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**SENATE BILL 5208**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** Senator Wilson, J.

1 AN ACT Relating to requiring legislative approval before agencies  
2 may increase fees for public records production; and amending RCW  
3 42.56.070.

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

5 **Sec. 1.** RCW 42.56.070 and 2017 c 304 s 1 are each amended to  
6 read as follows:

7 (1) Each agency, in accordance with published rules, shall make  
8 available for public inspection and copying all public records,  
9 unless the record falls within the specific exemptions of subsection  
10 (8) of this section, this chapter, or other statute which exempts or  
11 prohibits disclosure of specific information or records. To the  
12 extent required to prevent an unreasonable invasion of personal  
13 privacy interests protected by this chapter, an agency shall delete  
14 identifying details in a manner consistent with this chapter when it  
15 makes available or publishes any public record; however, in each  
16 case, the justification for the deletion shall be explained fully in  
17 writing.

18 (2) For informational purposes, each agency shall publish and  
19 maintain a current list containing every law, other than those listed  
20 in this chapter, that the agency believes exempts or prohibits  
21 disclosure of specific information or records of the agency. An

1 agency's failure to list an exemption shall not affect the efficacy  
2 of any exemption.

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

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

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

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

13 (d) Planning policies and goals, and interim and final planning  
14 decisions;

15 (e) Factual staff reports and studies, factual consultant's  
16 reports and studies, scientific reports and studies, and any other  
17 factual information derived from tests, studies, reports, or surveys,  
18 whether conducted by public employees or others; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (7) Each agency may establish, maintain, and make available for  
30 public inspection and copying a statement of the actual costs that it  
31 charges for providing photocopies or electronically produced copies,  
32 of public records and a statement of the factors and manner used to  
33 determine the actual costs. Any statement of costs may be adopted by  
34 an agency only after providing notice and public hearing. Beginning  
35 the effective date of this section, a state agency may not revise its  
36 statement of costs to increase the charges for providing public  
37 records without prior specific legislative approval.

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

1 (A) The actual cost of the paper and the per page cost for use of  
2 agency copying equipment; and  
3 (B) The actual cost of the electronic production or file transfer  
4 of the record and the use of any cloud-based data storage and  
5 processing service.  
6 (ii) In determining other actual costs for providing copies of  
7 public records, an agency may include all costs directly incident to:  
8 (A) Shipping such public records, including the cost of postage  
9 or delivery charges and the cost of any container or envelope used;  
10 and  
11 (B) Transmitting such records in an electronic format, including  
12 the cost of any transmission charge and use of any physical media  
13 device provided by the agency.  
14 (b) In determining the actual costs for providing copies of  
15 public records, an agency may not include staff salaries, benefits,  
16 or other general administrative or overhead charges, unless those  
17 costs are directly related to the actual cost of copying the public  
18 records. Staff time to copy and send the requested public records may  
19 be included in an agency's costs.  
20 (8) This chapter shall not be construed as giving authority to  
21 any agency, the office of the secretary of the senate, or the office  
22 of the chief clerk of the house of representatives to give, sell or  
23 provide access to lists of individuals requested for commercial  
24 purposes, and agencies, the office of the secretary of the senate,  
25 and the office of the chief clerk of the house of representatives  
26 shall not do so unless specifically authorized or directed by law:  
27 PROVIDED, HOWEVER, That lists of applicants for professional licenses  
28 and of professional licensees shall be made available to those  
29 professional associations or educational organizations recognized by  
30 their professional licensing or examination board, upon payment of a  
31 reasonable charge therefor: PROVIDED FURTHER, That such recognition  
32 may be refused only for a good cause pursuant to a hearing under the  
33 provisions of chapter 34.05 RCW, the administrative procedure act.

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