

ESHB 1594 - S COMM AMD

By Committee on State Government

NOT 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. Records that are not otherwise required to be
30 retained by the agency and are held by volunteers who do not serve in
31 an administrative capacity and have not been appointed by the agency

1 to an agency board, commission, internship, or supervisory role that
2 has delegated agency authority are not public records.

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

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

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

18 (2) Public records officers must:

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

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

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

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

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

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

32 (1) Responses to requests for public records shall be made
33 promptly by agencies, the office of the secretary of the senate, and
34 the office of the chief clerk of the house of representatives. Within
35 five business days of receiving a public record request, an agency,
36 the office of the secretary of the senate, or the office of the chief
37 clerk of the house of representatives must respond (~~by either~~) in
38 one of the ways provided in this subsection (1):

1 (a) Providing the record;

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

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

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

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

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

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

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

39 (4) Denials of requests must be accompanied by a written
40 statement of the specific reasons therefor. Agencies, the office of

1 the secretary of the senate, and the office of the chief clerk of the
2 house of representatives shall establish mechanisms for the most
3 prompt possible review of decisions denying inspection, and such
4 review shall be deemed completed at the end of the second business
5 day following the denial of inspection and shall constitute final
6 agency action or final action by the office of the secretary of the
7 senate or the office of the chief clerk of the house of
8 representatives for the purposes of judicial review.

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

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

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

17 (a) Providing fullest assistance to requestors;

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

19 (c) Fulfilling requests for electronic records; and

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

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

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

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

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

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

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

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

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

33 (2) Any local agency may apply to the grant program. The division
34 of archives and records management in the office of the secretary of
35 state must award grants annually. The division of archives and
36 records management must consult with the chief information officer to
37 develop the criteria for grant recipient selection with a preference
38 given to small local governmental agencies based on the applicant

1 agency's need and ability to improve its information technology
2 systems for public record retention, management, and disclosure. The
3 division of archives and records management may award grants for
4 specific hardware, software, equipment, technology services
5 management and training needs, indexing for local records and digital
6 data, and other resources for improving information technology
7 systems. To the extent possible, information technology systems,
8 processes, training, and other resources for improving information
9 technology systems for records retention and distribution may be
10 replicated and shared with other governmental entities. Grants are
11 provided for one-time investments and are not an ongoing source of
12 revenue for operation or management costs. A grantee may not supplant
13 local funding with grant funding provided by the office of the
14 secretary of state.

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

17 (1)(a) In addition to any other charge authorized by law, the
18 county auditor shall charge a surcharge of one dollar per instrument
19 for each document recorded. Revenue generated through this surcharge
20 shall be transmitted monthly to the state treasurer for deposit in
21 the local government archives account under RCW 40.14.024. These
22 funds shall be used solely for providing records (~~scheduling~~)
23 schedule compliance, security microfilm inspection and storage,
24 archival preservation, cataloging, and indexing for local government
25 records and digital data and access to those records and data through
26 the regional branch archives of the division of archives and records
27 management.

28 (b) The division of archives and records management within the
29 office of the secretary of state shall provide records management
30 training for local governments and shall establish a competitive
31 grant program to solicit and prioritize project proposals from local
32 governments for potential funding to be paid for by funds from the
33 auditor surcharge and tax warrant surcharge revenues. Application for
34 specific projects may be made by local government agencies only. The
35 state archivist in consultation with the advisory committee
36 established under RCW 40.14.027 shall adopt rules governing project
37 eligibility, evaluation, awarding of grants, and other criteria
38 including requirements for records management training for grant
39 recipients.

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

11 (3)(a) In addition to any other surcharge authorized by law, the
12 county auditor shall charge a surcharge of one dollar per instrument
13 for every document recorded after January 1, 2002. Revenue generated
14 through this surcharge shall be transmitted to the state treasurer
15 monthly for deposit in the local government archives account under
16 RCW 40.14.024 to be used exclusively for: (i) The construction and
17 improvement of a specialized regional facility located in eastern
18 Washington designed to serve the archives, records management, and
19 digital data management needs of local government; and (ii) payment
20 of the certificate of participation issued for the Washington state
21 heritage center to the extent there is an excess fund balance in the
22 account and fees generated under RCW 36.18.010 and 43.07.128 are
23 insufficient to meet debt service payments on the certificate of
24 participation.

25 (b) To the extent the facilities are used for the storage and
26 retrieval of state agency records and digital data, that portion of
27 the construction of such facilities used for state government records
28 and data shall be supported by other charges and fees paid by state
29 agencies and shall not be supported by the surcharge authorized in
30 this subsection, except that to the extent there is an excess fund
31 balance in the account and fees generated under RCW 36.18.010 and
32 43.07.128 are insufficient to meet debt service payments for the
33 Washington state heritage center, the local government archives
34 account under RCW 40.14.024 may be used for the Washington state
35 heritage center.

36 (c) At such time that all debt service from construction of the
37 specialized regional archive facility located in eastern Washington
38 has been paid, fifty percent of the surcharge authorized by this
39 subsection shall be reverted to the centennial document preservation
40 and modernization account as prescribed in RCW 36.22.170 and fifty

1 percent of the surcharge authorized by this section shall be reverted
2 to the state treasurer for deposit in the public records efficiency,
3 preservation, and access account to serve the archives, records
4 management, and digital data management needs of local government,
5 except that the state treasurer shall not revert funds to the
6 centennial document preservation and modernization account and to the
7 public records efficiency, preservation, and access account if fees
8 generated under RCW 36.18.010 and 43.07.128 are insufficient to meet
9 debt service payments on the Washington state heritage center.

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

18 NEW SECTION. **Sec. 8.** (1) The division of archives and records
19 management in the office of the secretary of state must conduct a
20 study to assess the feasibility of implementing a statewide open
21 records portal through which a user can request and receive a
22 response through a single internet web site relating to public
23 records information.

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

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

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

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

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

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

38 (e) The cost of creating the open records portal in other states
39 and the amount of funds local and state agencies or any other

1 entities contributed to the start-up and ongoing costs to operate the
2 open records portal;

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

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

9 (h) The length of time it would take for Washington to develop
10 and implement an open records portal from start-up to full operation
11 that would include: (i) The portal collecting, archiving, and holding
12 all public records from local and state governmental agencies in
13 Washington; (ii) the portal being capable of allowing users to submit
14 a public records request through a central site; and (iii) the
15 records portal operating as a central site for answering and
16 providing requested public records to a user;

17 (i) The estimated cost to develop and implement an open records
18 portal that is: (i) Similar to the open records portals located in
19 other states referenced and reviewed in (g) of this subsection; and
20 (ii) a full open records portal pursuant to (h) of this subsection.
21 In both instances, the costs must include costs associated with local
22 and state governmental agencies in Washington participating in the
23 portal and any needed supporting infrastructure, staffing, and
24 training requirements;

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

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

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

39 (m) The feasibility of creating an open records portal in
40 Washington that notifies a requestor that the request has been

1 received and either immediately provides the requestor with a copy of
2 the requested record, notifies the requestor that the record is not
3 available, or notifies the requestor that because of the
4 extraordinary request the record will be available on a date certain;

5 (n) The feasibility of creating an open records portal through
6 which a requestor can make a request and receive a response through a
7 single internet web site relating to public records information, and
8 the feasibility of agencies managing internet web sites to make
9 public access easier and reduce the number of requests related to the
10 same topic through best practices by offering to post different
11 categories of requested records on the web site in a manner that is
12 responsive to records requests; and

13 (o) The allocation of liability between the agency operating an
14 open records portal and any agency that provides records through the
15 portal or accepts requests for public records through the portal in
16 the event of litigation regarding denial of access to records or
17 unreasonable estimate of time to produce records in response to a
18 request.

19 (4) A report must be completed with findings and recommendations
20 on the experience of the electronic open records portal created in
21 other states and the feasibility of creating a central statewide open
22 records portal in Washington, as well as recommendations and best
23 management practices for agencies to post records that are responsive
24 to records requests on an agency internet web site and take into
25 consideration various categories of records and agency capacities in
26 order to provide broader public access to records of public interest
27 and to reduce the number of requests relating to the same topic. The
28 report must be submitted to the governor, the appropriate committees
29 of the legislature, and members of the stakeholder group in section 9
30 of this act, by September 1, 2018.

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

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

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

1 (a) The majority leader and the minority leader of the senate
2 shall appoint one member from each of the two largest caucuses of the
3 senate.

4 (b) The majority leader and the minority leader of the house of
5 representatives shall appoint one member from each of the two largest
6 caucuses of the house of representatives.

7 (c) The president of the senate and the speaker of the house of
8 representatives, in consultation with the division of archives and
9 records management, jointly shall appoint the remaining three
10 members. The remaining three members must be representatives of the
11 community who have experience in the retention and disclosure of
12 public records.

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

14 NEW SECTION. **Sec. 10.** (1) The joint legislative audit and
15 review committee must conduct a review of the attorney general's
16 consultation program and the state archivist's training services
17 created under section 4, chapter . . . , Laws of 2017 (section 4 of
18 this act), and the local government competitive grant program created
19 under section 6 of this act. The review must include:

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

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

26 (b)(i) Information on the number of local governments that
27 applied for and participated in the competitive grant program under
28 section 6 of this act, the amount of funding awarded through the
29 grant program, and how such funding was used; and

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

33 (2) Each agency shall maintain a log of public records requests
34 submitted to and processed by the agency, which shall include but not
35 be limited to the following information for each request: The
36 identity provided by the requestor, the date the request was
37 received, the text of the original request, a description of the
38 records produced in response to the request, a description of the
39 records redacted or withheld and the reasons therefor, and the date

1 of the final disposition of the request. The log must be retained by
2 the agency in accordance with the relevant record retention schedule
3 established under chapter 40.14 RCW, and shall be a public record
4 subject to disclosure under this chapter.

5 (3) To improve best practices for dissemination of public
6 records, each agency with estimated staff and legal costs associated
7 with fulfilling public records requests of at least forty thousand
8 dollars per year must, and each agency with such estimated costs of
9 less than forty thousand dollars per year may, report the following
10 metrics, measured over the preceding year, to the joint legislative
11 audit and review committee by July 1st of each year:

12 (a) An identification of leading practices and processes for
13 records management and retention, including technological upgrades,
14 and what percentage of those leading practices and processes were
15 implemented by the agency;

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

18 (c) The proportion of requests where the agency provided the
19 requested records within five days of receipt of the request compared
20 to the proportion of requests where the agency provided an estimate
21 of an anticipated response time beyond five days of receipt of the
22 request;

23 (d) A comparison of the agency's average initial estimate
24 provided for full disclosure of responsive records with the actual
25 time when all responsive records were fully disclosed, including
26 whether the agency sent subsequent estimates of an anticipated
27 response time;

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

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

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

33 (h) To the extent the information is known by the agency,
34 requests by type of requestor, including individuals, law firms,
35 organizations, insurers, governments, incarcerated persons, the
36 media, anonymous requestors, current or former employees, and others;

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

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

1 (k) The estimated agency staff time spent on each individual
2 request;

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

6 (m) The number of claims filed alleging a violation of chapter
7 42.56 RCW or other public records statutes in the past year involving
8 the agency, categorized by type and exemption at issue, if
9 applicable;

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

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

17 (p) Expenses recovered by the agency from requestors for
18 fulfilling public records requests, including any customized service
19 charges; and

20 (q) Measures of requestor satisfaction with agency responses,
21 communication, and processes relating to the fulfillment of public
22 records requests.

23 (4) By December 1, 2019, the joint legislative audit and review
24 committee must report to the legislature on its findings from the
25 review, including recommendations on whether the competitive grant
26 program, the attorney general's consultation program, and the state
27 archivist's training services should continue or be allowed to
28 expire.

29 NEW SECTION. **Sec. 11.** Sections 6 and 7 of this act expire June
30 30, 2020.

31 NEW SECTION. **Sec. 12.** The sum of twenty-five thousand dollars,
32 or as much thereof as may be necessary, is appropriated for the
33 fiscal biennium ending June 30, 2019, from the general fund to the
34 secretary of state solely for purposes of section 8 of this act."

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By Committee on State Government

NOT 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; making an
5 appropriation; and 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 \$40,000 to report metrics regarding public records fulfillment and compliance to JLARC annually, which JLARC must compile and report to the Legislature.

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

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

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