
ENGROSSED SUBSTITUTE HOUSE BILL 1594

State of Washington

65th Legislature

2017 Regular Session

By House Appropriations (originally sponsored by Representatives McBride, Nealey, Springer, Clibborn, Hayes, Gregerson, Peterson, Koster, Griffey, Klippert, Kilduff, Muri, Senn, Goodman, Haler, Robinson, Sells, Steele, Fitzgibbon, Fey, Kraft, Bergquist, Smith, Tharinger, Stanford, Kloba, Jinkins, Hargrove, Slatter, and Kagi)

READ FIRST TIME 02/24/17.

1 AN ACT Relating to improving public records administration;
2 amending RCW 42.56.152, 42.56.520, 42.56.570, 40.14.024, and
3 36.22.175; adding a new section to chapter 40.14 RCW; creating new
4 sections; making an appropriation; and providing expiration dates.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 42.56.152 and 2014 c 66 s 4 are each amended to read
7 as follows:

8 (1) Public records officers designated under RCW 42.56.580 and
9 records officers designated under RCW 40.14.040 must complete a
10 training course regarding the provisions of this chapter, and also
11 chapter 40.14 RCW for records retention.

12 (2) Public records officers must:

13 (a) Complete training no later than ninety days after assuming
14 responsibilities as a public records officer or records manager; and

15 (b) Complete refresher training at intervals of no more than four
16 years as long as they maintain the designation.

17 (3) Training must be consistent with the attorney general's model
18 rules for compliance with the public records act.

19 (4) Training may be completed remotely with technology including
20 but not limited to internet-based training.

1 (5) Training must address particular issues related to the
2 retention, production, and disclosure of electronic documents,
3 including updating and improving technology information services.

4 **Sec. 2.** RCW 42.56.520 and 2010 c 69 s 2 are each amended to read
5 as follows:

6 (1) Responses to requests for public records shall be made
7 promptly by agencies, the office of the secretary of the senate, and
8 the office of the chief clerk of the house of representatives. Within
9 five business days of receiving a public record request, an agency,
10 the office of the secretary of the senate, or the office of the chief
11 clerk of the house of representatives must respond ((by either)) in
12 one of the ways provided in this subsection (1):

13 (a) Providing the record;

14 ~~((+2))~~ (b) Providing an internet address and link on the
15 agency's web site to the specific records requested, except that if
16 the requester notifies the agency that he or she cannot access the
17 records through the internet, then the agency must provide copies of
18 the record or allow the requester to view copies using an agency
19 computer;

20 ~~((+3))~~ (c) Acknowledging that the agency, the office of the
21 secretary of the senate, or the office of the chief clerk of the
22 house of representatives has received the request and providing a
23 reasonable estimate of the time the agency, the office of the
24 secretary of the senate, or the office of the chief clerk of the
25 house of representatives will require to respond to the request;

26 (d) Acknowledging that the agency, the office of the secretary of
27 the senate, or the office of the chief clerk of the house of
28 representatives has received the request and asking the requestor to
29 provide clarification for a request that is unclear, and providing,
30 to the greatest extent possible, a reasonable estimate of the time
31 the agency, the office of the secretary of the senate, or the office
32 of the chief clerk of the house of representatives will require to
33 respond to the request if it is not clarified; or

34 ~~((+4))~~ (e) Denying the public record request.

35 (2) Additional time required to respond to a request may be based
36 upon the need to clarify the intent of the request, to locate and
37 assemble the information requested, to notify third persons or
38 agencies affected by the request, or to determine whether any of the

1 information requested is exempt and that a denial should be made as
2 to all or part of the request.

3 (3)(a) In acknowledging receipt of a public record request that
4 is unclear, an agency, the office of the secretary of the senate, or
5 the office of the chief clerk of the house of representatives may ask
6 the requestor to clarify what information the requestor is seeking.

7 (b) If the requestor fails to respond to an agency request to
8 clarify the request, and the entire request is unclear, the agency,
9 the office of the secretary of the senate, or the office of the chief
10 clerk of the house of representatives need not respond to it.
11 Otherwise, the agency must respond, pursuant to this section, to
12 those portions of the request that are clear.

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

23 **Sec. 3.** RCW 42.56.570 and 2007 c 197 s 8 are each amended to
24 read as follows:

25 (1) The attorney general's office shall publish, and update when
26 appropriate, a pamphlet, written in plain language, explaining this
27 chapter.

28 (2) The attorney general, by February 1, 2006, shall adopt by
29 rule (~~an~~) advisory model rules for state and local agencies, as
30 defined in RCW 42.56.010, addressing the following subjects:

31 (a) Providing fullest assistance to requestors;

32 (b) Fulfilling large requests in the most efficient manner;

33 (c) Fulfilling requests for electronic records; and

34 (d) Any other issues pertaining to public disclosure as
35 determined by the attorney general.

36 (3) The attorney general, in his or her discretion, may from time
37 to time revise the model rule.

1 (4) Local agencies should consult the advisory model rules when
2 establishing local ordinances for compliance with the requirements
3 and responsibilities of this chapter.

4 (5) Until June 30, 2020, the attorney general must establish a
5 consultation program to provide information for developing best
6 practices for local agencies requesting assistance in compliance with
7 this chapter including, but not limited to: Responding to records
8 requests, seeking additional public and private resources for
9 developing and updating technology information services, and
10 mitigating liability and costs of compliance. The attorney general
11 may develop the program in conjunction with the advisory model rule
12 and may collaborate with the chief information officer, the state
13 archivist, and other relevant agencies and organizations in
14 developing and managing the program. The program in this subsection
15 ceases to exist June 30, 2020.

16 (6) Until June 30, 2020, the state archivist must offer and
17 provide consultation and training services for local agencies on
18 improving record retention practices.

19 **Sec. 4.** RCW 40.14.024 and 2008 c 328 s 6005 are each amended to
20 read as follows:

21 The local government archives account is created in the state
22 treasury. All receipts collected by the county auditors under RCW
23 40.14.027 and 36.22.175 for local government services, such as
24 providing records (~~scheduling~~) schedule compliance, security
25 microfilm inspection and storage, archival preservation, cataloging,
26 and indexing for local government records and digital data and access
27 to those records and data through the regional branch archives of the
28 division of archives and records management, must be deposited into
29 the account, and expenditures from the account may be used only for
30 these purposes. (~~During the 2007-2009 biennium, the legislature may~~
31 ~~transfer from the local government archives account to the Washington~~
32 ~~state heritage center account such amounts as reflect the excess fund~~
33 ~~balance in the account.)) Any amounts deposited in the account in
34 accordance with RCW 36.22.175(4) may only be expended for the
35 purposes authorized under that provision as follows: No more than
36 fifty percent of funding may be used for the attorney general's
37 consultation program and the state archivist's training services, and
38 the remainder is to be used for the competitive grant program.~~

1 NEW SECTION. **Sec. 5.** A new section is added to chapter 40.14
2 RCW to read as follows:

3 (1) The division of archives and records management in the office
4 of the secretary of state must establish and administer a competitive
5 grant program for local agencies to improve technology information
6 systems for public record retention, management, and disclosure, and
7 any related training. The division of archives and records management
8 may use up to six percent of amounts appropriated for the program for
9 administration of the grant program.

10 (2) Any local agency may apply to the grant program. The division
11 of archives and records management in the office of the secretary of
12 state must award grants annually. The division of archives and
13 records management must consult with the chief information officer to
14 develop the criteria for grant recipient selection with a preference
15 given to small local governmental agencies based on the applicant
16 agency's need and ability to improve its information technology
17 systems for public record retention, management, and disclosure. The
18 division of archives and records management may award grants for
19 specific hardware, software, equipment, technology services
20 management and training needs, indexing for local records and digital
21 data, and other resources for improving information technology
22 systems. To the extent possible, information technology systems,
23 processes, training, and other resources for improving information
24 technology systems for records retention and distribution may be
25 replicated and shared with other governmental entities. Grants are
26 provided for one-time investments and are not an ongoing source of
27 revenue for operation or management costs. A grantee may not supplant
28 local funding with grant funding provided by the office of the
29 secretary of state.

30 **Sec. 6.** RCW 36.22.175 and 2011 1st sp.s. c 50 s 931 are each
31 amended to read as follows:

32 (1)(a) In addition to any other charge authorized by law, the
33 county auditor shall charge a surcharge of one dollar per instrument
34 for each document recorded. Revenue generated through this surcharge
35 shall be transmitted monthly to the state treasurer for deposit in
36 the local government archives account under RCW 40.14.024. These
37 funds shall be used solely for providing records (~~scheduling~~)
38 schedule compliance, security microfilm inspection and storage,
39 archival preservation, cataloging, and indexing for local government

1 records and digital data and access to those records and data through
2 the regional branch archives of the division of archives and records
3 management.

4 (b) The division of archives and records management within the
5 office of the secretary of state shall provide records management
6 training for local governments and shall establish a competitive
7 grant program to solicit and prioritize project proposals from local
8 governments for potential funding to be paid for by funds from the
9 auditor surcharge and tax warrant surcharge revenues. Application for
10 specific projects may be made by local government agencies only. The
11 state archivist in consultation with the advisory committee
12 established under RCW 40.14.027 shall adopt rules governing project
13 eligibility, evaluation, awarding of grants, and other criteria
14 including requirements for records management training for grant
15 recipients.

16 (2) The advisory committee established under RCW 40.14.027 shall
17 review grant proposals and establish a prioritized list of projects
18 to be considered for funding by January 1st of each even-numbered
19 year, beginning in 2002. The evaluation of proposals and development
20 of the prioritized list must be developed through open public
21 meetings. Funding for projects shall be granted according to the
22 ranking of each application on the prioritized list and projects will
23 be funded only to the extent that funds are available. A grant award
24 may have an effective date other than the date the project is placed
25 on the prioritized list.

26 (3)(a) In addition to any other surcharge authorized by law, the
27 county auditor shall charge a surcharge of one dollar per instrument
28 for every document recorded after January 1, 2002. Revenue generated
29 through this surcharge shall be transmitted to the state treasurer
30 monthly for deposit in the local government archives account under
31 RCW 40.14.024 to be used exclusively for: (i) The construction and
32 improvement of a specialized regional facility located in eastern
33 Washington designed to serve the archives, records management, and
34 digital data management needs of local government; and (ii) payment
35 of the certificate of participation issued for the Washington state
36 heritage center to the extent there is an excess fund balance in the
37 account and fees generated under RCW 36.18.010 and 43.07.128 are
38 insufficient to meet debt service payments on the certificate of
39 participation.

1 (b) To the extent the facilities are used for the storage and
2 retrieval of state agency records and digital data, that portion of
3 the construction of such facilities used for state government records
4 and data shall be supported by other charges and fees paid by state
5 agencies and shall not be supported by the surcharge authorized in
6 this subsection, except that to the extent there is an excess fund
7 balance in the account and fees generated under RCW 36.18.010 and
8 43.07.128 are insufficient to meet debt service payments for the
9 Washington state heritage center, the local government archives
10 account under RCW 40.14.024 may be used for the Washington state
11 heritage center.

12 (c) At such time that all debt service from construction of the
13 specialized regional archive facility located in eastern Washington
14 has been paid, fifty percent of the surcharge authorized by this
15 subsection shall be reverted to the centennial document preservation
16 and modernization account as prescribed in RCW 36.22.170 and fifty
17 percent of the surcharge authorized by this section shall be reverted
18 to the state treasurer for deposit in the public records efficiency,
19 preservation, and access account to serve the archives, records
20 management, and digital data management needs of local government,
21 except that the state treasurer shall not revert funds to the
22 centennial document preservation and modernization account and to the
23 public records efficiency, preservation, and access account if fees
24 generated under RCW 36.18.010 and 43.07.128 are insufficient to meet
25 debt service payments on the Washington state heritage center.

26 (4) In addition to any other surcharge authorized by law, the
27 county auditor shall charge a surcharge of one dollar per instrument
28 for every document recorded. Revenue generated through this surcharge
29 shall be transmitted to the state treasurer monthly for deposit in
30 the local government archives account under RCW 40.14.024 to be used
31 exclusively for the competitive grant program in section 5 of this
32 act, and for the attorney general's consultation program and state
33 archivist's training services authorized in RCW 42.56.570.

34 NEW SECTION. **Sec. 7.** (1) The division of archives and records
35 management in the office of the secretary of state must conduct a
36 study to assess the feasibility of implementing a statewide open
37 records portal through which a user can request and receive a
38 response through a single internet web site relating to public
39 records information.

1 (2) The division of archives and records management must hire a
2 consultant to conduct the study.

3 (3) At a minimum, the report must include:

4 (a) The feasibility of Washington creating a central site from
5 which a user can submit a records request and receive a timely
6 response to such request;

7 (b) An examination of the experience in other states, including
8 but not limited to the state of Utah, that have implemented an
9 electronic open records portal;

10 (c) Whether the open records portals in other states serve as
11 central repositories and archives for the purpose of all public
12 records on behalf of local and state agencies;

13 (d) Whether other states' open records portals track and provide
14 a timeline where each request is being responded to in the process;

15 (e) The cost of creating the open records portal in other states
16 and the amount of funds local and state agencies or any other
17 entities contributed to the start-up and ongoing costs to operate the
18 open records portal;

19 (f) The length of time it took for other states to develop an
20 open records portal from its initial start-up to its current full
21 operation;

22 (g) The length of time it would take for Washington to develop
23 and implement an open records portal from start-up to full operation
24 that is similar to the portals located in other states;

25 (h) The length of time it would take for Washington to develop
26 and implement an open records portal from start-up to full operation
27 that would include: (i) The portal collecting, archiving, and holding
28 all public records from local and state governmental agencies in
29 Washington; (ii) the portal being capable of allowing users to submit
30 a public records request through a central site; and (iii) the
31 records portal operating as a central site for answering and
32 providing requested public records to a user;

33 (i) The estimated cost to develop and implement an open records
34 portal that is: (i) Similar to the open records portals located in
35 other states referenced and reviewed in (g) of this subsection; and
36 (ii) a full open records portal pursuant to (h) of this subsection.
37 In both instances, the costs must include costs associated with local
38 and state governmental agencies in Washington participating in the
39 portal and any needed supporting infrastructure, staffing, and
40 training requirements;

1 (j) How much is charged and how fees are collected from a user
2 requesting a public record through other states' open records
3 portals;

4 (k) The feasibility of whether an open records portal created in
5 Washington would be able to track all public records requests, when
6 such requests for public records are made through the open records
7 portal, and provide a timeline where each request is being responded
8 to in the process;

9 (l) The feasibility of whether an open records portal created in
10 Washington would be able to directly respond to answering a user's
11 public records request and, if not, the feasibility of the portal
12 tracking when a local or state agency responds to such a request and
13 providing a timeline where each request is being responded to in the
14 process;

15 (m) The feasibility of creating an open records portal in
16 Washington that notifies a requestor that the request has been
17 received and either immediately provides the requestor with a copy of
18 the requested record, notifies the requestor that the record is not
19 available, or notifies the requestor that because of the
20 extraordinary request the record will be available on a date certain;

21 (n) The feasibility of creating an open records portal through
22 which a requestor can make a request and receive a response through a
23 single internet web site relating to public records information, and
24 the feasibility of agencies managing internet web sites to make
25 public access easier and reduce the number of requests related to the
26 same topic through best practices by offering to post different
27 categories of requested records on the web site in a manner that is
28 responsive to records requests; and

29 (o) The allocation of liability between the agency operating an
30 open records portal and any agency that provides records through the
31 portal or accepts requests for public records through the portal in
32 the event of litigation regarding denial of access to records or
33 unreasonable estimate of time to produce records in response to a
34 request.

35 (4) A report must be completed with findings and recommendations
36 on the experience of the electronic open records portal created in
37 other states and the feasibility of creating a central statewide open
38 records portal in Washington, as well as recommendations and best
39 management practices for agencies to post records that are responsive
40 to records requests on an agency internet web site and take into

1 consideration various categories of records and agency capacities in
2 order to provide broader public access to records of public interest
3 and to reduce the number of requests relating to the same topic. The
4 report must be submitted to the governor, the appropriate committees
5 of the legislature, and members of the stakeholder group in section 8
6 of this act, by September 1, 2018.

7 (5) This section expires December 31, 2018.

8 NEW SECTION. **Sec. 8.** (1) The division of archives and records
9 management in the office of the secretary of state must convene a
10 stakeholder group by September 1, 2017, to develop the initial scope
11 and direction of the study in section 7 of this act.

12 (2) The stakeholder group must include seven members as provided
13 in this subsection.

14 (a) The president of the senate shall appoint one member from
15 each of the two largest caucuses of the senate.

16 (b) The speaker of the house of representatives shall appoint one
17 member from each of the two largest caucuses of the house of
18 representatives.

19 (c) The president of the senate and the speaker of the house of
20 representatives, in consultation with the division of archives and
21 records management, jointly shall appoint the remaining three
22 members. The remaining three members must be representatives of the
23 community who have experience in the retention and disclosure of
24 public records.

25 (3) This section expires September 30, 2018.

26 NEW SECTION. **Sec. 9.** (1) The joint legislative audit and review
27 committee must conduct a review of the attorney general's
28 consultation program and the state archivist's training services
29 created under section 3, chapter . . ., Laws of 2017 (section 3 of
30 this act), and the local government competitive grant program created
31 under section 5 of this act. The review must include:

32 (a)(i) Information on the number of local governments served, the
33 types of consultation and training provided, and the implementation
34 of any practices adopted from the attorney general's consultation
35 program and the state archivist's training services; and

36 (ii) The effectiveness of the consultation program and the
37 training services in providing assistance for local governments; and

1 (b)(i) Information on the number of local governments that
2 applied for and participated in the competitive grant program under
3 section 5 of this act, the amount of funding awarded through the
4 grant program, and how such funding was used; and

5 (ii) The effectiveness of the grant program in improving local
6 government technology information systems for public records
7 retention, management, disclosure, and training.

8 (2) By December 1, 2019, the joint legislative audit and review
9 committee must report to the legislature on its findings from the
10 review, including recommendations on whether the competitive grant
11 program, the attorney general's consultation program, and the state
12 archivist's training services should continue or be allowed to
13 expire.

14 NEW SECTION. **Sec. 10.** Sections 5 and 6 of this act expire June
15 30, 2020.

16 NEW SECTION. **Sec. 11.** The sum of twenty-five thousand dollars,
17 or as much thereof as may be necessary, is appropriated for the
18 fiscal biennium ending June 30, 2019, from the general fund to the
19 secretary of state solely for purposes of section 7 of this act.

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