

# HOUSE BILL REPORT

## EHB 1595

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### As Amended by the Senate

**Title:** An act relating to costs associated with responding to public records requests.

**Brief Description:** Concerning costs associated with responding to public records requests.

**Sponsors:** Representatives Nealey, McBride, Senn, Springer, Koster, Klippert, Dye, Schmick, J. Walsh, Haler, Manweller, Harris, Dent, Peterson, Bergquist, Gregerson, Clibborn, Fey, Fitzgibbon, Dolan, Wilcox, Lytton, Griffey, Hayes, Muri, Goodman, Robinson, Sells, Steele, Kraft, 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].

#### Floor Activity:

Passed House: 3/3/17, 75-22.

Senate Amended.

Passed Senate: 4/7/17, 43-4.

### Brief Summary of Engrossed Bill

- Authorizes agencies to charge for providing copies of electronically produced public records and sets a default fee schedule for such records
- Authorizes a customized service charge for locating and preparing public records for exceptional complex requests.
- Provides that a request for all or substantially all agency records is not a valid request for identifiable records under the Public Records Act.
- Allows agencies to deny frequent automatically generated requests for public records that would interfere with the other essential functions of the agency.

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

**Majority Report:** Do pass. Signed by 8 members: Representatives Hudgins, Chair; Dolan, Vice Chair; Koster, Ranking Minority Member; Volz, Assistant Ranking Minority Member; Appleton, Gregerson, Kraft and Pellicciotti.

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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.*

**Minority Report:** Without recommendation. Signed by 1 member: Representative Irwin.

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

**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. The Attorney General publishes model rules to assist agencies on PRA compliance issues, including providing assistance to requesters, fulfilling large requests and requests for electronic records, as well as other issues.

Agencies must make their facilities available for the copying of public records, unless it would unreasonably disrupt the operations of the agency. An agency may not charge a fee for locating and making records available for inspection. However, an agency may establish a charge for the actual cost of copying the records. Copying costs include a per-page rate, as well as costs directly related to copying may be included, such as the labor for making copies and shipping costs, but general administrative and overhead costs are excluded. If it is too burdensome for an agency to determine the actual costs for copying records, the agency may charge a default rate up to 15 cents per page. The agency may require a deposit of up to 10 percent of the estimated actual copy costs for a request.

**Summary of Engrossed Bill:**

Public Records Charges.

Agencies are authorized to charge for providing copies of electronically produced records. The charge may include the actual costs for the electronic production or file transfer of the record, the use of a cloud-based storage and processing service, and the cost of transmitting the records in an electronic format. If determining its own actual costs would be unduly burdensome, the agency may charge up to the following amounts for electronic copies:

- 10 cents per page scanned into an electronic format;
- 5 cents for every 4 electronic attachments uploaded to an electronic delivery system;
- and
- 10 cents per gigabyte transmitting records electronically.

An agency may charge a flat fee of \$2 as an alternative to the authorized default fees.

An agency may assess a customized service charge for records requests that require the preparation of data compilations or customized electronic access services that are not used by the agency for other purposes. The fee is in addition to the authorized copying costs, and may include reimbursement for the actual costs of providing the records.

An agency may not assess a customized service charge unless the agency notifies the requester, explains the reason for the charge, and provides a cost estimate. The requester may amend his or her request to avoid or reduce the costs. A requester may seek judicial review of the reasonableness of an agency's estimate for copying charges.

Agencies may require a deposit of up to 10 percent of the estimated customized service charge costs. Also, agencies may waive any fee for a request if the agency determines the fee is unwarranted. An agency may enter into a contract or other agreement with a requester who provides an alternative fee arrangement to the authorized charges or in response to a voluminous or frequently occurring request.

#### Excessive Requests.

A request for all or substantially all records of an agency not relating to a particular topic is not a valid request for identifiable records under the PRA. An agency may deny multiple automatically generated (bot) requests that come from the same source within a 24-hour period, if the requests cause excessive interference with the other essential functions of the agency.

#### **EFFECT OF SENATE AMENDMENT(S):**

The alternative \$2 flat fee for copies may only be charged when the agency reasonably estimated that the copying costs are clearly \$2 or more. Agencies are required upon request to provide a summary of applicable charges before any copies are made.

**Appropriation:** None.

**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:**

(In support) The PRA was enacted in 1972 and did not contemplate the use of electronic records or technological advancements. The 15 cents per page charge is outdated when processing electronic records. The increase in volume and complexities of requests are hindering the ability of locals to comply with the PRA. Agencies are often overwhelmed responding to large records requests, many of which are used for vindictive purposes. The law is in need of an update to address modern technology and current agency practices and this bill does that.

The spirit of the PRA is to allow for agencies to charge reasonable costs. The costs schedule in this bill is fair and has been vetted by the City of Seattle to determine the lowest rate of staff time and resources. The City of Seattle studied and determined its actual costs for electronic records. The study even charged the lowest rate for services based on the lowest employee salary. The fee assessment is not a money making effort, but simply allows agencies to recoup their actual costs. Furthermore, the authority to allow customized charges will address the variation in technology systems.

(Opposed) Charging more for records access would discriminate against the poor from accessing public information. This bill would weaken the effectiveness of the PRA by hindering ordinary citizens' ability to access their government. Broad transparency of government business is a powerful tool to maintain citizen oversight over government actions. Reviewing agency records can correct agency errors and prevent agencies from acting on misinformation or otherwise not fulfilling their duties. Open records review protects average citizens against agency false accusations and prosecutions exposing agency misconduct.

(Other) The bill should make clear that the new fee schedule will not affect other fees set in statute. This bill attempts to address vexatious requests without interfering with legitimate citizen access, though it may need to be more tightly defined.

**Persons Testifying:** (In support) Representative Nealey, prime sponsor; Pat Johnson, City of Buckley; David Sauter, Klickitat County; Amy Walen, City of Kirkland; Mary Perry, City of Seattle; Whitney Stevens, Snohomish County; Steve Brooks, Thurston County; Laurene Burton, EvergreenHealth; Joe Daniels, Washington Association of Sewer and Water Districts; Tim Garchow, Washington State School Director's 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; Arthur West; Glen Morigan, Citizens Alliance for Property Rights; Betsy Howe, Citizens Opposed to On-Site Sewer System Management Washington; Bruce Wishart, Sierra Club; Lori Shavlik; Anne Block, Gold Bar Reporter; Brandia Taamu; and John Scannell, ActionLaw.

(Other) Toby Nixon and Kathy George, Washington Coalition for Open Government; Rowland Thompson, Allied Daily Newspapers of Washington; Christy Diamond, Uninformed Consent; and Diana Carlen, RELX Group.

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