

2SHB 2576 - H AMD 781

By Representative McBride

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that the right of
4 citizens to observe the actions of local agencies and to have timely
5 access to public records are essential to democracy and allow for
6 meaningful participation in the democratic process. The legislature
7 reaffirms the importance of transparent and open government while
8 recognizing that local agencies face unique challenges in responding
9 to voluminous and automated requests for public records.

10 **PART I**

11 **PROCEDURES FOR RESPONDING TO REQUESTS**

12 NEW SECTION. **Sec. 101.** A new section is added to chapter 42.56
13 RCW to read as follows:

14 (1) Ensuring the transparency and openness of governmental
15 agencies is a function of all local agencies, along with other
16 essential functions. To prevent undue interference with other
17 essential functions of the local agency, a local agency may adopt
18 procedures that limit the number of hours it devotes on a monthly
19 basis to responding to public records requests, and that prioritize
20 requests according to criteria established by the local agency.
21 Procedures adopted by local agencies:

22 (a) Must address the need to provide the fullest assistance
23 possible to requestors while avoiding excessive interference with
24 other essential functions;

25 (b) Must provide that unfilled requests or installments will roll
26 over into the following month and will continue to be fulfilled in
27 installments based on available time under the procedures;

28 (c) Must ensure that the local agency promptly responds to
29 requests for public records in accordance with RCW 42.56.520; and

1 (d) Must be adopted by the local agency in the form of adopted
2 legislation subject to public hearing. The procedures must be
3 reviewed and amended, as necessary, by the governing body of the
4 local agency not less than once every other year.

5 (2)(a) Prior to adopting procedures, a local agency must make
6 available and accessible to the public in accordance with (b) of this
7 subsection:

8 (i) Budgets for the ongoing and three previous fiscal years and,
9 when available, any proposed budget for the upcoming fiscal year; and

10 (ii) Agendas and minutes for all public meetings of the local
11 agency's governing body for the three previous fiscal years, as well
12 as comply with applicable laws including RCW 42.30.077.

13 (b) A local agency may not adopt or implement procedures under
14 this section unless:

15 (i) For local agencies with a web site and employing ten or more
16 full-time equivalent employees, documents listed in (a) of this
17 subsection are accessible through a central web site; or

18 (ii) For local agencies without a web site or employing fewer
19 than ten full-time equivalent employees, the local agency produces
20 for inspection any document listed in (a) of this subsection within
21 five business days of a request, or the documents are accessible
22 through the local agency's web site.

23 (c) Unless a local agency employs fewer than ten full-time
24 equivalent employees, a local agency that adopts procedures under
25 this section must be able to conduct an electronic search of any
26 electronic records held by the local agency by January 1, 2018. Local
27 agencies employing fewer than ten full-time equivalent employees must
28 be able to conduct an electronic search of any electronic records
29 held by the local agency to the extent feasible.

30 (3)(a) A local agency that limits the number of hours it devotes
31 on a monthly basis to responding to requests must establish a minimum
32 amount of time each month that the local agency devotes to responding
33 to requests. At a minimum, the local agency must devote the greater
34 of:

35 (i) Ten hours each month; or

36 (ii) A reasonable amount of time each month, determined by the
37 local agency by considering factors including:

38 (A) For a local agency with fewer than fifty full-time employees,
39 five percent of the local agency's designated administrative staff
40 time;

1 (B) For a local agency with fifty or more full-time employees,
2 ten percent of the local agency's designated administrative staff
3 time; and

4 (C) The average amount of time spent by the local agency
5 responding to requests over the prior two-year period.

6 (b) Tasks subject to a limit authorized by this section may
7 include the time it takes to search for responsive records and review
8 and redact responsive records. Tasks subject to a limit authorized by
9 this section may not include time spent in litigation or time spent
10 by an attorney providing legal advice regarding records. Local
11 agencies are encouraged to use generally available redaction tools to
12 speedily redact items such as personally identifying information or
13 to blur or remove visual images that may be exempt to protect
14 privacy.

15 (4) Procedures adopted by a local agency under this section must
16 provide for prompt responses to certain time-sensitive requests by
17 prioritizing the order in which public records requests will be
18 fulfilled. If a local agency chooses to limit the number of hours it
19 devotes to responding to requests on a monthly basis, the local
20 agency must adopt rules establishing the criteria governing
21 prioritization in accordance with this subsection (4).

22 (a) A local agency may prioritize requests based on the size or
23 complexity of the request or the number of requests received and
24 pending.

25 (b) To the extent possible, local agencies must give priority to
26 time-sensitive requests in which any of the conditions listed in
27 (b)(i), (ii), or (iii) of this subsection apply. To determine whether
28 one of these conditions exist, the public records officer of a local
29 agency may ask the requestor for clarifying information. If the
30 requestor does not provide information necessary to determine whether
31 one or more of the conditions apply, then the local agency may assume
32 that the condition does not apply. Priority must be given to:

33 (i) Requests involving an imminent threat to public safety or a
34 loss of substantive or procedural due process rights;

35 (ii) Requests concerning imminent legislative, administrative, or
36 judicial action, an election, or issues subject to a defined comment
37 period; and

38 (iii) Requests that are routine, may be readily fulfilled, or are
39 immediately accessible.

1 (5) In an effort to better understand a request, provide all
2 responsive records, and appropriately prioritize a request, if
3 procedures providing for prioritization have been adopted by a local
4 agency, a local agency's procedures must encourage public records
5 officers to contact requestors to inquire about the purpose for a
6 request. Requestors are not obligated to answer the inquiry of a
7 public records officer regarding the purpose of a request, except to
8 establish whether inspection and copying of records would violate RCW
9 42.56.070(9) or other law that exempts or prohibits production of
10 specific information or records to certain persons.

11 (6) When a local agency that has adopted procedures authorized by
12 this section anticipates that fulfilling a public records request
13 will take more than sixty calendar days, the local agency must inform
14 the requestor in writing of the factors determining a response time
15 estimate, including providing a list of all other pending requests.
16 Response time estimates of local agencies are subject to court
17 challenges pursuant to RCW 42.56.550.

18 (7) If a court holds that records have been withheld by a local
19 agency from disclosure or production for an unreasonable period of
20 time as a result of the local agency devoting an inadequate amount of
21 time to responding to requests under procedures authorized by this
22 section, the agency must revise the procedures.

23 **Sec. 102.** RCW 42.56.080 and 2005 c 483 s 1 and 2005 c 274 s 285
24 are each reenacted and amended to read as follows:

25 Public records shall be available for inspection and copying, and
26 agencies shall, upon request for identifiable public records, make
27 them promptly available to any person including, if applicable, on a
28 partial or installment basis as records that are part of a larger set
29 of requested records are assembled or made ready for inspection or
30 disclosure. A request for all or substantially all agency records is
31 not a request for identifiable public records, and an agency may deny
32 such a request. Agencies shall not deny a request for identifiable
33 public records solely on the basis that the request is overbroad.
34 Agencies shall not distinguish among persons requesting records, and
35 such persons shall not be required to provide information as to the
36 purpose for the request except to establish whether inspection and
37 copying would violate RCW 42.56.070(9) or other statute which exempts
38 or prohibits disclosure of specific information or records to certain
39 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. Multiple records
5 requests made by an automated computer program are not valid requests
6 for records under this chapter, and an agency may deny such requests.
7 Local agencies may ask a requestor to respond in a manner to
8 determine whether multiple records requests were generated by an
9 automated computer program.

10 **Sec. 103.** RCW 42.56.520 and 2010 c 69 s 2 are each amended to
11 read as follows:

12 (1) Responses to requests for public records shall be made
13 promptly by agencies, the office of the secretary of the senate, and
14 the office of the chief clerk of the house of representatives.

15 (2) Within five business days of receiving a public record
16 request, an agency, the office of the secretary of the senate, or the
17 office of the chief clerk of the house of representatives must
18 respond by ~~((either(1)))~~:

19 (a) Providing the record;

20 ~~((+2))~~ (b) Providing an internet address and link on the
21 agency's web site to the specific records requested, except that if
22 the requester notifies the agency that he or she cannot access the
23 records through the internet, then the agency must provide copies of
24 the record or allow the requester to view copies using an agency
25 computer;

26 ~~((+3))~~ (c) Acknowledging that the agency, the office of the
27 secretary of the senate, or the office of the chief clerk of the
28 house of representatives has received the request and providing a
29 reasonable estimate of the time the agency, the office of the
30 secretary of the senate, or the office of the chief clerk of the
31 house of representatives will require to respond to the request; or

32 ~~((+4))~~ (d) Denying the public record request.

33 (3) Additional time required to respond to a request may be based
34 upon:

35 (a) The need to clarify the intent of the request~~((τ))~~;

36 (b) The need to locate and assemble the information
37 requested~~((τ))~~;

38 (c) The need to notify third persons or agencies affected by the
39 request~~((τ))~~;

1 (d) Procedures adopted by a local agency in accordance with
2 section 101 of this act; or

3 (e) The need to determine whether any of the information
4 requested is exempt and that a denial should be made as to all or
5 part of the request.

6 (4) In acknowledging receipt of a public record request that is
7 unclear, an agency, the office of the secretary of the senate, or the
8 office of the chief clerk of the house of representatives may ask the
9 requestor to clarify what information the requestor is seeking. If
10 the requestor fails to clarify the request, the agency, the office of
11 the secretary of the senate, or the office of the chief clerk of the
12 house of representatives need not respond to it.

13 (5) Denials of requests must be accompanied by a written
14 statement of the specific reasons ~~((therefor))~~ for the denial.
15 Agencies, the office of the secretary of the senate, and the office
16 of the chief clerk of the house of representatives shall establish
17 mechanisms for the most prompt possible review of decisions denying
18 inspection, and such review shall be deemed completed at the end of
19 the second business day following the denial of inspection and shall
20 constitute final agency action or final action by the office of the
21 secretary of the senate or the office of the chief clerk of the house
22 of representatives for the purposes of judicial review.

23 PART II

24 LEGISLATIVE TASK FORCE ON PUBLIC RECORDS REQUESTS TO LOCAL AGENCIES

25 NEW SECTION. **Sec. 201.** (1) A legislative task force on public
26 records requests to local agencies under the public records act,
27 chapter 42.56 RCW, is established, with members as provided in this
28 subsection.

29 (a) The majority and minority leaders of the senate shall appoint
30 two members, one from each of the relevant caucuses of the senate.

31 (b) The majority and minority leaders of the house of
32 representatives shall appoint two members, one from each of the
33 relevant caucuses of the house of representatives.

34 (c) The governor shall appoint:

35 (i) Two members representing the news media;

36 (ii) Two members representing public interest organizations
37 advising or advocating on behalf of citizens who make public records
38 requests under the public records act, chapter 42.56 RCW, with one

1 member representing citizen requestors statewide and one member
2 representing citizen requestors in a community or locality;

3 (iii) Two members representing requestors who make public records
4 requests for commercial purposes under the public records act,
5 chapter 42.56 RCW;

6 (iv) One member representing special purpose districts other than
7 school districts in Washington; and

8 (v) One member representing public employees.

9 (d) An association representing Washington cities shall appoint
10 one member representing cities.

11 (e) An association representing Washington counties shall appoint
12 one member representing counties.

13 (f) An association representing Washington state school directors
14 shall appoint one member representing Washington state school
15 directors.

16 (2) The task force shall choose its chair from among its
17 legislative membership. The task force may choose or engage an entity
18 or person to serve as a facilitator. The legislative members of the
19 task force must convene the initial meeting of the task force. The
20 task force must convene at least three meetings.

21 (3) The task force shall review the following issues with respect
22 to local agencies:

23 (a) The merits of forming a public records commission to
24 administer provisions of the public records act, chapter 42.56 RCW,
25 to have jurisdiction over disputes arising under the act, and to
26 perform functions such as facilitating resolution of disputes through
27 mediation, arbitration, or adjudicative proceedings;

28 (b) Other strategies for resolving disputes related to public
29 records requests;

30 (c) The survey conducted by the office of the state auditor to
31 collect information about the nature, volume, and associated costs of
32 public records requests, and the report submitted by the office of
33 the state auditor to the legislature; and

34 (d) Cost recovery for expenses associated with responding to
35 public records requests, including cost recovery for providing
36 records requested for a commercial purpose.

37 (4) Staff support for the task force must be provided by senate
38 committee services and the house of representatives office of program
39 research.

1 (5) Legislative members of the task force are reimbursed for
2 travel expenses in accordance with RCW 44.04.120. Nonlegislative
3 members are not entitled to be reimbursed for travel expenses if they
4 are elected officials or are participating on behalf of an employer,
5 governmental entity, or other organization. Any reimbursement for
6 other nonlegislative members is subject to chapter 43.03 RCW.

7 (6) The expenses of the task force must be paid jointly by the
8 senate and the house of representatives. Task force expenditures are
9 subject to approval by the senate facilities and operations committee
10 and the house of representatives executive rules committee, or their
11 successor committees.

12 (7) By November 15, 2016, the task force must submit to the
13 appropriate committees of the legislature, in accordance with RCW
14 43.01.036, a summary of the task force's findings and
15 recommendations, if any.

16 (8) This section expires January 1, 2017.

17 **PART III**

18 **LOCAL GOVERNMENT ARCHIVES ACCOUNT**

19 NEW SECTION. **Sec. 301.** Under RCW 36.22.175, 40.14.024, and
20 40.14.027 purposes for which funds in the local government archives
21 account are supposed to be used include local government services,
22 such as: Records management training for local government agencies;
23 providing records scheduling, security microfilm inspection, and
24 storage; archival preservation; cataloging; indexing for local
25 government records and digital data; and access to local government
26 records and data through the regional branch archives of the division
27 of archives and records management.

28 It is the intent of the legislature that expenditures from the
29 local government archives account be used for these purposes. It is
30 also the intent of the legislature that the local government archives
31 account be fully funded through appropriations in the 2017-2019
32 omnibus appropriations act."

33 Correct the title.

EFFECT: Makes the following changes to the underlying second
substitute bill:

(1) Declares that ensuring the transparency and openness of governmental agencies is a function of all local agencies, along with other essential functions.

(2) Requires that procedures adopted by a local agency ensure that the local agency promptly respond to requests for public records in accordance with a current statute, RCW 42.56.520.

(3) Provides that: (a) Local agencies that adopt procedures under the bill must be able to conduct electronic searches of the local agency's electronic records by January 1, 2018; or (b) local agencies with fewer than 10 full-time equivalent employees that adopt procedures under the bill must be able to conduct electronic searches of the local agency's electronic records to the extent feasible.

(4) Modifies how local agencies that adopt procedures under the bill compute the minimum amount of time they devote each month to responding to records requests. Provides that, at a minimum, a local agency must devote the greater of: (a) 10 hours each month; or (b) a reasonable amount of time each month, determined by the local agency by considering factors including: (i) 5 percent of the local agency's designated administrative staff time, if the local agency has fewer than 50 employees; (ii) 10 percent of the local agency's designated administrative staff time, if the local agency has 50 or more employees; and (iii) the average amount of time spent by the local agency responding to requests over the prior two-year period.

(5) Encourages local agencies to use generally available redaction tools to speedily redact items such as personally identifying information or to blur or remove visual images that may be exempt to protect privacy.

(6) Requires any local agency that adopts procedures limiting the amount of time devoted to responding to requests on a monthly basis to provide prompt responses to time-sensitive requests by prioritizing the order in which public records requests are fulfilled. Requires, rather than authorizes, as proposed in the underlying bill, such local agencies to establish criteria governing prioritization.

(7) Specifies that a local agency may prioritize requests based on the size of a request, complexity of a request, or the number of requests received and pending, rather than based on the size and complexity of a request and the number of requests the requestor has made in the preceding 12 months.

(8) Adds or modifies the following possible conditions a local agency must consider when prioritizing records requests: (a) Any requests concerning an election; (b) any requests concerning issues subject to a defined comment period; and (c) any requests involving a loss of substantive or procedural due process rights, rather than a loss of substantial due process rights as proposed in the underlying bill.

(9) Adds provisions to the bill that modify the Public Records Act (PRA) to: (a) Provide that requests for all or substantially all agency records is not a request for identifiable public records, and authorize agencies to deny such requests; (b) provide that multiple records requests made by an automated computer program are not valid requests for records under the PRA, and authorize agencies to deny such requests; and (c) authorize local agencies to ask requestors to respond in a manner to determine whether multiple records requests were generated by an automated computer program.

(10) Eliminates Part II of the underlying second substitute bill establishing the Public Records Commission.

(11) Creates a 15-member Legislative Task Force on Public Records Requests to Local Agencies (Task Force), and provides for its members, payment of expenses, and staff support.

(a) Directs the Task Force to review specified issues with respect to local agencies: (i) The merits of forming a public records commission to administer provisions of the PRA, have jurisdiction over disputes arising under the PRA, and perform functions such as facilitating resolution of disputes through mediation, arbitration, or adjudicative proceedings; (ii) other strategies for resolving disputes related to public records requests; (iii) the survey conducted by the office of the state auditor (SAO) to collect information about the nature, volume, and associated costs of public records requests, and the report submitted by the SAO to the Legislature; and (iv) cost recovery for expenses associated with responding to public records requests, including cost recovery for providing records requested for a commercial purpose.

(b) Authorizes the Task Force to choose or engage an entity or person to serve as a facilitator.

(c) Requires the Task Force to submit a report to the Legislature by November 15, 2016.

(12) Removes a null and void clause added to the bill by the second substitute.

(13) Makes technical changes.

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