

HOUSE BILL REPORT

ESHB 1667

As Amended by the Senate

Title: An act relating to public records request administration.

Brief Description: Concerning public records request administration.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Springer, Walsh, Appleton, Peterson, Smith and Griffey).

Brief History:

Committee Activity:

State Government & Tribal Relations: 2/8/19, 2/19/19 [DP];

Appropriations: 2/26/19, 2/27/19 [DPS].

Floor Activity:

Passed House: 3/8/19, 96-0.

Senate Amended.

Passed Senate: 4/25/19, 47-0.

Brief Summary of Engrossed Substitute Bill

- Removes the June 30, 2020, expiration date for the grant program, the Attorney General's consultation program, and the requirement that Division of Archives and Records Management (State Archives) offer and provide consultation and training services for local agencies on improving retention practices.
- Makes the additional \$1 surcharge assessed on documents recorded with the county auditor permanent to fund the grant program, the Attorney General's consultation program, and the requirement that State Archives offer and provide consultation and training services for local agencies on improving retention practices.
- Modifies the metrics that certain agencies are required to report to the Joint Legislative Audit and Review Committee.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL RELATIONS

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.

Majority Report: Do pass. Signed by 9 members: Representatives Gregerson, Chair; Pellicciotti, Vice Chair; Walsh, Ranking Minority Member; Goehner, Assistant Ranking Minority Member; Appleton, Dolan, Hudgins, Mosbrucker and Smith.

Staff: Desiree Omli (786-7105).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 31 members: Representatives Ormsby, Chair; Bergquist, 2nd Vice Chair; Robinson, 1st Vice Chair; Stokesbary, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Rude, Assistant Ranking Minority Member; Caldier, Chandler, Cody, Dolan, Dye, Fitzgibbon, Hansen, Hoff, Hudgins, Jinkins, Kraft, Macri, Mosbrucker, Pettigrew, Pollet, Ryu, Schmick, Senn, Stanford, Steele, Sullivan, Sutherland, Tarleton, Tharinger and Ybarra.

Staff: Linda Merelle (786-7092).

Background:

Management of Public Records.

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 under the PRA or as otherwise provided in law.

The Office of the Secretary of State includes the Division of Archives and Records Management (State Archives), which is responsible for ensuring the proper management and safeguarding of state public records. The State Archivist administers the State Archives and manages the retention, cataloging, and preservation of the public records inventory.

Public Records Programs Established.

In 2017 the State Archives established and administered a competitive grant program for local agencies to improve technology information systems for public record retention, management, and disclosure, and any related training. Any local agency may apply to the grant program, and the State Archives must award grants annually. Grants awarded under this program are one-time investments.

Also in 2017, the Attorney General (AG) established a consultation program to assist local governments with best practices for managing records requests, updating technology, and mitigating costs and liability. In addition, the State Archives was required to offer consultation and training services for local agencies on improving record retention practices.

By statute, the grant program, the AG's consultation program, and the requirement that State Archives offer and provide consultation and training services for local agencies on improving retention practices are scheduled to end on June 30, 2020.

Funding for Public Records Programs.

The State Archives is authorized to use up to 6 percent of amounts appropriated for the program for the administration of the grant program. An additional \$1 surcharge is assessed on documents recorded with the county auditor and deposited into the Local Archives Account. The additional surcharge revenue must be used exclusively for the State Archives' local agency competitive grant program, the AG's consultation program, and the State Archives' records retention training services. No more than 50 percent of the revenue may be used for the competitive grant program; the remainder is to be used for the AG's consultation program and the State Archive's training services, combined.

This funding structure for the additional \$1 surcharge is set to expire June 30, 2020.

Joint Legislative Audit and Review Committee Evaluation.

Any agency with at least \$100,000 in annual staff and legal costs associated with fulfilling public records requests must report to the Joint Legislative Audit and Review Committee (JLARC) by July 1 on certain metrics measured over the preceding year. Agencies with less than \$100,000 in estimated costs may report voluntarily. The JLARC must develop a reporting method and standardized metrics for the reporting requirements. The metrics reported include, for example:

- the leading practices and processes for records management and retention, and what percentage of such practices were implemented by the agency;
- the average length of time taken to acknowledge receipt of a public records request, and the estimated agency staff time spent on a request;
- the proportion of records provided within five days of the request and the proportion of requests estimated beyond five days;
- the agency's initial estimate for providing records as compared with the actual time in providing such records;
- the number of requests denied; and
- measures of requestor satisfaction with agency responses, communication, and processes relating to the fulfillment of public records requests.

The JLARC issued a report in January 2019 regarding the metrics and its findings.

By December 1, 2019, the JLARC must also report to the Legislature its recommendations on whether the competitive grant program, the AG's consultation program, and the State Archivist's training services should continue or be allowed to expire.

Summary of Engrossed Substitute Bill:

Public Records Programs Established.

The June 30, 2020, expiration date is removed for the grant program and the AG's consultation program, and the requirement that State Archives offer and provide consultation and training services for local agencies on improving retention practices.

Funding for Public Records Programs.

The \$1 surcharge funding structure is made permanent.

Joint Legislative Audit and Review Committee Evaluation.

Agencies are no longer required to report to the JLARC on the following metrics:

- the leading practices and processes for records management and retention, and what percentage of such practices were implemented by the agency;
- the average length of time taken to acknowledge receipt of a public records request, and the estimated agency staff time spent on a request;
- the proportion of records provided within five days of the request and the proportion of requests estimated beyond five days;
- the agency's initial estimate for providing records as compared with the actual time in providing such records; and
- measures of requestor satisfaction with agency responses, communication, and processes relating to the fulfillment of public records requests.

In addition to the other metrics enumerated in law, agencies required to report metrics to the JLARC must also report on the following:

- the number of requests where the agency provided the requested records within five days of receipt, and number of requests where the agency provided an estimated time for responding beyond five days after receipt; rather than a comparison of the proportion of these metrics;
- the average and median number of days from receipt of request to the date the request is closed; and
- the number of requests denied in full or in part.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendment removes an extraneous cross reference to harmonize provisions with other changes in the bill.

Appropriation: None.

Fiscal Note: Available.

Effective Date: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 3, relating to the surcharge on recorded documents, which takes effect June 30, 2020.

Staff Summary of Public Testimony (State Government & Tribal Relations):

(In support) The burden of implementing the PRA has fallen on local governments. With the expansion of electronic records, the ability for local governments to comply with PRA requests is difficult. This is especially true for smaller jurisdictions that do not have the resources and staff that larger jurisdictions have, but are still expected to have the same knowledge and fulfill the same duties. Local governments are fined when they do not meet the PRA requirements, and daily fines that accumulate can be in excess of the annual budgets for smaller local governments. The state needs to help them get out from under this burden.

Making the programs in this bill permanent is important because staff come and go, and when that happens, the institutional knowledge and training goes as well. The AG's consulting program provides valuable assistance to local governments to help them meet

their obligations under the PRA, and understand legislative amendments. Compliance with the PRA increases government transparency.

The State Archives' consulting program has awarded 134 competitive grants and \$1.7 million has been dispersed in those grants. In addition, 232 consultations occurred, 85 training sessions were held, and 2,800 individuals were assisted.

The programs are held accountable, as the JLARC monitors and reports on the program. Although some metrics are being removed from the reporting requirements, they are being replaced by other metrics that are a better measure of the programs and would provide more useful data.

(Opposed) None.

Staff Summary of Public Testimony (Appropriations):

(In support) Some of the JLARC reporting requirements are streamlined under this bill, making them more cost effective. The programs funded by the surcharge are important to all counties and especially the smaller jurisdictions. The smaller jurisdictions do not have the resources to attend trainings and obtain legal advice. The PRA is constantly evolving. The consultation program operated by the AG helps local governments understand their obligations. Many smaller jurisdictions face challenges with staff turnover, and it is difficult to build institutional knowledge.

(Opposed) None.

Persons Testifying (State Government & Tribal Relations): Representative Springer, prime sponsor; July Simpson and Morgan Damerow, Office of the Attorney General; Jay Jennings, Office of the Secretary of State; Mike Hoover, Washington State Association of Counties; Sheri Sawyer, Office of the Governor; and Candice Bock, Association of Washington Cities.

Persons Testifying (Appropriations): Nancy Krier, Office of the Attorney General; Mike Hoover, Washington State Association of Counties; and Candice Bock, Association of Washington Cities.

Persons Signed In To Testify But Not Testifying (State Government & Tribal Relations): None.

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