

SENATE BILL REPORT

ESHB 1667

As Reported by Senate Committee On:
State Government, Tribal Relations & Elections, March 27, 2019
Ways & Means, April 9, 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].

Ways & Means: 4/04/19, 4/09/19 [DPA].

Brief Summary of Amended 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.

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Operating, Capital Lead; Mullet, Capital Budget Cabinet; Braun, Ranking Member; Brown, Assistant Ranking Member, Operating; Honeyford, Assistant Ranking Member, Capital; Bailey, Becker, Billig, Carlyle, Conway, Darneille, Hasegawa, Hunt, Keiser, Liias, Palumbo, Pedersen, Schoesler, Van De Wege, Wagoner and Warnick.

Staff: Sarian Scott (786-7729)

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 Amended 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.

EFFECT OF WAYS & MEANS COMMITTEE AMENDMENT(S):

- Removed an extraneous cross-reference.

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 on Engrossed Substitute House Bill (State Government, Tribal Relations & Elections): 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 (State Government, Tribal Relations & Elections): 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 (State Government, Tribal Relations & Elections): No one.

Staff Summary of Public Testimony on Engrossed Substitute House Bill (Ways & Means): *The committee recommended a different version of the bill than what was heard.* PRO: We ask a lot for local governments to in their retention management of records. Often they do not have the resources to manage those records legally, and with some liabilities so we did not get the grant program itself. Get the Graham program itself is part of the best attribute is its flexibility we see grants from four hundred dollars for software to \$39,000 for digital imaging.

There is a lot of focus on digital imaging obviously that is where we would like to go. There have been 114 training sessions including touching 4000 across the state. About \$1.8 million in grants have been spread. We do have the grants, if anybody is interested by the legislative district and by amount. We finished round three of the grants. We have about \$700,000 dollars requested more than we have left to disperse. We often do the trainings with the attorney general's office and try to increase efficiency.

I would like to thank you. You created this program and funding source in 2017 with the passage of HB 1594 and it was a big step for local governments around the state that the legislature was recognizing and funding again the grant program and creating this new technical assistance program through the Attorney General's office. We are very appreciative of that. The Public Records Act can be challenging. The amount of records that our local governments around the state are managing are enormous and this is important. These two programs are important for helping us meet those requirements comply with the Public Records Act ensure that these records are preserved and available for the public. It is an important part of government transparency for us and again we are very appreciative of the

creation of the funding source in these programs and now we are asking that you remove the sunset and make these programs permanent so we can continue to see this work down around the state.

We support removal of the sunset provision for the local government public records consultation program, and continuing funding. The funding of the legislature set for this legislation. The local government public records consultation program has provided valuable assistance to local governments to help them better understand and meet their obligations under the Public Records Act. Local governments express a commitment to complying with the Public Records Act, but frequently encounter barriers to this due to scarce resources and experience. The programs therefore saves valuable government resources and is an excellent investment. By helping local governments streamline and improve the processes by assistance of the agency's size, volume of requests, and needs. This program saves local governments in three ways: it provides onsite consultation, it provides consultations via phone and e-mail, and it also provides training. Over the past year 1300 individuals were trained at 19 locations. Removing the sunset provision of this bill will ensure the local governments have continued access to valuable resource they will help them comply with the public record Records Act and thereby ensure government transparency.

This is a great bill. When I was up in King County, I had a deputy, I had a legal department, we had a records department, we had prosecutors down the street from me, and I had actually an AG office all helping me with public records. In some of our smaller communities, there is just not a lot of support for that. There is not even a lot of colleagues or people they can turn to, to get best practices. This bill changes that. I think it is a great step we implement as a pilot two years ago, we like to keep it going and I think it is largely self-funding.

Persons Testifying (Ways & Means): PRO: Candice Bock, Association of Washington Cities; Jay Jennings, Office of the Secretary of State; July Simpson, Attorney General's Office; Mike Hoover, Washington State Association of Counties.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.