

ESHB 1594 - S AMD 241
By Senator Miloscia

ADOPTED 04/10/2017

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 42.56.010 and 2010 c 204 s 1005 are each amended to
4 read as follows:

5 The definitions in this section apply throughout this chapter
6 unless the context clearly requires otherwise.

7 (1) "Agency" includes all state agencies and all local agencies.
8 "State agency" includes every state office, department, division,
9 bureau, board, commission, or other state agency. "Local agency"
10 includes every county, city, town, municipal corporation, quasi-
11 municipal corporation, or special purpose district, or any office,
12 department, division, bureau, board, commission, or agency thereof,
13 or other local public agency.

14 (2) "Person in interest" means the person who is the subject of a
15 record or any representative designated by that person, except that
16 if that person is under a legal disability, "person in interest"
17 means and includes the parent or duly appointed legal representative.

18 (3) "Public record" includes any writing containing information
19 relating to the conduct of government or the performance of any
20 governmental or proprietary function prepared, owned, used, or
21 retained by any state or local agency regardless of physical form or
22 characteristics. For the office of the secretary of the senate and
23 the office of the chief clerk of the house of representatives, public
24 records means legislative records as defined in RCW 40.14.100 and
25 also means the following: All budget and financial records; personnel
26 leave, travel, and payroll records; records of legislative sessions;
27 reports submitted to the legislature; and any other record designated
28 a public record by any official action of the senate or the house of
29 representatives. This definition does not include records that are
30 not otherwise required to be retained by the agency and are held by
31 volunteers who:

32 (a) Do not serve in an administrative capacity;

1 (b) Have not been appointed by the agency to an agency board,
2 commission, or internship; and

3 (c) Do not have a supervisory role or delegated agency authority.

4 (4) "Writing" means handwriting, typewriting, printing,
5 photostating, photographing, and every other means of recording any
6 form of communication or representation including, but not limited
7 to, letters, words, pictures, sounds, or symbols, or combination
8 thereof, and all papers, maps, magnetic or paper tapes, photographic
9 films and prints, motion picture, film and video recordings, magnetic
10 or punched cards, discs, drums, diskettes, sound recordings, and
11 other documents including existing data compilations from which
12 information may be obtained or translated.

13 **Sec. 2.** RCW 42.56.152 and 2014 c 66 s 4 are each amended to read
14 as follows:

15 (1) Public records officers designated under RCW 42.56.580 and
16 records officers designated under RCW 40.14.040 must complete a
17 training course regarding the provisions of this chapter, and also
18 chapter 40.14 RCW for records retention.

19 (2) Public records officers must:

20 (a) Complete training no later than ninety days after assuming
21 responsibilities as a public records officer or records manager; and

22 (b) Complete refresher training at intervals of no more than four
23 years as long as they maintain the designation.

24 (3) Training must be consistent with the attorney general's model
25 rules for compliance with the public records act.

26 (4) Training may be completed remotely with technology including
27 but not limited to internet-based training.

28 (5) Training must address particular issues related to the
29 retention, production, and disclosure of electronic documents,
30 including updating and improving technology information services.

31 **Sec. 3.** RCW 42.56.520 and 2010 c 69 s 2 are each amended to read
32 as follows:

33 (1) Responses to requests for public records shall be made
34 promptly by agencies, the office of the secretary of the senate, and
35 the office of the chief clerk of the house of representatives. Within
36 five business days of receiving a public record request, an agency,
37 the office of the secretary of the senate, or the office of the chief

1 clerk of the house of representatives must respond (~~by either~~) in
2 one of the ways provided in this subsection (1):

3 (a) Providing the record;

4 (~~(+2)~~) (b) Providing an internet address and link on the
5 agency's web site to the specific records requested, except that if
6 the requester notifies the agency that he or she cannot access the
7 records through the internet, then the agency must provide copies of
8 the record or allow the requester to view copies using an agency
9 computer;

10 (~~(+3)~~) (c) Acknowledging that the agency, the office of the
11 secretary of the senate, or the office of the chief clerk of the
12 house of representatives has received the request and providing a
13 reasonable estimate of the time the agency, the office of the
14 secretary of the senate, or the office of the chief clerk of the
15 house of representatives will require to respond to the request;

16 (d) Acknowledging that the agency, the office of the secretary of
17 the senate, or the office of the chief clerk of the house of
18 representatives has received the request and asking the requestor to
19 provide clarification for a request that is unclear, and providing,
20 to the greatest extent possible, a reasonable estimate of the time
21 the agency, the office of the secretary of the senate, or the office
22 of the chief clerk of the house of representatives will require to
23 respond to the request if it is not clarified; or

24 (~~(+4)~~) (e) Denying the public record request.

25 (2) Additional time required to respond to a request may be based
26 upon the need to clarify the intent of the request, to locate and
27 assemble the information requested, to notify third persons or
28 agencies affected by the request, or to determine whether any of the
29 information requested is exempt and that a denial should be made as
30 to all or part of the request.

31 (3)(a) In acknowledging receipt of a public record request that
32 is unclear, an agency, the office of the secretary of the senate, or
33 the office of the chief clerk of the house of representatives may ask
34 the requestor to clarify what information the requestor is seeking.

35 (b) If the requestor fails to respond to an agency request to
36 clarify the request, and the entire request is unclear, the agency,
37 the office of the secretary of the senate, or the office of the chief
38 clerk of the house of representatives need not respond to it.
39 Otherwise, the agency must respond, pursuant to this section, to
40 those portions of the request that are clear.

1 (4) Denials of requests must be accompanied by a written
2 statement of the specific reasons therefor. Agencies, the office of
3 the secretary of the senate, and the office of the chief clerk of the
4 house of representatives shall establish mechanisms for the most
5 prompt possible review of decisions denying inspection, and such
6 review shall be deemed completed at the end of the second business
7 day following the denial of inspection and shall constitute final
8 agency action or final action by the office of the secretary of the
9 senate or the office of the chief clerk of the house of
10 representatives for the purposes of judicial review.

11 **Sec. 4.** RCW 42.56.570 and 2007 c 197 s 8 are each amended to
12 read as follows:

13 (1) The attorney general's office shall publish, and update when
14 appropriate, a pamphlet, written in plain language, explaining this
15 chapter.

16 (2) The attorney general, by February 1, 2006, shall adopt by
17 rule ((an)) advisory model rules for state and local agencies, as
18 defined in RCW 42.56.010, addressing the following subjects:

19 (a) Providing fullest assistance to requestors;

20 (b) Fulfilling large requests in the most efficient manner;

21 (c) Fulfilling requests for electronic records; and

22 (d) Any other issues pertaining to public disclosure as
23 determined by the attorney general.

24 (3) The attorney general, in his or her discretion, may from time
25 to time revise the model rule.

26 (4) Local agencies should consult the advisory model rules when
27 establishing local ordinances for compliance with the requirements
28 and responsibilities of this chapter.

29 (5) Until June 30, 2020, the attorney general must establish a
30 consultation program to provide information for developing best
31 practices for local agencies requesting assistance in compliance with
32 this chapter including, but not limited to: Responding to records
33 requests, seeking additional public and private resources for
34 developing and updating technology information services, and
35 mitigating liability and costs of compliance. The attorney general
36 may develop the program in conjunction with the advisory model rule
37 and may collaborate with the chief information officer, the state
38 archivist, and other relevant agencies and organizations in

1 developing and managing the program. The program in this subsection
2 ceases to exist June 30, 2020.

3 (6) Until June 30, 2020, the state archivist must offer and
4 provide consultation and training services for local agencies on
5 improving record retention practices.

6 **Sec. 5.** RCW 40.14.024 and 2008 c 328 s 6005 are each amended to
7 read as follows:

8 The local government archives account is created in the state
9 treasury. All receipts collected by the county auditors under RCW
10 40.14.027 and 36.22.175 for local government services, such as
11 providing records (~~scheduling~~) schedule compliance, security
12 microfilm inspection and storage, archival preservation, cataloging,
13 and indexing for local government records and digital data and access
14 to those records and data through the regional branch archives of the
15 division of archives and records management, must be deposited into
16 the account, and expenditures from the account may be used only for
17 these purposes. (~~During the 2007-2009 biennium, the legislature may~~
18 ~~transfer from the local government archives account to the Washington~~
19 ~~state heritage center account such amounts as reflect the excess fund~~
20 ~~balance in the account.)) Any amounts deposited in the account in
21 accordance with RCW 36.22.175(4) may only be expended for the
22 purposes authorized under that provision as follows: No more than
23 fifty percent of funding may be used for the attorney general's
24 consultation program and the state archivist's training services, and
25 the remainder is to be used for the competitive grant program.~~

26 NEW SECTION. **Sec. 6.** A new section is added to chapter 40.14
27 RCW to read as follows:

28 (1) The division of archives and records management in the office
29 of the secretary of state must establish and administer a competitive
30 grant program for local agencies to improve technology information
31 systems for public record retention, management, and disclosure, and
32 any related training. The division of archives and records management
33 may use up to six percent of amounts appropriated for the program for
34 administration of the grant program. The program in this subsection
35 ceases to exist June 30, 2020.

36 (2) Any local agency may apply to the grant program. The division
37 of archives and records management in the office of the secretary of
38 state must award grants annually. The division of archives and

1 records management must consult with the chief information officer to
2 develop the criteria for grant recipient selection with a preference
3 given to small local governmental agencies based on the applicant
4 agency's need and ability to improve its information technology
5 systems for public record retention, management, and disclosure. The
6 division of archives and records management may award grants for
7 specific hardware, software, equipment, technology services
8 management and training needs, indexing for local records and digital
9 data, and other resources for improving information technology
10 systems. To the extent possible, information technology systems,
11 processes, training, and other resources for improving information
12 technology systems for records retention and distribution may be
13 replicated and shared with other governmental entities. Grants are
14 provided for one-time investments and are not an ongoing source of
15 revenue for operation or management costs. A grantee may not supplant
16 local funding with grant funding provided by the office of the
17 secretary of state. The program in this subsection ceases to exist
18 June 30, 2020.

19 (3) The joint legislative audit and review committee must conduct
20 a review of the attorney general's consultation program and the state
21 archivist's training services created under section 4, chapter . . . ,
22 Laws of 2017 (section 4 of this act), and the local government
23 competitive grant program created under this section. The review must
24 include:

25 (a)(i) Information on the number of local governments served, the
26 types of consultation and training provided, and the implementation
27 of any practices adopted from the attorney general's consultation
28 program and the state archivist's training services; and

29 (ii) The effectiveness of the consultation program and the
30 training services in providing assistance for local governments; and

31 (b)(i) Information on the number of local governments that
32 applied for and participated in the competitive grant program under
33 this section, the amount of funding awarded through the grant
34 program, and how such funding was used; and

35 (ii) The effectiveness of the grant program in improving local
36 government technology information systems for public records
37 retention, management, disclosure, and training.

38 (4) Each agency shall maintain a log of public records requests
39 submitted to and processed by the agency, which shall include but not
40 be limited to the following information for each request: The

1 identity of the requestor if provided by the requestor, the date the
2 request was received, the text of the original request, a description
3 of the records produced in response to the request, a description of
4 the records redacted or withheld and the reasons therefor, and the
5 date of the final disposition of the request. The log must be
6 retained by the agency in accordance with the relevant record
7 retention schedule established under this chapter, and shall be a
8 public record subject to disclosure under chapter 42.56 RCW.

9 (5) To improve best practices for dissemination of public
10 records, each agency with actual staff and legal costs associated
11 with fulfilling public records requests of at least one hundred
12 thousand dollars during the prior fiscal year must, and each agency
13 with such estimated costs of less than one hundred thousand dollars
14 during the prior fiscal year may, report to the joint legislative
15 audit and review committee by July 1st of each subsequent year the
16 following metrics, measured over the preceding year:

17 (a) An identification of leading practices and processes for
18 records management and retention, including technological upgrades,
19 and what percentage of those leading practices and processes were
20 implemented by the agency;

21 (b) The average length of time taken to acknowledge receipt of a
22 public records request;

23 (c) The proportion of requests where the agency provided the
24 requested records within five days of receipt of the request compared
25 to the proportion of requests where the agency provided an estimate
26 of an anticipated response time beyond five days of receipt of the
27 request;

28 (d) A comparison of the agency's average initial estimate
29 provided for full disclosure of responsive records with the actual
30 time when all responsive records were fully disclosed, including
31 whether the agency sent subsequent estimates of an anticipated
32 response time;

33 (e) The number of requests where the agency formally sought
34 additional clarification from the requestor;

35 (f) The number of requests denied and the most common reasons for
36 denying requests;

37 (g) The number of requests abandoned by requestors;

38 (h) To the extent the information is known by the agency,
39 requests by type of requestor, including individuals, law firms,

1 organizations, insurers, governments, incarcerated persons, the
2 media, anonymous requestors, current or former employees, and others;

3 (i) Which portion of requests were fulfilled electronically
4 compared to requests fulfilled by physical records;

5 (j) The number of requests where the agency was required to scan
6 physical records electronically to fulfill disclosure;

7 (k) The estimated agency staff time spent on each individual
8 request;

9 (l) The estimated costs incurred by the agency in fulfilling
10 records requests, including costs for staff compensation and legal
11 review, and a measure of the average cost per request;

12 (m) The number of claims filed alleging a violation of chapter
13 42.56 RCW or other public records statutes in the past year involving
14 the agency, categorized by type and exemption at issue, if
15 applicable;

16 (n) The costs incurred by the agency litigating claims alleging a
17 violation of chapter 42.56 RCW or other public records statutes in
18 the past year, including any penalties imposed on the agency;

19 (o) The costs incurred by the agency with managing and retaining
20 records, including staff compensation and purchases of equipment,
21 hardware, software, and services to manage and retain public records
22 or otherwise assist in the fulfillment of public records requests;

23 (p) Expenses recovered by the agency from requestors for
24 fulfilling public records requests, including any customized service
25 charges; and

26 (q) Measures of requestor satisfaction with agency responses,
27 communication, and processes relating to the fulfillment of public
28 records requests.

29 (6) The joint legislative audit and review committee must consult
30 with state and local agencies to develop a reporting method and
31 clearly define standardized metrics in accordance with this section.

32 (7) By December 1, 2019, the joint legislative audit and review
33 committee must report to the legislature on its findings from the
34 review, including recommendations on whether the competitive grant
35 program, the attorney general's consultation program, and the state
36 archivist's training services should continue or be allowed to
37 expire.

38 **Sec. 7.** RCW 36.22.175 and 2011 1st sp.s. c 50 s 931 are each
39 amended to read as follows:

1 (1)(a) In addition to any other charge authorized by law, the
2 county auditor shall charge a surcharge of one dollar per instrument
3 for each document recorded. Revenue generated through this surcharge
4 shall be transmitted monthly to the state treasurer for deposit in
5 the local government archives account under RCW 40.14.024. These
6 funds shall be used solely for providing records (~~scheduling~~)
7 schedule compliance, security microfilm inspection and storage,
8 archival preservation, cataloging, and indexing for local government
9 records and digital data and access to those records and data through
10 the regional branch archives of the division of archives and records
11 management.

12 (b) The division of archives and records management within the
13 office of the secretary of state shall provide records management
14 training for local governments and shall establish a competitive
15 grant program to solicit and prioritize project proposals from local
16 governments for potential funding to be paid for by funds from the
17 auditor surcharge and tax warrant surcharge revenues. Application for
18 specific projects may be made by local government agencies only. The
19 state archivist in consultation with the advisory committee
20 established under RCW 40.14.027 shall adopt rules governing project
21 eligibility, evaluation, awarding of grants, and other criteria
22 including requirements for records management training for grant
23 recipients.

24 (2) The advisory committee established under RCW 40.14.027 shall
25 review grant proposals and establish a prioritized list of projects
26 to be considered for funding by January 1st of each even-numbered
27 year, beginning in 2002. The evaluation of proposals and development
28 of the prioritized list must be developed through open public
29 meetings. Funding for projects shall be granted according to the
30 ranking of each application on the prioritized list and projects will
31 be funded only to the extent that funds are available. A grant award
32 may have an effective date other than the date the project is placed
33 on the prioritized list.

34 (3)(a) In addition to any other surcharge authorized by law, the
35 county auditor shall charge a surcharge of one dollar per instrument
36 for every document recorded after January 1, 2002. Revenue generated
37 through this surcharge shall be transmitted to the state treasurer
38 monthly for deposit in the local government archives account under
39 RCW 40.14.024 to be used exclusively for: (i) The construction and
40 improvement of a specialized regional facility located in eastern

1 Washington designed to serve the archives, records management, and
2 digital data management needs of local government; and (ii) payment
3 of the certificate of participation issued for the Washington state
4 heritage center to the extent there is an excess fund balance in the
5 account and fees generated under RCW 36.18.010 and 43.07.128 are
6 insufficient to meet debt service payments on the certificate of
7 participation.

8 (b) To the extent the facilities are used for the storage and
9 retrieval of state agency records and digital data, that portion of
10 the construction of such facilities used for state government records
11 and data shall be supported by other charges and fees paid by state
12 agencies and shall not be supported by the surcharge authorized in
13 this subsection, except that to the extent there is an excess fund
14 balance in the account and fees generated under RCW 36.18.010 and
15 43.07.128 are insufficient to meet debt service payments for the
16 Washington state heritage center, the local government archives
17 account under RCW 40.14.024 may be used for the Washington state
18 heritage center.

19 (c) At such time that all debt service from construction of the
20 specialized regional archive facility located in eastern Washington
21 has been paid, fifty percent of the surcharge authorized by this
22 subsection shall be reverted to the centennial document preservation
23 and modernization account as prescribed in RCW 36.22.170 and fifty
24 percent of the surcharge authorized by this section shall be reverted
25 to the state treasurer for deposit in the public records efficiency,
26 preservation, and access account to serve the archives, records
27 management, and digital data management needs of local government,
28 except that the state treasurer shall not revert funds to the
29 centennial document preservation and modernization account and to the
30 public records efficiency, preservation, and access account if fees
31 generated under RCW 36.18.010 and 43.07.128 are insufficient to meet
32 debt service payments on the Washington state heritage center.

33 (4) In addition to any other surcharge authorized by law, the
34 county auditor shall charge a surcharge of one dollar per instrument
35 for every document recorded. Revenue generated through this surcharge
36 shall be transmitted to the state treasurer monthly for deposit in
37 the local government archives account under RCW 40.14.024 to be used
38 exclusively for the competitive grant program in section 6 of this
39 act, and for the attorney general's consultation program and state
40 archivist's training services authorized in RCW 42.56.570.

1 NEW SECTION. **Sec. 8.** (1) Subject to the availability of amounts
2 appropriated for this specific purpose, the division of archives and
3 records management in the office of the secretary of state must
4 conduct a study to assess the feasibility of implementing a statewide
5 open records portal through which a user can request and receive a
6 response through a single internet web site relating to public
7 records information.

8 (2) The division of archives and records management must hire a
9 consultant to conduct the study.

10 (3) At a minimum, the report must include:

11 (a) The feasibility of Washington creating a central site from
12 which a user can submit a records request and receive a timely
13 response to such request;

14 (b) An examination of the experience in other states, including
15 but not limited to the state of Utah, that have implemented an
16 electronic open records portal;

17 (c) Whether the open records portals in other states serve as
18 central repositories and archives for the purpose of all public
19 records on behalf of local and state agencies;

20 (d) Whether other states' open records portals track and provide
21 a timeline where each request is being responded to in the process;

22 (e) The cost of creating the open records portal in other states
23 and the amount of funds local and state agencies or any other
24 entities contributed to the start-up and ongoing costs to operate the
25 open records portal;

26 (f) The length of time it took for other states to develop an
27 open records portal from its initial start-up to its current full
28 operation;

29 (g) The length of time it would take for Washington to develop
30 and implement an open records portal from start-up to full operation
31 that is similar to the portals located in other states;

32 (h) The length of time it would take for Washington to develop
33 and implement an open records portal from start-up to full operation
34 that would include: (i) The portal collecting, archiving, and holding
35 all public records from local and state governmental agencies in
36 Washington; (ii) the portal being capable of allowing users to submit
37 a public records request through a central site; and (iii) the
38 records portal operating as a central site for answering and
39 providing requested public records to a user;

1 (i) The estimated cost to develop and implement an open records
2 portal that is: (i) Similar to the open records portals located in
3 other states referenced and reviewed in (g) of this subsection; and
4 (ii) a full open records portal pursuant to (h) of this subsection.
5 In both instances, the costs must include costs associated with local
6 and state governmental agencies in Washington participating in the
7 portal and any needed supporting infrastructure, staffing, and
8 training requirements;

9 (j) How much is charged and how fees are collected from a user
10 requesting a public record through other states' open records
11 portals;

12 (k) The feasibility of whether an open records portal created in
13 Washington would be able to track all public records requests, when
14 such requests for public records are made through the open records
15 portal, and provide a timeline where each request is being responded
16 to in the process;

17 (l) The feasibility of whether an open records portal created in
18 Washington would be able to directly respond to answering a user's
19 public records request and, if not, the feasibility of the portal
20 tracking when a local or state agency responds to such a request and
21 providing a timeline where each request is being responded to in the
22 process;

23 (m) The feasibility of creating an open records portal in
24 Washington that notifies a requestor that the request has been
25 received and either immediately provides the requestor with a copy of
26 the requested record, notifies the requestor that the record is not
27 available, or notifies the requestor that because of the
28 extraordinary request the record will be available on a date certain;

29 (n) The feasibility of creating an open records portal through
30 which a requestor can make a request and receive a response through a
31 single internet web site relating to public records information, and
32 the feasibility of agencies managing internet web sites to make
33 public access easier and reduce the number of requests related to the
34 same topic through best practices by offering to post different
35 categories of requested records on the web site in a manner that is
36 responsive to records requests; and

37 (o) The allocation of liability between the agency operating an
38 open records portal and any agency that provides records through the
39 portal or accepts requests for public records through the portal in
40 the event of litigation regarding denial of access to records or

1 unreasonable estimate of time to produce records in response to a
2 request.

3 (4) A report must be completed with findings and recommendations
4 on the experience of the electronic open records portal created in
5 other states and the feasibility of creating a central statewide open
6 records portal in Washington, as well as recommendations and best
7 management practices for agencies to post records that are responsive
8 to records requests on an agency internet web site and take into
9 consideration various categories of records and agency capacities in
10 order to provide broader public access to records of public interest
11 and to reduce the number of requests relating to the same topic. The
12 report must be submitted to the governor, the appropriate committees
13 of the legislature, and members of the stakeholder group in section 9
14 of this act, by September 1, 2018.

15 (5) This section expires December 31, 2018.

16 NEW SECTION. **Sec. 9.** (1) The division of archives and records
17 management in the office of the secretary of state must convene a
18 stakeholder group by September 1, 2017, to develop the initial scope
19 and direction of the study in section 8 of this act.

20 (2) The stakeholder group must include seven members as provided
21 in this subsection.

22 (a) The majority leader and the minority leader of the senate
23 shall appoint one member from each of the two largest caucuses of the
24 senate.

25 (b) The majority leader and the minority leader of the house of
26 representatives shall appoint one member from each of the two largest
27 caucuses of the house of representatives.

28 (c) The president of the senate and the speaker of the house of
29 representatives, in consultation with the division of archives and
30 records management, jointly shall appoint the remaining three
31 members. The remaining three members must be representatives of the
32 community who have experience in the retention and disclosure of
33 public records.

34 (3) This section expires September 30, 2018.

35 NEW SECTION. **Sec. 10.** Section 7 of this act expires June 30,
36 2020."

ADOPTED 04/10/2017

1 On page 1, line 1 of the title, after "administration;" strike
2 the remainder of the title and insert "amending RCW 42.56.010,
3 42.56.152, 42.56.520, 42.56.570, 40.14.024, and 36.22.175; adding a
4 new section to chapter 40.14 RCW; creating new sections; and
5 providing expiration dates."

EFFECT: (1) Removes records held by agency volunteers who do not serve in an administrative capacity and who do not have delegated agency authority which are not otherwise required to be retained by the agency from the definition of "record."

(2) Requires that agencies estimating annual public records fulfillment costs of over \$100,000 to report metrics regarding public records fulfillment and compliance to JLARC annually, which JLARC must compile and report to the Legislature.

(3) Requires JLARC to work with state and local agencies to define standardized metrics and develop a reporting method.

(4) Requires agencies to maintain a log of public records requests, responses, and final dispositions.

(5) Modifies officials making appointments to stakeholder group directing the study on the open records portal.

(6) The statewide open records portal feasibility study is made subject to appropriation.

(7) The \$25,000 general fund appropriation for the statewide open records portal feasibility study is removed.

--- END ---