

CERTIFICATION OF ENROLLMENT

ENGROSSED SENATE BILL 6617

65th Legislature
2018 Regular Session

Passed by the Senate February 23, 2018
Yeas 41 Nays 7

President Pro Tempore of the Senate

Passed by the House February 23, 2018
Yeas 83 Nays 14

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SENATE BILL 6617** as passed by Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SENATE BILL 6617

Passed Legislature - 2018 Regular Session

State of Washington

65th Legislature

2018 Regular Session

By Senators Nelson and Schoesler

1 AN ACT Relating to records disclosure obligations of the
2 legislative branch; amending RCW 42.56.010, 42.56.070, 42.56.090,
3 42.56.100, 42.56.120, and 42.56.520; adding a new section to chapter
4 1.08 RCW; adding a new section to chapter 42.52 RCW; adding a new
5 section to chapter 44.04 RCW; adding a new section to chapter 44.05
6 RCW; adding a new section to chapter 44.28 RCW; adding a new section
7 to chapter 44.44 RCW; adding a new section to chapter 44.48 RCW;
8 adding a new section to chapter 44.68 RCW; adding a new section to
9 chapter 44.80 RCW; adding a new section to chapter 42.56 RCW; adding
10 a new chapter to Title 44 RCW; creating a new section; repealing RCW
11 42.56.560; and declaring an emergency.

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

13 NEW SECTION. **Sec. 1.** The legislature intends to clarify that
14 the legislature, like the judiciary, is a branch of government rather
15 than an "agency" of the state as that term is used in chapter 42.56
16 RCW, the public records act, and that the legislature is subject to
17 separate disclosure requirements arising from its representative
18 duties.

19 Beginning in 1986, the supreme court of Washington has ruled that
20 the public records act did not apply to the judicial branch, because
21 the judiciary is a branch, not an agency, because there is a common

1 law right of access to court records, and because the public records
2 act did not specifically include courts or court files. The state
3 supreme court has since adopted comprehensive rules to provide public
4 access to case records and administrative records of the judicial
5 branch.

6 Similarly, the state Constitution requires the legislative houses
7 to maintain journals, and to publish those journals, except such
8 parts as require secrecy. During the essential legislative acts of
9 floor deliberation and voting, the state Constitution requires the
10 doors of the chambers to remain open, except where the public welfare
11 requires secrecy. The presiding officers must sign legislation in
12 open session. The state Constitution further requires the secretary
13 of state to maintain records of official acts of the legislature. In
14 addition, the state Constitution directs the legislative houses to
15 adopt rules to govern their own proceedings.

16 To protect the independence of legislative deliberations against
17 interference by the other branches, the state Constitution provides
18 that legislators are immune from civil process during the legislative
19 session, and they are likewise immune from any civil or criminal
20 liability for words spoken in debate. As John Adams explained in the
21 Massachusetts state Constitution of 1780, "The freedom of
22 deliberation, speech and debate, in either house of the legislature,
23 is so essential to the rights of the people, that it cannot be the
24 foundation of any accusation or prosecution, action or complaint, in
25 any other court or place whatsoever." Correspondingly, the state
26 Constitution also protects the right of the people to petition and
27 communicate with their elected representatives.

28 For these reasons, the legislature intends to establish records
29 disclosure obligations that preserve the independent deliberation of
30 the people's representatives while providing access to legislative
31 public records. The legislative records disclosure obligations in
32 this act establish continued public access to specified records of
33 the legislature as originally codified in the public records act in
34 1995, as well as additional records as provided in this act.

35 **PART I**

36 **LEGISLATIVE RECORDS DISCLOSURE OBLIGATIONS ESTABLISHED IN NEW CHAPTER**

37 NEW SECTION. **Sec. 101.** TITLE. This chapter may be known and
38 cited as the legislative public records act.

1 NEW SECTION. **Sec. 102.** RECORDS DISCLOSURE OBLIGATIONS OF THE
2 LEGISLATIVE BRANCH. (1) This chapter governs the public records
3 disclosure obligations of the legislative branch, and its houses,
4 members, employees, and agencies. Chapter 42.56 RCW does not apply to
5 the legislative branch and its houses, members, employees, and
6 agencies.

7 (2) The secretary and the chief clerk must make legislative
8 public records available for public inspection and copying as
9 required by this chapter.

10 (3) The secretary, or his or her designee, is the public records
11 officer for the senate and senators, senate committees, and senate
12 staff. The chief clerk, or his or her designee, is the public records
13 officer for the house, members of the house, house committees, and
14 house staff. The secretary and the chief clerk, or their respective
15 designees, are jointly the public records officers for the senate and
16 the house of representatives collectively, for joint committees, and
17 for legislative agencies other than the senate and the house of
18 representatives.

19 (4) Nothing in this chapter prohibits any legislator from
20 permitting public inspection or copying of any record in his or her
21 possession, subject to section 112 of this act.

22 NEW SECTION. **Sec. 103.** DEFINITIONS. The definitions in this
23 section apply throughout this chapter unless the context clearly
24 requires otherwise.

25 (1) "Chief clerk" means the chief clerk of the house of
26 representatives elected by the members of the house pursuant to
27 Article II, section 10 of the state Constitution, and his or her
28 office.

29 (2) "Committee" means a committee or subcommittee as defined in
30 legislative rule and joint and joint select legislative committees
31 established in statute or resolution.

32 (3) "Constituent" means individuals who are not: Lobbyists
33 required to register under chapter 42.17A RCW; lobbyist's employers
34 as defined in chapter 42.17A RCW; sponsors of a grassroots lobbying
35 campaign under RCW 42.17A.640; public employees who lobby under RCW
36 42.17A.635; elected officials; or individuals who are acting on
37 behalf of such persons.

38 (4) "Executive rules committee" means the executive rules
39 committee of the house of representatives, or its successor committee

1 as designated in legislative rule or resolution to administer
2 operational policies, procedures, and oversight of the house of
3 representatives.

4 (5) "Facilities and operations committee" means the facilities
5 and operations committee of the senate, or its successor committee
6 designated in legislative rule or resolution to administer
7 operational policies, procedures, and oversight of the senate.

8 (6) "Legislative agency" means the joint legislative audit and
9 review committee, the joint legislative transportation committee, the
10 legislative evaluation and accountability program committee, the
11 office of legislative support services, the joint legislative systems
12 committee, the statute law committee, the office of the code reviser,
13 the office of the state actuary, the redistricting commission, the
14 legislative ethics board, and any other agency created in the
15 legislative branch.

16 (7) "Legislative public records" means the following records
17 related to legislative business, regardless of physical form:

18 (a) Correspondence, amendments, reports, and minutes of meetings,
19 made by or submitted to legislative committees or subcommittees;

20 (b) Transcripts, other records of hearings, or supplementary
21 written testimony or data thereof filed with committees or
22 subcommittees in connection with the exercise of legislative or
23 investigatory functions;

24 (c) Internal accounting and financial records, such as records of
25 payments in lieu of per diem or reimbursement of member expenses;

26 (d) Personnel leave, travel, and payroll records;

27 (e) Records of legislative sessions such as journals, floor
28 amendments and recordings of floor debate;

29 (f) Bills and bill reports;

30 (g) Reports submitted to the legislature;

31 (h) Final dispositions of disciplinary proceedings by the
32 facilities and operations or executive rules committees;

33 (i) Legislators' calendar notations of dates, events, and names
34 of individuals or organizations, for meetings or events that are
35 related to official legislative duties and that occur July 1, 2018,
36 and thereafter;

37 (j) Legislators' correspondence dated July 1, 2018, and
38 thereafter on legislative business to and from persons outside the
39 legislature who are not constituents; and

1 (k) Any other record designated a legislative public record by
2 any official action of the senate or the house of representatives.

3 (8) "Legislative rule" means rules adopted jointly or
4 respectively by the houses of the legislature pursuant to Article II,
5 section 9 of the state Constitution.

6 (9) "Secretary" means the secretary of the senate elected
7 pursuant to Article II, section 10 of the state Constitution, and his
8 or her office.

9 NEW SECTION. **Sec. 104.** GENERAL DISCLOSURE DUTIES. (1) The chief
10 clerk and the secretary must make available for public inspection and
11 copying all legislative public records, unless the record falls
12 within the specific exemptions of this chapter or other statute that
13 exempts or prohibits disclosure of specific information or records.

14 (2) The chief clerk and the secretary must prominently publish
15 procedures for requesting legislative public records. The chief clerk
16 and secretary must publish these procedures on web sites maintained
17 for legislative offices and agencies. The information published must
18 include the appropriate public records officer's physical mailing
19 address, telephone number, and email address.

20 (3) The chief clerk and the secretary may establish policies for
21 producing, indexing, and identifying legislative public records.

22 (4) This chapter does not give authority to the secretary or the
23 chief clerk to give, sell, or provide access to lists of individuals
24 requested for commercial purposes, and the secretary and chief clerk
25 shall not do so unless specifically authorized or directed by law.

26 NEW SECTION. **Sec. 105.** DISCLOSURE EXEMPTIONS. The following are
27 exempt from public inspection and copying under this chapter:

28 (1)(a) Records the disclosure of which would violate a person's
29 right of privacy including, but not limited to, personal information
30 in files maintained for employees, appointees, or legislators.

31 (b) For purposes of this chapter, a person's right to privacy is
32 invaded if disclosure of information about the person: (i) Would be
33 highly offensive to a reasonable person and (ii) is not of legitimate
34 concern to the public. The provisions of this chapter dealing with
35 privacy in certain legislative public records do not create any right
36 of privacy beyond those rights that are specified in this chapter as
37 express exemptions from the public's right to inspect, examine, or
38 copy public records.

1 (c) To the extent required to prevent disclosure of information
2 that would invade the right of privacy under this subsection, the
3 chief clerk and the secretary may delete identifying details when
4 they make available or publish any legislative public record.

5 (2) Credit card numbers, debit card numbers, electronic check
6 numbers, card expiration dates, or bank or other financial
7 information as defined in RCW 9.35.005, including social security
8 numbers, except when disclosure is expressly required by or governed
9 by other law.

10 (3) The following information in personnel records, public
11 employment-related records, volunteer rosters, or included in any
12 mailing list of employees or volunteers of any legislative house or
13 agency: Residential addresses, residential telephone numbers,
14 personal wireless telephone numbers, personal email addresses, social
15 security numbers, driver's license numbers, identicard numbers, and
16 emergency contact information of employees or volunteers of a
17 legislative house or agency, and the names, dates of birth,
18 residential addresses, residential telephone numbers, personal
19 wireless telephone numbers, personal email addresses, social security
20 numbers, and emergency contact information of dependents of employees
21 or volunteers of a legislative house or agency.

22 (4) Those portions of records assembled, prepared, or maintained
23 to prevent, mitigate, or respond to criminal terrorist acts, which
24 are acts that significantly disrupt the conduct of government or of
25 the general civilian population of the state or the United States and
26 that manifest an extreme indifference to human life, the public
27 disclosure of which would have a substantial likelihood of
28 threatening public safety, consisting of:

29 (a) Specific and unique vulnerability assessments or specific and
30 unique response or deployment plans, including compiled underlying
31 data collected in preparation of or essential to the assessments, or
32 to the response or deployment plans; and

33 (b) Records not subject to public disclosure under federal law
34 that are shared by federal or international agencies, and information
35 prepared from national security briefings provided to state or local
36 government officials related to domestic preparedness for acts of
37 terrorism.

38 (5) Information regarding the public and private infrastructure
39 and security of computer and telecommunications networks, consisting
40 of security passwords, security access codes and programs, access

1 codes for secure software applications, security and service recovery
2 plans, security risk assessments, and security test results to the
3 extent that they identify specific system vulnerabilities, and other
4 such information the release of which may increase risk to the
5 confidentiality, integrity, or availability of security, information
6 technology infrastructure, or assets.

7 (6) Records that are relevant to a controversy to which any
8 entity of state government is a party but which records would not be
9 available to another party under court rules for pretrial discovery.

10 (7) Records that are subject to the speech or debate clause of
11 Article II, section 17 of the state Constitution including, but not
12 limited to, preliminary drafts, notes, recommendations, and internal
13 legislative and interbranch communication in which opinions are
14 expressed or policies formulated or recommended.

15 NEW SECTION. **Sec. 106.** REQUESTS—INSPECTION AND COPYING. (1) A
16 legislative public records request must be for identifiable records.
17 A request for all or substantially all records prepared, owned, used,
18 or retained by the legislative branch, its houses, members,
19 employees, or agencies is not a valid request for identifiable
20 legislative public records under this chapter.

21 (2) Legislative public records must be available for inspection
22 and copying, and the chief clerk and the secretary shall, upon
23 request for identifiable legislative public records, make them
24 promptly available to any person including, if applicable, on a
25 partial or installment basis as records that are part of a larger set
26 of requested records are assembled or made ready for inspection or
27 disclosure, taking into considerations time, resource, and personnel
28 constraints associated with legislative sessions and part-time
29 citizen legislators.

30 (3) The chief clerk and the secretary shall not distinguish among
31 persons requesting records, and such persons are not required to
32 provide information as to the purpose for the request except to
33 establish whether inspection and copying would violate section 104(4)
34 of this act, this section, section 107 (5) or (6) of this act, or
35 other statute that exempts or prohibits disclosure of specific
36 information or records to certain persons.

37 (4) Facilities of the chief clerk and secretary must be made
38 available to any person for the copying of legislative public records
39 except when and to the extent that this would unreasonably disrupt

1 the operations of the chief clerk or secretary or the respective
2 houses, considering the time, resource, and personnel constraints
3 associated with legislative sessions and part-time citizen
4 legislators.

5 (5) No official format is required for making a records request;
6 however, the chief clerk or secretary may recommend that requesters
7 submit requests using a form or web page provided by the chief clerk
8 or secretary.

9 NEW SECTION. **Sec. 107.** RESPONSES. (1) The chief clerk and the
10 secretary must promptly respond to requests for legislative public
11 records, taking into consideration the time, resource, and personnel
12 constraints associated with legislative sessions and a part-time
13 citizen legislature. Within five business days of receiving a
14 legislative public records request, the secretary or the chief clerk
15 must respond in one of the ways provided in this subsection (1):

16 (a) Providing the legislative public record;

17 (b) Providing an internet address and link on the houses' or
18 agency's web site to the specific records requested, except that if
19 the requester notifies the chief clerk or the secretary that he or
20 she cannot access the records through the internet, then the chief
21 clerk or the secretary must provide copies of the record or allow the
22 requester to view copies using a computer of the chief clerk or
23 secretary;

24 (c) Acknowledging that the secretary or the chief clerk has
25 received the request and providing a reasonable estimate of the time
26 the secretary or the chief clerk will require to respond to the
27 request;

28 (d) Acknowledging that the secretary or the chief clerk has
29 received the request and asking the requester to provide
30 clarification for a request that is unclear; or

31 (e) Denying the legislative public records request.

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

1 constraints associated with legislative sessions and a part-time
2 citizen legislature.

3 (3)(a) In acknowledging receipt of a legislative public records
4 request that is unclear, the secretary or the chief clerk may ask the
5 requester to clarify what information the requester is seeking and
6 provide at least ten days for the requester to respond.

7 (b) If the requester fails to respond to a request to clarify the
8 request, and the entire request is unclear, the secretary or the
9 chief clerk need not respond to it. Otherwise, the secretary or the
10 chief clerk must respond, pursuant to this section, to those portions
11 of the request that are clear.

12 (4) Denials of requests must be accompanied by a written
13 statement of the specific reasons therefor.

14 (5) The chief clerk or the secretary may deny a bot request that
15 is one of multiple requests from the requester to the chief clerk or
16 secretary within a twenty-four hour period, if the chief clerk or
17 secretary establishes that responding to the multiple requests would
18 cause excessive interference with other essential functions of the
19 chief clerk or the secretary or the respective legislative houses.
20 For purposes of this subsection, "bot request" means a request for
21 legislative public records that the chief clerk or the secretary
22 reasonably believes was automatically generated by a computer program
23 or script.

24 (6) The chief clerk or the secretary may deny a request in whole
25 or in part if the chief clerk or secretary determines that:

26 (a) The request was made to harass or intimidate a legislator or
27 legislative employee;

28 (b) Fulfilling the request would likely threaten the safety or
29 security of the legislative branch, or legislators, legislative
30 employees, or their families; or

31 (c) Fulfilling the request may assist criminal activity.

32 NEW SECTION. **Sec. 108.** REVIEW. (1) A person whose request for
33 legislative public records was denied in whole or in part may seek
34 review under this section. If the request was denied by the
35 secretary, the requester may seek review by the facilities and
36 operations committee. If the request was denied by the chief clerk,
37 the requester may seek review by the executive rules committee. If
38 the request was denied by the secretary and chief clerk jointly, the
39 requester may seek review by both the executive rules and facilities

1 and operations committees, in which case the decision is joint
2 although the executive rules and facilities and operations committees
3 need not meet jointly. The request for review must be filed within
4 one month after the denial.

5 (2) The review by the executive rules and facilities and
6 operations committee or committees consists of review of a written
7 record in accordance with any legislative rules. The requester may
8 submit written materials in support of his or her request for review.

9 (3) The executive rules and facilities and operations committees,
10 whether the review is separate or joint, must meet at least quarterly
11 to render decisions on review of denials, and must issue decisions
12 promptly, taking into consideration the time, resource, and personnel
13 constraints associated with legislative sessions and a part-time
14 citizen legislature.

15 (4) The decisions of the executive rules committee, or the
16 facilities and operations committee, or the two committees, if acting
17 jointly, are final, and are not subject to further review in any
18 venue. If in the case of a joint decision the committees do not
19 agree, the original decision stands.

20 NEW SECTION. **Sec. 109.** PROTECTION—ACCESS—ARCHIVING. (1) The
21 chief clerk and the secretary shall establish reasonable procedures
22 allowing for the time, resource, and personnel constraints associated
23 with legislative sessions and a part-time citizen legislature,
24 consonant with the intent of this chapter to provide full public
25 access to legislative public records, to protect legislative public
26 records from damage or disorganization, and to prevent excessive
27 interference with other essential functions of the secretary of the
28 senate, or the chief clerk of the house of representatives. Such
29 procedures shall provide for the fullest assistance to inquirers and
30 the most timely possible action on requests for information.

31 (2) Procedures adopted for access to and preservation of
32 legislative public records must be consistent with the archiving
33 duties of the chief clerk and the secretary under chapter 40.14 RCW.

34 (3) For legislative public records not subject to required
35 archiving under chapter 40.14 RCW, the chief clerk and the secretary
36 shall establish retention schedules.

37 (4) Once a legislative public record is transmitted to the state
38 archivist under chapter 40.14 RCW, it is subject to access laws

1 governing the state archives, and the record is no longer subject to
2 mandatory inspection and copying under this chapter.

3 (5) If a legislative public records request is made at a time
4 when such record exists but is scheduled for destruction in the near
5 future, the secretary or the chief clerk shall retain possession of
6 the record, and may not destroy or erase the record until the request
7 is resolved.

8 NEW SECTION. **Sec. 110.** FEES. (1) The chief clerk and secretary
9 may impose a reasonable fee for providing copies of legislative
10 public records, as follows:

11 (a) Fifteen cents per page for photocopies, printed copies of
12 electronic records when requested by the person requesting the
13 records, or for the use of legislative equipment to photocopy the
14 records;

15 (b) Ten cents per page for records scanned into an electronic
16 format or for the use of legislative equipment to scan the records;

17 (c) Five cents per each four electronic files or attachments
18 uploaded to email, cloud-based data storage services, or other means
19 of electronic delivery;

20 (d) The actual cost of any digital storage media or device
21 provided to the requester; and

22 (e) A fee according to a schedule adopted by the secretary and
23 the chief clerk for each printed or electronic photo.

24 (2) The charges in subsection (1) of this section may be combined
25 to the extent that more than one type of charge applies to copies
26 produced in response to a particular request.

27 (3) No fee may be imposed under this section for access to or
28 downloading of legislative public records that are routinely posted
29 on a legislative public web site prior to receipt of a request unless
30 the requester has specially requested that the copies be provided
31 through other means.

32 (4) Requesters may be required to pay for copies in advance of
33 receiving records. The chief clerk and secretary may require an
34 advance deposit of ten percent of the estimated fees when the fees
35 for an installment or an entire request exceeds twenty-five dollars.
36 The chief clerk and secretary may close a request when a requester
37 fails by the payment due date to pay in the manner prescribed for
38 records, an installment of records, or a required deposit.

1 (5) The chief clerk and secretary have the discretion to waive or
2 reduce fees pursuant to a consistently applied policy.

3 NEW SECTION. **Sec. 111.** DISCLAIMER OF LIABILITY. The legislative
4 branch and its houses, members, employees, and agencies are not
5 liable, and no cause of action exists, for any loss or damage based
6 upon the release of a legislative public record if the entity
7 releasing the record acted in good faith in attempting to comply with
8 the provisions of this chapter.

9 NEW SECTION. **Sec. 112.** DUTY TO DISCLOSE OR WITHHOLD. Nothing in
10 this chapter affects a positive duty to disclose or a positive duty
11 to withhold information or records when that duty is contained in any
12 other law.

13 NEW SECTION. **Sec. 113.** LEGISLATIVE OVERSIGHT COMMITTEES.
14 Nothing in this chapter gives the executive rules committee oversight
15 authority over any senators, senate employees, or committee of the
16 senate, nor does it give the facilities and operations committee
17 oversight authority over house members, house employees, or any
18 committee of the house of representatives.

19 NEW SECTION. **Sec. 114.** CODIFICATION. Sections 1 and 101 through
20 113 of this act constitute a new chapter in Title 44 RCW.

21 NEW SECTION. **Sec. 115.** A new section is added to chapter 1.08
22 RCW to read as follows:

23 The statute law committee and the office of the code reviser are
24 agencies established within the legislative branch and their public
25 records disclosure obligations are governed by chapter 44.--- RCW
26 (the new chapter created in section 114 of this act).

27 NEW SECTION. **Sec. 116.** A new section is added to chapter 42.52
28 RCW to read as follows:

29 The legislative ethics board is an agency established within the
30 legislative branch and its public records disclosure obligations are
31 governed by chapter 44.--- RCW (the new chapter created in section
32 114 of this act).

1 NEW SECTION. **Sec. 117.** A new section is added to chapter 44.04
2 RCW to read as follows:

3 The joint transportation committee is an agency established
4 within the legislative branch and its public records disclosure
5 obligations are governed by chapter 44.--- RCW (the new chapter
6 created in section 114 of this act).

7 NEW SECTION. **Sec. 118.** A new section is added to chapter 44.05
8 RCW to read as follows:

9 The redistricting commission is an agency established within the
10 legislative branch and its public records disclosure obligations are
11 governed by chapter 44.--- RCW (the new chapter created in section
12 114 of this act).

13 NEW SECTION. **Sec. 119.** A new section is added to chapter 44.28
14 RCW to read as follows:

15 The joint legislative audit and review committee is an agency
16 established within the legislative branch and its public records
17 disclosure obligations are governed by chapter 44.--- RCW (the new
18 chapter created in section 114 of this act).

19 NEW SECTION. **Sec. 120.** A new section is added to chapter 44.44
20 RCW to read as follows:

21 The select committee on pension policy and the office of the
22 state actuary are agencies established within the legislative branch
23 and their public records disclosure obligations are governed by
24 chapter 44.--- RCW (the new chapter created in section 114 of this
25 act).

26 NEW SECTION. **Sec. 121.** A new section is added to chapter 44.48
27 RCW to read as follows:

28 The joint legislative evaluation and accountability program
29 committee is an agency established within the legislative branch and
30 its public records disclosure obligations are governed by chapter
31 44.--- RCW (the new chapter created in section 114 of this act).

32 NEW SECTION. **Sec. 122.** A new section is added to chapter 44.68
33 RCW to read as follows:

34 The joint legislative systems administrative committee is an
35 agency established within the legislative branch and its public

1 records disclosure obligations are governed by chapter 44.--- RCW
2 (the new chapter created in section 114 of this act).

3 NEW SECTION. **Sec. 123.** A new section is added to chapter 44.80
4 RCW to read as follows:

5 The office of legislative support services is an agency
6 established within the legislative branch and its public records
7 disclosure obligations are governed by chapter 44.--- RCW (the new
8 chapter created in section 114 of this act).

9 **PART II**

10 **PUBLIC RECORDS ACT—CLARIFIED TO EXCLUDE LEGISLATIVE BRANCH—**
11 **CONFORMING AMENDMENTS TO CHAPTER 42.56 RCW**

12 NEW SECTION. **Sec. 201.** A new section is added to chapter 42.56
13 RCW to read as follows:

14 The public records disclosure obligations of the legislative
15 branch, and its houses, members, employees, and agencies, are
16 established in chapter 44.--- RCW (the new chapter created in section
17 114 of this act) and Article II of the state Constitution.

18 **Sec. 202.** RCW 42.56.010 and 2017 c 303 s 1 are each amended to
19 read as follows:

20 The definitions in this section apply throughout this chapter
21 unless the context clearly requires otherwise.

22 (1) "Agency" includes all state agencies and all local agencies.
23 "State agency" includes every state office, department, division,
24 bureau, board, commission, or other state agency. "Local agency"
25 includes every county, city, town, municipal corporation, quasi-
26 municipal corporation, or special purpose district, or any office,
27 department, division, bureau, board, commission, or agency thereof,
28 or other local public agency. "Agency" does not include the state
29 legislative branch or its houses, members, offices, employees, or
30 agencies.

31 (2) "Person in interest" means the person who is the subject of a
32 record or any representative designated by that person, except that
33 if that person is under a legal disability, "person in interest"
34 means and includes the parent or duly appointed legal representative.

35 (3) "Public record" includes any writing containing information
36 relating to the conduct of government or the performance of any

1 governmental or proprietary function prepared, owned, used, or
2 retained by any state or local agency regardless of physical form or
3 characteristics. (~~For the office of the secretary of the senate and
4 the office of the chief clerk of the house of representatives, public
5 records means legislative records as defined in RCW 40.14.100 and
6 also means the following: All budget and financial records; personnel
7 leave, travel, and payroll records; records of legislative sessions;
8 reports submitted to the legislature; and any other record designated
9 a public record by any official action of the senate or the house of
10 representatives.~~) This definition does not include records that are
11 not otherwise required to be retained by the agency and are held by
12 volunteers who:

- 13 (a) Do not serve in an administrative capacity;
 - 14 (b) Have not been appointed by the agency to an agency board,
15 commission, or internship; and
 - 16 (c) Do not have a supervisory role or delegated agency authority.
- 17 (4) "Writing" means handwriting, typewriting, printing,
18 photostating, photographing, and every other means of recording any
19 form of communication or representation including, but not limited
20 to, letters, words, pictures, sounds, or symbols, or combination
21 thereof, and all papers, maps, magnetic or paper tapes, photographic
22 films and prints, motion picture, film and video recordings, magnetic
23 or punched cards, discs, drums, diskettes, sound recordings, and
24 other documents including existing data compilations from which
25 information may be obtained or translated.

26 **Sec. 203.** RCW 42.56.070 and 2017 c 304 s 1 are each amended to
27 read as follows:

28 (1) Each agency, in accordance with published rules, shall make
29 available for public inspection and copying all public records,
30 unless the record falls within the specific exemptions of subsection
31 (8) of this section, this chapter, or other statute which exempts or
32 prohibits disclosure of specific information or records. To the
33 extent required to prevent an unreasonable invasion of personal
34 privacy interests protected by this chapter, an agency shall delete
35 identifying details in a manner consistent with this chapter when it
36 makes available or publishes any public record; however, in each
37 case, the justification for the deletion shall be explained fully in
38 writing.

1 (2) For informational purposes, each agency shall publish and
2 maintain a current list containing every law, other than those listed
3 in this chapter, that the agency believes exempts or prohibits
4 disclosure of specific information or records of the agency. An
5 agency's failure to list an exemption shall not affect the efficacy
6 of any exemption.

7 (3) Each local agency shall maintain and make available for
8 public inspection and copying a current index providing identifying
9 information as to the following records issued, adopted, or
10 promulgated after January 1, 1973:

11 (a) Final opinions, including concurring and dissenting opinions,
12 as well as orders, made in the adjudication of cases;

13 (b) Those statements of policy and interpretations of policy,
14 statute, and the Constitution which have been adopted by the agency;

15 (c) Administrative staff manuals and instructions to staff that
16 affect a member of the public;

17 (d) Planning policies and goals, and interim and final planning
18 decisions;

19 (e) Factual staff reports and studies, factual consultant's
20 reports and studies, scientific reports and studies, and any other
21 factual information derived from tests, studies, reports, or surveys,
22 whether conducted by public employees or others; and

23 (f) Correspondence, and materials referred to therein, by and
24 with the agency relating to any regulatory, supervisory, or
25 enforcement responsibilities of the agency, whereby the agency
26 determines, or opines upon, or is asked to determine or opine upon,
27 the rights of the state, the public, a subdivision of state
28 government, or of any private party.

29 (4) A local agency need not maintain such an index, if to do so
30 would be unduly burdensome, but it shall in that event:

31 (a) Issue and publish a formal order specifying the reasons why
32 and the extent to which compliance would unduly burden or interfere
33 with agency operations; and

34 (b) Make available for public inspection and copying all indexes
35 maintained for agency use.

36 (5) Each state agency shall, by rule, establish and implement a
37 system of indexing for the identification and location of the
38 following records:

39 (a) All records issued before July 1, 1990, for which the agency
40 has maintained an index;

1 (b) Final orders entered after June 30, 1990, that are issued in
2 adjudicative proceedings as defined in RCW 34.05.010 and that contain
3 an analysis or decision of substantial importance to the agency in
4 carrying out its duties;

5 (c) Declaratory orders entered after June 30, 1990, that are
6 issued pursuant to RCW 34.05.240 and that contain an analysis or
7 decision of substantial importance to the agency in carrying out its
8 duties;

9 (d) Interpretive statements as defined in RCW 34.05.010 that were
10 entered after June 30, 1990; and

11 (e) Policy statements as defined in RCW 34.05.010 that were
12 entered after June 30, 1990.

13 Rules establishing systems of indexing shall include, but not be
14 limited to, requirements for the form and content of the index, its
15 location and availability to the public, and the schedule for
16 revising or updating the index. State agencies that have maintained
17 indexes for records issued before July 1, 1990, shall continue to
18 make such indexes available for public inspection and copying.
19 Information in such indexes may be incorporated into indexes prepared
20 pursuant to this subsection. State agencies may satisfy the
21 requirements of this subsection by making available to the public
22 indexes prepared by other parties but actually used by the agency in
23 its operations. State agencies shall make indexes available for
24 public inspection and copying. State agencies may charge a fee to
25 cover the actual costs of providing individual mailed copies of
26 indexes.

27 (6) A public record may be relied on, used, or cited as precedent
28 by an agency against a party other than an agency and it may be
29 invoked by the agency for any other purpose only if:

30 (a) It has been indexed in an index available to the public; or

31 (b) Parties affected have timely notice (actual or constructive)
32 of the terms thereof.

33 (7) Each agency may establish, maintain, and make available for
34 public inspection and copying a statement of the actual costs that it
35 charges for providing photocopies or electronically produced copies,
36 of public records and a statement of the factors and manner used to
37 determine the actual costs. Any statement of costs may be adopted by
38 an agency only after providing notice and public hearing.

1 (a)(i) In determining the actual cost for providing copies of
2 public records, an agency may include all costs directly incident to
3 copying such public records including:

4 (A) The actual cost of the paper and the per page cost for use of
5 agency copying equipment; and

6 (B) The actual cost of the electronic production or file transfer
7 of the record and the use of any cloud-based data storage and
8 processing service.

9 (ii) In determining other actual costs for providing copies of
10 public records, an agency may include all costs directly incident to:

11 (A) Shipping such public records, including the cost of postage
12 or delivery charges and the cost of any container or envelope used;
13 and

14 (B) Transmitting such records in an electronic format, including
15 the cost of any transmission charge and use of any physical media
16 device provided by the agency.

17 (b) In determining the actual costs for providing copies of
18 public records, an agency may not include staff salaries, benefits,
19 or other general administrative or overhead charges, unless those
20 costs are directly related to the actual cost of copying the public
21 records. Staff time to copy and send the requested public records may
22 be included in an agency's costs.

23 (8) This chapter shall not be construed as giving authority to
24 any agency(~~(, the office of the secretary of the senate, or the~~
25 ~~office of the chief clerk of the house of representatives))~~) to give,
26 sell or provide access to lists of individuals requested for
27 commercial purposes, and agencies(~~(, the office of the secretary of~~
28 ~~the senate, and the office of the chief clerk of the house of~~
29 ~~representatives))~~) shall not do so unless specifically authorized or
30 directed by law: PROVIDED, HOWEVER, That lists of applicants for
31 professional licenses and of professional licensees shall be made
32 available to those professional associations or educational
33 organizations recognized by their professional licensing or
34 examination board, upon payment of a reasonable charge therefor:
35 PROVIDED FURTHER, That such recognition may be refused only for a
36 good cause pursuant to a hearing under the provisions of chapter
37 34.05 RCW, the administrative procedure act.

38 **Sec. 204.** RCW 42.56.090 and 2009 c 428 s 2 are each amended to
39 read as follows:

1 Public records shall be available for inspection and copying
2 during the customary office hours of the agency(~~(, the office of the~~
3 ~~secretary of the senate, and the office of the chief clerk of the~~
4 ~~house of representatives))~~) for a minimum of thirty hours per week,
5 except weeks that include state legal holidays, unless the person
6 making the request and the agency(~~(, the office of the secretary of~~
7 ~~the senate, or the office of the chief clerk of the house of~~
8 ~~representatives))~~) or its representative agree on a different time.
9 Customary business hours must be posted on the (~~agency or office's~~)
10 agency's web site and made known by other means designed to provide
11 the public with notice.

12 **Sec. 205.** RCW 42.56.100 and 1995 c 397 s 13 are each amended to
13 read as follows:

14 Agencies shall adopt and enforce reasonable rules and
15 regulations(~~(, and the office of the secretary of the senate and the~~
16 ~~office of the chief clerk of the house of representatives shall adopt~~
17 ~~reasonable procedures))~~) allowing for the time, resource, and
18 personnel constraints associated with legislative sessions, consonant
19 with the intent of this chapter to provide full public access to
20 public records, to protect public records from damage or
21 disorganization, and to prevent excessive interference with other
22 essential functions of the agency(~~(, the office of the secretary of~~
23 ~~the senate, or the office of the chief clerk of the house of~~
24 ~~representatives))~~). Such rules and regulations shall provide for the
25 fullest assistance to inquirers and the most timely possible action
26 on requests for information. Nothing in this section shall relieve
27 agencies(~~(, the office of the secretary of the senate, and the office~~
28 ~~of the chief clerk of the house of representatives))~~) from honoring
29 requests received by mail for copies of identifiable public records.

30 If a public record request is made at a time when such record
31 exists but is scheduled for destruction in the near future, the
32 agency(~~(, the office of the secretary of the senate, or the office of~~
33 ~~the chief clerk of the house of representatives))~~) shall retain
34 possession of the record, and may not destroy or erase the record
35 until the request is resolved.

36 **Sec. 206.** RCW 42.56.120 and 2017 c 304 s 3 are each amended to
37 read as follows:

1 (1) No fee shall be charged for the inspection of public records
2 or locating public documents and making them available for copying,
3 except as provided in RCW 42.56.240(14) and subsection (3) of this
4 section. A reasonable charge may be imposed for providing copies of
5 public records and for the use by any person of agency equipment (~~or~~
6 ~~equipment of the office of the secretary of the senate or the office~~
7 ~~of the chief clerk of the house of representatives)) to copy public
8 records, which charges shall not exceed the amount necessary to
9 reimburse the agency(~~, the office of the secretary of the senate, or~~
10 ~~the office of the chief clerk of the house of representatives)) for
11 its actual costs directly incident to such copying. When calculating
12 any fees authorized under this section, an agency shall use the most
13 reasonable cost-efficient method available to the agency as part of
14 its normal operations. If any agency translates a record into an
15 alternative electronic format at the request of a requestor, the copy
16 created does not constitute a new public record for purposes of this
17 chapter. Scanning paper records to make electronic copies of such
18 records is a method of copying paper records and does not amount to
19 the creation of a new public record.~~~~

20 (2)(a) Agency charges for actual costs may only be imposed in
21 accordance with the costs established and published by the agency
22 pursuant to RCW 42.56.070(7), and in accordance with the statement of
23 factors and manner used to determine the actual costs. In no event
24 may an agency charge a per page cost greater than the actual cost as
25 established and published by the agency.

26 (b) An agency need not calculate the actual costs it charges for
27 providing public records if it has rules or regulations declaring the
28 reasons doing so would be unduly burdensome. To the extent the agency
29 has not determined the actual costs of copying public records, the
30 agency may not charge in excess of:

31 (i) Fifteen cents per page for photocopies of public records,
32 printed copies of electronic public records when requested by the
33 person requesting records, or for the use of agency equipment to
34 photocopy public records;

35 (ii) Ten cents per page for public records scanned into an
36 electronic format or for the use of agency equipment to scan the
37 records;

38 (iii) Five cents per each four electronic files or attachment
39 uploaded to email, cloud-based data storage service, or other means
40 of electronic delivery; and

1 (iv) Ten cents per gigabyte for the transmission of public
2 records in an electronic format or for the use of agency equipment to
3 send the records electronically. The agency shall take reasonable
4 steps to provide the records in the most efficient manner available
5 to the agency in its normal operations; and

6 (v) The actual cost of any digital storage media or device
7 provided by the agency, the actual cost of any container or envelope
8 used to mail the copies to the requestor, and the actual postage or
9 delivery charge.

10 (c) The charges in (b) of this subsection may be combined to the
11 extent that more than one type of charge applies to copies produced
12 in response to a particular request.

13 (d) An agency may charge a flat fee of up to two dollars for any
14 request as an alternative to fees authorized under (a) or (b) of this
15 subsection when the agency reasonably estimates and documents that
16 the costs allowed under this subsection are clearly equal to or more
17 than two dollars. An additional flat fee shall not be charged for any
18 installment after the first installment of a request produced in
19 installments. An agency that has elected to charge the flat fee in
20 this subsection for an initial installment may not charge the fees
21 authorized under (a) or (b) of this subsection on subsequent
22 installments.

23 (e) An agency shall not impose copying charges under this section
24 for access to or downloading of records that the agency routinely
25 posts on its public internet web site prior to receipt of a request
26 unless the requestor has specifically requested that the agency
27 provide copies of such records through other means.

28 (f) A requestor may ask an agency to provide, and if requested an
29 agency shall provide, a summary of the applicable charges before any
30 copies are made and the requestor may revise the request to reduce
31 the number of copies to be made and reduce the applicable charges.

32 (3)(a)(i) In addition to the charge imposed for providing copies
33 of public records and for the use by any person of agency equipment
34 copying costs, an agency may include a customized service charge. A
35 customized service charge may only be imposed if the agency estimates
36 that the request would require the use of information technology
37 expertise to prepare data compilations, or provide customized
38 electronic access services when such compilations and customized
39 access services are not used by the agency for other agency purposes.

1 (ii) The customized service charge may reimburse the agency up to
2 the actual cost of providing the services in this subsection.

3 (b) An agency may not assess a customized service charge unless
4 the agency has notified the requestor of the customized service
5 charge to be applied to the request, including an explanation of why
6 the customized service charge applies, a description of the specific
7 expertise, and a reasonable estimate cost of the charge. The notice
8 also must provide the requestor the opportunity to amend his or her
9 request in order to avoid or reduce the cost of a customized service
10 charge.

11 (4) An agency may require a deposit in an amount not to exceed
12 ten percent of the estimated cost of providing copies for a request,
13 including a customized service charge. If an agency makes a request
14 available on a partial or installment basis, the agency may charge
15 for each part of the request as it is provided. If an installment of
16 a records request is not claimed or reviewed, the agency is not
17 obligated to fulfill the balance of the request. An agency may waive
18 any charge assessed for a request pursuant to agency rules and
19 regulations. An agency may enter into any contract, memorandum of
20 understanding, or other agreement with a requestor that provides an
21 alternative fee arrangement to the charges authorized in this
22 section, or in response to a voluminous or frequently occurring
23 request.

24 **Sec. 207.** RCW 42.56.520 and 2017 c 303 s 3 are each amended to
25 read as follows:

26 (1) Responses to requests for public records shall be made
27 promptly by agencies(~~(, the office of the secretary of the senate,~~
28 ~~and the office of the chief clerk of the house of representatives))~~).
29 Within five business days of receiving a public record request, an
30 agency(~~(, the office of the secretary of the senate, or the office of~~
31 ~~the chief clerk of the house of representatives))~~) must respond in one
32 of the ways provided in this subsection (1):

33 (a) Providing the record;

34 (b) Providing an internet address and link on the agency's web
35 site to the specific records requested, except that if the requester
36 notifies the agency that he or she cannot access the records through
37 the internet, then the agency must provide copies of the record or
38 allow the requester to view copies using an agency computer;

1 (c) Acknowledging that the agency(~~(, the office of the secretary~~
2 ~~of the senate, or the office of the chief clerk of the house of~~
3 ~~representatives))~~) has received the request and providing a reasonable
4 estimate of the time the agency(~~(, the office of the secretary of the~~
5 ~~senate, or the office of the chief clerk of the house of~~
6 ~~representatives))~~) will require to respond to the request;

7 (d) Acknowledging that the agency(~~(, the office of the secretary~~
8 ~~of the senate, or the office of the chief clerk of the house of~~
9 ~~representatives))~~) has received the request and asking the requestor
10 to provide clarification for a request that is unclear, and
11 providing, to the greatest extent possible, a reasonable estimate of
12 the time the agency(~~(, the office of the secretary of the senate, or~~
13 ~~the office of the chief clerk of the house of representatives))~~) will
14 require to respond to the request if it is not clarified; or

15 (e) Denying the public record request.

16 (2) Additional time required to respond to a request may be based
17 upon the need to clarify the intent of the request, to locate and
18 assemble the information requested, to notify third persons or
19 agencies affected by the request, or to determine whether any of the
20 information requested is exempt and that a denial should be made as
21 to all or part of the request.

22 (3)(a) In acknowledging receipt of a public record request that
23 is unclear, an agency(~~(, the office of the secretary of the senate,~~
24 ~~or the office of the chief clerk of the house of representatives))~~)
25 may ask the requestor to clarify what information the requestor is
26 seeking.

27 (b) If the requestor fails to respond to an agency request to
28 clarify the request, and the entire request is unclear, the agency(~~(,~~
29 ~~the office of the secretary of the senate, or the office of the chief~~
30 ~~clerk of the house of representatives))~~) need not respond to it.
31 Otherwise, the agency must respond, pursuant to this section, to
32 those portions of the request that are clear.

33 (4) Denials of requests must be accompanied by a written
34 statement of the specific reasons therefor. Agencies(~~(, the office of~~
35 ~~the secretary of the senate, and the office of the chief clerk of the~~
36 ~~house of representatives))~~) shall establish mechanisms for the most
37 prompt possible review of decisions denying inspection, and such
38 review shall be deemed completed at the end of the second business
39 day following the denial of inspection and shall constitute final
40 agency action (~~or final action by the office of the secretary of the~~

1 ~~senate or the office of the chief clerk of the house of~~
2 ~~representatives))~~ for the purposes of judicial review.

3 NEW SECTION. **Sec. 208.** RCW 42.56.560 (Application of RCW
4 42.56.550) and 2005 c 274 s 289 & 1995 c 397 s 16 are each repealed.

5 **PART III**
6 **TECHNICAL PROVISIONS**

7 NEW SECTION. **Sec. 301.** SEVERABILITY. If any provision of this
8 act or its application to any person or circumstance is held invalid,
9 the remainder of the act or the application of the provision to other
10 persons or circumstances is not affected.

11 NEW SECTION. **Sec. 302.** APPLICATION. This act is curative,
12 remedial, and retroactive, and applies to all records requests and
13 lawsuits under chapter 42.56 RCW pending as of the effective date of
14 this section.

15 NEW SECTION. **Sec. 303.** This act is necessary for the immediate
16 preservation of the public peace, health, or safety, or support of
17 the state government and its existing public institutions, and takes
18 effect immediately.

--- END ---