

CERTIFICATION OF ENROLLMENT
SECOND SUBSTITUTE HOUSE BILL 1758

Chapter 483, Laws of 2005

59th Legislature
2005 Regular Session

PUBLIC DISCLOSURE

EFFECTIVE DATE: 7/24/05

Passed by the House April 21, 2005
Yeas 97 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 21, 2005
Yeas 47 Nays 0

BRAD OWEN

President of the Senate

Approved May 16, 2005.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SECOND SUBSTITUTE HOUSE BILL 1758** as passed by the House of Representatives and the Senate on the dates hereon set forth.

RICHARD NAFZIGER

Chief Clerk

FILED

May 16, 2005 - 10:50 a.m.

**Secretary of State
State of Washington**

SECOND SUBSTITUTE HOUSE BILL 1758

AS AMENDED BY THE SENATE

Passed Legislature - 2005 Regular Session

State of Washington 59th Legislature 2005 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives Kessler, Nixon, Haigh, Chandler, Clements, Schindler, Hunt, Hunter, Hinkle, Takko, B. Sullivan, Miloscia, Buck and Shabro; by request of Attorney General)

READ FIRST TIME 03/07/05.

1 AN ACT Relating to public disclosure; amending RCW 42.17.270,
2 42.17.348, and 42.17.340; reenacting and amending RCW 42.17.300; and
3 adding a new section to chapter 42.17 RCW.

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

5 **Sec. 1.** RCW 42.17.270 and 1987 c 403 s 4 are each amended to read
6 as follows:

7 Public records shall be available for inspection and copying, and
8 agencies shall, upon request for identifiable public records, make them
9 promptly available to any person including, if applicable, on a partial
10 or installment basis as records that are part of a larger set of
11 requested records are assembled or made ready for inspection or
12 disclosure. Agencies shall not deny a request for identifiable public
13 records solely on the basis that the request is overbroad. Agencies
14 shall not distinguish among persons requesting records, and such
15 persons shall not be required to provide information as to the purpose
16 for the request except to establish whether inspection and copying
17 would violate RCW 42.17.260(~~(+5)~~) (9) or other statute which exempts
18 or prohibits disclosure of specific information or records to certain
19 persons. Agency facilities shall be made available to any person for

1 the copying of public records except when and to the extent that this
2 would unreasonably disrupt the operations of the agency. Agencies
3 shall honor requests received by mail for identifiable public records
4 unless exempted by provisions of this chapter.

5 **Sec. 2.** RCW 42.17.300 and 1995 c 397 s 14 and 1995 c 341 s 2 are
6 each reenacted and amended to read as follows:

7 No fee shall be charged for the inspection of public records. No
8 fee shall be charged for locating public documents and making them
9 available for copying. A reasonable charge may be imposed for
10 providing copies of public records and for the use by any person of
11 agency equipment or equipment of the office of the secretary of the
12 senate or the office of the chief clerk of the house of representatives
13 to copy public records, which charges shall not exceed the amount
14 necessary to reimburse the agency, the office of the secretary of the
15 senate, or the office of the chief clerk of the house of
16 representatives for its actual costs directly incident to such copying.
17 Agency charges for photocopies shall be imposed in accordance with the
18 actual per page cost or other costs established and published by the
19 agency. In no event may an agency charge a per page cost greater than
20 the actual per page cost as established and published by the agency.
21 To the extent the agency has not determined the actual per page cost
22 for photocopies of public records, the agency may not charge in excess
23 of fifteen cents per page. An agency may require a deposit in an
24 amount not to exceed ten percent of the estimated cost of providing
25 copies for a request. If an agency makes a request available on a
26 partial or installment basis, the agency may charge for each part of
27 the request as it is provided. If an installment of a records request
28 is not claimed or reviewed, the agency is not obligated to fulfill the
29 balance of the request.

30 NEW SECTION. **Sec. 3.** A new section is added to chapter 42.17 RCW
31 to read as follows:

32 (1) Each state and local agency shall appoint and publicly identify
33 a public records officer whose responsibility is to serve as a point of
34 contact for members of the public in requesting disclosure of public
35 records and to oversee the agency's compliance with the public records

1 disclosure requirements of this chapter. A state or local agency's
2 public records officer may appoint an employee or official of another
3 agency as its public records officer.

4 (2) For state agencies, the name and contact information of the
5 agency's public records officer to whom members of the public may
6 direct requests for disclosure of public records and who will oversee
7 the agency's compliance with the public records disclosure requirements
8 of this chapter shall be published in the state register at the time of
9 designation and annually every year thereafter.

10 (3) For local agencies, the name and contact information of the
11 agency's public records officer to whom members of the public may
12 direct requests for disclosure of public records and who will oversee
13 the agency's compliance within the public records disclosure
14 requirements of this chapter shall be made in a way reasonably
15 calculated to provide notice to the public, including posting at the
16 local agency's place of business, posting on its internet site, or
17 including in its publications.

18 **Sec. 4.** RCW 42.17.348 and 1992 c 139 s 9 are each amended to read
19 as follows:

20 (1) The attorney general's office shall publish, and update when
21 appropriate, a pamphlet, written in plain language, explaining the
22 provisions of the public records subdivision of this chapter.

23 (2) The attorney general, by February 1, 2006, shall adopt by rule
24 an advisory model rule for state and local agencies, as defined in RCW
25 42.17.020, addressing the following subjects:

- 26 (a) Providing fullest assistance to requestors;
- 27 (b) Fulfilling large requests in the most efficient manner;
- 28 (c) Fulfilling requests for electronic records; and
- 29 (d) Any other issues pertaining to public disclosure as determined
30 by the attorney general.

31 (3) The attorney general, in his or her discretion, may from time
32 to time revise the model rule.

33 **Sec. 5.** RCW 42.17.340 and 1992 c 139 s 8 are each amended to read
34 as follows:

35 (1) Upon the motion of any person having been denied an opportunity
36 to inspect or copy a public record by an agency, the superior court in

1 the county in which a record is maintained may require the responsible
2 agency to show cause why it has refused to allow inspection or copying
3 of a specific public record or class of records. The burden of proof
4 shall be on the agency to establish that refusal to permit public
5 inspection and copying is in accordance with a statute that exempts or
6 prohibits disclosure in whole or in part of specific information or
7 records.

8 (2) Upon the motion of any person who believes that an agency has
9 not made a reasonable estimate of the time that the agency requires to
10 respond to a public record request, the superior court in the county in
11 which a record is maintained may require the responsible agency to show
12 that the estimate it provided is reasonable. The burden of proof shall
13 be on the agency to show that the estimate it provided is reasonable.

14 (3) Judicial review of all agency actions taken or challenged under
15 RCW 42.17.250 through 42.17.320 shall be de novo. Courts shall take
16 into account the policy of this chapter that free and open examination
17 of public records is in the public interest, even though such
18 examination may cause inconvenience or embarrassment to public
19 officials or others. Courts may examine any record in camera in any
20 proceeding brought under this section. The court may conduct a hearing
21 based solely on affidavits.

22 (4) Any person who prevails against an agency in any action in the
23 courts seeking the right to inspect or copy any public record or the
24 right to receive a response to a public record request within a
25 reasonable amount of time shall be awarded all costs, including
26 reasonable attorney fees, incurred in connection with such legal
27 action. In addition, it shall be within the discretion of the court to
28 award such person an amount not less than five dollars and not to
29 exceed one hundred dollars for each day that he or she was denied the
30 right to inspect or copy said public record.

31 (5) For actions under this section against counties, the venue
32 provisions of RCW 36.01.050 apply.

33 (6) Actions under this section must be filed within one year of the
34 agency's claim of exemption or the last production of a record on a
35 partial or installment basis.

Passed by the House April 21, 2005.
Passed by the Senate April 21, 2005.
Approved by the Governor May 16, 2005.
Filed in Office of Secretary of State May 16, 2005.