

SENATE BILL REPORT

EHB 1595

As Reported by Senate Committee On:
State Government, March 29, 2017

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: Passed House: 3/03/17, 75-22.

Committee Activity: State Government: 3/15/17, 3/29/17 [DPA].

Brief Summary of Amended Bill

- Authorizes agencies to charge for providing copies of electronically produced public records and sets a default fee schedule for electronic records.
- Authorizes a customized service charge for locating and preparing public records for exceptionally 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.

SENATE COMMITTEE ON STATE GOVERNMENT

Majority Report: Do pass as amended.

Signed by Senators Miloscia, Chair; Zeiger, Vice Chair; Hunt, Ranking Minority Member; Kuderer and Pearson.

Staff: Samuel Brown (786-7470)

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background: Public Records Act (PRA). The PRA requires state and local agencies to make records available for inspection and copying upon request unless the information fits into one of the various statutory exemptions. The PRA is construed to favor disclosure, with narrow application of the listed exemptions. Agencies must respond to a records request within five business days by providing the record, denying the request, or providing an estimate of when the records will be available.

Charges for Public Records. Agencies must make facilities available for requesters to copy public records unless doing so would unreasonably disrupt agency operations. An agency may not charge a fee for locating and making records available for inspection, but may establish a fee for the actual cost of copying the records. Copying costs include a per-page rate, as well as costs directly related to copying such as the labor for making copies and shipping costs. General administrative and overhead costs are excluded. The agency may charge a default rate up to \$0.15 per page rather than determine the actual cost of copying records. The agency may require a deposit of up to 10 percent of the estimated actual copy costs for a request.

Summary of Amended Bill: Charges for Public Records. Agencies may 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. Agencies must use the most reasonable cost-efficient method available as part of normal operations in determining actual costs. Agencies must provide public notice and hold a hearing prior to establishing a cost schedule for electronic records.

If determining its own actual costs would be unduly burdensome, the agency may charge up to the following rates for electronic records:

- \$0.15 per page for printed copies of electronic records;
- \$0.10 per page for records scanned into an electronic format;
- \$0.05 for every 4 electronic attachments uploaded to an electronic delivery system;
- \$0.10 per gigabyte for records transmitted electronically; and
- actual costs for digital storage media and mailing supplies.

An agency may charge a flat fee of \$2 as an alternative to the authorized default fees if the agency reasonably estimates and documents that the costs under the default rates clearly equal or exceed \$2.

Customized Service Charges. 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. 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. Agencies may require a deposit of up to 10 percent of the estimated customized service charge costs.

Procedural Provisions. The requester may amend a request to avoid or reduce the costs or copies made, and may seek judicial review of the reasonableness of an agency's estimate for copying changes. Agencies may waive any fee for a request if the agency determines the fee is unwarranted. An agency may enter into an agreement with a requester who provides an

alternative fee arrangement to the authorized charges or in response to a voluminous or frequently occurring request.

Identifiable Records. Agencies are not required to fulfill requests for all or substantially all agency records unless the request is for all records regarding a particular topic or containing a specific key word or name.

Excessive Requests. An agency may deny multiple automatically generated 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 STATE GOVERNMENT COMMITTEE AMENDMENT(S): Charges for Public Records. Agencies charging a flat fee as an alternative to the default rates for electronic records requests must first reasonably estimate and document that the costs under the default rates clearly equal or exceed \$2.

Procedural Provisions. Agencies must provide an estimate of charges to fulfill a public records request if asked. Requesters may modify a request to reduce the number of copies made.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Engrossed House Bill: *The committee recommended a different version of the bill than what was heard.* PRO: Developments in technology have changed the public records climate. Agencies have many FTEs and spend over \$60 million per year responding to requests. This bill sets forth a small, reasonable charge for requests that will curb vexatious, serial requesters and improve transparency by expediting proper requests. Many states impose a similar charge for electronic records. Without parity in costs, it's easier for requesters to seek large numbers of documents electronically. Agency cost recovery is declining, straining our ability to respond to many requests. Most requests are for electronic records now. The bill provides a framework for better communication between agencies and requesters, helping minimize costs and liability. School districts are using money that could be spent filling teaching positions for records request response. Cost recovery provisions will help agencies be responsive to all requests and provide services to the public. Public records requests are being used as a tool for waging interpersonal conflict, which is not an effective use of the law. This bill clarifies the law and accommodates interests who request large batches of data from government agencies on a regular basis.

CON: Objections were raised to charging for electronic records. This will hinder the ability of individuals to see how the government spends tax dollars and hold the government accountable by making information cost-prohibitive. Information will be more difficult to

access by concerned, caring individuals. Everything is getting easier and faster with technology, and this should apply to public records too.

OTHER: The flat default fee for electronic records should be eliminated or amended. Requiring agencies to use the most reasonable cost-efficient method to determine actual costs is vague. Performance measures should be included. Settled case law principles need to be added to statute so agencies understand their responsibilities.

Persons Testifying: PRO: Representative Terry Nealey, Prime Sponsor; Kurt Triplett, City of Kirkland; Mayor Jim Hemberry, City of Quincy; Candice Bock, Association of Washington Cities; Steve Brooks, Lacey Fire District; Beth Worthington, North Kitsap School District; Jessica Vavrus, Washington State School Directors' Association; Commissioner Edna Fund, Lewis County; Councilmember Jamie Stephens, San Juan County; Jennifer Ziegler, Washington State Association of Counties; Cliff Webster, Consumer Data Industry Association.

CON: Kit Burns, citizen; Robert Parker, citizen; Mark Kibler, citizen; Tiffany Diaz De Leon, Libertarian Party of Kitsap County.

OTHER: Toby Nixon, Washington Coalition for Open Government; Rowland Thompson, Allied Daily Newspapers of Washington.

Persons Signed In To Testify But Not Testifying: No one.