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**SUBSTITUTE HOUSE BILL 1667**

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**State of Washington 66th Legislature 2019 Regular Session**

**By** House Appropriations (originally sponsored by Representatives Springer, Walsh, Appleton, Peterson, Smith, and Griffey)

AN ACT Relating to public records request administration; and amending RCW 40.14.026, 42.56.570, and 36.22.175; and providing an effective date.

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

**Sec.**  RCW 40.14.026 and 2017 c 303 s 6 are each amended to read as follows:

(1) The division of archives and records management in the office of the secretary of state must establish and administer a competitive grant program for local agencies to improve technology information systems for public record retention, management, and disclosure, and any related training. The division of archives and records management may use up to six percent of amounts appropriated for the program for administration of the grant program. ((~~The program in this subsection ceases to exist June 30, 2020.~~))

(2) Any local agency may apply to the grant program. The division of archives and records management in the office of the secretary of state must award grants annually. The division of archives and records management must consult with the chief information officer to develop the criteria for grant recipient selection with a preference given to small local governmental agencies based on the applicant agency's need and ability to improve its information technology systems for public record retention, management, and disclosure. The division of archives and records management may award grants for specific hardware, software, equipment, technology services management and training needs, indexing for local records and digital data, and other resources for improving information technology systems. To the extent possible, information technology systems, processes, training, and other resources for improving information technology systems for records retention and distribution may be replicated and shared with other governmental entities. Grants are provided for one-time investments and are not an ongoing source of revenue for operation or management costs. A grantee may not supplant local funding with grant funding provided by the office of the secretary of state. ((~~The program in this subsection ceases to exist June 30, 2020.~~))

(3) The joint legislative audit and review committee must conduct a review of the attorney general's consultation program and the state archivist's training services created under section 4, chapter 303, Laws of 2017, and the local government competitive grant program created under this section. The review must include:

(a)(i) Information on the number of local governments served, the types of consultation and training provided, and the implementation of any practices adopted from the attorney general's consultation program and the state archivist's training services; and

(ii) The effectiveness of the consultation program and the training services in providing assistance for local governments; and

(b)(i) Information on the number of local governments that applied for and participated in the competitive grant program under this section, the amount of funding awarded through the grant program, and how such funding was used; and

(ii) The effectiveness of the grant program in improving local government technology information systems for public records retention, management, disclosure, and training.

(4) Each agency shall maintain a log of public records requests submitted to and processed by the agency, which shall include but not be limited to the following information for each request: The identity of the requestor if provided by the requestor, the date the request was received, the text of the original request, a description of the records produced in response to the request, a description of the records redacted or withheld and the reasons therefor, and the date of the final disposition of the request. The log must be retained by the agency in accordance with the relevant record retention schedule established under this chapter, and shall be a public record subject to disclosure under chapter 42.56 RCW.

(5) Except as provided under subsection (6) of this section, to improve best practices for dissemination of public records, each agency with actual staff and legal costs associated with fulfilling public records requests of at least one hundred thousand dollars during the prior fiscal year must, and each agency with such estimated costs of less than one hundred thousand dollars during the prior fiscal year may, report to the joint legislative audit and review committee by July 1st of each subsequent year the following metrics, measured over the preceding year:

(a) ((~~An identification of leading practices and processes for records management and retention, including technological upgrades, and what percentage of those leading practices and processes were implemented by the agency;~~

~~(b) The average length of time taken to acknowledge receipt of a public records request;~~

~~(c) The proportion of requests where the agency provided the requested records within five days of receipt of the request compared to the proportion of requests where the agency provided an estimate of an anticipated response time beyond five days of receipt of the request;~~

~~(d) A comparison of the agency's average initial estimate provided for full disclosure of responsive records with the actual time when all responsive records were fully disclosed, including whether the agency sent subsequent estimates of an anticipated response time;~~

~~(e)~~)) The number of requests where the agency provided the requested records within five days of receiving the request.

(b) The number of requests where the agency provided a time estimate for providing responsive records beyond five days after receiving the request.

(c) The average and median number of days from receipt of request to the date the request is closed.

(d) The number of requests where the agency formally sought additional clarification from the requestor;

((~~(f)~~)) (e) The number of requests denied in full or in part and the most common reasons for denying requests;

((~~(g)~~)) (f) The number of requests abandoned by requestors;

((~~(h)~~)) (g) To the extent the information is known by the agency, requests by type of requestor, including individuals, law firms, organizations, insurers, governments, incarcerated persons, the media, anonymous requestors, current or former employees, and others;

((~~(i)~~)) (h) Which portion of requests were fulfilled electronically compared to requests fulfilled by physical records;

((~~(j)~~)) (i) The number of requests where the agency ((~~was required to scan~~)) scanned physical records electronically to fulfill disclosure;

((~~(k)~~)) (j) The total estimated agency staff time spent on each individual request;

((~~(l)~~)) (k) The estimated costs incurred by the agency in fulfilling records requests, including costs for staff compensation and legal review, and a measure of the average cost per request;

((~~(m)~~)) (l) The number of claims filed alleging a violation of chapter 42.56 RCW or other public records statutes in the past year involving the agency, categorized by type and exemption at issue, if applicable;

((~~(n)~~)) (m) The costs incurred by the agency litigating claims alleging a violation of chapter 42.56 RCW or other public records statutes in the past year, including any penalties imposed on the agency;

((~~(o)~~)) (n) The costs incurred by the agency with managing and retaining records, including staff compensation and purchases of equipment, hardware, software, and services to manage and retain public records ((~~or otherwise assist in the fulfillment of public records requests~~)); and

((~~(p)~~)) (o) Expenses recovered by the agency from requestors for fulfilling public records requests, including any customized service charges((~~; and~~

~~(q) Measures of requestor satisfaction with agency responses, communication, and processes relating to the fulfillment of public records requests~~)).

(6) The joint legislative audit and review committee may modify or add to the reporting metrics listed in subsection (5) of this section to align with the metrics listed under Title 5 U.S.C. Sec. 552(e)(1).

(7) The joint legislative audit and review committee must consult with state and local agencies to develop a reporting method and clearly define standardized metrics in accordance with this section.

((~~(7)~~)) (8) By December 1, 2019, the joint legislative audit and review committee must report to the legislature on its findings from the review, including recommendations on whether the competitive grant program, the attorney general's consultation program, and the state archivist's training services should continue or be allowed to expire.

**Sec.**  RCW 42.56.570 and 2017 c 303 s 4 are each amended to read as follows:

(1) The attorney general's office shall publish, and update when appropriate, a pamphlet, written in plain language, explaining this chapter.

(2) The attorney general, by February 1, 2006, shall adopt by rule advisory model rules for state and local agencies, as defined in RCW 42.56.010, addressing the following subjects:

(a) Providing fullest assistance to requestors;

(b) Fulfilling large requests in the most efficient manner;

(c) Fulfilling requests for electronic records; and

(d) Any other issues pertaining to public disclosure as determined by the attorney general.

(3) The attorney general, in his or her discretion, may from time to time revise the model ((~~rule[s]~~)) rules.

(4) Local agencies should consult the advisory model rules when establishing local ordinances for compliance with the requirements and responsibilities of this chapter.

(5) ((~~Until June 30, 2020,~~)) The attorney general must establish a consultation program to provide information for developing best practices for local agencies requesting assistance in compliance with this chapter including, but not limited to: Responding to records requests, seeking additional public and private resources for developing and updating technology information services, and mitigating liability and costs of compliance. The attorney general may develop the program in conjunction with the advisory model rule and may collaborate with the chief information officer, the state archivist, and other relevant agencies and organizations in developing and managing the program. ((~~The program in this subsection ceases to exist June 30, 2020.~~))

(6) ((~~Until June 30, 2020,~~)) The state archivist must offer and provide consultation and training services for local agencies on improving record retention practices.

**Sec.**  RCW 36.22.175 and 2011 1st sp.s. c 50 s 931 are each amended to read as follows:

(1)(a) In addition to any other charge authorized by law, the county auditor shall charge a surcharge of one dollar per instrument for each document recorded. Revenue generated through this surcharge shall be transmitted monthly to the state treasurer for deposit in the local government archives account under RCW 40.14.024. These funds shall be used solely for providing records scheduling, security microfilm inspection and storage, archival preservation, cataloging, and indexing for local government records and digital data and access to those records and data through the regional branch archives of the division of archives and records management.

(b) The division of archives and records management within the office of the secretary of state shall provide records management training for local governments and shall establish a competitive grant program to solicit and prioritize project proposals from local governments for potential funding to be paid for by funds from the auditor surcharge and tax warrant surcharge revenues. Application for specific projects may be made by local government agencies only. The state archivist in consultation with the advisory committee established under RCW 40.14.027 shall adopt rules governing project eligibility, evaluation, awarding of grants, and other criteria including requirements for records management training for grant recipients.

(2) The advisory committee established under RCW 40.14.027 shall review grant proposals and establish a prioritized list of projects to be considered for funding by January 1st of each even-numbered year, beginning in 2002. The evaluation of proposals and development of the prioritized list must be developed through open public meetings. Funding for projects shall be granted according to the ranking of each application on the prioritized list and projects will be funded only to the extent that funds are available. A grant award may have an effective date other than the date the project is placed on the prioritized list.

(3)(a) In addition to any other surcharge authorized by law, the county auditor shall charge a surcharge of one dollar per instrument for every document recorded after January 1, 2002. Revenue generated through this surcharge shall be transmitted to the state treasurer monthly for deposit in the local government archives account under RCW 40.14.024 to be used exclusively for: (i) The construction and improvement of a specialized regional facility located in eastern Washington designed to serve the archives, records management, and digital data management needs of local government; and (ii) payment of the certificate of participation issued for the Washington state heritage center to the extent there is an excess fund balance in the account and fees generated under RCW 36.18.010 and 43.07.128 are insufficient to meet debt service payments on the certificate of participation.

(b) To the extent the facilities are used for the storage and retrieval of state agency records and digital data, that portion of the construction of such facilities used for state government records and data shall be supported by other charges and fees paid by state agencies and shall not be supported by the surcharge authorized in this subsection, except that to the extent there is an excess fund balance in the account and fees generated under RCW 36.18.010 and 43.07.128 are insufficient to meet debt service payments for the Washington state heritage center, the local government archives account under RCW 40.14.024 may be used for the Washington state heritage center.

(c) At such time that all debt service from construction of the specialized regional archive facility located in eastern Washington has been paid, fifty percent of the surcharge authorized by this subsection shall be reverted to the centennial document preservation and modernization account as prescribed in RCW 36.22.170 and fifty percent of the surcharge authorized by this section shall be reverted to the state treasurer for deposit in the public records efficiency, preservation, and access account to serve the archives, records management, and digital data management needs of local government, except that the state treasurer shall not revert funds to the centennial document preservation and modernization account and to the public records efficiency, preservation, and access account if fees generated under RCW 36.18.010 and 43.07.128 are insufficient to meet debt service payments on the Washington state heritage center.

(4) In addition to any other surcharge authorized by law, the county auditor shall charge a surcharge of one dollar per instrument for every document recorded. Revenue generated through this surcharge shall be transmitted to the state treasurer monthly for deposit in the local government archives account under RCW 40.14.024 to be used exclusively for the competitive grant program in RCW 40.14.026, and for the attorney general's consultation program and state archivist's training services authorized in RCW 42.56.570.

NEW SECTION. **Sec.**  Section 3 of this act takes effect June 30, 2020.

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