
SENATE BILL No. 294

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-14.

Synopsis: Public records and public meetings. Provides that an officer or management level employee of a public agency who knowingly or intentionally violates the open door law by: (1) taking final action outside a regular meeting or special meeting; (2) participating in a secret ballot during a meeting; (3) discussing in an executive session subjects that are not eligible for an executive session; or (4) participating in at least one meeting of a series of meetings prohibited by law; commits a Class C infraction and is personally liable for the judgment and costs. Provides that an officer or management level employee of a public agency who intentionally denies a request for a public record that the officer or management level employee knows or reasonably should know is subject to disclosure under the open records act commits a Class C infraction and is personally liable for the judgment and costs. Provides that an officer or management level employee of a public agency who intentionally charges an excessive copying fee commits a Class C infraction and is personally liable for the judgment and costs. Prohibits a public agency from charging a fee for a public record transmitted by electronic mail except for a: (1) fee charged for reprogramming a computer system if the reprogramming is required to separate disclosable information from nondisclosable information; (2) certification or search fee set by statute or ordered by a court; or (3) fee charged for providing an electronic map.

Effective: July 1, 2012.

Holdman

January 5, 2012, read first time and referred to Committee on Local Government.

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Second Regular Session 117th General Assembly (2012)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2011 Regular Session of the General Assembly.

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SENATE BILL No. 294



A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 5-14-1.5-7.5 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2012]: **Sec. 7.5. (a) As used in this section,**
4 **"individual" means:**
5 (1) **an officer of a public agency; or**
6 (2) **a management level employee of a public agency.**
7 (b) **If an individual knowingly or intentionally fails to perform**
8 **a duty imposed on the individual under this chapter by:**
9 (1) **taking final action outside a regular meeting or special**
10 **meeting;**
11 (2) **participating in a secret ballot during a meeting;**
12 (3) **discussing in an executive session subjects that are not**
13 **eligible for an executive session; or**
14 (4) **participating in at least one (1) gathering of a series of**
15 **gatherings under section 3.1 of this chapter;**
16 **the individual commits a Class C infraction and is personally liable**
17 **for the judgment and costs.**



1 SECTION 2. IC 5-14-3-8, AS AMENDED BY P.L.16-2008,
 2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 3 JULY 1, 2012]: Sec. 8. (a) For the purposes of this section, "state
 4 agency" has the meaning set forth in IC 4-13-1-1.

5 (b) Except as provided in this section, a public agency may not
 6 charge any fee under this chapter **for the following:**

7 (1) To inspect a public record. ~~or~~

8 (2) To search for, examine, or review a record to determine
 9 whether the record may be disclosed.

10 **(3) An electronic copy of a public record transmitted by**
 11 **electronic mail. However, a public agency may charge a fee**
 12 **for a public record transmitted by electronic mail if the fee**
 13 **for the public record is authorized under:**

14 **(A) subsection (f) or (j); or**

15 **(B) section 6(c) of this chapter.**

16 (c) The Indiana department of administration shall establish a
 17 uniform copying fee for the copying of one (1) page of a standard-sized
 18 document by state agencies. The fee may not exceed the average cost
 19 of copying records by state agencies or ten cents (\$0.10) per page,
 20 whichever is greater. A state agency may not collect more than the
 21 uniform copying fee for providing a copy of a public record. However,
 22 a state agency shall establish and collect a reasonable fee for copying
 23 nonstandard-sized documents.

24 (d) This subsection applies to a public agency that is not a state
 25 agency. The fiscal body (as defined in IC 36-1-2-6) of the public
 26 agency, or the governing body, if there is no fiscal body, shall establish
 27 a fee schedule for the certification or copying of documents. The fee for
 28 certification of documents may not exceed five dollars (\$5) per
 29 document. The fee for copying documents may not exceed the greater
 30 of:

31 (1) ten cents (\$0.10) per page for copies that are not color copies
 32 or twenty-five cents (\$0.25) per page for color copies; or

33 (2) the actual cost to the agency of copying the document.

34 As used in this subsection, "actual cost" means the cost of paper and
 35 the per-page cost for use of copying or facsimile equipment and does
 36 not include labor costs or overhead costs. A fee established under this
 37 subsection must be uniform throughout the public agency and uniform
 38 to all purchasers.

39 (e) If:

40 (1) a person is entitled to a copy of a public record under this
 41 chapter; and

42 (2) the public agency which is in possession of the record has

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- 1 reasonable access to a machine capable of reproducing the public
 2 record;
- 3 the public agency must provide at least one (1) copy of the public
 4 record to the person. However, if a public agency does not have
 5 reasonable access to a machine capable of reproducing the record or if
 6 the person cannot reproduce the record by use of enhanced access
 7 under section 3.5 of this chapter, the person is only entitled to inspect
 8 and manually transcribe the record. A public agency may require that
 9 the payment for copying costs be made in advance.
- 10 (f) Notwithstanding subsection ~~(b)~~ **(b)(1), (b)(2)**, (c), (d), (g), (h),
 11 or (i), a public agency shall collect any certification, copying, facsimile
 12 machine transmission, or search fee that is specified by statute or is
 13 ordered by a court. **Notwithstanding subsection (b)(3), a public**
 14 **agency shall collect any certification or search fee that is specified**
 15 **by statute or is ordered by a court.**
- 16 (g) Except as provided by subsection (h), for providing a duplicate
 17 of a computer tape, computer disc, microfilm, or similar or analogous
 18 record system containing information owned by the public agency or
 19 entrusted to it, a public agency may charge a fee, uniform to all
 20 purchasers, that does not exceed the sum of the following:
- 21 (1) The agency's direct cost of supplying the information in that
 22 form.
- 23 (2) The standard cost for selling the same information to the
 24 public in the form of a publication if the agency has published the
 25 information and made the publication available for sale.
- 26 (3) In the case of the legislative services agency, a reasonable
 27 percentage of the agency's direct cost of maintaining the system
 28 in which the information is stored. However, the amount charged
 29 by the legislative services agency under this subdivision may not
 30 exceed the sum of the amounts it may charge under subdivisions
 31 (1) and (2).
- 32 (h) This subsection applies to the fee charged by a public agency for
 33 providing enhanced access to a public record. A public agency may
 34 charge any reasonable fee agreed on in the contract under section 3.5
 35 of this chapter for providing enhanced access to public records.
- 36 (i) This subsection applies to the fee charged by a public agency for
 37 permitting a governmental entity to inspect public records by means of
 38 an electronic device. A public agency may charge any reasonable fee
 39 for the inspection of public records under this subsection, or the public
 40 agency may waive any fee for the inspection.
- 41 (j) Except as provided in subsection (k), a public agency may charge
 42 a fee, uniform to all purchasers, for providing an electronic map that is

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1 based upon a reasonable percentage of the agency's direct cost of
 2 maintaining, upgrading, and enhancing the electronic map and for the
 3 direct cost of supplying the electronic map in the form requested by the
 4 purchaser. If the public agency is within a political subdivision having
 5 a fiscal body, the fee is subject to the approval of the fiscal body of the
 6 political subdivision.

7 (k) The fee charged by a public agency under subsection (j) to cover
 8 costs for maintaining, upgrading, and enhancing an electronic map may
 9 be waived by the public agency if the electronic map for which the fee
 10 is charged will be used for a noncommercial purpose, including the
 11 following:

- 12 (1) Public agency program support.
- 13 (2) Nonprofit activities.
- 14 (3) Journalism.
- 15 (4) Academic research.

16 SECTION 3. IC 5-14-3-9.5 IS ADDED TO THE INDIANA CODE
 17 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 18 1, 2012]: **Sec. 9.5. (a) As used in this section, "individual" means:**

- 19 (1) an officer of a public agency; or
- 20 (2) a management level employee of a public agency.

21 **(b) If an individual:**

- 22 (1) denies a request complying with section 3(a) of this
 23 chapter for inspection or copying of a public record; and
- 24 (2) knows or reasonably should know that the public record
 25 is subject to disclosure under this chapter;

26 **the individual commits a Class C infraction and is personally liable
 27 for the judgment and costs.**

28 **(c) If an individual charges a copying fee that the individual
 29 knows or reasonably should know exceeds the amount set by
 30 statute, fee schedule, ordinance, or court order, the individual
 31 commits a Class C infraction and is personally liable for the
 32 judgment and costs.**

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