



PREPROPOSAL STATEMENT OF INQUIRY

CR-101 (August 2017) (Implements RCW 34.05.310) Do NOT use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: September 06, 2017

TIME: 8:23 AM

WSR 17-18-091

Agency: Office of the Attorney General

Subject of possible rule making: The purpose of this possible rule making is to adopt a permanent rule that implements the State Legislature’s new Public Records Act (PRA) requirement and provide the necessary findings so that the Office of the Attorney General may continue to use the amended statutory default fee schedule that became effective July 23, 2017, and continue to waive copy fees under listed circumstances. The additional purpose of the rule is to continue to explain procedures for payment for copies. An emergency rule on these subjects, WAC 44-06-092, was adopted effective July 23, 2017. The office intends to proceed with adopting the rule as a permanent rule. Finally, the office intends to repeal its permanent rule at WAC 44-06-090, a copying fees rule adopted under prior PRA statutes.

Statutes authorizing the agency to adopt rules on this subject: RCW 42.56.100; RCW 42.56.040(1)(d); RCW 42.56.120 (as amended by Chap. 304, 2017 Laws); RCW 43.10.110.

Reasons why rules on this subject may be needed and what they might accomplish:

The Public Records Act is at chapter 42.56 RCW. The 2017 Legislature amended RCW 42.56.120 at Chap. 304, 2017 Laws, Sec. 3 to require that effective July 23, 2017 if an agency uses the new law’s amended statutory default copy fee schedule (rather than determining actual costs of copies), the agency must have a rule declaring the reason it is not calculating actual costs is because to do so would be unduly burdensome. The office is not calculating actual costs for copying records because to do so would be unduly burdensome for the reasons specified in its emergency rule at WAC 44-06-092. The office intends to adopt the rule on a permanent basis so it can continue to use the statutory default copy fee schedule. In addition, RCW 42.56.120 as amended by Chap. 304, 2017 Laws, Sec. 3 allows an agency to waive any charge assessed for a public record pursuant to agency rule. The emergency rule at WAC 44-06-092 also describes the circumstances under which the office will waive copying fees. In order to continue that waiver ability, the office intends to enact WAC 44-06-092 as a permanent rule. The office also describes in that emergency rule the procedures to pay for copies. The office also intends to adopt that part of the rule and the remainder of the rule on a permanent basis. Finally, the office intends to repeal WAC 44-06-090, its copying fees rule originally adopted under former chapter 42.17 RCW because that rule is now outdated.

There was insufficient time under permanent rule making procedures for the office to bring its copy fees into statutory compliance by July 23, 2017 and as directed by the 2017 Legislature; therefore, the office adopted an emergency rule at WAC 44-06-092. The office is now proceeding with permanent rule making on the subjects addressed in the emergency rule at WAC 44-06-092, and is proceeding with permanent rule making to repeal WAC 44-06-090.

Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies: None

Process for developing new rule (check all that apply):

- Negotiated rule making
- Pilot rule making
- Agency study

Other (describe) The office will be proposing a permanent rule and repealing a current rule in response to the copying fee amendments to RCW 42.56.120. The office will provide public notice of this rulemaking through filings in the *Washington State Register* and through posting information on the office website at www.atg.wa.gov. During a public comment period, the office will also seek comment: (1) as to be described in the anticipated Rule Making Proposal form (CR-102); (2) from persons who have requested notice of office rule making; and, (3) from persons who attend the public hearing.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting:

(If necessary)

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Other:

Additional comments:

Date: 9/6/2017

Name: Bob Ferguson

Title: Attorney General

Signature:

A handwritten signature in blue ink that reads "Bob Ferguson". The signature is written in a cursive style with a large, looping "F" and a long horizontal stroke at the end.