

HOUSE BILL REPORT

SHB 2121

As Passed House:
February 12, 2014

Title: An act relating to training public officials and employees regarding public records, records management, and open public meetings.

Brief Description: Concerning training public officials and employees regarding public records, records management, and open public meetings requirements.

Sponsors: House Committee on Government Operations & Elections (originally sponsored by Representatives Pollet, S. Hunt, Rodne, Bergquist, Holy, Moeller, Hayes, Carlyle, Fitzgibbon, Liias, Takko, Springer, Appleton, Morrell, Reykdal, Jinkins, Moscoso, Ryu, Fagan, Farrell, Riccelli and Freeman; by request of Attorney General).

Brief History:

Committee Activity:

Government Operations & Elections: 1/14/14, 1/21/14 [DPS].

Floor Activity:

Passed House: 2/12/14, 64-34.

Brief Summary of Substitute Bill

- Requires training for members of a governing body of a public agency on the Open Public Meetings Act.
- Requires training for elected state and local officials and agency public records officers on the Public Records Act.
- Requires training for elected state and local officials and agency records retention officers on the preservation and destruction of public records.

HOUSE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives S. Hunt, Chair; Bergquist, Vice Chair; Carlyle, Orwall, Robinson and Van De Wege.

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: Do not pass. Signed by 5 members: Representatives Taylor, Ranking Minority Member; Young, Assistant Ranking Minority Member; Christian, Kretz and Manweller.

Staff: Marsha Reilly (786-7135).

Background:

Open Public Meetings Act.

The Open Public Meetings Act (OPMA) requires that all meetings of the governing body of a public agency be open to the public and all persons shall be allowed to attend. For the purposes of the OPMA, a public agency is defined broadly and includes, but is not limited to, any state board, commission, department, education institution, agency, local government, and special purposes district. A governing body is defined as a multi-member board, commission, committee, council, or other policy or rule making body of a public agency or any committee thereof that is acting on behalf of the public agency.

Public Records Act.

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 requiring 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 provide the records, provide a reasonable estimate of the time the agency will take to respond to this request, or deny the request. Additional time may be required to 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.

The PRA requires that each state and local agency appoint and publicly identify a public records officer to serve as a point of contact for the public and to oversee the agency's compliance with the PRA disclosure requirements.

Preservation and Destruction of Public Records.

Public records are required to be preserved, stored, transferred, destroyed or disposed of, and managed in accordance with provisions of law. The State Archivist manages the Division of Archives and Records Management in the Office of the Secretary of State to insure the proper management and safeguarding of public records. The State Archivist manages the state archives, catalogs and arranges the retention of all state public records, insures the maintenance and security of all state public records, operates a microfilming bureau, and directly supervises the destruction of public records that are authorized to be destroyed.

State law requires each department and agency of the state government to designate a records officer to supervise its records program and to represent the office in all contacts with the records committee and the division of archives and records management. The records officer must also coordinate the department's or agency's records management program and manage the inventory of its public records.

Summary of Substitute Bill:

Every member of the governing body of a public agency is required to complete training on the requirements of the OPMA. Training on the PRA is required of each elected state and local official subject to the requirements of the PRA and public records officers designated pursuant to the PRA. Training on the preservation and destruction of public records is required of each elected state and local official and each records retention officer.

The various trainings must be completed within 90 days of taking office or assuming such duties, and subsequent training must be completed at intervals of no more than every four years. All training may be completed remotely with technology including, but not limited to, internet-based training.

Training on the PRA and the preservation and destruction of public records must be consistent with the Attorney General's model rules for compliance with the PRA. The Attorney General's office may provide information, technical assistance, and training on the provisions of the PRA.

The act is cited as the Open Government Trainings Act.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect July 1, 2014.

Staff Summary of Public Testimony:

(In support) People try to follow the PRA or the OPMA, but many times they lack the training necessary on the basics. The Supreme Court has said that lack of training is a significant potential increase for violating the PRA. The bill will significantly reduce the state's liabilities with no fiscal impact.

The bill requires training for those elected officials subject to the PRA, the OPMA, and the Public Retention Act. Open government training will help prevent costly lawsuits. Most violations are the result of insufficient knowledge and training. The recent Ruckelshaus report recommends training. Training is a risk management tool and helps foster compliance within agencies. There are trainings available and all would qualify under the legislation. Web-based training is available through the Attorney General's office. Training and sources of training are linked on the website. The bill will promote open government.

There have been hundreds of open government disputes based on lack of basic grounding on the tenets of the PRA and the OPMA. Training has been an issue for several years. This is a tremendous opportunity to reduce litigation and costs to local governments.

The Association of Washington Cities supports the legislation. It is a complex area of law and training is valuable. We appreciate that this requirement is not a huge cost.

The Secretary of State supports the bill and supports ongoing training. The Secretary does coordinate with the Attorney General regarding training on records retention. While retention doesn't get a lot of attention, if the record is not available, it cannot be provided.

Allied Daily Newspapers supports the bill. As a member of the Sunshine Committee, it has become apparent that training is important.

The League of Women Voters supports the bill. The League believes that strong democratic government depends on an informed public. All of the positions taken by the League are based on extensive studies. If a law or policy is to be supported, the next step should be to train the people involved. Tight budgets have resulted in a loss of training at a time when training is most needed. Some of the violations may be deliberate, but more violations occur because of lack of information. The cost of public trust is important and lack of trust will lead to lack of involvement.

The most significant thing government can do to reduce costs is training. It is essential for compliance with laws that can be confusing and daunting. This bill represents a positive step forward. However, the Attorney General should be able to define the training more clearly and be in charge of the training.

(Neutral) The Association of County Officials is neutral on the bill. Public records continue to be a big issue. The training policy should be looked at as a part of the big issue to advance a comprehensive policy.

(With concerns) The counties support training and provide training, including web-based training for our members and staff. There are concerns with the notion that training will decrease costs and litigation. The PRA requires agencies to designate a PRA officer and that person, or a team of people, will respond. Those individuals receive technical training while training elected officials is meant to encourage a spirit of compliance. This bill does not address the issue of overly burdensome requests. You should continue the work of the Ruckelshaus Center for a mediation process which will require additional funding to move forward.

(Opposed) None.

Persons Testifying: (In support) Representative Pollet, prime sponsor; Nancy Krier, Office of the Attorney General; Bill Will, Washington Newspaper Publishers Association; Candice Bock, Association of Washington Cities; Katie Blinn, Office of the Secretary of State; Rowland Thompson, Allied Daily Newspapers; Kathy Sakahara, League of Women Voters; and Arthur West.

(Neutral) James McMahan, Washington Association of County Officials.

(With concerns) Brian Enslow, Washington State Association of Counties.

Persons Signed In To Testify But Not Testifying: None.