

# HOUSE BILL REPORT

## ESB 6617

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**As Passed House:**  
February 23, 2018

**Title:** An act relating to records disclosure obligations of the legislative branch.

**Brief Description:** Concerning records disclosure obligations of the legislative branch.

**Sponsors:** Senators Nelson and Schoesler.

**Brief History:**

**Committee Activity:**

None.

**Floor Activity:**

Passed House: 2/23/18, 83-14.

### Brief Summary of Engrossed Bill

- Specifies that the Public Records Act (PRA) does not apply to the Legislative branch.
- Creates public disclosure requirements for the legislative and legislative branch agencies and provide certain exemptions to the disclosure requirements.
- Provides processes for making legislative public records requests and responding to such requests, and authorizes the collection of fees for completing legislative public records requests.
- Provides for review of denial of a legislative public records request by the Senate Facilities and Operations Committee or House Executive Rules Committee.

**Staff:** Travis Yonker (786-7383).

**Background:**

Public Records Act.

The Public Records Act (PRA) was enacted by initiative in 1972 and requires that all state and local government agencies make all records available for public inspection and copying.

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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.*

The PRA and other statutes exclude certain information from the PRA, provide exemptions from the public disclosure requirements, or designate certain information as confidential.

Under the PRA, agencies subject to the disclosure of public records include all state and local agencies, which includes every state office, department, division, bureau, board, commission, or other state agency. A public record includes any recording of communication or representation containing information related to conduct of government or performance of governmental function that is prepared, owned, used, or retained by state or local agencies, regardless of its physical form or characteristics.

For purposes of the Office of the Secretary of the Senate (Secretary) and the Office of the Chief Clerk of the House of Representatives (Chief Clerk), a public record specifically means "legislative records," which include correspondence, amendments, reports, and minutes of meetings made by or submitted to legislative committees or subcommittees, and transcripts or other records of hearings or supplementary written testimony or data thereof filed with committees or subcommittees in connection with the exercise of legislative or investigatory functions. In addition, the following information also qualifies as public records for purposes of the Secretary and Chief Clerk:

- budget and financial records;
- personnel leave, travel, and payroll records;
- records of legislative sessions;
- reports to the Legislature; and
- other records designated as public records by the Senate or House of Representatives.

Agencies, as well as the Secretary and the Chief Clerk, must promptly respond to public records request, and must provide the specific reasons if a request is denied. Any person denied a request for a public record may seek judicial review of the denial. Requesters also may seek judicial review if the person believes the agency has not reasonably estimated the time required to respond to a request. If a court determines that the agency impermissibly denied a request, or did not respond within a reasonable time, the court may award the person's costs and reasonable attorney's fees, as well as up to \$100 per day that the person was denied a record.

#### The Legislative Branch.

The legislative branch is composed of the Senate and the House of Representatives, as well as various other legislative agencies, including: the Statute Law Committee, the Legislative Ethics Board, the Joint Transportation Committee, the Redistricting Commission, the Joint Legislative Audit and Review Committee, the Select Committee on Pension Policy, the Joint Legislative Evaluation and Accountability Program, the Joint Legislative Systems Administrative Committee, and the Office of Legislative Support Services.

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

#### Legislative Branch Excluded from the Public Records Act.

The legislative branch, including its houses, members, employees, and agencies, are expressly excluded from the PRA. Conforming amendments are made to the PRA to reflect that exclusion.

### Legislative Public Records Act is Established.

The Legislature's duty to disclose certain records of the legislative branch, and its houses, members, employees, and agencies is established under the Legislative Public Records Act (LPRa). The Chief Clerk and the Secretary must make available for inspection and copying all legislative public records, unless the record falls within a specific exemption.

Conforming amendments are made in existing statutes clarifying that the various legislative agencies within the legislative branch are subject to the LPRa.

The Secretary serves as the public records officer for the Senate and senators, Senate committees, and Senate staff. The Chief Clerk serves as the public records officer for the House, members of the House, House committees, and House staff. The Secretary and the Chief Clerk jointly serve as the public records officers for the Senate and House collectively, joint committees, and other legislative agencies.

### Definition of Legislative Public Records.

The following categories of documents are included in the definition of "legislative public records" and subject to disclosure:

- correspondence, amendments, and minutes of meetings made by or submitted to legislative committees;
- transcripts, records of hearings, and written testimony filed with committees;
- internal accounting and financial records;
- personnel leave, travel, and payroll records;
- journals, floor amendments, and recordings of floor debate;
- bills and bill reports;
- reports submitted to the Legislature;
- final dispositions of disciplinary proceedings by the Executive Rules Committee of the House of Representatives or the Facilities and Operations Committee of the Senate;
- certain information from legislators' calendars of meetings or events related to official legislative duties that occur on July 1, 2018, or thereafter;
- legislators' correspondence on legislative business to and from persons outside the Legislature who are not constituents, if dated July 1, 2018, and thereafter; and
- any other record officially designated as a legislative public record by the Senate or the House of Representatives.

### Specific Exemptions from Disclosure.

The following records are exempt from public inspection and copying:

- records which, if disclosed, would violate an individual's right to privacy, meaning: (1) the disclosure would be highly offensive to a reasonable person, and (2) the information is not of legitimate concern to the public;
- credit card and debit card numbers, electronic check numbers, Social Security numbers, and other bank or financial information;
- information in personnel records and volunteer rosters for employees, volunteers, and their dependents, such as residential addresses, personal telephone numbers and email addresses, dates of birth, Social Security numbers, driver's license numbers;
- records prepared to prevent, mitigate, or respond to terrorist acts;
- information related to public and private infrastructure and security of computer and telecommunications networks;

- records relevant to a controversy to which a state entity is a party but would not be available to another party under pretrial discovery rules; and
- records that are subject to the speech or debate clause of the Constitution, including preliminary drafts, notes, recommendations, and internal legislative and interbranch communications expressing opinions.

#### Requesting Legislative Public Records.

The Chief Clerk and the Secretary must prominently publish procedures for requesting legislative public records on its website, and establish policies for producing, indexing, and identifying such records. A request for legislative public records must be for identifiable records. No official request format is required, although the Chief Clerk and the Secretary may recommend a particular format to requesters.

#### Responding to Requests for Legislative Public Records.

The Chief Clerk or the Secretary must initially respond to requests for legislative public records within five business days of receiving a legislative public records request by:

- providing the requested record;
- providing a link to websites maintained by legislative offices and agencies where the records may be accessed, with exception;
- acknowledging the request and providing a reasonable estimate of the time necessary to fully respond to the request, or asking the requester for clarification on the request; or
- denying the request.

If the request is denied, there must be a written statement of the specific reasons for the denial. The Chief Clerk and Secretary may deny requests for the following reasons:

- the request is a "bot request" automatically generated by a computer program or script and is one of multiple requests from the requester within a 24-hour period, if responding to the request would cause excessive interference with other essential functions of the Legislature;
- the request was made to harass or intimidate a legislator or legislative employee;
- fulfilling the request would likely threaten the safety or security of legislators, legislative employees, or their families; or
- fulfilling the request may assist criminal activity.

The Chief Clerk and the Secretary must also make facilities reasonably available to any person for the copying of legislative public records.

#### Fees.

The Chief Clerk and the Secretary may impose certain fees for providing copies of legislative public records in various formats as follows:

- 15 cents per page for photocopies, printed copies of electronic records, or for the use of legislative equipment to photocopy records;
- 10 cents per page for records scanned into an electronic format or for the use of legislative equipment to scan the records;
- 5 cents per each four electronic files or attachments uploaded to an electronic delivery system;
- the actual cost of any digital storage media or devices provided to the requester; and

- a fee, according to a schedule adopted by the Chief Clerk and Secretary, for printed or electronic photos.

The Chief Clerk and Secretary may also waive or reduce fees.

Review of Denial of Request for Legislative Public Records.

If a request for legislative public records is denied, the requester may request review of that denial within one month. The requester may request review by the Facilities and Operations Committee of the Senate for requests denied by the Secretary. The requester may request review by the Executive Rules Committee for requests denied by the Chief Clerk. The requester may request review by the Executive Rules Committee and the Facilities and Operations Committee for requests denied jointly by the Secretary and the Chief Clerk.

The Executive Rules Committee and the Facilities and Operations Committee must meet at least quarterly to render decisions on review of denials. The decision of the reviewing committee is final, and not subject to further review in any venue.

Retroactivity.

The bill is curative, remedial, and retroactive and applies to all records requests and lawsuits under the PRA as of the effective date of the act.

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**Appropriation:** None.

**Fiscal Note:** Requested on February 23, 2018.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.