

# SENATE BILL REPORT

## ESB 6617

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As Passed Senate, 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:**

**Floor Activity:**

Passed Senate: 2/23/18, 41-7.

### Brief Summary of Engrossed Bill

- Specifies that the Public Records Act (PRA) does not apply to the Legislature, its houses, members, employees, and agencies.
- Clarifies legislative records disclosure duties.
- Defines legislative public records.
- Provides exemptions to the requirement that legislative public records be subject to public disclosure and copying.
- Provides processes for responding to legislative public records requests.
- Authorizes the collection of fees for fulfilling 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, whose decisions are final and not subject to review in any venue.

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**Background:** The PRA. The PRA, enacted in 1972 as part of Initiative 276, requires that all state and local government agencies make all public records available for public inspection

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and copying unless certain statutory exemptions apply. Over 500 specific references in the PRA or other statutes remove certain information from application of the PRA, provide exceptions to the public disclosure and copying of certain information, or designate certain information as confidential. The provisions requiring public records disclosure must be interpreted liberally while the exemptions are interpreted narrowly to effectuate the general policy favoring disclosure.

PRA Definitions. For purposes of the PRA, agency means all state and local agencies, which includes every state office, department, division, bureau, board, commission, or other state agency. In January 2018, the Thurston County Superior Court held, on a case pending appeal, that the offices of individual state legislators are state offices, and thus agencies, for the purposes of PRA interpretation, subject to the PRA's disclosure requirements. The court also held that the Legislature itself and its chambers, administered by the Secretary of the Senate (Secretary) and the Chief Clerk of the House (Chief Clerk), were not agencies under the PRA.

In 1995, for materials in the possession of the Secretary and the Chief Clerk, public records were defined to mean legislative records and:

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

Legislative Agencies. In addition to the two legislative chambers, there are a number of legislative agencies providing various functions under legislative oversight: 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 Engrossed Bill:** Application of the PRA to the Legislature. The PRA does not apply to the state Legislature, its houses, members, employees, and agencies. The Legislature's records disclosure duties are established in a new chapter in the Revised Code of Washington. Conforming amendments are made to the PRA to reflect these changes.

Legislative Public Records Disclosure Duty. The Secretary and the Chief Clerk are designated as the public records officers for each respective chamber, and are jointly the public records officers for joint committees and all legislative agencies. All legislative public records must be made available for public inspection and copying unless an exemption applies. The Secretary and Chief Clerk must publish procedures for requesting legislative public records prominently on legislative websites, including contact information for the Secretary and Chief Clerk.

The Secretary and Chief Clerk must establish procedures to retain and preserve legislative public records consistent with their archiving duties.

Legislative Public Records Subject to Disclosure. The following items are defined as legislative public records:

- committee meeting documents, such as correspondence, amendments, and minutes;
- transcripts, records of hearings, written testimony, and other documents filed with committees;
- internal accounting and financial records;
- leave, travel, and payroll records;
- bills and bill reports;
- reports submitted to the Legislature;
- final dispositions of disciplinary proceedings;
- information from legislators' calendars of meetings or events related to official legislative duties, if created after July 1, 2018;
- correspondence on legislative business to and from non-legislative employees who are not constituents, if created after July 1, 2018; and
- any other record officially designated as such.

Exemptions From Disclosure Requirements. The following types of legislative public records are exempt from the requirement to be made available for public inspection and copying:

- records which, if disclosed, would violate an individual's right to privacy;
- financial information such as credit or debit card numbers, check numbers, and Social Security numbers;
- personally identifying information in personnel or employment records for employees, volunteers, and their dependents;
- records prepared to prevent, mitigate, or respond to terrorist acts;
- information regarding computer and telecommunication network infrastructure and security;
- records relevant to a controversy to which a state entity is a party which would not be subject to pretrial discovery; and
- records subject to the speech and debate clause of the state Constitution, including preliminary drafts, records pertaining to the deliberative process, and records in which policies are formulated.

Responding to Records Requests. Requests must be for identifiable records. A request for all or substantially all records of the legislature, its houses, members, employees, or agencies, is not a valid request. Legislative public records officers must, within five day of receiving a legislative public records request, respond in one of five ways:

- by providing the requested records;
- by providing a link to an address on a legislative website where the records may be accessed;
- by acknowledging receipt of the request and providing a reasonable estimate of the time needed to respond;
- by acknowledging receipt of the request and seeking clarification if the request is unclear; or
- by denying the request.

Requests must be responded to promptly, considering time, resources, and staff constraints of legislative sessions and a part-time citizen legislature. The legislative public records officers

may not seek information about the purpose of a request except to determine whether the request is for commercial purposes.

Requests may be denied if made to intimidate or harass a legislator or employee, fulfillment would threaten legislative, member, employee, or family member security or safety, or fulfillment may assist criminal activity. A legislative public records officer may deny multiple automatically generated (bot) requests that come from the same source within a 24-hour period if the requests cause excessive interference with the other essential functions of the Legislature. Denials must be accompanied by a statement of the reason for the denial.

Fees. The Legislature may charge the following fees for copies of records, and may waive or reduce fees pursuant to consistently applied policy:

- 15 cents per page for photocopies or printed copies of electronic records;
- 10 cents per page scanned into an electronic format;
- 5 cents for every 4 electronic attachments uploaded to an electronic delivery system;
- the actual costs of any digital storage media or devices provided to the requester; and
- a fee, according to a schedule, for printed or electronic photos.

Review of Denial of Records. A person whose request was denied may seek review of the denial within one month. Denials by the Secretary may be reviewed by the Senate Facilities and Operations Committee, while denials by the Chief Clerk may be reviewed by the House Executive Rules Committee. A request denied jointly by the Secretary and Chief Clerk may be reviewed by both committees. The review is final, and not subject to appeal in any venue. Both committees must meet at least quarterly to issue decisions.

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

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

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