

# HOUSE BILL REPORT

## HB 1198

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**As Reported by House Committee On:**  
Government Operations & Elections

**Title:** An act relating to training public officials and employees regarding public records and open public meetings.

**Brief Description:** Requiring training of public officials and employees regarding public records and open public meetings.

**Sponsors:** Representatives Pollet, Hunt, Ryu, Maxwell, Reykdal, Bergquist, Moscoso, Moeller, Upthegrove and Jinkins.

**Brief History:**

**Committee Activity:**

Government Operations & Elections: 1/23/13, 2/12/13 [DPS].

**Brief Summary of Substitute Bill**

- Requires the Attorney General to develop and implement training programs for the legal requirements contained in the Open Public Meetings Act and the Public Records Act.
- Requires members of governing bodies of public and local agencies, elected officials, and public records officers to complete the training courses.

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### HOUSE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Hunt, Chair; Bergquist, Vice Chair; Buys, Ranking Minority Member; Alexander, Carlyle, Fitzgibbon, Kristiansen, Manweller, Orwall and Van De Wege.

**Minority Report:** Do not pass. Signed by 1 member: Representative Taylor, Assistant Ranking Minority Member.

**Staff:** Marsha Reilly (786-7135).

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*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.*

## **Background:**

### Open Public Meetings Act.

The Open Public Meetings Act (OPMA) requires that all meetings of the governing body of a public agency be open to the public and all persons must be allowed to attend. For the purposes of the OPMA, a public agency is defined broadly and includes, but is not limited to, any state board, commission, department, education institution, agency, local government, and special purposes district. A governing body is defined as a multi-member board, commission, committee, council, or other policy or rulemaking body of a public agency or any committee thereof that is acting on behalf of the public agency.

A governing body may meet without the public for portions of a regular or special meeting to discuss certain issues. "Executive Session" is not expressly defined in the OPMA, but according to the Attorney General's Deskbook, the term is commonly understood to mean that part of a regular or special meeting of the governing body that is closed to the public. A governing body may hold an executive session only for purposes specified in statute and only during a regular or special meeting. Washington courts have held that because an executive session is an exception to the OPMA's overall provisions requiring open meetings, a court will narrowly construe the grounds for an executive session in favor of requiring an open meeting.

Some of the matters that may be discussed in an executive session include: matters affecting national security, the selection of a site or the acquisition of real estate by lease or purchase when public knowledge regarding such consideration would cause a likelihood of increased price, and the qualifications of an applicant for public employment or to review the performance of a public employee.

### Public Records Act.

The Public Records Act (PRA) requires that all state and local government agencies make all public records available for public inspection and copying unless they fall within certain statutory exemptions. The provisions requiring public records disclosure must be interpreted liberally and the exemptions narrowly in order to effectuate a general policy favoring disclosure. The PRA requires agencies to respond to public records requests within five business days. The agency must either provide the records, provide a reasonable estimate of the time the agency will take to respond to this request, or deny the request. Additional time may be required to respond to a request where the agency needs to notify third parties or agencies affected by the request or to determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request.

For practical purposes, the law treats a failure to properly respond as denial. A denial of a public records request must be accompanied by a written statement of the specific reasons for denial. Any person who is denied the opportunity to inspect or copy a public record may file a motion to show cause in superior court why the agency has refused access to the record. The burden of proof rests with the agency to establish that the refusal is consistent with the statute that exempts or prohibits disclosure. Judicial review of the agency decision is de novo and the court may examine the record in camera. Any person who prevails against an agency in any action in the courts seeking the right to inspect or copy any public record must be awarded all costs, including reasonable attorney fees. In addition, the court has the

discretion to award such person no less than \$5 but not to exceed \$100 for each day he or she was denied the right to inspect or copy the public record. The court's discretion lies in the amount per day, but the court may not adjust the number of days for which the agency is fined.

Under the PRA, a "public record" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. For the Office of the Secretary of the Senate (Secretary) and the Office of the Chief Clerk of the House of Representatives (Chief Clerk), public records means legislative records as defined in RCW 40.14.100 and also means the following: all budget and financial records; personnel leave, travel, and payroll records; records of legislative sessions; reports submitted to the Legislature; and any other record designated a public record by any official action of the Senate or the House of Representatives.

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### **Summary of Substitute Bill:**

By July 1, 2014, the Attorney General (AG) must develop and implement training programs on the legal requirements and purposes of the OPMA and the PRA. The training programs are to be a concise, web-based presentation, available on the AG's web site, that include instruction in:

- the purposes and intent of the various laws;
- the applicability of the laws to governmental bodies and members of governing boards of agencies;
- procedures and requirements necessary for compliance and best practices for compliance with the laws;
- penalties and other consequences for failure to comply with the laws; and
- the role of the AG under the laws.

In developing the training, the AG must consult with, and may utilize training materials from, associations representing cities, counties, and those nonprofit organizations whose mission includes education regarding the provisions of the OPMA and the PRA. The AG must review and approve in-person or web-based training programs offered by other agencies and organizations that provide similar training by persons with appropriate expertise. Training courses implemented or approved by the AG must be regularly updated at intervals of no more than two years.

Every member of the governing body of a public agency is required to complete the training course on the OPMA no later than 90 days after the date the member takes the oath of office, if required, or assumes his or her duties as a public official.

Every elected state or local official and each person appointed to fill a vacancy in elective office who is subject to the requirements of the PRA must complete the training course on the PRA no later than 90 days after the date the member takes the oath of office, if required, or

assumes his or her duties as a public official. The Chief Clerk and the Secretary must provide training to legislators on their obligations under the PRA.

The AG must also develop and implement an intensive training seminar for public records officers of state and local agencies. Training may be administered via web technology or in person. The training will include:

- duties and obligations of agencies regarding public records disclosure and retention;
- duties to manage and preserve records;
- discussion of innovative mechanisms for providing timely access to public records; and
- discussion of the benefits and duties related to indexing records.

This training is required of public records officers of state and local agencies at regular intervals.

### **Substitute Bill Compared to Original Bill:**

The substitute bill does the following:

- removes the training requirement regarding public records preservation and destruction;
- allows for training by agencies and associations or nonprofit organizations to meet the training requirements, but must be reviewed and approved by the AG;
- removes the requirement that the training be interactive;
- removes accreditation requirements; and
- requires the Chief Clerk and the Secretary to provide training to legislators on their obligations under the PRA.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

### **Staff Summary of Public Testimony:**

(In support) There are many violations of the PRA. The training required by the bill will reduce liability costs and increase trust in government. Training is for elected officials as well as agency public records officers. The training is available now. Reporters regularly have questions about instances where the OPMA has been violated, or about the difficulties in getting records under the PRA. Most failures to comply with the law are due to simple ignorance. The mechanism is available in the AG's office, and that office does a good job of training. The plan to deliver this via a website is cost effective. The AG's office should have more authority over quasi-government agencies. An alternative to lawsuits is for the AG to identify those agencies that do not comply with the laws and require training. It is necessary to know what the government is doing. Hundreds of thousands of dollars are awarded

through lawsuits each year for simple omissions. This is an extremely important bill for citizens, but also for the state.

Knowledge equals compliance, and compliance equals good government. The AG is extremely well suited to do the training. This is an excellent bill that contains the singular most effective means to cut down on public records violations and penalties. Agencies do not understand the laws or the Constitution. This should be a general primer on constitutional law. The training should be objective, and the AG is objective and will provide good training. The Association of Washington Cities (AWC) supports the bill. There are a lot of records to manage and a lot of requests made for records. Training is offered through the AWC that is designed for newly elected city council members. Other opportunities are available for training, but there can be more. The AG should provide a comprehensive training model that can be used by other entities.

(Opposed) None.

**Persons Testifying:** Representative Pollett, prime sponsor; Bill Will, Washington Newspaper Publishers; John Worthington; Brian Moran, Office of the Attorney General; Candice Bock, Association of Washington Cities; and Arthur West.

**Persons Signed In To Testify But Not Testifying:** None.