

Peterson, Susan

From: SCJA Legislative Committee [SCJALEGISLATIVE@LISTSERV.COURTS.WA.GOV] on behalf of Prochnau, Kimberley [Kimberley.Prochnau@KINGCOUNTY.GOV]
Sent: Wednesday, February 23, 2011 12:46 PM
To: SCJALEGISLATIVE@LISTSERV.COURTS.WA.GOV
Subject: [SCJALEGISLATIVE] SB 5826

I have reviewed SB 5826 and am sending you my personal report as I will not be at the meeting on Friday. This bill has not yet been referred to or considered by the civil committee.

. It doesn't appear that the bill has yet had a hearing although was referred to Financial Institutions, Housing Committee. Prime Sponsor is Sen Kohl-Welles, also sponsored by Sen Kline.

Section 4 of the bill provides that the court, in all eviction proceedings (commercial and residential) **shall** conduct a hearing on whether the records of the eviction hearing should be sealed or redacted "in a manner minimally necessary to protect the defendants ability to obtain rental housing in the future". Although one of the considerations in sealing records is whether the defendant prevailed in the hearing; it would appear to require the court to undertake this hearing in every eviction proceeding and does not appear to require the defendant to make an affirmative motion.

The first problem posed by Section 4 is the fiscal impact of requiring these hearings. Irrespective of policy/constitutional concerns the standards set forth would be very difficult to apply especially since the bulk of these hearings involve pro se defendants in residential evictions. (Nor should we necessarily expect the landlords' lawyers to devote much time to helping educate us about the facts and issues, these eviction hearings are generally done on the cheap given that the eviction is usually due to nonpayment of rent. The court would have to balance the public right of access with a number of variables i.e. including potential diminution of defendant's future rental housing prospects.. I don't know that OFM has yet requested AOC to provide a fiscal note, but if there is any significant chance of this bill moving, I would suggest we ask AOC to prepare a fiscal note. Fiscal note should be fairly easy depending on whether AOC keeps specific data on eviction proceedings. Multiply # of eviction hearings by a minimum of half hour in judicial time. –Note this includes all commercial and residential evictions that proceed to hearing or trial. Clerks Assoc should also be consulted re their extra costs of sealing all or some of eviction records.

Second issue appears to be a policy issue with potential constitutional concerns. This statute creates new standards for determining whether records of a civil proceeding should be sealed i.e. whether public's interest in access to court records outweighs defendant's interest in obtaining future rental housing and that public access will not materially chill tenants with meritorious defenses from appearing and defending in unlawful detainer actions/" i.e. Supreme Court may have to sort out whether this policy violates constitutional guarantees of open courts but I don't believe we should comment on either the policy or constitutional concerns.

Bill also imposes new duties and constraints on landlords and tenant screening organizations—I recommend "no position" on these issues.

BOTTOM LINE-RECOMMEND WE TAKE NO POSITION BUT WITH FISCAL CONCERNS AND IF BILL HAS CHANCE OF GOING ANYWHERE THAT WE REQUEST AOC DO FISCAL NOTE.

From: SCJA Legislative Committee [mailto:SCJALEGISLATIVE@LISTSERV.COURTS.WA.GOV] **On Behalf Of** Anthony Wartnik

Sent: Wednesday, February 23, 2011 9:51 AM

To: SCJALEGISLATIVE@LISTSERV.COURTS.WA.GOV

Subject: [SCJALEGISLATIVE] Bill Screener's Third Report - Week #7

Civil
SB 5826 – Screening of prospective tenants – Section 4 is very troublesome and violates current rules regarding the sealing of court files and records – Either No Position with Serious Concerns or Oppose

More to follow later in the day.

Tony

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