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HOUSE BILL 1594

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State of Washington

65th Legislature

2017 Regular Session

**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, Jenkins, Hargrove, Slatter, and Kagi

Read first time 01/25/17. Referred to Committee on State Government.

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; or

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

31       (2) Additional time required to respond to a request may be based  
32 upon the need to clarify the intent of the request, to locate and  
33 assemble the information requested, to notify third persons or  
34 agencies affected by the request, or to determine whether any of the  
35 information requested is exempt and that a denial should be made as  
36 to all or part of the request.

37       (3)(a) In acknowledging receipt of a public record request that  
38 is unclear, an agency, the office of the secretary of the senate, or

1 the office of the chief clerk of the house of representatives may ask  
2 the requestor to clarify what information the requestor is seeking.

3 (b) If the requestor responds but the request remains unclear, or  
4 if the requestor and the agency disagree on what may be disclosed,  
5 the agency, within five business days of receiving the requestor's  
6 response, must offer to participate with the requestor in mediation  
7 conducted in accordance with the provisions of the uniform mediation  
8 act, chapter 7.07 RCW. If the requestor refuses to participate in an  
9 offered mediation, a court may consider the fact of such refusal in  
10 determining whether the agency has satisfied its burden of proof  
11 regarding its response to a records request in any related judicial  
12 review proceedings under RCW 42.56.550.

13 (c) If the requestor fails to clarify the request, the agency,  
14 the office of the secretary of the senate, or the office of the chief  
15 clerk of the house of representatives need not respond to it.

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

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

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

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

34 (a) Providing fullest assistance to requestors;

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

36 (c) Fulfilling requests for electronic records; and

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

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

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

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

16 (6) The state archivist must offer and provide consultation and  
17 training services for local agencies on improving record retention  
18 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.)) In accordance with RCW 36.22.175(4), any  
34 amounts deposited in the account for purposes of the local government  
35 grant program in section 5 of this act may only be expended for that  
36 purpose.~~

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

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

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

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

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

1 the regional branch archives of the division of archives and records  
2 management.

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

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

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

39 (b) To the extent the facilities are used for the storage and  
40 retrieval of state agency records and digital data, that portion of

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

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

24 (4) In addition to any other surcharge authorized by law, the  
25 county auditor shall charge a surcharge of one dollar per instrument  
26 for every document recorded. Revenue generated through this surcharge  
27 shall be transmitted to the state treasurer monthly for deposit in  
28 the local government archives account under RCW 40.14.024 to be used  
29 exclusively for the competitive grant program for local agencies to  
30 improve technology information systems for public record retention,  
31 management, and disclosure, and any related training, as authorized  
32 in section 5 of this act.

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

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 (4) A report must be completed with findings and recommendations  
22 on the experience of the electronic open records portal created in  
23 other states and the feasibility of creating a central statewide open  
24 records portal in Washington. The report must be submitted to the  
25 governor, the appropriate committees of the legislature, and members  
26 of the stakeholder group in section 8 of this act, by September 1,  
27 2018.

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

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

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

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

37 (b) The speaker of the house of representatives shall appoint one  
38 member from each of the two largest caucuses of the house of  
39 representatives.

1           (c) The president of the senate and the speaker of the house of  
2 representatives, in consultation with the division of archives and  
3 records management, jointly shall appoint the remaining three  
4 members. The remaining three members must be representatives of the  
5 community who have experience in the collection and distribution of  
6 governmental public records.

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

8           NEW SECTION.   **Sec. 9.** The sum of twenty-five thousand dollars,  
9 or as much thereof as may be necessary, is appropriated for the  
10 fiscal biennium ending June 30, 2019, from the general fund to the  
11 secretary of state solely for purposes of section 7 of this act.

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