

## Summary of [ESHB 1594](#) (Improving Public Records Administration)

[Chap. 303, 2017 Laws. Act is effective July 23, 2017. Summary only – see bill for details.]

### DEFINITION

- **PUBLIC RECORD.** Section 1 amends the “public record” definition in the Public Records Act (PRA) at RCW 42.56.010(3) to exclude records that are not otherwise required to be retained and are held by volunteers who (a) do not serve in an administrative capacity; (b) have not been appointed by the agency to an agency board, commission or internship; and, (c) do not have a supervisory role or delegated agency authority.

### TRAINING

- **PUBLIC RECORDS OFFICER TRAINING.** Section 2 amends the training requirement for public records officers in RCW 42.56.152 to require training on “particular issues related to the retention, production and disclosure of electronic documents, including updating and improving technology information services.”

### RECORDS PROCEDURES

- **5-DAY RESPONSE – REQUEST FOR CLARIFICATION.** Section 3 amends RCW 42.56.520 to provide that a permitted agency response to a PRA request within the 5-business day period is an acknowledgment of receipt and request for clarification, “and, providing to the greatest extent possible, a reasonable estimate of time” the agency will require to respond to the request if it is not clarified. If the entire request is unclear and the requester fails to respond, the agency need not respond to it. However, the agency must respond to those portions of a request that are clear.
- **PRA REQUESTS - LOGS.** Section 6 adds a new section in RCW 40.14 (records retention) that requires public agencies to maintain a log of public records requests to include for each request the identity of the requester (if provided), date of receipt, text of request, description of records produced, description of records redacted/withheld and the reasons, and date of final disposition. The logs must be retained per the agency’s records retention schedule and are a public record the PRA.
- **LOCAL AGENCY PRA ORDINANCES - ATTORNEY GENERAL’S OFFICE MODEL RULES.** Section 4 amends RCW 42.56.570 to provide that local agencies should consult the Attorney General’s Office (AGO) Model Rules when establishing local PRA ordinances.
- **PRA REQUESTS – DATA COLLECTION AND REPORTING.** Section 6 adds a new section in RCW 40.14 that requires public agencies “with actual staff and legal costs associated with fulfilling public records requests of at least \$100,000 during the prior fiscal year” to report to the Joint Legislative Audit and Review Committee (JLARC) 17 different data points about the agency’s PRA requests. Agencies that incur lower PRA costs (less than \$100,000) may report the data. JLARC must consult with state and local agencies to develop a reporting method and define metrics.

The data to be reported includes: leading practices and processes for records management/retention including technology upgrades and what percentage were implemented by the agency, average length of time to acknowledge receipt of a PRA request, proportion of requests where the agency responded in 5 days compared to where agency provided an estimated response time beyond 5 days, comparison of agency’s average initial estimate with actual time when all records were disclosed including whether the agency sent subsequent estimates, number of clarifications requested, number of requests denied and most common reasons, number of requests abandoned, requester types, which portion of requests were fulfilled electronically, numbers of requests where agency was required to scan records, estimated staff time spent on each individual request, estimated costs including costs for staff compensation and legal review and an average cost per request, number of PRA/other public records claims (by type of claim and exemption), litigation costs including penalties, costs for managing and retaining records (including staff compensation, equipment), expenses recovered by the agency from requesters, and a measure of requester satisfaction. JLARC will report to the Legislature by Dec. 1, 2019.

## Summary of [ESHB 1594](#) (Cont.)

*[Chap. 303, 2017 Laws. Act is effective July 23, 2017. Summary only – see bill for details.]*

### PROGRAMS

- **RECORDS CONSULTATION PROGRAMS.** Section 4 amends RCW 42.56.570 to establish records consultation programs. An AGO program is established for local governments, addressing responding to records requests, seeking additional resources for technology, and mitigating liability and costs of compliance. A Secretary of State (State Archives) program is established for consultation and training on improving records retention practices for local governments. The programs end June 30, 2020. Funding is through a new county document recording \$1 surcharge deposited in the local government archives account (per Section 5 - amending RCW 40.14.024; and, Section 7 – amending RCW 36.22.175, which per Section 10 expires June 30, 2020). JLARC will review the programs and report to the Legislature by Dec. 1, 2019 (per Section 6 – new section in RCW 40.14).
- **LOCAL GOVERNMENT COMPETITIVE GRANT PROGRAM.** Section 6 adds a new section to RCW 40.14 that creates a local agency competitive grant program, administered by the State Archives, for one-time investments to improve technology information systems for records retention, management, disclosure and related training, through June 30, 2020. The program is funded through a new county document recording \$1 surcharge deposited in the local government archives account (per Section 5 - amending RCW 40.14.024; and, Section 7 – amending RCW 36.22.175, which per Section 10 expires June 30, 2020). JLARC will review the programs and report to the Legislature by Dec. 1, 2019 (per Section 6 – new section in RCW 40.14).

### STUDY

- **OPEN RECORDS PORTAL STUDY.** Sections 8 and 9 provide for an open records portal study. The bill does not identify where these sections will be codified. Subject to appropriation, the State Archives must hire a consultant to study the feasibility of implementing a statewide open records portal through which a requester can request and receive a response to a PRA request through a single internet web site. The State Archives will convene a stakeholder group to develop the study's scope and direction. A report is due to the Legislature by Sept. 1, 2018.

**Summary of [EHB 1595](#)**  
**(Concerning Costs Associated With Responding to Public Records Requests)**

*[Chap. 304, 2017 Laws. Act is effective July 23, 2017. Summary only – see bill for details.]*

**COPY FEES**

- **ACTUAL COSTS - COPYING FEES - ELECTRONIC RECORDS; HEARING.** Section 1 amends RCW 42.56.070(7) in the Public Records Act (PRA) to provide that:
  - Agencies may establish a statement of the actual costs that it charges for photocopies and now to include “electronically produced copies.”
  - “Actual costs” for copies may now also include the “actual cost of the electronic production or file transfer of the record and the use of any cloud-based data storage processing service” and the cost of transmitting electronic records (including the use of a physical media device).
  - The statement of costs may be adopted only after providing notice and a public hearing.
- **ACTUAL COSTS - COPYING FEES – CALCULATIONS.** Section 3 amends RCW 42.56.120 to provide that when calculating copy fees, “the agency shall use the most reasonable cost-efficient method available to the agency.” It also provides that actual costs may be imposed only in accordance with RCW 42.56.070(7) (see amendments in Section 1), and in accordance with the statement of factors and manner used to determine actual costs.
- **ACTUAL COSTS - CUSTOMIZED SERVICE CHARGE.** Section 3 amends RCW 42.56.120 to provide that an agency may additionally impose the actual costs of a “customized service charge” when the request would require the use of IT expertise to prepare data compilations or when such customized access services are not used by the agency for other business purposes. The agency must notify the requester and take other steps if it will be doing a customized service. An agency can require an advance 10 percent deposit.
- **ACTUAL COSTS VS. PRA DEFAULT FEE SCHEDULE – RULE DECLARATION.** Section 3 amends RCW 42.56.120 to provide that an agency need not calculate actual copying costs “if it has rules or regulations declaring the reasons doing so would be unduly burdensome.” In that case, the agency can use the PRA default fee schedule. See next bullet.
- **PRA DEFAULT FEE SCHEDULE.** Section 3 amends RCW 42.56.120 to provide a PRA default copying fee schedule (including an optional flat fee), under which the agency may charge:

<b>PRA Fee Schedule</b>	
Actual cost	Customized service charge (in addition to fees for copies – see copying fees below).
<b>Copies:</b>	
15 cents /page	Photocopies, printed copies of electronic records when requested by the requester, or for the use of agency equipment to make photocopies.
10 cents /page	Scanned records, or use of agency equipment for scanning.
5 cents /each 4 electronic files or attachment	Records uploaded to email, or cloud-based data storage service, or other means of electronic delivery.
10 cents /gigabyte	Records transmitted in electronic format or for use of agency equipment to send records electronically.
Actual cost	Digital storage media or devices.
Actual cost	Any container or envelope used to mail copies.
Actual cost	Postage or delivery charges.
<i>↑ Copy charges above may be combined to the extent more than one type of charge applies to copies responsive to a particular request</i>	
<b>Option for Copies:</b>	
Up to \$2 flat fee	As an alternative to the copy charges above, an agency may charge a flat fee of up to \$2 for any request when the agency reasonably estimates and documents that the costs are equal to or more than \$2. If applied to the initial installment, additional flat fees shall not be charged for subsequent installments.

## Summary of [EHB 1595](#) (Cont.)

[Chap. 304, 2017 Laws. Act is effective July 23, 2017. Summary only – see bill for details.]

### COPY FEES (cont.)

- **NO FEE - RECORDS ROUTINELY POSTED ON AGENCY WEB SITE.** Section 3 amends RCW 42.56.120 to provide that an agency shall not charge for access to or downloading of records it routinely posts on its web site prior to the receipt of a request, unless the requester has specifically asked that the agency provide records through other means.
- **FEE ESTIMATE.** Section 3 amends RCW 42.56.120 to provide that upon request an agency must provide a summary of the applicable charges before copies are made and the requester may revise the request to reduce the number of copies, thus the applicable charges. See also Section 5 (new court action challenging estimate of fees, amending RCW 42.56.550).
- **FEE WAIVER - RULES.** Section 3 amends RCW 42.56.120 to provide that an agency may waive any charge “pursuant to agency rules and regulations.”
- **OTHER FEE ARRANGEMENTS.** Section 3 amends RCW 42.56.120 to provide that an agency may enter into a contract, memorandum of understanding or other agreement with a requester for an alternative fee arrangement, or in response to a voluminous or frequently occurring request.
- **FEES IN OTHER STATUTES.** Section 4 amends RCW 42.56.130, which provides that PRA fees in RCW 42.56.070(7) and (8) and 42.56.120 do not supersede other statutory provisions for copying fees, and the amendment extends that provision to electronically produced copies.
- **NEW COURT ACTION – CHALLENGING FEE ESTIMATE.** Section 5 amends RCW 42.56.550 to permit a requester to file a superior court motion when the requester believes the agency has not made a “reasonable estimate of the charges to produce copies of public records.”

### RECORDS PROCEDURES

- **REQUESTS – FORMAT.** Section 2 amends RCW 42.56.080 to provide that “No official format is required for making a records request; however, agencies may recommend that requestors submit requests using an agency provided form or web page.”
- **REQUESTS – BOTS.** Section 2 amends RCW 42.56.080 to provide that an agency may deny a “bot” request (a request that an agency reasonably believes was automatically generated by a computer program or script), when it is one of multiple requests from the requester received within a 24 hour period. The agency must establish that responding would cause excessive interference with other agency essential functions.
- **REQUESTS - IDENTIFIABLE RECORDS.** Section 2 amends RCW 42.56.080 to provide that PRA requests must be for “identifiable” records. A request for all or substantially all of an agency’s records is not a valid PRA request, “provided that a request for all records regarding a particular topic or containing a particular keyword or name shall not be considered a request for all of an agency’s records.”
- **REQUESTS – RECEIPT.** Section 2 amends RCW 42.56.080 to require agencies to honor PRA requests received “in person during an agency’s normal office hours” or by email.
- **PROVIDING COPIES - ELECTRONIC RECORD TRANSLATIONS, PAPER SCANS.** Section 3 amends RCW 42.56.120 to provide that translating a record into an alternative electronic format at the request of the requester or scanning a paper record is not creating a new record.