

**2SHB 2576 - H AMD 809**

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 excessive interference with other  
17 essential functions of the local agency, a local agency may adopt  
18 procedures that prioritize requests according to criteria established  
19 by the local agency. Procedures adopted by local agencies:

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

23 (b) Must ensure that the local agency responds to requests for  
24 public records in accordance with RCW 42.56.520; and

25 (c) Must be adopted by the local agency in the form of adopted  
26 legislation subject to public hearing. The procedures must be  
27 reviewed and amended, as necessary, by the governing body of the  
28 local agency not less than once every other year.

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

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

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

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

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

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

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

26 (3)(a) Procedures adopted by a local agency under this section  
27 must provide for responses to public records requests to be made  
28 promptly in accordance with RCW 42.56.520 while prioritizing the  
29 order in which public records requests will be fulfilled. The local  
30 agency must adopt rules establishing the criteria governing  
31 prioritization in accordance with this subsection (3).

32 (b) A local agency may prioritize requests based on the size or  
33 complexity of the request or the number of requests received and  
34 pending.

35 (c) To the extent possible, local agencies must give priority to  
36 time-sensitive requests in which any of the conditions listed in  
37 (c)(i), (ii), (iii), or (iv) of this subsection apply. To determine  
38 whether one of these conditions exist, the public records officer of  
39 a local agency may ask the requestor for clarifying information. If  
40 the requestor does not provide information necessary to determine

1 whether one or more of the conditions apply, then the local agency  
2 may assume that the condition does not apply. Priority must be given  
3 to:

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

6 (ii) Requests concerning imminent legislative, administrative, or  
7 judicial action, an election, or issues subject to a defined comment  
8 period;

9 (iii) Requests submitted by news media for which the news media  
10 requestor shows that there is a particular urgency justifying an  
11 expedited response for the purpose of disseminating information in  
12 the record to the public; and

13 (iv) Requests that are routine, may be readily fulfilled, or are  
14 immediately accessible.

15 (4) In an effort to better understand a request, provide all  
16 responsive records, and appropriately prioritize a request, if  
17 procedures providing for prioritization have been adopted by a local  
18 agency, a local agency's procedures must encourage public records  
19 officers to contact requestors to inquire about the purpose for a  
20 request. Requestors are not obligated to answer the inquiry of a  
21 public records officer regarding the purpose of a request, except to  
22 establish whether inspection and copying of records would violate RCW  
23 42.56.070(9) or other law that exempts or prohibits production of  
24 specific information or records to certain persons.

25 (5) When a local agency that has adopted procedures authorized by  
26 this section anticipates that fulfilling a public records request  
27 will take more than sixty calendar days, the local agency must inform  
28 the requestor in writing of the factors determining a response time  
29 estimate, including providing a list of all other pending requests.  
30 Response time estimates of local agencies are subject to court  
31 challenges pursuant to RCW 42.56.550.

32 (6) If a court holds that records have been withheld by a local  
33 agency from disclosure or production for an unreasonable period of  
34 time as a result of procedures adopted by the local agency under this  
35 section, the agency must revise the procedures.

36 (7) For purposes of this section, the term "news media" means any  
37 entity that is regularly engaged in news gathering and disseminating  
38 news or information routinely to the public, or an employee or  
39 independent contractor of the entity who is engaged in bona fide news  
40 gathering for the entity, by print, broadcast, or internet including

1 any newspaper, magazine, news agency, wire service, radio or  
2 television station or network, or cable or satellite station or  
3 network.

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

6 Public records shall be available for inspection and copying, and  
7 agencies shall, upon request for identifiable public records, make  
8 them promptly available to any person including, if applicable, on a  
9 partial or installment basis as records that are part of a larger set  
10 of requested records are assembled or made ready for inspection or  
11 disclosure. A request for all agency records or substantially all  
12 agency records is not a request for identifiable public records, and  
13 an agency may deny such a request. Agencies shall not deny a request  
14 for identifiable public records solely on the basis that the request  
15 is overbroad. Agencies shall not distinguish among persons requesting  
16 records, and such persons shall not be required to provide  
17 information as to the purpose for the request except to establish  
18 whether inspection and copying would violate RCW 42.56.070(9) or  
19 other statute which exempts or prohibits disclosure of specific  
20 information or records to certain persons. Agency facilities shall be  
21 made available to any person for the copying of public records except  
22 when and to the extent that this would unreasonably disrupt the  
23 operations of the agency. Agencies shall honor requests received by  
24 mail for identifiable public records unless exempted by provisions of  
25 this chapter. Multiple records requests made to an agency by an  
26 automated computer program are not valid requests for records under  
27 this chapter, and an agency may deny such requests. Local agencies  
28 may ask a requestor to respond in a manner to determine whether  
29 multiple records requests were generated by an automated computer  
30 program.

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

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

36 (2) Within five business days of receiving a public record  
37 request, an agency, the office of the secretary of the senate, or the

1 office of the chief clerk of the house of representatives must  
2 respond by (~~either (1)~~):

3 (a) Providing the record;

4 (~~(2)~~) (b) Providing an internet address and link on the  
5 agency's web site to the specific records requested, except that if  
6 the requester notifies the agency that he or she cannot access the  
7 records through the internet, then the agency must provide copies of  
8 the record or allow the requester to view copies using an agency  
9 computer;

10 (~~(3)~~) (c) Acknowledging that the agency, the office of the  
11 secretary of the senate, or the office of the chief clerk of the  
12 house of representatives has received the request and providing a  
13 reasonable estimate of the time the agency, the office of the  
14 secretary of the senate, or the office of the chief clerk of the  
15 house of representatives will require to respond to the request; or

16 (~~(4)~~) (d) Denying the public record request.

17 (3) Additional time required to respond to a request may be based  
18 upon:

19 (a) The need to clarify the intent of the request(~~(7)~~);

20 (b) The need to locate and assemble the information  
21 requested(~~(7)~~);

22 (c) The need to notify third persons or agencies affected by the  
23 request(~~(7)~~);

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

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

29 (4) In acknowledging receipt of a public record request that is  
30 unclear, an agency, the office of the secretary of the senate, or the  
31 office of the chief clerk of the house of representatives may ask the  
32 requestor to clarify what information the requestor is seeking. If  
33 the requestor fails to clarify the request, the agency, the office of  
34 the secretary of the senate, or the office of the chief clerk of the  
35 house of representatives need not respond to it.

36 (5) Denials of requests must be accompanied by a written  
37 statement of the specific reasons (~~therefor~~) for the denial.  
38 Agencies, the office of the secretary of the senate, and the office  
39 of the chief clerk of the house of representatives shall establish  
40 mechanisms for the most prompt possible review of decisions denying

1 inspection, and such review shall be deemed completed at the end of  
2 the second business day following the denial of inspection and shall  
3 constitute final agency action or final action by the office of the  
4 secretary of the senate or the office of the chief clerk of the house  
5 of representatives for the purposes of judicial review.

6 **PART II**

7 **LEGISLATIVE TASK FORCE ON PUBLIC RECORDS REQUESTS TO LOCAL AGENCIES**

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

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

14 (b) The majority and minority leaders of the house of  
15 representatives shall appoint two members, one from each of the  
16 relevant caucuses of the house of representatives.

17 (c) The governor shall appoint:

18 (i) Two members representing the news media;

19 (ii) Two members representing public interest organizations  
20 advising or advocating on behalf of citizens who make public records  
21 requests under the public records act, chapter 42.56 RCW, with one  
22 member representing citizen requestors statewide and one member  
23 representing citizen requestors in a community or locality;

24 (iii) Two members representing requestors who make public records  
25 requests for commercial purposes under the public records act,  
26 chapter 42.56 RCW;

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

29 (v) One member representing public employees.

30 (d) An association representing Washington cities shall appoint  
31 one member representing cities.

32 (e) An association representing Washington counties shall appoint  
33 one member representing counties.

34 (f) An association representing Washington state school directors  
35 shall appoint one member representing Washington state school  
36 directors.

37 (g) The state auditor, or his or her designee, shall serve as a  
38 member of the task force.

1 (2)(a) The task force shall choose its chair from among its  
2 legislative membership. The legislative members of the task force  
3 must convene the initial meeting of the task force. The task force  
4 must convene at least three meetings.

5 (b) The task force may employ neutral facilitators with expertise  
6 and other resources, as needed, for an amount not to exceed seventy  
7 thousand dollars, subject to appropriations.

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

10 (a) Authority granted to local agencies by chapter . . . , Laws of  
11 2016 (this act) to adopt procedures that prioritize requests  
12 according to criteria established by the local agency;

13 (b) The merits of forming a public records commission to  
14 administer provisions of the public records act, chapter 42.56 RCW,  
15 to have jurisdiction over disputes arising under the act, and to  
16 perform functions such as facilitating resolution of disputes through  
17 mediation, arbitration, or adjudicative proceedings;

18 (c) Other strategies for resolving disputes related to public  
19 records requests;

20 (d) The survey conducted by the office of the state auditor to  
21 collect information about the nature, volume, and associated costs of  
22 public records requests, and the report submitted by the office of  
23 the state auditor to the legislature; and

24 (e) Cost recovery for expenses associated with responding to  
25 public records requests, including cost recovery for providing  
26 records requested for a commercial purpose.

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

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

36 (6) The expenses of the task force must be paid jointly by the  
37 senate and the house of representatives. Task force expenditures are  
38 subject to approval by the senate facilities and operations committee  
39 and the house of representatives executive rules committee, or their  
40 successor committees.

1 (7) By November 15, 2016, the task force must submit to the  
2 appropriate committees of the legislature, in accordance with RCW  
3 43.01.036, a summary of the task force's findings and  
4 recommendations, if any.

5 (8) This section expires June 30, 2017.

6 **PART III**

7 **LOCAL GOVERNMENT ARCHIVES ACCOUNT**

8 NEW SECTION. **Sec. 301.** Under RCW 36.22.175, 40.14.024, and  
9 40.14.027 purposes for which funds in the local government archives  
10 account are supposed to be used include local government services,  
11 such as: Records management training for local government agencies;  
12 providing records scheduling, security microfilm inspection, and  
13 storage; archival preservation; cataloging; indexing for local  
14 government records and digital data; and access to local government  
15 records and data through the regional branch archives of the division  
16 of archives and records management.

17 It is the intent of the legislature that expenditures from the  
18 local government archives account be used for these purposes. It is  
19 also the intent of the legislature that the local government archives  
20 account be fully funded through appropriations in the 2017-2019  
21 omnibus appropriations act.

22 **PART IV**

23 **MISCELLANEOUS**

24 NEW SECTION. **Sec. 401.** (1) The sum of thirty-five thousand  
25 dollars, or as much thereof as may be necessary, is appropriated for  
26 the fiscal year ending June 30, 2017, from the general fund to the  
27 house of representatives for the purpose of supporting the task force  
28 created in section 201 of this act and employing a facilitator for  
29 the task force.

30 (2) The sum of thirty-five thousand dollars, or as much thereof  
31 as may be necessary, is appropriated for the fiscal year ending June  
32 30, 2017, from the general fund to the senate for the purpose of  
33 supporting the task force created in section 201 of this act and  
34 employing a facilitator for the task force."

35 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) 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) to the extent feasible, 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.

(3) Eliminates authority granted to local agencies in the underlying bill to limit the number of hours they devote on a monthly basis to responding to public records requests, as well as related references to the adoption of such time limits including requirements: That local agencies establish a minimum amount of time each month devoted to responding to records requests; and that procedures adopted by local agencies provide for unfilled requests or installments to roll over into the following month and be fulfilled based on available time.

(4) Requires local agencies that adopt procedures prioritizing the order in which public records requests are fulfilled to continue to respond to requests in accordance with existing statutory requirements in RCW 42.56.520, which concern responding promptly to requests and providing reasonable time estimates to requestors for furnishing responsive records.

(5) Requires, rather than authorizes (as proposed in the underlying bill), local agencies that choose to adopt procedures to establish criteria governing prioritization.

(6) 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.

(7) Adds or modifies the following possible conditions for which, if a condition applies, a local agency must prioritize a public records request:

(a) Requests concerning an election;

(b) Requests concerning issues subject to a defined comment period;

(c) 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; and

(d) Requests submitted by news media for which the news media requestor shows that there is a particular urgency justifying an expedited response for the purpose of disseminating information in the record to the public.

(8) Adds a definition of "news media" to the 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 16-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) Authority granted to local agencies by the bill to adopt procedures that prioritize requests; (ii) 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; (iii) other strategies for resolving disputes related to public records requests; (iv) 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 (v) 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 employ neutral facilitators with expertise and other resources, as needed, for an amount not to exceed \$70,000, subject to appropriations. Makes the following appropriations from the General Fund for the fiscal year ending June 30, 2017, for the purpose of supporting the Task Force and employing a facilitator for the Task Force: (i) The sum of \$35,000 to the House of Representatives; and (ii) the sum of \$35,000 to the Senate.

(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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