
Local Government Committee

HB 2576

Brief Description: Concerning public records act requests to local agencies.

Sponsors: Representatives McBride, Nealey, Ryu, Tarleton, Springer, S. Hunt, Johnson, Zeiger, Rossetti, Clibborn, Peterson, Haler, Hargrove, Jinkins, Gregerson, Senn and Hickel.

Brief Summary of Bill

- Authorizes a local agency to adopt a policy limiting the number of hours it devotes to responding to public records requests, if the agency makes certain documents publicly available and meets other specified criteria.
- Establishes the Public Records Commission (*i.e.*, a five-member commission with members appointed by the Governor to staggered four-year terms) and the powers, duties, and functions of the commission.
- Creates the Dedicated Open Records Account in the custody of the State Treasurer into which funds that support the operations and administration of the Public Records Commission must be deposited.
- Authorizes local agencies and requestors to submit requests to the Public Records Commission for resolution of disputes by: voluntary arbitration; voluntary mediation; or in the event that either the agency or requestor does not consent to arbitration or mediation, adjudicative proceeding.
- Allows local agencies to impose a fee for the actual cost of providing a public record if the request is primarily for a commercial purpose.
- Declares the Legislature's intent with regard to fully funding the Local Government Archives Account and any expenditures from the Account, including that funds in the account be used for specified local government services.

Hearing Date: 1/28/16

Staff: Michaela Murdock (786-7289).

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.

Background:

Under the Public Records Act (PRA), all state and local agencies must make available for public inspection and copying all public records, unless a record falls within specific exemptions set forth in the PRA or other law prohibits the disclosure of specific information or records. "Local agencies" include every county, city, town, municipal or quasi-municipal corporation, and special purpose district, as well as their associated offices, departments, divisions, bureaus, boards, or commissions. The PRA's provisions requiring disclosure must be interpreted liberally and its exemptions must be narrowly construed to effectuate a general policy favoring disclosure.

Public Records Act – Requests for Records.

Upon receiving a request for identifiable public records, agencies must respond within five business days. The agency must either provide the records or access to the records, provide a reasonable estimate of the time the agency will take to respond to the request, or deny the request. Failure to properly respond to a records requests may be treated as a denial.

Responsive records may be provided on a partial or installment basis as records that are part of a larger set of responsive records are assembled or made ready for inspection or disclosure. Requests received by mail for identifiable public records must be honored. Additional time required to respond to a request may be based on the need to clarify the request, locate and assemble responsive records, notify affected third persons or agencies, or determine whether any exemptions apply and whether denial of part or all of the request is appropriate.

Public Records Requests – Fees.

An agency may not charge a fee for the inspection of public records, or for locating and making records available for copying. An agency may, however, impose a reasonable charge for providing copies and for the use of equipment to copy records. Charges may not exceed the amount necessary to reimburse the agency for its actual costs directly related to copying. To the extent an agency has not determined the actual per page cost for copies, the agency may not charge in excess of 15 cents per page or the actual cost for postage, delivery, or any container or envelopment used to mails records. The agency may also require a deposit in an amount up to 10 percent of the estimated cost of providing copies for a request.

Judicial Review of Response to Public Records Request.

The PRA provides any person denied an opportunity to inspect or copy a public record, or who believes that an agency has not made a reasonable estimate of the time that it requires to respond to a request, with judicial review of the agency action. Courts must take into account the policy of the PRA that free and open examination of public records is in the public interest, even though examination may cause inconvenience or embarrassment to public officials or others.

A person who prevails against an agency in a court action must be awarded all costs, including reasonable attorney fees incurred in connection with the action. In addition, the court may, within its discretion, award an amount not to exceed \$100 per day for each day that the person was denied the right to inspect or copy the record. Actions must be filed within one year after a claim of exemption or the last production of a record.

Records Requests – Commercial Purposes.

In general, agencies are not authorized to give, sell, or provide access to lists of individuals that are requested for commercial purposes, unless specifically authorized or directed by law. However, lists of applicants for professional licenses and professional licensees may be made available to professional associations or educational organizations recognized by their professional licensing or examination board upon payment of a reasonable charge.

Summary of Bill:

Policies for Responding to Requests – Local Agencies.

To prevent excessive interference with other essential functions of the local agency, a local agency is authorized to adopt a policy limiting the number of hours it devotes on a monthly basis to responding to public records requests, including tasks such as searching for responsive records and reviewing and redacting responsive records. In order to adopt such a policy, the local agency must make certain documents publicly available, as that term is defined in the bill.

In adopting the policy, the limit on the number of hours the agency devotes to responding: (1) must be reasonable in light of the local agency's resources and other essential functions; and (2) the local agency must establish a minimum amount of time each month, not fewer than 10 hours, which must be reasonable in light of the local agency's resources and other essential functions, to devote to responding to requests.

Public Records Commission.

The Public Records Commission (Commission) is created to administer the provisions of the PRA. The Commission comprises five members appointed by the Governor to staggered four-year terms, and includes members representing the news media, local government interests, a public interest organization advising or advocating on behalf of citizens who make public records requests, the Office of the Attorney General, and the State Auditor's Office (SAO). The SAO is responsible for providing administrative and clerical assistance.

The Dedicated Open Records Account (Account) is created in the custody of the State Treasurer. Twenty percent of discretionary amounts awarded by a court in cases brought by requestors under the PRA against agencies must be deposited into the Account for the support of the Commission. The Commission must submit a written report to the Legislature and the Governor annually by July 1.

The Commission is granted jurisdiction over disputes arising under the PRA between local agencies and persons making public records requests. When a dispute arises, local agencies and requestors may submit requests to the Commission for resolution of the disputes by voluntary arbitration or voluntary mediation. If the requestor or a local agency does not agree to arbitration or mediation, either party may request an adjudicative proceeding conducted by the Commission.

The Commission must conduct adjudicative proceedings in accordance with the Administrative Procedure Act. The Commission must adopt rules for voluntary arbitration and mediation, establish rosters of qualified arbitrators and mediators, and establish a fee schedule for such services, which must be paid by the Commission from the Account.

Fees for Records Requests – Commercial Purposes.

A local agency may charge a fee for providing public records that are requested for a commercial purpose. A "commercial purpose" is defined as a record requested by or on behalf of a for-profit business for direct sale or resale, or for obtaining information from the record that is used for sale, facilitating a profit, or increasing business opportunities. A "commercial purpose" specifically does not include requests for records used by a news media outlet to broadly disseminate information on matters of public interest or requests for records for use in any judicial or quasi-judicial proceeding.

The fee assessed for a commercial purpose request may not exceed a reasonable estimate of the actual cost of locating, producing, inspecting, redacting, and copying the records for the requestor. A local agency may require a requestor to declare whether a request is for a commercial purpose and may recover its cost from any party who intentionally misrepresents the purpose of the request to the agency. A party may seek judicial review of the fee assessed by a local agency for a commercial purpose request.

A local agency is authorized to enact regulations establishing a priority for promptly fulfilling non-commercial purpose requests ahead of commercial purpose requests. A local agency may enter into an agreement with a requestor to fulfill regular periodic requests, which may include an alternative arrangement to the fee authorized for commercial purpose requests.

The Local Government Archives Account.

Legislative intent regarding expenditures from the Local Government Archives Account is declared, including that the account should be fully funded through appropriations in the 2017-2019 Omnibus Appropriations Act.

Appropriation: None.

Fiscal Note: Available.

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