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**SENATE BILL 6617**

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**State of Washington 65th Legislature 2018 Regular Session**

**By** Senators Nelson and Schoesler

AN ACT Relating to records disclosure obligations of the legislative branch; amending RCW 42.56.010, 42.56.070, 42.56.090, 42.56.100, 42.56.120, and 42.56.520; adding a new section to chapter 1.08 RCW; adding a new section to chapter 42.52 RCW; adding a new section to chapter 44.04 RCW; adding a new section to chapter 44.05 RCW; adding a new section to chapter 44.28 RCW; adding a new section to chapter 44.44 RCW; adding a new section to chapter 44.48 RCW; adding a new section to chapter 44.68 RCW; adding a new section to chapter 44.80 RCW; adding a new section to chapter 42.56 RCW; adding a new chapter to Title 44 RCW; creating a new section; repealing RCW 42.56.560; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  The legislature intends to clarify that the legislature, like the judiciary, is a branch of government rather than an "agency" of the state as that term is used in chapter 42.56 RCW, the public records act, and that the legislature is subject to separate disclosure requirements arising from its representative duties.

Beginning in 1986, the supreme court of Washington has ruled that the public records act did not apply to the judicial branch, because the judiciary is a branch, not an agency, because there is a common law right of access to court records, and because the public records act did not specifically include courts or court files. The state supreme court has since adopted comprehensive rules to provide public access to case records and administrative records of the judicial branch.

Similarly, the state Constitution requires the legislative houses to maintain journals, and to publish those journals, except such parts as require secrecy. During the essential legislative acts of floor deliberation and voting, the state Constitution requires the doors of the chambers to remain open, except where the public welfare requires secrecy. The presiding officers must sign legislation in open session. The state Constitution further requires the secretary of state to maintain records of official acts of the legislature. In addition, the state Constitution directs the legislative houses to adopt rules to govern their own proceedings.

To protect the independence of legislative deliberations against interference by the other branches, the state Constitution provides that legislators are immune from civil process during the legislative session, and they are likewise immune from any civil or criminal liability for words spoken in debate. As John Adams explained in the Massachusetts state Constitution of 1780, "The freedom of deliberation, speech and debate, in either house of the legislature, is so essential to the rights of the people, that it cannot be the foundation of any accusation or prosecution, action or complaint, in any other court or place whatsoever." Correspondingly, the state Constitution also protects the right of the people to petition and communicate with their elected representatives.

For these reasons, the legislature intends to establish records disclosure obligations that preserve the independent deliberation of the people's representatives while providing access to legislative public records. The legislative records disclosure obligations in this act establish continued public access to specified records of the legislature as originally codified in the public records act in 1995, as well as additional records as provided in this act.

**PART I**

**LEGISLATIVE RECORDS DISCLOSURE OBLIGATIONS ESTABLISHED IN NEW CHAPTER**

NEW SECTION. **Sec.**  TITLE. This chapter may be known and cited as the legislative public records act.

NEW SECTION. **Sec.**  RECORDS DISCLOSURE OBLIGATIONS OF THE LEGISLATIVE BRANCH. (1) This chapter governs the public records disclosure obligations of the legislative branch, and its houses, members, employees, and agencies. Chapter 42.56 RCW does not apply to the legislative branch and its houses, members, employees, and agencies.

(2) The secretary and the chief clerk must make legislative public records available for public inspection and copying as required by this chapter.

(3) The secretary, or his or her designee, is the public records officer for the senate and senators, senate committees, and senate staff. The chief clerk, or his or her designee, is the public records officer for the house, members of the house, house committees, and house staff. The secretary and the chief clerk, or their respective designees, are jointly the public records officers for the senate and the house of representatives collectively, for joint committees, and for legislative agencies other than the senate and the house of representatives.

(4) Nothing in this chapter prohibits any legislator from permitting public inspection or copying of any record in his or her possession, subject to section 112 of this act.

NEW SECTION. **Sec.**  DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Chief clerk" means the chief clerk of the house of representatives elected by the members of the house pursuant to Article II, section 10 of the state Constitution, and his or her office.

(2) "Committee" means a committee or subcommittee as defined in legislative rule and joint and joint select legislative committees established in statute or resolution.

(3) "Constituent" means individuals who are not: Lobbyists required to register under chapter 42.17A RCW; lobbyist's employers as defined in chapter 42.17 RCW; sponsors of a grassroots lobbying campaign under RCW 42.17A.640; public employees who lobby under RCW 42.17A.635; elected officials; or individuals who are acting on behalf of such persons.

(4) "Executive rules committee" means the executive rules committee of the house of representatives, or its successor committee as designated in legislative rule or resolution to administer operational policies, procedures, and oversight of the house of representatives.

(5) "Facilities and operations committee" means the facilities and operations committee of the senate, or its successor committee designated in legislative rule or resolution to administer operational policies, procedures, and oversight of the senate.

(6) "Legislative agency" means the joint legislative audit and review committee, the joint legislative transportation committee, the legislative evaluation and accountability program committee, the office of legislative support services, the joint legislative systems committee, the statute law committee, the office of the code reviser, the office of the state actuary, the redistricting commission, the legislative ethics board, and any other agency created in the legislative branch.

(7) "Legislative public records" means the following records related to legislative business, regardless of physical form:

(a) Correspondence, amendments, reports, and minutes of meetings, made by or submitted to legislative committees or subcommittees;

(b) Transcripts, other records of hearings, or supplementary written testimony or data thereof filed with committees or subcommittees in connection with the exercise of legislative or investigatory functions;

(c) Internal accounting and financial records, such as records of payments in lieu of per diem or reimbursement of member expenses;

(d) Personnel leave, travel, and payroll records;

(e) Records of legislative sessions such as journals, floor amendments and recordings of floor debate;

(f) Bills and bill reports;

(g) Reports submitted to the legislature;

(h) Final dispositions of disciplinary proceedings by the facilities and operations or executive rules committees;

(i) Legislators' calendar notations of dates, events, and names of individuals or organizations, for meetings or events that are related to official legislative duties and that occur July 1, 2018, and thereafter;

(j) Legislators' correspondence dated July 1, 2018, and thereafter on legislative business to and from persons outside the legislature who are not constituents; and

(k) Any other record designated a legislative public record by any official action of the senate or the house of representatives.

(8) "Legislative rule" means rules adopted jointly or respectively by the houses of the legislature pursuant to Article II, section 9 of the state Constitution.

(9) "Secretary" means the secretary of the senate elected pursuant to Article II, section 10 of the state Constitution, and his or her office.

NEW SECTION. **Sec.**  GENERAL DISCLOSURE DUTIES. (1) The chief clerk and the secretary must make available for public inspection and copying all legislative public records, unless the record falls within the specific exemptions of this chapter or other statute that exempts or prohibits disclosure of specific information or records.

(2) The chief clerk and the secretary must prominently publish procedures for requesting legislative public records. The chief clerk and secretary must publish these procedures on web sites maintained for legislative offices and agencies. The information published must include the appropriate public records officer's physical mailing address, telephone number, and email address.

(3) The chief clerk and the secretary may establish policies for producing, indexing, and identifying legislative public records.

(4) This chapter does not give authority to the secretary or the chief clerk to give, sell, or provide access to lists of individuals requested for commercial purposes, and the secretary and chief clerk shall not do so unless specifically authorized or directed by law.

NEW SECTION. **Sec.**  DISCLOSURE EXEMPTIONS. The following are exempt from public inspection and copying under this chapter:

(1)(a) Records the disclosure of which would violate a person's right of privacy including, but not limited to, personal information in files maintained for employees, appointees, or legislators.

(b) For purposes of this chapter, a person's right to privacy is invaded if disclosure of information about the person: (i) Would be highly offensive to a reasonable person and (ii) is not of legitimate concern to the public. The provisions of this chapter dealing with privacy in certain legislative public records do not create any right of privacy beyond those rights that are specified in this chapter as express exemptions from the public's right to inspect, examine, or copy public records.

(c) To the extent required to prevent disclosure of information that would invade the right of privacy under this subsection, the chief clerk and the secretary may delete identifying details when they make available or publish any legislative public record.

(2) Credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial information as defined in RCW 9.35.005, including social security numbers, except when disclosure is expressly required by or governed by other law.

(3) The following information in personnel records, public employment-related records, volunteer rosters, or included in any mailing list of employees or volunteers of any legislative house or agency: Residential addresses, residential telephone numbers, personal wireless telephone numbers, personal email addresses, social security numbers, driver's license numbers, identicard numbers, and emergency contact information of employees or volunteers of a legislative house or agency, and the names, dates of birth, residential addresses, residential telephone numbers, personal wireless telephone numbers, personal email addresses, social security numbers, and emergency contact information of dependents of employees or volunteers of a legislative house or agency.

(4) Those portions of records assembled, prepared, or maintained to prevent, mitigate, or respond to criminal terrorist acts, which are acts that significantly disrupt the conduct of government or of the general civilian population of the state or the United States and that manifest an extreme indifference to human life, the public disclosure of which would have a substantial likelihood of threatening public safety, consisting of:

(a) Specific and unique vulnerability assessments or specific and unique response or deployment plans, including compiled underlying data collected in preparation of or essential to the assessments, or to the response or deployment plans; and

(b) Records not subject to public disclosure under federal law that are shared by federal or international agencies, and information prepared from national security briefings provided to state or local government officials related to domestic preparedness for acts of terrorism.

(5) Information regarding the public and private infrastructure and security of computer and telecommunications networks, consisting of security passwords, security access codes and programs, access codes for secure software applications, security and service recovery plans, security risk assessments, and security test results to the extent that they identify specific system vulnerabilities, and other such information the release of which may increase risk to the confidentiality, integrity, or availability of security, information technology infrastructure, or assets.

(6) Records that are relevant to a controversy to which any entity of state government is a party but which records would not be available to another party under court rules for pretrial discovery.

(7) Records that are subject to the speech or debate clause of Article II, section 17 of the state Constitution including, but not limited to, preliminary drafts, notes, recommendations, and internal legislative and interbranch communication in which opinions are expressed or policies formulated or recommended.

NEW SECTION. **Sec.**  REQUESTS—INSPECTION AND COPYING. (1) A legislative public records request must be for identifiable records. A request for all or substantially all records prepared, owned, used, or retained by the legislative branch, its houses, members, employees, or agencies is not a valid request for identifiable legislative public records under this chapter.

(2) Legislative public records must be available for inspection and copying, and the chief clerk and the secretary shall, upon request for identifiable legislative public records, make them promptly available to any person including, if applicable, on a partial or installment basis as records that are part of a larger set of requested records are assembled or made ready for inspection or disclosure, taking into considerations time, resource, and personnel constraints associated with legislative sessions and part-time citizen legislators.

(3) The chief clerk and the secretary shall not distinguish among persons requesting records, and such persons are not required to provide information as to the purpose for the request except to establish whether inspection and copying would violate section 104(4) of this act, this section, section 107 (5) or (6) of this act, or other statute that exempts or prohibits disclosure of specific information or records to certain persons.

(4) Facilities of the chief clerk and secretary must be made available to any person for the copying of legislative public records except when and to the extent that this would unreasonably disrupt the operations of the chief clerk or secretary or the respective houses, considering the time, resource, and personnel constraints associated with legislative sessions and part-time citizen legislators.

(5) No official format is required for making a records request; however, the chief clerk or secretary may recommend that requesters submit requests using a form or web page provided by the chief clerk or secretary.

NEW SECTION. **Sec.**  RESPONSES. (1) The chief clerk and the secretary must promptly respond to requests for legislative public records, taking into consideration the time, resource, and personnel constraints associated with legislative sessions and a part-time citizen legislature. Within five business days of receiving a legislative public records request, the secretary or the chief clerk must respond in one of the ways provided in this subsection (1):

(a) Providing the legislative public record;

(b) Providing an internet address and link on the houses' or agency's web site to the specific records requested, except that if the requester notifies the chief clerk or the secretary that he or she cannot access the records through the internet, then the chief clerk or the secretary must provide copies of the record or allow the requester to view copies using a computer of the chief clerk or secretary;

(c) Acknowledging that the secretary or the chief clerk has received the request and providing a reasonable estimate of the time the secretary or the chief clerk will require to respond to the request;

(d) Acknowledging that the secretary or the chief clerk has received the request and asking the requester to provide clarification for a request that is unclear; or

(e) Denying the legislative public records request.

(2) Additional time required to respond to a request may be based upon the need to clarify the intent of the request, to locate and assemble the information requested, to notify third persons or agencies affected by the request, or to determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request. Additional time required to respond to a request may also be based on time, resource, and personnel constraints associated with legislative sessions and a part-time citizen legislature.

(3)(a) In acknowledging receipt of a legislative public records request that is unclear, the secretary or the chief clerk may ask the requester to clarify what information the requester is seeking and provide at least ten days for the requester to respond.

(b) If the requester fails to respond to a request to clarify the request, and the entire request is unclear, the secretary or the chief clerk need not respond to it. Otherwise, the secretary or the chief clerk must respond, pursuant to this section, to those portions of the request that are clear.

(4) Denials of requests must be accompanied by a written statement of the specific reasons therefor.

(5) The chief clerk or the secretary may deny a bot request that is one of multiple requests from the requester to the chief clerk or secretary within a twenty-four hour period, if the chief clerk or secretary establishes that responding to the multiple requests would cause excessive interference with other essential functions of the chief clerk or the secretary or the respective legislative houses. For purposes of this subsection, "bot request" means a request for legislative public records that the chief clerk or the secretary reasonably believes was automatically generated by a computer program or script.

(6) The chief clerk or the secretary may deny a request in whole or in part if the chief clerk or secretary determines that:

(a) The request was made to harass or intimidate a legislator or legislative employee;

(b) Fulfilling the request would likely threaten the safety or security of the legislative branch, or legislators, legislative employees, or their families; or

(c) Fulfilling the request may assist criminal activity.

NEW SECTION. **Sec.**  REVIEW. (1) A person whose request for legislative public records was denied in whole or in part may seek review under this section. If the request was denied by the secretary, the requester may seek review by the facilities and operations committee. If the request was denied by the chief clerk, the requester may seek review by the executive rules committee. If the request was denied by the secretary and chief clerk jointly, the requester may seek review by both the executive rules and facilities and operations committees, in which case the decision is joint although the executive rules and facilities and operations committees need not meet jointly. The request for review must be filed within one month after the denial.

(2) The review by the executive rules and facilities and operations committee or committees consists of review of a written record in accordance with any legislative rules. The requester may submit written materials in support of his or her request for review.

(3) The executive rules and facilities and operations committees, whether the review is separate or joint, must meet at least quarterly to render decisions on review of denials, and must issue decisions promptly, taking into consideration the time, resource, and personnel constraints associated with legislative sessions and a part-time citizen legislature.

(4) The decisions of the executive rules committee, or the facilities and operations committee, or the two committees, if acting jointly, are final, and are not subject to further review in any venue. If in the case of a joint decision the committees do not agree, the original decision stands.

NEW SECTION. **Sec.**  PROTECTION—ACCESS—ARCHIVING. (1) The chief clerk and the secretary shall establish reasonable procedures allowing for the time, resource, and personnel constraints associated with legislative sessions and a part-time citizen legislature, consonant with the intent of this chapter to provide full public access to legislative public records, to protect legislative public records from damage or disorganization, and to prevent excessive interference with other essential functions of the secretary of the senate, or the chief clerk of the house of representatives. Such procedures shall provide for the fullest assistance to inquirers and the most timely possible action on requests for information.

(2) Procedures adopted for access to and preservation of legislative public records must be consistent with the archiving duties of the chief clerk and the secretary under chapter 40.14 RCW.

(3) For legislative public records not subject to required archiving under chapter 40.14 RCW, the chief clerk and the secretary shall establish retention schedules.

(4) Once a legislative public record is transmitted to the state archivist under chapter 40.14 RCW, it is subject to access laws governing the state archives, and the record is no longer subject to mandatory inspection and copying under this chapter.

(5) If a legislative public records request is made at a time when such record exists but is scheduled for destruction in the near future, the secretary or the chief clerk shall retain possession of the record, and may not destroy or erase the record until the request is resolved.

NEW SECTION. **Sec.**  FEES. (1) The chief clerk and secretary may impose a reasonable fee for providing copies of legislative public records, as follows:

(a) Fifteen cents per page for photocopies, printed copies of electronic records when requested by the person requesting the records, or for the use of legislative equipment to photocopy the records;

(b) Ten cents per page for records scanned into an electronic format or for the use of legislative equipment to scan the records;

(c) Five cents per each four electronic files or attachments uploaded to email, cloud-based data storage services, or other means of electronic delivery;

(d) The actual cost of any digital storage media or device provided to the requester; and

(e) A fee according to a schedule adopted by the secretary and the chief clerk for each printed or electronic photo.

(2) The charges in subsection (1) of this section may be combined to the extent that more than one type of charge applies to copies produced in response to a particular request.

(3) No fee may be imposed under this section for access to or downloading of legislative public records that are routinely posted on a legislative public web site prior to receipt of a request unless the requester has specially requested that the copies be provided through other means.

(4) Requesters may be required to pay for copies in advance of receiving records. The chief clerk and secretary may require an advance deposit of ten percent of the estimated fees when the fees for an installment or an entire request exceeds twenty-five dollars. The chief clerk and secretary may close a request when a requester fails by the payment due date to pay in the manner prescribed for records, an installment of records, or a required deposit.

(5) The chief clerk and secretary have the discretion to waive or reduce fees pursuant to a consistently applied policy.

NEW SECTION. **Sec.**  DISCLAIMER OF LIABILITY. The legislative branch and its houses, members, employees, and agencies are not liable, and no cause of action exists, for any loss or damage based upon the release of a legislative public record if the entity releasing the record acted in good faith in attempting to comply with the provisions of this chapter.

NEW SECTION. **Sec.**  DUTY TO DISCLOSE OR WITHHOLD. Nothing in this chapter affects a positive duty to disclose or a positive duty to withhold information or records when that duty is contained in any other law.

NEW SECTION. **Sec.**  LEGISLATIVE OVERSIGHT COMMITTEES. Nothing in this chapter gives the executive rules committee oversight authority over any senators, senate employees, or committee of the senate, nor does it give the facilities and operations committee oversight authority over house members, house employees, or any committee of the house of representatives.

NEW SECTION. **Sec.**  CODIFICATION. Sections 1 and 101 through 113 of this act constitute a new chapter in Title 44 RCW.

NEW SECTION. **Sec.**  A new section is added to chapter 1.08 RCW to read as follows:

The statute law committee and the office of the code reviser are agencies established within the legislative branch and their public records disclosure obligations are governed by chapter 44.--- RCW (the new chapter created in section 114 of this act).

NEW SECTION. **Sec.**  A new section is added to chapter 42.52 RCW to read as follows:

The legislative ethics board is an agency established within the legislative branch and its public records disclosure obligations are governed by chapter 44.--- RCW (the new chapter created in section 114 of this act).

NEW SECTION. **Sec.**  A new section is added to chapter 44.04 RCW to read as follows:

The joint transportation committee is an agency established within the legislative branch and its public records disclosure obligations are governed by chapter 44.--- RCW (the new chapter created in section 114 of this act).

NEW SECTION. **Sec.**  A new section is added to chapter 44.05 RCW to read as follows:

The redistricting commission is an agency established within the legislative branch and its public records disclosure obligations are governed by chapter 44.--- RCW (the new chapter created in section 114 of this act).

NEW SECTION. **Sec.**  A new section is added to chapter 44.28 RCW to read as follows:

The joint legislative audit and review committee is an agency established within the legislative branch and its public records disclosure obligations are governed by chapter 44.--- RCW (the new chapter created in section 114 of this act).

NEW SECTION. **Sec.**  A new section is added to chapter 44.44 RCW to read as follows:

The select committee on pension policy and the office of the state actuary are agencies established within the legislative branch and their public records disclosure obligations are governed by chapter 44.--- RCW (the new chapter created in section 114 of this act).

NEW SECTION. **Sec.**  A new section is added to chapter 44.48 RCW to read as follows:

The joint legislative evaluation and accountability program committee is an agency established within the legislative branch and its public records disclosure obligations are governed by chapter 44.--- RCW (the new chapter created in section 114 of this act).

NEW SECTION. **Sec.**  A new section is added to chapter 44.68 RCW to read as follows:

The joint legislative systems administrative committee is an agency established within the legislative branch and its public records disclosure obligations are governed by chapter 44.--- RCW (the new chapter created in section 114 of this act).

NEW SECTION. **Sec.**  A new section is added to chapter 44.80 RCW to read as follows:

The office of legislative support services is an agency established within the legislative branch and its public records disclosure obligations are governed by chapter 44.--- RCW (the new chapter created in section 114 of this act).

**PART II**

**PUBLIC RECORDS ACT—CLARIFIED TO EXCLUDE LEGISLATIVE BRANCH—CONFORMING AMENDMENTS TO CHAPTER 42.56 RCW**

NEW SECTION. **Sec.**  A new section is added to chapter 42.56 RCW to read as follows:

The public records disclosure obligations of the legislative branch, and its houses, members, employees, and agencies, are established in chapter 44.--- RCW (the new chapter created in section 114 of this act) and Article II of the state Constitution.

**Sec.**  RCW 42.56.010 and 2017 c 303 s 1 are each amended to read as follows:

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

(1) "Agency" includes all state agencies and all local agencies. "State agency" includes every state office, department, division, bureau, board, commission, or other state agency. "Local agency" includes every county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district, or any office, department, division, bureau, board, commission, or agency thereof, or other local public agency. "Agency" does not include the state legislative branch or its houses, members, offices, employees, or agencies.

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

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

(a) Do not serve in an administrative capacity;

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

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

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

**Sec.**  RCW 42.56.070 and 2017 c 304 s 1 are each amended to read as follows:

(1) Each agency, in accordance with published rules, shall make available for public inspection and copying all public records, unless the record falls within the specific exemptions of subsection (8) of this section, this chapter, or other statute which exempts or prohibits disclosure of specific information or records. To the extent required to prevent an unreasonable invasion of personal privacy interests protected by this chapter, an agency shall delete identifying details in a manner consistent with this chapter when it makes available or publishes any public record; however, in each case, the justification for the deletion shall be explained fully in writing.

(2) For informational purposes, each agency shall publish and maintain a current list containing every law, other than those listed in this chapter, that the agency believes exempts or prohibits disclosure of specific information or records of the agency. An agency's failure to list an exemption shall not affect the efficacy of any exemption.

(3) Each local agency shall maintain and make available for public inspection and copying a current index providing identifying information as to the following records issued, adopted, or promulgated after January 1, 1973:

(a) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(b) Those statements of policy and interpretations of policy, statute, and the Constitution which have been adopted by the agency;

(c) Administrative staff manuals and instructions to staff that affect a member of the public;

(d) Planning policies and goals, and interim and final planning decisions;

(e) Factual staff reports and studies, factual consultant's reports and studies, scientific reports and studies, and any other factual information derived from tests, studies, reports, or surveys, whether conducted by public employees or others; and

(f) Correspondence, and materials referred to therein, by and with the agency relating to any regulatory, supervisory, or enforcement responsibilities of the agency, whereby the agency determines, or opines upon, or is asked to determine or opine upon, the rights of the state, the public, a subdivision of state government, or of any private party.

(4) A local agency need not maintain such an index, if to do so would be unduly burdensome, but it shall in that event:

(a) Issue and publish a formal order specifying the reasons why and the extent to which compliance would unduly burden or interfere with agency operations; and

(b) Make available for public inspection and copying all indexes maintained for agency use.

(5) Each state agency shall, by rule, establish and implement a system of indexing for the identification and location of the following records:

(a) All records issued before July 1, 1990, for which the agency has maintained an index;

(b) Final orders entered after June 30, 1990, that are issued in adjudicative proceedings as defined in RCW 34.05.010 and that contain an analysis or decision of substantial importance to the agency in carrying out its duties;

(c) Declaratory orders entered after June 30, 1990, that are issued pursuant to RCW 34.05.240 and that contain an analysis or decision of substantial importance to the agency in carrying out its duties;

(d) Interpretive statements as defined in RCW 34.05.010 that were entered after June 30, 1990; and

(e) Policy statements as defined in RCW 34.05.010 that were entered after June 30, 1990.

Rules establishing systems of indexing shall include, but not be limited to, requirements for the form and content of the index, its location and availability to the public, and the schedule for revising or updating the index. State agencies that have maintained indexes for records issued before July 1, 1990, shall continue to make such indexes available for public inspection and copying. Information in such indexes may be incorporated into indexes prepared pursuant to this subsection. State agencies may satisfy the requirements of this subsection by making available to the public indexes prepared by other parties but actually used by the agency in its operations. State agencies shall make indexes available for public inspection and copying. State agencies may charge a fee to cover the actual costs of providing individual mailed copies of indexes.

(6) A public record may be relied on, used, or cited as precedent by an agency against a party other than an agency and it may be invoked by the agency for any other purpose only if:

(a) It has been indexed in an index available to the public; or

(b) Parties affected have timely notice (actual or constructive) of the terms thereof.

(7) Each agency may establish, maintain, and make available for public inspection and copying a statement of the actual costs that it charges for providing photocopies or electronically produced copies, of public records and a statement of the factors and manner used to determine the actual costs. Any statement of costs may be adopted by an agency only after providing notice and public hearing.

(a)(i) In determining the actual cost for providing copies of public records, an agency may include all costs directly incident to copying such public records including:

(A) The actual cost of the paper and the per page cost for use of agency copying equipment; and

(B) The actual cost of the electronic production or file transfer of the record and the use of any cloud-based data storage and processing service.

(ii) In determining other actual costs for providing copies of public records, an agency may include all costs directly incident to:

(A) Shipping such public records, including the cost of postage or delivery charges and the cost of any container or envelope used; and

(B) Transmitting such records in an electronic format, including the cost of any transmission charge and use of any physical media device provided by the agency.

(b) In determining the actual costs for providing copies of public records, an agency may not include staff salaries, benefits, or other general administrative or overhead charges, unless those costs are directly related to the actual cost of copying the public records. Staff time to copy and send the requested public records may be included in an agency's costs.

(8) This chapter shall not be construed as giving authority to any agency((~~, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives~~)) to give, sell or provide access to lists of individuals requested for commercial purposes, and agencies((~~, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives~~)) shall not do so unless specifically authorized or directed by law: PROVIDED, HOWEVER, That lists of applicants for professional licenses and of professional licensees shall be made available to those professional associations or educational organizations recognized by their professional licensing or examination board, upon payment of a reasonable charge therefor: PROVIDED FURTHER, That such recognition may be refused only for a good cause pursuant to a hearing under the provisions of chapter 34.05 RCW, the administrative procedure act.

**Sec.**  RCW 42.56.090 and 2009 c 428 s 2 are each amended to read as follows:

Public records shall be available for inspection and copying during the customary office hours of the agency((~~, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives~~)) for a minimum of thirty hours per week, except weeks that include state legal holidays, unless the person making the request and the agency((~~, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives~~)) or its representative agree on a different time. Customary business hours must be posted on the ((~~agency or office's~~)) agency's web site and made known by other means designed to provide the public with notice.

**Sec.**  RCW 42.56.100 and 1995 c 397 s 13 are each amended to read as follows:

Agencies shall adopt and enforce reasonable rules and regulations((~~, and the office of the secretary of the senate and the office of the chief clerk of the house of representatives shall adopt reasonable procedures~~)) allowing for the time, resource, and personnel constraints associated with legislative sessions, consonant with the intent of this chapter to provide full public access to public records, to protect public records from damage or disorganization, and to prevent excessive interference with other essential functions of the agency((~~, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives~~)). Such rules and regulations shall provide for the fullest assistance to inquirers and the most timely possible action on requests for information. Nothing in this section shall relieve agencies((~~, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives~~)) from honoring requests received by mail for copies of identifiable public records.

If a public record request is made at a time when such record exists but is scheduled for destruction in the near future, the agency((~~, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives~~)) shall retain possession of the record, and may not destroy or erase the record until the request is resolved.

**Sec.**  RCW 42.56.120 and 2017 c 304 s 3 are each amended to read as follows:

(1) No fee shall be charged for the inspection of public records or locating public documents and making them available for copying, except as provided in RCW 42.56.240(14) and subsection (3) of this section. A reasonable charge may be imposed for providing copies of public records and for the use by any person of agency equipment ((~~or equipment of the office of the secretary of the senate or the office of the chief clerk of the house of representatives~~)) to copy public records, which charges shall not exceed the amount necessary to reimburse the agency((~~, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives~~)) for its actual costs directly incident to such copying. When calculating any fees authorized under this section, an agency shall use the most reasonable cost-efficient method available to the agency as part of its normal operations. If any agency translates a record into an alternative electronic format at the request of a requestor, the copy created does not constitute a new public record for purposes of this chapter. Scanning paper records to make electronic copies of such records is a method of copying paper records and does not amount to the creation of a new public record.

(2)(a) Agency charges for actual costs may only be imposed in accordance with the costs established and published by the agency pursuant to RCW 42.56.070(7), and in accordance with the statement of factors and manner used to determine the actual costs. In no event may an agency charge a per page cost greater than the actual cost as established and published by the agency.

(b) An agency need not calculate the actual costs it charges for providing public records if it has rules or regulations declaring the reasons doing so would be unduly burdensome. To the extent the agency has not determined the actual costs of copying public records, the agency may not charge in excess of:

(i) Fifteen cents per page for photocopies of public records, printed copies of electronic public records when requested by the person requesting records, or for the use of agency equipment to photocopy public records;

(ii) Ten cents per page for public records scanned into an electronic format or for the use of agency equipment to scan the records;

(iii) Five cents per each four electronic files or attachment uploaded to email, cloud-based data storage service, or other means of electronic delivery; and

(iv) Ten cents per gigabyte for the transmission of public records in an electronic format or for the use of agency equipment to send the records electronically. The agency shall take reasonable steps to provide the records in the most efficient manner available to the agency in its normal operations; and

(v) The actual cost of any digital storage media or device provided by the agency, the actual cost of any container or envelope used to mail the copies to the requestor, and the actual postage or delivery charge.

(c) The charges in (b) of this subsection may be combined to the extent that more than one type of charge applies to copies produced in response to a particular request.

(d) An agency may charge a flat fee of up to two dollars for any request as an alternative to fees authorized under (a) or (b) of this subsection when the agency reasonably estimates and documents that the costs allowed under this subsection are clearly equal to or more than two dollars. An additional flat fee shall not be charged for any installment after the first installment of a request produced in installments. An agency that has elected to charge the flat fee in this subsection for an initial installment may not charge the fees authorized under (a) or (b) of this subsection on subsequent installments.

(e) An agency shall not impose copying charges under this section for access to or downloading of records that the agency routinely posts on its public internet web site prior to receipt of a request unless the requestor has specifically requested that the agency provide copies of such records through other means.

(f) A requestor may ask an agency to provide, and if requested an agency shall provide, a summary of the applicable charges before any copies are made and the requestor may revise the request to reduce the number of copies to be made and reduce the applicable charges.

(3)(a)(i) In addition to the charge imposed for providing copies of public records and for the use by any person of agency equipment copying costs, an agency may include a customized service charge. A customized service charge may only be imposed if the agency estimates that the request would require the use of information technology expertise to prepare data compilations, or provide customized electronic access services when such compilations and customized access services are not used by the agency for other agency purposes.

(ii) The customized service charge may reimburse the agency up to the actual cost of providing the services in this subsection.

(b) An agency may not assess a customized service charge unless the agency has notified the requestor of the customized service charge to be applied to the request, including an explanation of why the customized service charge applies, a description of the specific expertise, and a reasonable estimate cost of the charge. The notice also must provide the requestor the opportunity to amend his or her request in order to avoid or reduce the cost of a customized service charge.

(4) An agency may require a deposit in an amount not to exceed ten percent of the estimated cost of providing copies for a request, including a customized service charge. If an agency makes a request available on a partial or installment basis, the agency may charge for each part of the request as it is provided. If an installment of a records request is not claimed or reviewed, the agency is not obligated to fulfill the balance of the request. An agency may waive any charge assessed for a request pursuant to agency rules and regulations. An agency may enter into any contract, memorandum of understanding, or other agreement with a requestor that provides an alternative fee arrangement to the charges authorized in this section, or in response to a voluminous or frequently occurring request.

**Sec.**  RCW 42.56.520 and 2017 c 303 s 3 are each amended to read as follows:

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

(a) Providing the record;

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

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

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

(e) Denying the public record request.

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

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

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

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

NEW SECTION. **Sec.**  RCW 42.56.560 (Application of RCW 42.56.550) and 2005 c 274 s 289 & 1995 c 397 s 16 are each repealed.

**PART III**

**TECHNICAL PROVISIONS**

NEW SECTION. **Sec.**  SEVERABILITY. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec.**  APPLICATION. This act is curative, remedial, and retroactive, and applies to all records requests and lawsuits under chapter 42.56 RCW pending as of the effective date of this section.

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

**--- END ---**