

# HOUSE BILL REPORT

## ESHB 1594

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### As Passed Legislature

**Title:** An act relating to improving public records administration.

**Brief Description:** Improving public records administration.

**Sponsors:** House Committee on Appropriations (originally sponsored by Representatives McBride, Nealey, Springer, Clibborn, Hayes, Gregerson, Peterson, Koster, Griffey, Klippert, Kilduff, Muri, Senn, Goodman, Haler, Robinson, Sells, Steele, Fitzgibbon, Fey, Kraft, Bergquist, Smith, Tharinger, Stanford, Kloba, Jinkins, Hargrove, Slatter and Kagi).

### Brief History:

#### Committee Activity:

State Government, Elections & Information Technology: 2/10/17, 2/14/17 [DP];  
Appropriations: 2/23/17, 2/24/17 [DPS].

#### Floor Activity:

Passed House: 3/3/17, 79-18.  
Senate Amended.  
Passed Senate: 4/10/17, 40-7.  
House Concurred.  
Passed House: 4/17/17, 80-18.  
Passed Legislature.

### Brief Summary of Engrossed Substitute Bill

- Requires records held by certain nonadministrative volunteers from application of the Public Records Act.
- Requires the Attorney General to establish a consultation program to assist local governments with best practices for managing public records requests.
- Requires the Division of Archives and Records Management (State Archives) to provide training to local agencies on records retention practices and to establish a competitive grant program for local agencies to improve their information technology systems.
- Provides a \$1 surcharge on county recorded documents for funding the State Archives local competitive grant program, consultation program, and local trainings on records retention practice.

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*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.*

- Requires a Joint Legislative Audit and Review Committee report on the effectiveness of the competitive grant program, the consultation program, and the records retention training services, with recommendations whether those services should continue beyond 2020.
- Authorizes State Archives to conduct a feasibility study for establishing a statewide Internet portal for public records management.

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## HOUSE COMMITTEE ON STATE GOVERNMENT, ELECTIONS & INFORMATION TECHNOLOGY

**Majority Report:** Do pass. Signed by 6 members: Representatives Hudgins, Chair; Dolan, Vice Chair; Koster, Ranking Minority Member; Volz, Assistant Ranking Minority Member; Appleton and Gregerson.

**Minority Report:** Without recommendation. Signed by 2 members: Representatives Irwin and Kraft.

**Minority Report:** Do not pass. Signed by 1 member: Representative Pellicciotti.

**Staff:** Sean Flynn (786-7124).

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 25 members: Representatives Ormsby, Chair; Robinson, Vice Chair; Stokesbary, Assistant Ranking Minority Member; Bergquist, Caldier, Cody, Fitzgibbon, Hansen, Harris, Hudgins, Jinkins, Kagi, Lytton, Manweller, Nealey, Pettigrew, Pollet, Sawyer, Schmick, Senn, Springer, Stanford, Sullivan, Tharinger and Volz.

**Minority Report:** Do not pass. Signed by 7 members: Representatives Chandler, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Buys, Haler, Taylor, Vick and Wilcox.

**Staff:** Jordan Clarke (786-7123).

### **Background:**

#### Public Records Act.

The Public Records Act (PRA) requires state and local agencies to make their written records available to the public for inspection and copying upon request, unless the information fits into one of the various specific exemptions in the PRA or as otherwise provided in law. The stated policy of the PRA favors disclosure and requires narrow application of the listed exemptions.

Agencies must respond to a records request within five business days. The response must provide the record, deny the request, or provide an estimate of time when the records will be available. An agency may ask the requester to clarify what information the requester is seeking. If the requester fails to clarify the request, the agency is not obligated to respond.

Agencies must adopt rules for providing public access to records, protecting public records from damage or disorganization, and preventing excessive interference with other essential functions of the agency. The Attorney General also publishes model rules for agencies on PRA compliance issues.

Each agency must appoint a public records officer to oversee agency compliance with the PRA. Every four years, each records officer must complete a training course on PRA compliance. The training must be consistent with the Attorney General's model rules.

#### State Archives – Local Records Management.

The Office of the Secretary of State includes the Division of Archives and Records Management (State Archives), which is responsible for safeguarding state public records. The State Archivist administers the Division and manages the retention, cataloging, and preservation of the public records inventory. The State Archives also operates regional offices that support state and local agencies with records management.

The Local Government Archives Account (Local Archives Account) is a funding source to support local government record keeping services. The State Archives provides services, resources, and training to assist with local government archives, including access to digital data systems. The State Archives also administers a competitive grant program to fund specific local government archives projects. Finally, funding is used for the construction of archives facilities in eastern Washington that support local government records management needs.

Revenue from the Local Archives Account comes from surcharges on documents recorded with a county auditor. A \$1 surcharge funds the State Archives supportive services for local governments. A second \$1 charge is collected exclusively to fund the capital projects.

#### **Summary of Engrossed Substitute Bill:**

##### Records Held by Agency Volunteers Not Public Records.

Records held by agency volunteers are not considered public records for purposes of the PRA if the volunteer does not serve in an administrative capacity, does not hold an appointed position to an agency board, commission or internship, and does not have any supervisory function for the agency.

##### Public Records Training Services.

The public records officer training course required under the PRA must address improvements for technology information services and management of electronic records.

In addition to publishing model rules, the Attorney General must establish a consultation program to assist local governments with best practices for managing records requests, updating technology, and mitigating costs and liability. The Chief Information Officer, State Archivist, and other relevant agencies may provide consultation in developing and managing the program. The State Archives also must offer consultation and training services for local agencies on improving record retention practices. The Attorney General's consultation program and the State Archives' records retention training services expire in 2020.

#### Local Agency Information Technology Competitive Grant Program.

The State Archives must establish a competitive grant program to improve local agency information technology systems for public records management. Any local agency may apply for grants, awarded annually, with preference given to small agencies with the need and ability to improve information technology systems. The State Archives may consult with the Chief Information Officer to develop criteria for making grant awards.

Grant awards may cover software and hardware, equipment, management and training, indexing for records and digital data, and other resources. Grants are provided as single investments, and not as an ongoing source for operation and management expenses, and may not be used to supplant local funding. The State Archives may spend up to 6 percent of the grant program funding on administrative costs. The competitive grant program expires in 2020.

#### Funding for Local Agency Training and Resources.

An additional \$1 surcharge is assessed on documents recorded with the county auditor and deposited into the Local Archives Account. The additional surcharge revenue must be used exclusively for the State Archives' local agency competitive grant program, the Attorney General's consultation program, and the State Archives' records retention training services. No more than 50 percent of the such revenue may be used for the competitive grant program and the records retention training services, combined.

#### Evaluation and Reporting Requirements on Public Records Management.

The Joint Legislative Audit and Review Committee (JLARC) must review the local agency competitive grant program, the attorney general's consultation program, and the state archivist's training services. By December 1, 2019, the JLARC must report to the legislature on its findings from the review, including recommendations on whether those programs should continue or be allowed to expire.

All agencies must maintain a log of public records requests submitted and processed, including the identity of the requestor if provided, the date the request was received and completed, a description of the records produced, redacted or withheld, in response to the request. Any agency with at least \$100,000 in annual staff and legal costs associated with fulfilling public records requests must report to the JLARC by July 1 on certain metrics measured over the preceding year. The JLARC must develop a reporting method and standardized metrics for the reporting requirements, in consultation with agencies. The metrics reported must include:

- the leading practices and processes for records management and retention and what percentage of such practices were implemented by the agency;
- the average length of time taken to acknowledge receipt of a public records request, and the estimated agency staff time spent on a request;
- the proportion of records provided within five days of the request and the proportion of requests estimated beyond five days;
- the agency's initial estimate for providing records as compared with the actual time in providing such records;
- the number of requests where the agency asked for clarification from the requestor;
- the number of requests denied and abandoned;
- the type of requestor;
- the portion of requests fulfilled electronically or by physical records and the number of requests where the agency was required to scan physical records electronically to fulfill disclosure;
- the estimated agency costs fulfilling requests, managing and retaining records and defending claims of public disclosure violations;
- the number of claims filed alleging a violation of public disclosure laws, and costs;
- the agency costs defending claims of public disclosure violations
- the expenses recovered from requestors for fulfilling records requests; and
- the measurement of requestor satisfaction with agency responses, communication, and processes relating to public records requests.

#### State Records Portal – Study.

The State Archives is authorized to administer a feasibility study on implementing a statewide open records portal that would administer public records request through a single access point Internet website. The study must be conducted by a consultant hired by the State Archives. The consultant must prepare a report that includes findings and recommendations. The report is due to the Legislature by September 1, 2018.

The study must address the following topics:

- the feasibility of a central portal can provide a timely response to records requests;
- an evaluation of other states that have implemented such an open records portal system;
- the length of time and estimated costs to develop and implement a portal; and
- possible fees collected from requestors using the portal;
- the possibility of the portal to track records requests, provide notice to the requester on record availability, and provide direct responses to requests;
- the allocation of liability regarding records accessibility between the portal managing entity and the agency providing the records; and
- the feasibility of agencies receiving requests through a single Internet website and managing websites to expedite public records access.

An appropriation of \$25,000 is made in the 2017-19 operating budget for funding the study. The State Archives must convene a workgroup by September 1, 2017, to develop the scope and direction of the study. The work group must have seven members, including four legislators and three community representatives selected by the Legislature majority and minority leadership.

**Appropriation:** The sum of \$25,000 from the General Fund to the Secretary of State.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony (State Government, Elections & Information Technology):**

(In support) This bill is the result of a broad stakeholder workgroup that met over the interim to come up with a consensus approach to improving the PRA. Agencies need help with the increasing demands of records management, especially in regards to electronic records. Furthermore, litigation and compliance can cost agencies millions of dollars.

Small districts are burdened by PRA compliance and have particular concerns with PRA compliance in dealing with records requests. Such agencies, like hospital districts, must carefully review records for confidential and exempted information in sensitive matters like medical records. Exceptional costs associated with compliance take away necessary resources from the function of local agencies. Also, legal costs may not be covered by an agency's insurance.

This bill strikes a balance of providing more resources for agencies to manage costs and record retention, while maintaining transparency and upholding the principals of allowing public access to the business of government. The State Archives is uniquely qualified to assist local agencies with records management and to update retention practices to be responsive to new technologies.

(Opposed) This bill works against the purpose of the PRA by allowing agencies to detour requests and create barriers to records access. Citizen oversight over government actions is essential to maintaining accountability over government action. Keeping records accessible to the public helps prevent government abuses of power as well as simple errors, and protects average citizens against government abuse of power.

(Other) This bill is a good start at addressing current problems with the PRA, but there are still concerns from various stakeholders. The concept provides a generally workable framework to address the need for reform. The proposed mediation between records requesters and agencies may be more burdensome on agencies than litigation. Also, mediation services are already available. Agency volunteers should be exempt from the disclosure requirements of the PRA.

**Staff Summary of Public Testimony (Appropriations):**

(In support) This bill is the result of several months of collaborative work among stakeholders and legislators. We want to help local jurisdictions in particular better manage and address public records requests. There have been more public records requests than ever before at local agencies, and small agencies struggle to afford the new technology that would help them better manage those records and respond to requests. The grant program in the bill

is critical to supporting technology efforts for small agencies and increasing transparency. The substitute bill represents changes made to address concerns raised by stakeholders, and the changes are included in this version. It is a relatively small cost for helping local governments uphold the tenants of the Public Record Act and ensuring an open and transparent government.

(Opposed) None.

**Persons Testifying** (State Government, Elections & Information Technology): (In support) Representative McBride, prime sponsor; Pat Johnson, City of Buckley; David Sauter, Klickitat County; Amy Walen, City of Kirkland; Mary Perry, City of Seattle Police Department; Whitney Stevens, Snohomish County; Steve Brooks, Thurston County; Laurene Burton, EvergreenHealth; Joe Daniels, Association of Water and Sewer Districts; Tim Garchow, Washington State School Directors Association; Beth Worthington, North Kitsap School District; John Campbell, North Mason School District; Jennifer Ziegler, Washington Association of Counties; and Candace Bock, Association of Washington Cities.

(Opposed) John Worthington and Arthur West.

(Other) Toby Nixon, Washington Coalition for Open Government; Rowland Thompson, Allied Daily Newspapers of Washington; and Toni McKinley-Camp, Russell Wood, and Patrick Williams, Office of the Secretary of State.

**Persons Testifying** (Appropriations): Candice Bock, Association of Washington Cities and Washington Association of Counties.

**Persons Signed In To Testify But Not Testifying** (State Government, Elections & Information Technology): None.

**Persons Signed In To Testify But Not Testifying** (Appropriations): None.