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## Government Operations & Elections Committee

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### HB 1198

**Brief Description:** Requiring training of public officials and employees regarding public records and open public meetings.

**Sponsors:** Representatives Pollet, Hunt, Ryu, Maxwell, Reykdal, Bergquist, Moscoso, Moeller, Upthegrove and Jinkins.

#### Brief Summary of Bill

- Requires the Attorney General to develop and implement training programs for the legal requirements contained in the Open Public Meetings Act, the Public Records Act, and the requirements for preservation and destruction of public records;
- Requires members of governing bodies of public and local agencies, elected officials, and public records officers to complete the training courses.

**Hearing Date:** 1/23/13

**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 rulemaking body of a public agency or any committee thereof that is acting on behalf of the public agency.

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A governing body may meet without the public for portions of a regular or special meeting to discuss certain issues. "Executive Session" is not expressly defined in the OPMA, but according to the Attorney General's Deskbook, the term is commonly understood to mean that part of a regular or special meeting of the governing body that is closed to the public. A governing body may hold an executive session only for purposes specified in statute and only during a regular or special meeting. Washington courts have held that because an executive session is an exception to the OPMA's overall provisions requiring open meetings, a court will narrowly construe the grounds for an executive session in favor of requiring an open meeting.

Some of the matters that may be discussed in an executive session include: matters affecting national security, the selection of a site or the acquisition of real estate by lease or purchase when public knowledge regarding such consideration would cause a likelihood of increased price, and the qualifications of an applicant for public employment or to review the performance of a public employee.

### 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.

For practical purposes, the law treats a failure to properly respond as denial. A denial of a public records 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 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. Judicial review of the agency decision is de novo and the court may examine the record in camera. Any person who prevails against an agency in any action in the courts seeking the right to inspect or copy any public record shall be awarded all costs, including reasonable attorney fees. In addition, the court has the discretion to award such person no less than \$5 but not to exceed \$100 for each day he or she was denied the right to inspect or copy the public record. The court's discretion lies in the amount per day, but the court may not adjust the number of days for which the agency is fined.

Under the PRA, a "public record" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. For the Office of the Secretary of the Senate and the Office of the Chief Clerk of the House of Representatives, public records means legislative records as defined in RCW 40.14.100 and also means the following: all budget and financial records; personnel leave, travel, and payroll records; records of legislative sessions; reports submitted to the legislature; and any other record designated a public record by any official action of the Senate or the House

of Representatives.

### 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.

For purposes of the preservation and destruction of public records statutes, "public record" includes:

- all original vouchers, receipts, and other documents necessary to isolate and prove the validity of every transaction relating to the receipt, use, and disposition of all public property and public income from all sources whatsoever; all agreements and contracts to which the state of Washington or any agency thereof may be a party; all fidelity, surety, and performance bonds; all claims filed against the state of Washington or any agency thereof; all records or documents required by law to be filed with or kept by any agency of the state of Washington; all legislative records as defined in RCW 40.14.100; and all other documents or records determined by the records committee, created in RCW 40.14.050, to be official public records; and
- office files and memoranda including such records as correspondence, exhibits, drawings, maps, completed forms, or documents not above defined and classified as official public records; duplicate copies of official public records filed with any agency of the state of Washington; documents and reports made for the internal administration of the office to which they pertain but not required by law to be filed or kept with such agency; and other documents or records as determined by the records committee to be office files and memoranda.

### **Summary of Bill:**

By July 1, 2014, the Attorney General must develop and implement training programs on the legal requirements and purposes of the OPMA, the PRA, and the preservation and destruction of public records. The training programs are to be a concise, interactive, web-based presentation, available on the Attorney General's web site, that include instruction in:

- the purposes and intent of the various laws;
- the applicability of the laws to governmental bodies and members of governing boards of agencies;
- procedures and requirements necessary for compliance and best practices for compliance with the laws;
- penalties and other consequences for failure to comply with the laws; and
- the role of the Attorney General under the laws.

Every member of the governing body of a public agency is required to complete the training course on the OPMA no later than 90 days after the date the member takes the oath of office, if required, or assumes his or her duties as a public official. Training must be updated every two years. Individuals completing the training course must maintain proof of completion.

Every elected state or local official and each person appointed to fill a vacancy in elective office who is subject to the requirements of the PRA must complete the training course on the PRA no later than 90 days after the date the member takes the oath of office, if required, or assumes his or her duties as a public official. Training must be updated every two years.

The Attorney General must also develop and implement an intensive training seminar for public records officers of state and local agencies. Training may be administered via interactive web technology or in person. The training will include:

- duties and obligations of agencies regarding public records disclosure and retention;
- duties to manage and preserve records;
- discussion of innovative mechanisms for providing timely access to public records; and
- discussion of the benefits and duties related to indexing records.

This training is required of public records officers of state and local agencies at regular intervals.

**Appropriation:** None.

**Fiscal Note:** Requested on January 19, 2013.

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