not respond with one of the listed responses, then the action must be filed within one year of the public record request.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

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

**Staff Summary of Public Testimony on Original Bill:** PRO: Due to an appellate court decision, the statute of limitations for PRA actions needs to be clarified. This opinion left a gaping hole for agencies, requestors, and for the courts as to when the statute of limitations runs for requests where an agency produces only one record/response. Because it is a clarification, it is expected that the law will apply retroactively, and in that regard the Attorney General will be providing some revised language to address anyone who has relied on the *Tobin* decision to make sure there is a carve out for those persons.

Not everyone who filed one of the 18,000 PRA requests with the Department of Corrections (DOC) last year did so with good intentions. There are some individuals who do this with a for-profit motive. If the department provides the records in a single installment then the statute of limitations will never begin to run. This allows someone to potentially sit on a stale claim and wait while the fees and penalties build and build until they feel like bringing the action. The Legislature did not intend for this result.

CON: The shadow government is taking over the legislative process. This bill is not a request of the Attorney General, but is actually a bill that the counties wanted and sent to WAPA. This is a covertly proposed bill. Now me and my client are having to play catch-up. The county is not a private interest group and shouldn't be conducting its business behind closed doors. What this bill will allow is for agencies and local governments to continue to hide documents until the one-year statute of limitations runs.

**Persons Testifying:** PRO: Christina Beusch, Attorney General's Office; Scott Blonien, DOC.

CON: Arthur West, citizen.