

HOUSE BILL REPORT

HB 2741

As Reported by House Committee On:
State Government

Title: An act relating to managing digitally archived public records.

Brief Description: Managing digital public records.

Sponsors: Representatives Miloscia, Armstrong and Upthegrove; by request of Secretary of State.

Brief History:

Committee Activity:

State Government: 1/23/04, 2/3/04 [DPS].

Brief Summary of Substitute Bill

- Permits and facilitates management of digitally archived material.
- Codifies management of electronic and digital archival material.
- Exempts computer database infrastructure from disclosure as a public record.

HOUSE COMMITTEE ON STATE GOVERNMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Haigh, Chair; Miloscia, Vice Chair; Armstrong, Ranking Minority Member; Shabro, Assistant Ranking Minority Member; Hunt, McDermott, Nixon, Tom and Wallace.

Staff: Matt Kuehn (786-7291).

Background:

Archival Records

When a public record is no longer required in the operation of the office where it is kept, it is to be delivered to the State Archivist. The archivist manages and maintains these records for the purpose of preservation as well as scholarship and research.

The records to be delivered to the archivist are described by statute. The records include records regarding public property and income disposition, contracts to which Washington is a

party, bonds, legal claims filed against the state, agency records that are kept by law, and legislative records.

Exemptions

Public Records Act lists exemptions from public disclosure. Documents included among the exemptions may not be inspected or copied. Without the exemptions, the documents would qualify as open, public records. Medical records made by public institutions, witness and victim names in police reports and addresses and telephone numbers of public employees are examples of exempted records which would otherwise be available to inspection.

The laws establishing the State Archives, and the procedures for managing public records under the archive program, are distinct from the Public Records Act.

Summary of Substitute Bill:

The State Archivist must manage digital archives in addition to other forms of archival material. The authority to manage these archives is under the archivist's administrative law rulemaking authority.

The archivist may license the use of the digital archives for a fee. Fees collected from the licensing are for the recouping of development costs for the digital archives and are not authorized for other uses. The licensing fee may only be charged if the digital records are available and viewable on the Internet.

All state database infrastructures and their specific security, application codes, and software applications are exempted from public disclosure.

Substitute Bill Compared to Original Bill:

The authority to maintain the digital archives is moved to the archivist's administrative law rulemaking authority. The authority to charge fees for licensing is removed from the exemption section of RCW 42.17.310 and placed in the archivist's management authority.

The exemption is expanded to include all state databases, not simply the database of the state archivist or the electronic record collection held by the archivist.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: The bill clarifies the scope of the digital records exemption. Washington census data has been appropriated in the past and there is a fear that a similar thing could

happen to the database of the digital archives. The state has invested considerable time and expense in the database. The digital archives are envisioned to be continually retrievable in the future. Methods of digital archive storage will be constantly updated as technology grows.

Testimony Against: There is a concern that public access to the materials in the digital archive could be cut off. The bill appears to exempt materials as long as those materials are available elsewhere, even if the material is only available for a fee. Charges for archival material are reasonable when there are copy fees or extraordinary requests, but the archives should not be a revenue source for the state. There is not a need for a separate public records exemption for the archives. Other parts of the exemption section cover computer databases, and by setting archives aside, other state databases may not be free from public inspection. Licensing fees are a departure from normal standards. Commercial database brokers should not be paying for the state archival digital database.

Persons Testifying: (In support) Jeff Wise, Office of the Secretary of State; and Rae Brad, State Archivist.

(Opposed) Doug Klunder, American Civil Liberties Union of Washington; and Rowland Thompson, Allied Daily Newspapers of Washington.

Persons Signed In To Testify But Not Testifying: None.