

SENATE BILL REPORT

ESHB 1667

As Reported by Senate Committee On:
State Government, Tribal Relations & Elections, March 27, 2019

Title: An act relating to public records request administration.

Brief Description: Concerning public records request administration.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Springer, Walsh, Appleton, Peterson, Smith and Griffey).

Brief History: Passed House: 3/08/19, 96-0.

Committee Activity: State Government, Tribal Relations & Elections: 3/22/19, 3/27/19 [DP-WM].

Brief Summary of Bill

- Removes sunsets on the local government competitive grant program for public records response improvements, records retention consultation, and Attorney General (AG) records consultation.
- Makes permanent a \$1 county auditor document recording fee for the competitive grant program, record retention consultation, and AG records consultation.
- Modifies language regarding metrics certain agencies must annually report to the Joint Legislative Audit and Review Committee on public records request responses.

SENATE COMMITTEE ON STATE GOVERNMENT, TRIBAL RELATIONS & ELECTIONS

Majority Report: Do pass and be referred to Committee on Ways & Means.

Signed by Senators Hunt, Chair; Kuderer, Vice Chair; Zeiger, Ranking Member; Bailey, Hasegawa, Hawkins and Takko.

Staff: Samuel Brown (786-7470)

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background: Management of Public Records. The Public Records Act (PRA) requires state and local agencies to make their written records available to the public for inspection and copying upon request, unless the information fits into one of the various specific exemptions under the PRA or as otherwise provided in law. The state archivist, part of the Office of the Secretary of State, administers the State Archives and manages the retention, cataloging, and preservation of the public records inventory.

Public Records Programs Established. In 2017, the Legislature passed ESHB 1594, which established three programs to assist local agencies with PRA compliance:

1. A competitive grant program, administered by the State Archives, for local agencies to improve technology information systems for public record retention, management, and disclosure, and any related training. Any local agency may apply to the grant program, and the State Archives must award grants annually. Grants awarded under this program are one-time investments.
2. A program, administered by the State Archives, to offer consultation and training services for local agencies on improving record retention practices.
3. A consultation program, administered by the AG, to assist local governments with best practices for managing records requests, updating technology, and mitigating costs and liability.

All three programs are scheduled to expire on June 30, 2020.

Funding for Public Records Programs. An additional \$1 surcharge is assessed on documents recorded with the county auditor to be used exclusively for the State Archives' local agency competitive grant program, the AG's consultation program, and the State Archives' records retention training services. No more than 50 percent of the revenue may be used for the competitive grant program; the remainder is to be used for the AG's consultation program and the State Archives training services, combined. The State Archives may use up to 6 percent of amounts appropriated for the program for the administration of the grant program.

This funding structure for the additional \$1 surcharge is scheduled to expire on June 30, 2020.

Joint Legislative Audit and Review Committee Evaluation. Any agency with at least \$100,000 in annual staff and legal costs associated with fulfilling public records requests must report to the Joint Legislative Audit and Review Committee (JLARC) by July 1st on metrics relating to public records requests response measured over the preceding year. Agencies with less than \$100,000 in estimated costs may report voluntarily. JLARC issued a report in January 2019 regarding the metrics and its findings.

By December 1, 2019, JLARC must also report to the Legislature its recommendations on whether the State Archives competitive grant program and consultation and training services and the AG's consultation program should continue or be allowed to expire.

Summary of Bill: Public Records Programs Established. The June 30, 2020, expiration date is removed for the State Archives competitive grant program and consultation and training services, and the AG's consultation program.

Funding for Public Records Programs. The \$1 surcharge funding structure for the State Archives competitive grant program and consultation and training services and the AG's consultation program is made permanent.

JLARC Evaluation. Agencies are no longer required to report to JLARC on the following metrics:

- the leading practices and processes for records management and retention, and what percentage of such practices were implemented by the agency;
- the average length of time taken to acknowledge receipt of a public records request;
- the proportion of records provided within five days of the request and the proportion of requests estimated beyond five days;
- the agency's initial estimate for providing records as compared with the actual time in providing such records; and
- measures of requestor satisfaction with agency responses, communication, and processes relating to the fulfillment of public records requests.

Agencies required to report metrics to JLARC must also report on:

- the number of requests where the agency provided the requested records within five days of receipt and where the agency provided an estimated response time beyond five days after receipt, rather than a comparison of the proportion of these metrics;
- the average and median number of days from receipt of request to the date the request is closed; and
- the number of requests denied in full or in part.

Appropriation: None.

Fiscal Note: Available.

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

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony: PRO: These programs make it possible for smaller jurisdictions to understand best practices. Jurisdictions have been through the reporting procedure once, and have a better feel now for what questions will generate good data, so the metrics are being fine-tuned. Some of the reporting metrics proved redundant. These are popular consultation programs, efficiently run for their specific purposes. We support removing the sunset on the AG's consultation program, which has helped smaller governments understand their obligations and streamline responses, particularly for large and voluminous records requests. The AG has provided training to over 300 people in the last two months alone.

OTHER: It is strange that public records produced electronically cost more to the requestor than records produced through paper media.

Persons Testifying: PRO: Mike Hoover, Washington State Association of Counties; Candice Bock, Association of Washington Cities; Rowland Thompson, Allied Daily Newspapers of Washington; Jay Jennings, Office of the Secretary of State; Morgan

Damerow, Attorney General's Office.

OTHER: Michael Brunson, citizen.

Persons Signed In To Testify But Not Testifying: No one.