

HOUSE BILL REPORT

HB 1594

As Reported by House Committee On:
State Government, Elections & Information Technology
Appropriations

Title: An act relating to improving public records administration.

Brief Description: Improving public records administration.

Sponsors: 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].

Brief Summary of Substitute Bill

- 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 conduct a feasibility study for establishing a statewide internet portal for public records management. Authorizes a \$1 surcharge on county recorded documents for the State Archives local competitive grant program and local trainings on records retention practice.

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.

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: Do not pass. Signed by 1 member: Representative Pellicciotti.

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.

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 Bill:

Public Records Training.

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 Archivist also must offer consultation and training services for local agencies on improving record retention practices. The public records officer training course must address improvements for technology information services and management of electronic records.

Public Records Request – Mediation.

An agency must offer to participate in mediation with a requester to clarify a request or resolve any disagreement regarding disclosure. The agency must offer the mediation within five business days of receiving a requester's response to the agency's request for clarification. If the requester refuses to participate in the offered mediation, that fact may be considered by a court in any subsequent litigation regarding whether the agency has satisfied its obligations in responding to the request.

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. An appropriation of \$25,000 is made in the 2017-19 operating budget for funding the study.

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 requesters 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 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 leadership.

Local Resources – Records Management.

An additional \$1 surcharge is assessed on documents recorded with the county auditor for the Local Archives Account to be used for the State Archives local competitive grant program as well as resources for the State Archivist's training on records retention practices.

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) 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.

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

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).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On State Government, Elections & Information Technology:

The Appropriations Committee (Committee) recommended removing the requirement to offer mediation to resolve an unclear public records request. The Committee recommended requiring that agencies include an estimate of time to respond to a records request that has not been clarified. The Committee recommended the addition of an additional element of the records portal report for the allocation of liability between the portal management and the agency providing records regarding claims over access to records.

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

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(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: Candice Bock, Association of Washington Cities and Washington Association of Counties.

Persons Signed In To Testify But Not Testifying: None.