

# SENATE BILL REPORT

## ESHB 1594

As Passed Senate - Amended, April 10, 2017

**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:** Passed House: 3/03/17, 79-18.

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

**Ways & Means:** 3/31/17, 4/03/17 [DPA, w/oRec].

**Floor Activity:**

Passed Senate - Amended: 4/10/17, 40-7.

### Brief Summary of Bill (As Amended by Senate)

- Requires that agencies respond to the portion of a public records request that is clear even if other portions are unclear.
- Establishes a consultation program for the Attorney General's Office to assist local governments with best practices for managing public records requests.
- Requires that the Division of Archives and Records Management provide training to local agencies on records retention practices.
- Establishes a competitive grant program for local agencies to improve their information technology systems.
- Institutes 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.
- Requires certain agencies and encourages others to annually report metrics regarding public records fulfillment and compliance.
- Directs a feasibility study regarding establishment of a statewide Internet portal for public records management.

*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.*

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## SENATE COMMITTEE ON STATE GOVERNMENT

**Majority Report:** Do pass as amended and be referred to Committee on Ways & Means.

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

**Staff:** Samuel Brown (786-7470)

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## SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** Do pass as amended.

Signed by Senators Braun, Chair; Brown, Vice Chair; Rossi, Vice Chair; Honeyford, Vice Chair, Capital Budget ; Ranker, Ranking Minority Member; Rolfes, Assistant Ranking Minority Member, Operating Budget; Frockt, Assistant Ranking Minority Member, Capital Budget; Bailey, Becker, Billig, Carlyle, Conway, Darneille, Fain, Hasegawa, Keiser, Miloscia, Pedersen, Rivers, Schoesler, Warnick and Zeiger.

**Minority Report:** That it be referred without recommendation.

Signed by Senator Padden.

**Staff:** Julie Murray (786-7711)

**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. 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. The Attorney General publishes model rules for agency PRA compliance. Each agency must appoint a public records officer to oversee agency compliance with the PRA. Every four years, the officer must complete a training course on PRA compliance 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 provides services, resources, and training to assist with local government archives, including access to digital data systems, and a competitive grant program to fund specific local government archives projects.

The Local Government Archives account (Local Archives Account) is a funding source to support local government record keeping services. Revenue comes from surcharges on

documents recorded with a county auditor. A \$1 surcharge funds the State Archives supportive services for local governments, including the competitive grant program. A second \$1 charge is collected exclusively to fund capital projects.

**Summary of Amended Bill: Records Training.** Public records officer training must address management of electronic records, including improvements for technology information services.

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

Records Request Responses. Agencies may respond to a public records request by simultaneously acknowledging receipt and asking the requestor to clarify an unclear request, with a reasonable estimate of the response time if the request is not clarified. If some, but not all, of a request is unclear, the agency must respond to portions of the request that are clear.

Competitive Grant Program. The State Archives must establish, in consultation with the Chief Information Officer, a competitive grant program to improve local agency information technology systems for public records management. Grants are awarded annually, with preference given to small agencies with the need and ability to improve information technology systems.

Grant awards may cover software and hardware, equipment, management and training, indexing for records and digital data, and other resources. Grant funds are not an ongoing source for operation and management expenses, and may not 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, with revenue 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. At least 50 percent of the revenue must be used for the competitive grant program.

By December 1, 2019, the Joint Legislative Audit and Review Committee (JLARC) must report on the effectiveness of the State Archives' competitive grant program, the Attorney General's consultation program, and the State Archives' records retention training services. JLARC must recommend whether the programs and services should continue beyond 2020.

State Records Portal Study. Subject to the availability of amount appropriated for this specific purpose, the State Archives must hire a consultant to conduct a feasibility study on implementing a statewide open records portal that would administer public records requests through a single access point Internet website. The consultant must prepare a report that

includes findings and recommendations for submission to the Legislature by September 1, 2018.

The study must address the following topics:

- the feasibility of creating a central portal to provide a timely response to records requests;
- an evaluation of open records portal systems in other states;
- the length of time and estimated costs to develop and implement a portal;
- possible fees collected from requesters using the portal;
- whether a portal could track records requests, provide notice to the requester of record availability, and provide direct responses to requests;
- the allocation of liability between the portal manager and the agency providing the records; and
- the feasibility of agencies managing websites to expedite public records access.

The State Archives must convene a workgroup, composed of one legislator from each major caucus and three community representatives selected by legislative leadership, by September 1, 2017, to develop the scope and direction of the study.

Definition of Records. Records held by agency volunteers who do not serve in an administrative capacity and who do not have delegated agency authority which are not otherwise required to be retained by the agency are not considered records under the PRA.

Agency Tracking and Reporting. Each agency must maintain a log of public records requests, responses, and final dispositions. Each agency with public records fulfillment costs of at least \$100,000 in a year must, and other agencies may, report a series of metrics annually to JLARC, who must compile the data and report it to the Legislature. The metrics include:

- leading practices and processes for records management and retention, including technological upgrades, and any implementation of those practices and processes;
- time to acknowledge receipt of and respond to public records requests;
- a comparison of estimated and actual response times;
- requests where additional clarification was sought from the requester;
- requests denied or abandoned;
- requests by type of requestor, if known;
- information on electronic fulfillment of records requests;
- costs incurred in responding to records requests, managing and retaining records, and litigating PRA claims;
- the number of public records lawsuits filed against the agency, including by type and exemption, if applicable;
- expenses recovered by the agency from requesters; and
- measures of requester satisfaction.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** Yes.

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

**Staff Summary of Public Testimony on Engrossed Substitute House Bill (State Government):** *The committee recommended a different version of the bill than what was heard.* PRO: This is a vetted bill that is the result of a large stakeholder process and has general agreement. Both public agencies and the requester community get something from this bill. Electronic records play a larger role in agency day-to-day business, and this provides the support, particularly for smaller agencies, in records management practices. The grant program is essential because it is challenging for agencies to manage requests with limited technology. This will make it easier for agencies to comply with the PRA. The idea of a statewide records portal is looking to the future of the PRA. Emergency response agencies also have an obligation to protect the medical privacy of people they serve, and this will adequately prepare staff. This bill will increase access to training for school districts. While we respond quickly to the vast majority of requests, this bill will give us tools to improve our efficiency and records management. Investments in equipment and processes will allow agencies to give requesters the records they want and filter the records they do not.

CON: Funding regional archives facilities is unnecessary. Agencies often bury responsive records by expanding requests beyond what is asked for. Records belong to the public, not the government.

OTHER: Handling public records is an essential public service. We're determined to negotiate an agreement that satisfies all parties.

**Persons Testifying (State Government):** PRO: Representative Joan McBride, Prime Sponsor; Steve Brooks, Lacey Fire District; Beth Worthington, North Kitsap School District; Jessica Vavrus, Washington State School Directors' Association; Kurt Triplett, City of Kirkland; Mayor Jim Hemberry, City of Quincy; Candice Bock, Association of Washington Cities; Toby Nixon, Washington Coalition for Open Government; Commissioner Edna Fund, Lewis County; Councilmember Jamie Stephens, San Juan County; Jennifer Ziegler, Washington State Association of Counties.

CON: Kit Burns, citizen; Robert Parker, citizen; Mark Kibler, citizen; Tiffany De Leon, citizen.

OTHER: Rowland Thompson, Allied Daily Newspapers of Washington.

**Persons Signed In To Testify But Not Testifying (State Government):** No one.

**Staff Summary of Public Testimony on Bill as Amended by State Government (Ways & Means):** *The committee recommended a different version of the bill than what was heard.* PRO: This bill is the result of a nine month stakeholder process with over 40 participants. Everyone had to compromise to reach agreement. This bill provides tools to local government to balance the need for transparency and privacy of individuals' information and to improve upon responding to PRA requests. The bill captures the necessary data points to quantify the cost of the PRA; you can't complain about cost without capturing the right data. The SAO audit was more of a survey and the information it captured was not useful. If we

know what the costs truly are, then we can respond appropriately with open data or other measures to reduce costs. The data is not onerous.

OTHER: We are supportive of the bill, but have concerns with section 10(3) which requires the collection of 17 data points to be supplied to JLARC annually. Every dollar and every staff hour spent collecting data is time and money not spent on producing records. Suggest that the committee require supplying JLARC with the logs required in section 10(2).

**Persons Testifying (Ways & Means):** PRO: Jennifer Ziegler, Washington Association of Counties and Association of Washington Cities; Rowland Thompson, Allied Daily Newspapers.

OTHER: Nancy Krier, Office of the Attorney General.

**Persons Signed In To Testify But Not Testifying (Ways & Means):** No one.