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**SUBSTITUTE HOUSE BILL 1758**

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**State of Washington**

**59th Legislature**

**2005 Regular Session**

**By** House Committee on State Government Operations & Accountability (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 42.17.250, 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 picked up, the agency is not obligated to fulfill the balance of  
29 the request.

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

32 Each state and local agency shall separately appoint and maintain  
33 and publicly identify an individual whose responsibility is to serve as  
34 a point of contact for members of the public in requesting disclosure  
35 of public records and to oversee the agency's compliance with the  
36 public records disclosure requirements of this chapter.

1       **Sec. 4.** RCW 42.17.250 and 1973 c 1 s 25 are each amended to read  
2 as follows:

3       (1) Each state agency shall separately state and currently publish  
4 in the Washington Administrative Code and each local agency shall  
5 prominently display and make available for inspection and copying at  
6 the central office of such local agency, for guidance of the public:

7       (a) Descriptions of its central and field organization and the  
8 established places at which, the employees from whom, and the methods  
9 whereby, the public may obtain information, make submittals or  
10 requests, or obtain copies of agency decisions;

11       (b) Statements of the general course and method by which its  
12 operations are channeled and determined, including the nature and  
13 requirements of all formal and informal procedures available;

14       (c) Rules of procedure;

15       (d) Substantive rules of general applicability adopted as  
16 authorized by law, and statements of general policy or interpretations  
17 of general applicability formulated and adopted by the agency; ~~((and))~~

18       (e) Each amendment or revision to, or repeal of any of the  
19 ~~((foregoing))~~ documents in this subsection (1); and

20       (f) The identity of the agency's appointed individual to whom  
21 members of the public may be directed to submit requests for disclosure  
22 or inspection of public records and who is responsible for overseeing  
23 the disclosure or inspection of such records.

24       (2) Except to the extent that he or she has actual and timely  
25 notice of the terms thereof, a person may not in any manner be required  
26 to resort to, or be adversely affected by, a matter required to be  
27 published or displayed and not so published or displayed.

28       (3)(a) The attorney general, by February 1, 2006, shall adopt by  
29 rule a model rule for state and local agencies, as defined in RCW  
30 42.17.020, addressing the following subjects:

31       (i) Providing fullest assistance to requestors;

32       (ii) Indexing of public records;

33       (iii) Fulfilling large requests in the most timely manner;

34       (iv) Fulfilling requests for electronic records; and

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

37       (b) The attorney general, in his or her discretion, may from time  
38 to time revise the model rule.

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

3       (1) Upon the motion of any person having been denied an opportunity  
4 to inspect or copy a public record by an agency, the superior court in  
5 the county in which a record is maintained may require the responsible  
6 agency to show cause why it has refused to allow inspection or copying  
7 of a specific public record or class of records. The burden of proof  
8 shall be on the agency to establish that refusal to permit public  
9 inspection and copying is in accordance with a statute that exempts or  
10 prohibits disclosure in whole or in part of specific information or  
11 records.

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

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

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

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

37       (6) Actions under this section must be filed within one year of the

1 agency's claim of exemption or the last production of a record on a  
2 partial or installment basis.

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