Reprinted
March 22, 2013

ENGROSSED
HOUSE BILL No. 1175

DIGEST OF HB 1175 (Updated March 21, 2013 2:08 pm - DI 87)

Citations Affected: IC 4-23; IC 5-14; IC 36-2.

Synopsis: Public records. Allows a state or local government public agency to charge a fee for any records search in excess of two hours. Provides that a public agency may not charge a search time fee if another fee is charged that covers the public records request. Provides that the search fee must be an hourly fee that does not exceed the lesser of: (1) the hourly rate of the person making the search; or (2) $20 per hour. Provides that the public agency may charge only for time that the person making the search actually spends in searching for the record, and may not charge for computer run time. Requires the fee to be prorated to reflect any search time of less than an hour. Prohibits a public agency from establishing a minimum fee for searching for a record. Requires a public agency to make a good faith effort to complete a search for a record within a reasonable time in order to minimize the amount of the search fee. Prohibits a public agency from charging a fee for a public record transmitted by electronic mail except for: (1) a fee charged for reprogramming a computer system if the reprogramming is required to separate disclosable information from
(Continued next page)

Effective: July 1, 2013.

Friend, Richardson, Saunders
(SENATE SPONSORS — HOLDMAN, MRVAN)

January 10, 2013, read first time and referred to Committee on Government and Regulatory Reform.
January 31, 2013, amended, reported — Do Pass.
February 4, 2013, read second time, ordered engrossed. Engrossed.
February 5, 2013, read third time, passed. Yeas 72, nays 27.

SENATE ACTION

February 25, 2013, read first time and referred to Committee on Tax and Fiscal Policy.
March 12, 2013, amended, reported favorably — Do Pass.
March 21, 2013, read second time, amended, ordered engrossed.

C o p y

Digest Continued

nondisclosable information; (2) a certification or search fee set by statute or ordered by a court; or (3) a fee charged for providing an electronic map. Prohibits a public agency from charging for a copy of a public record that is made with a cellular telephone by a noncommercial entity for a noncommercial purpose. Provides that if a public record is in an electronic format, a public agency (excluding the office of the county recorder) shall provide an electronic copy or a paper copy, at the option of the person making the request for a public record. Provides that the county recorder shall reject for filing or recording any document containing blood or other bodily fluids.

C o p y

Reprinted
March 22, 2013

First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

C o p y

ENGROSSED
HOUSE BILL No. 1175

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:

SECTION 1. IC 4-23-7.3-2, AS ADDED BY P.L.198-2007, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 2. As used in this chapter, "electronic map" has the meaning set forth in ~~IC 5-14-3-2(d).~~ **IC 5-14-3-2.**

SECTION 2. IC 5-14-3-2, AS AMENDED BY P.L.51-2008, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 2. (a) The definitions set forth in this section apply throughout this chapter.

(b) "Computer processing time" means the amount of time a computer takes to process a command or script to extract or copy electronically stored data that is the subject of a public records request.

~~(b)~~ **(c)** "Copy" includes transcribing by handwriting, photocopying, xerography, duplicating machine, duplicating electronically stored data onto a disk, tape, drum, or any other medium of electronic data storage, and reproducing by any other means.

~~(c)~~ **(d)** "Direct cost" means one hundred five percent (105%) of the

sum of the cost of:

(1) the initial development of a program, if any;

(2) the labor required to retrieve electronically stored data; and

(3) any medium used for electronic output;

for providing a duplicate of electronically stored data onto a disk, tape, drum, or other medium of electronic data retrieval under section 8(g) of this chapter, or for reprogramming a computer system under section 6(c) of this chapter.

~~(d)~~ **(e)** "Electronic map" means copyrighted data provided by a public agency from an electronic geographic information system.

~~(e)~~ **(f)** "Enhanced access" means the inspection of a public record by a person other than a governmental entity and that:

(1) is by means of an electronic device other than an electronic device provided by a public agency in the office of the public agency; or

(2) requires the compilation or creation of a list or report that does not result in the permanent electronic storage of the information.

~~(f)~~ **(g)** "Facsimile machine" means a machine that electronically transmits exact images through connection with a telephone network.

~~(g)~~ **(h)** "Inspect" includes the right to do the following:

(1) Manually transcribe and make notes, abstracts, or memoranda.

(2) In the case of tape recordings or other aural public records, to listen and manually transcribe or duplicate, or make notes, abstracts, or other memoranda from them.

(3) In the case of public records available:

(A) by enhanced access under section 3.5 of this chapter; or

(B) to a governmental entity under section 3(c)(2) of this chapter;

to examine and copy the public records by use of an electronic device.

(4) In the case of electronically stored data, to manually transcribe and make notes, abstracts, or memoranda or to duplicate the data onto a disk, tape, drum, or any other medium of electronic storage.

~~(h)~~ **(i)** "Investigatory record" means information compiled in the course of the investigation of a crime.

~~(i)~~ **(j)** "Offender" means a person confined in a penal institution as the result of the conviction for a crime.

~~(j)~~ **(k)** "Patient" has the meaning set out in IC 16-18-2-272(d).

~~(k)~~ **(l)** "Person" means an individual, a corporation, a limited liability company, a partnership, an unincorporated association, or a governmental entity.

C o p y

~~(l)~~ **(m)** "Provider" has the meaning set out in IC 16-18-2-295(b) and includes employees of the state department of health or local boards of health who create patient records at the request of another provider or who are social workers and create records concerning the family background of children who may need assistance.

~~(m)~~ **(n)** "Public agency", except as provided in section 2.1 of this chapter, means the following:

(1) Any board, commission, department, division, bureau, committee, agency, office, instrumentality, or authority, by whatever name designated, exercising any part of the executive, administrative, judicial, or legislative power of the state.

(2) Any:

(A) county, township, school corporation, city, or town, or any board, commission, department, division, bureau, committee, office, instrumentality, or authority of any county, township, school corporation, city, or town;

(B) political subdivision (as defined by IC 36-1-2-13); or

(C) other entity, or any office thereof, by whatever name designated, exercising in a limited geographical area the executive, administrative, judicial, or legislative power of the state or a delegated local governmental power.

(3) Any entity or office that is subject to:

(A) budget review by either the department of local government finance or the governing body of a county, city, town, township, or school corporation; or

(B) an audit by the state board of accounts that is required by statute, rule, or regulation.

(4) Any building corporation of a political subdivision that issues bonds for the purpose of constructing public facilities.

(5) Any advisory commission, committee, or body created by statute, ordinance, or executive order to advise the governing body of a public agency, except medical staffs or the committees of any such staff.

(6) Any law enforcement agency, which means an agency or a department of any level of government that engages in the investigation, apprehension, arrest, or prosecution of alleged criminal offenders, such as the state police department, the police or sheriff's department of a political subdivision, prosecuting attorneys, members of the excise police division of the alcohol and tobacco commission, conservation officers of the department of natural resources, gaming agents of the Indiana gaming commission, gaming control officers of the Indiana gaming

C o p y

commission, and the security division of the state lottery commission.

(7) Any license branch staffed by employees of the bureau of motor vehicles commission under IC 9-16.

(8) The state lottery commission established by IC 4-30-3-1, including any department, division, or office of the commission.

(9) The Indiana gaming commission established under IC 4-33, including any department, division, or office of the commission.

(10) The Indiana horse racing commission established by IC 4-31, including any department, division, or office of the commission.

~~(n)~~ **(o)** "Public record" means any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material, regardless of form or characteristics.

~~(o)~~ **(p)** "Standard-sized documents" includes all documents that can be mechanically reproduced (without mechanical reduction) on paper sized eight and one-half (8 1/2) inches by eleven (11) inches or eight and one-half (8 1/2) inches by fourteen (14) inches.

~~(p)~~ **(q)** "Trade secret" has the meaning set forth in IC 24-2-3-2.

~~(q)~~ **(r)** "Work product of an attorney" means information compiled by an attorney in reasonable anticipation of litigation. The term includes the attorney's:

(1) notes and statements taken during interviews of prospective witnesses; and

(2) legal research or records, correspondence, reports, or memoranda to the extent that each contains the attorney's opinions, theories, or conclusions.

This definition does not restrict the application of any exception under section 4 of this chapter.

SECTION 3. IC 5-14-3-3, AS AMENDED BY P.L.134-2012, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 3. (a) Any person may inspect and copy the public records of any public agency during the regular business hours of the agency, except as provided in section 4 of this chapter. A request for inspection or copying must:

(1) identify with reasonable particularity the record being requested; and

(2) be, at the discretion of the agency, in writing on or in a form provided by the agency.

C o p y

No request may be denied because the person making the request refuses to state the purpose of the request, unless such condition is required by other applicable statute.

(b) A public agency may not deny or interfere with the exercise of the right stated in subsection (a). Within a reasonable time after the request is received by the agency, the public agency shall either:

(1) provide the requested copies to the person making the request; or

(2) allow the person to make copies:

(A) on the agency's equipment; or

(B) on the person's own equipment.

(c) Notwithstanding subsections (a) and (b), a public agency may or may not do the following:

(1) In accordance with a contract described in section 3.5 of this chapter, permit a person to inspect and copy through the use of enhanced access public records containing information owned by or entrusted to the public agency.

(2) Permit a governmental entity to use an electronic device to inspect and copy public records containing information owned by or entrusted to the public agency.

(d) Except as provided in subsection (e), a public agency that maintains or contracts for the maintenance of public records in an electronic data storage system shall make reasonable efforts to provide to a person making a request a copy of all disclosable data contained in the records on paper, disk, tape, drum, or any other method of electronic retrieval if the medium requested is compatible with the agency's data storage system. This subsection does not apply to an electronic map.

(e) A state agency may adopt a rule under IC 4-22-2, and a political subdivision may enact an ordinance, prescribing the conditions under which a person who receives information on disk or tape under subsection (d) may or may not use the information for commercial purposes, including to sell, advertise, or solicit the purchase of merchandise, goods, or services, or sell, loan, give away, or otherwise deliver the information obtained by the request to any other person for these purposes. Use of information received under subsection (d) in connection with the preparation or publication of news, for nonprofit activities, or for academic research is not prohibited. A person who uses information in a manner contrary to a rule or ordinance adopted under this subsection may be prohibited by the state agency or political subdivision from obtaining a copy or any further data under subsection (d).

C o p y

(f) Notwithstanding the other provisions of this section, a public agency is not required to create or provide copies of lists of names and addresses (including electronic mail account addresses) unless the public agency is required to publish such lists and disseminate them to the public under a statute. However, if a public agency has created a list of names and addresses (excluding electronic mail account addresses) it must permit a person to inspect and make memoranda abstracts from the list unless access to the list is prohibited by law. The lists of names and addresses (including electronic mail account addresses) described in subdivisions (1) through (3) may not be disclosed by public agencies to any individual or entity for political purposes and may not be used by any individual or entity for political purposes. In addition, the lists of names and addresses (including electronic mail account addresses) described in subdivisions (1) through (3) may not be disclosed by public agencies to commercial entities for commercial purposes and may not be used by commercial entities for commercial purposes. The prohibition in this subsection against the disclosure of lists for political or commercial purposes applies to the following lists of names and addresses (including electronic mail account addresses):

(1) A list of employees of a public agency.

(2) A list of persons attending conferences or meetings at a state educational institution or of persons involved in programs or activities conducted or supervised by the state educational institution.

(3) A list of students who are enrolled in a public school corporation if the governing body of the public school corporation adopts a policy:

(A) with respect to disclosure related to a commercial purpose, prohibiting the disclosure of the list to commercial entities for commercial purposes;

(B) with respect to disclosure related to a commercial purpose, specifying the classes or categories of commercial entities to which the list may not be disclosed or by which the list may not be used for commercial purposes; or

(C) with respect to disclosure related to a political purpose, prohibiting the disclosure of the list to individuals and entities for political purposes.

A policy adopted under subdivision (3)(A) or (3)(B) must be uniform and may not discriminate among similarly situated commercial entities. For purposes of this subsection, "political purposes" means influencing the election of a candidate for federal, state, legislative, local, or school

C o p y

board office or the outcome of a public question or attempting to solicit a contribution to influence the election of a candidate for federal, state, legislative, local, or school board office or the outcome of a public question.

(g) A public agency may not enter into or renew a contract or an obligation:

(1) for the storage or copying of public records; or

(2) that requires the public to obtain a license or pay copyright royalties for obtaining the right to inspect and copy the records unless otherwise provided by applicable statute;

if the contract, obligation, license, or copyright unreasonably impairs the right of the public to inspect and copy the agency's public records.

(h) If this section conflicts with IC 3-7, the provisions of IC 3-7 apply.

(i) This subsection applies to a public record that is in an electronic format. This subsection does not apply to a public record recorded in the office of the county recorder. The public agency shall provide an electronic copy or a paper copy, at the option of the person making the request for a public record. This subsection does not require a public agency to change the format of a public record.

SECTION 4. IC 5-14-3-8, AS AMENDED BY P.L.16-2008, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 8. (a) For the purposes of this section, "state agency" has the meaning set forth in IC 4-13-1-1.

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

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

(2) To search for a record, if the search does not exceed two (2) hours.

~~(2)~~ **(3)** To ~~search for,~~ examine or review a record to determine whether the record may be disclosed.

(4) An electronic copy of a public record transmitted by electronic mail. However, a public agency may charge a fee for a public record transmitted by electronic mail if the fee for the public record is authorized under:

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

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

(5) A copy of a public record that is made with a cellular telephone:

(A) by a noncommercial entity; and

(B) for a noncommercial purpose.

Copy

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

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

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

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

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

(e) If:

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

(2) the public agency which is in possession of the record has reasonable access to a machine capable of reproducing the public record;

the public agency must provide at least one (1) copy of the public record to the person. However, if a public agency does not have reasonable access to a machine capable of reproducing the record or if the person cannot reproduce the record by use of enhanced access under section 3.5 of this chapter, the person is only entitled to inspect and manually transcribe the record. A public agency may require that the payment for **search and** copying costs be made in advance.

(f) Notwithstanding subsection ~~(b),~~ **(b)(1), (b)(2), (b)(3),** (c), (d), (g), (h), or (i), a public agency shall collect any certification, copying, facsimile machine transmission, or search fee that is specified by statute or is ordered by a court. **Notwithstanding subsection (b)(4), a public agency shall collect any certification or search fee that is specified by statute or is ordered by a court.**

C o p y

(g) Except as provided by subsection (h), for providing a duplicate of a computer tape, computer disc, microfilm, or similar or analogous record system containing information owned by the public agency or entrusted to it, a public agency may charge a fee, uniform to all purchasers, that does not exceed the sum of the following:

(1) The agency's direct cost of supplying the information in that form.

(2) The standard cost for selling the same information to the public in the form of a publication if the agency has published the information and made the publication available for sale.

(3) In the case of the legislative services agency, a reasonable percentage of the agency's direct cost of maintaining the system in which the information is stored. However, the amount charged by the legislative services agency under this subdivision may not exceed the sum of the amounts it may charge under subdivisions (1) and (2).

(h) This subsection applies to the fee charged by a public agency for providing enhanced access to a public record. A public agency may charge any reasonable fee agreed on in the contract under section 3.5 of this chapter for providing enhanced access to public records.

(i) This subsection applies to the fee charged by a public agency for permitting a governmental entity to inspect public records by means of an electronic device. A public agency may charge any reasonable fee for the inspection of public records under this subsection, or the public agency may waive any fee for the inspection.

(j) Except as provided in subsection (k), a public agency may charge a fee, uniform to all purchasers, for providing an electronic map that is based upon a reasonable percentage of the agency's direct cost of maintaining, upgrading, and enhancing the electronic map and for the direct cost of supplying the electronic map in the form requested by the purchaser. If the public agency is within a political subdivision having a fiscal body, the fee is subject to the approval of the fiscal body of the political subdivision.

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

(1) Public agency program support.

(2) Nonprofit activities.

(3) Journalism.

(4) Academic research.

C o p y

(l) A public agency may not charge a fee for the first two (2) hours required to search for a record. A public agency may charge a search fee for any time in excess of two (2) hours. If the public agency charges a search fee, the agency shall charge an hourly fee that does not exceed the lesser of:

(1) the hourly rate of the person making the search; or

(2) twenty dollars ($20) per hour.

A public agency charging an hourly fee under this subsection for searching for a record may charge only for time that the person making the search actually spends in searching for the record. A public agency may not charge for computer processing time, and may not establish a minimum fee for searching for a record. A public agency must make a good faith effort to complete a search for a record within a reasonable time in order to minimize the amount of a search fee. The fee shall be prorated to reflect any search time of less than one (1) hour. If a fee is charged by a public agency under subsection (g), (h), (i), or (j) for a public record, the public agency may not charge a fee for searching for the record under this subsection.

SECTION 5. IC 36-2-11-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 10. **(a)** The recorder may record sheets conforming in size, color, weight, and texture to the pages of the appropriate official record book in which similar instruments are recorded, if:

(1) the complete text of a printed instrument comprising ten (10) or more printed pages has been accurately and legibly printed on the sheets;

(2) the original instrument is filed for record in his office at the same time; and

(3) he is satisfied that the complete text of the original instrument has been accurately and legibly printed on the sheets.

After the recorder has numbered the sheets and securely fastened them into the official record book at the proper place according to the date and time of the filing of the instrument for record, the instruments are considered to have been properly recorded.

(b) The recorder shall reject for filing or recording any document containing blood or other bodily fluids.

C o p y

COMMITTEE REPORT

Mr. Speaker: Your Committee on Government and Regulatory Reform, to which was referred House Bill 1175, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 5-14-3-3, AS AMENDED BY P.L.134-2012, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 3. (a) Any person may inspect and copy the public records of any public agency during the regular business hours of the agency, except as provided in section 4 of this chapter. A request for inspection or copying must:

(1) identify with reasonable particularity the record being requested; and

(2) be, at the discretion of the agency, in writing on or in a form provided by the agency.

No request may be denied because the person making the request refuses to state the purpose of the request, unless such condition is required by other applicable statute.

(b) A public agency may not deny or interfere with the exercise of the right stated in subsection (a). Within a reasonable time after the request is received by the agency, the public agency shall either:

(1) provide the requested copies to the person making the request; or

(2) allow the person to make copies:

(A) on the agency's equipment; or

(B) on the person's own equipment.

(c) Notwithstanding subsections (a) and (b), a public agency may or may not do the following:

(1) In accordance with a contract described in section 3.5 of this chapter, permit a person to inspect and copy through the use of enhanced access public records containing information owned by or entrusted to the public agency.

(2) Permit a governmental entity to use an electronic device to inspect and copy public records containing information owned by or entrusted to the public agency.

(d) Except as provided in subsection (e), a public agency that maintains or contracts for the maintenance of public records in an electronic data storage system shall make reasonable efforts to provide to a person making a request a copy of all disclosable data contained

C o p y

in the records on paper, disk, tape, drum, or any other method of electronic retrieval if the medium requested is compatible with the agency's data storage system. This subsection does not apply to an electronic map.

(e) A state agency may adopt a rule under IC 4-22-2, and a political subdivision may enact an ordinance, prescribing the conditions under which a person who receives information on disk or tape under subsection (d) may or may not use the information for commercial purposes, including to sell, advertise, or solicit the purchase of merchandise, goods, or services, or sell, loan, give away, or otherwise deliver the information obtained by the request to any other person for these purposes. Use of information received under subsection (d) in connection with the preparation or publication of news, for nonprofit activities, or for academic research is not prohibited. A person who uses information in a manner contrary to a rule or ordinance adopted under this subsection may be prohibited by the state agency or political subdivision from obtaining a copy or any further data under subsection (d).

(f) Notwithstanding the other provisions of this section, a public agency is not required to create or provide copies of lists of names and addresses (including electronic mail account addresses) unless the public agency is required to publish such lists and disseminate them to the public under a statute. However, if a public agency has created a list of names and addresses (excluding electronic mail account addresses) it must permit a person to inspect and make memoranda abstracts from the list unless access to the list is prohibited by law. The lists of names and addresses (including electronic mail account addresses) described in subdivisions (1) through (3) may not be disclosed by public agencies to any individual or entity for political purposes and may not be used by any individual or entity for political purposes. In addition, the lists of names and addresses (including electronic mail account addresses) described in subdivisions (1) through (3) may not be disclosed by public agencies to commercial entities for commercial purposes and may not be used by commercial entities for commercial purposes. The prohibition in this subsection against the disclosure of lists for political or commercial purposes applies to the following lists of names and addresses (including electronic mail account addresses):

(1) A list of employees of a public agency.

(2) A list of persons attending conferences or meetings at a state educational institution or of persons involved in programs or activities conducted or supervised by the state educational

C o p y

institution.

(3) A list of students who are enrolled in a public school corporation if the governing body of the public school corporation adopts a policy:

(A) with respect to disclosure related to a commercial purpose, prohibiting the disclosure of the list to commercial entities for commercial purposes;

(B) with respect to disclosure related to a commercial purpose, specifying the classes or categories of commercial entities to which the list may not be disclosed or by which the list may not be used for commercial purposes; or

(C) with respect to disclosure related to a political purpose, prohibiting the disclosure of the list to individuals and entities for political purposes.

A policy adopted under subdivision (3)(A) or (3)(B) must be uniform and may not discriminate among similarly situated commercial entities. For purposes of this subsection, "political purposes" means influencing the election of a candidate for federal, state, legislative, local, or school board office or the outcome of a public question or attempting to solicit a contribution to influence the election of a candidate for federal, state, legislative, local, or school board office or the outcome of a public question.

(g) A public agency may not enter into or renew a contract or an obligation:

(1) for the storage or copying of public records; or

(2) that requires the public to obtain a license or pay copyright royalties for obtaining the right to inspect and copy the records unless otherwise provided by applicable statute;

if the contract, obligation, license, or copyright unreasonably impairs the right of the public to inspect and copy the agency's public records.

(h) If this section conflicts with IC 3-7, the provisions of IC 3-7 apply.

(i) This subsection applies to a public record that is in an electronic format. This subsection does not apply to a public record recorded in the office of the county recorder. The public agency shall provide an electronic copy or a paper copy, at the option of the person making the request for a public record. This subsection does not require a public agency to change the format of a public record.".

Page 1, line 6, delete ":" and insert "**for the following:**".

Page 1, line 7, delete "to" and insert "To".

Page 1, line 7, delete ";" and insert ".".

C o p y

Page 1, line 8, delete "to" and insert "**To**".

Page 1, line 9, delete "hours; or" and insert "**hours.**".

Page 1, line 10, after "(3)" delete "to" and insert "To".

Page 1, between lines 11 and 12, begin a new line block indented and insert:

"**(4) An electronic copy of a public record transmitted by electronic mail. However, a public agency may charge a fee for a public record transmitted by electronic mail if the fee for the public record is authorized under:**

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

(B) section 6(c) of this chapter.".

Page 2, line 31, strike "(b)," and insert "**(b)(1), (b)(2), (b)(3),**".

Page 2, line 34, after "court." insert "**Notwithstanding subsection (b)(4), a public agency shall collect any certification or search fee that is specified by statute or is ordered by a court.**".

Page 3, line 42, before "The fee" insert "**A public agency charging an hourly fee under this subsection for searching for a record may charge only for time that the person making the search actually spends in searching for the record, and may not charge for computer run time.**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1175 as introduced.)

MAHAN, Chair

Committee Vote: yeas 9, nays 1.

COMMITTEE REPORT

Madam President: The Senate Committee on Tax and Fiscal Policy, to which was referred House Bill No. 1175, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 4-23-7.3-2, AS ADDED BY P.L.198-2007, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 2. As used in this chapter, "electronic map" has the meaning set forth in ~~IC 5-14-3-2(d).~~ **IC 5-14-3-2.**

C o p y

SECTION 2. IC 5-14-3-2, AS AMENDED BY P.L.51-2008, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 2. (a) The definitions set forth in this section apply throughout this chapter.

(b) "Computer processing time" means the amount of time a computer takes to process a command or script to extract or copy electronically stored data that is the subject of a public records request.

~~(b)~~ **(c)** "Copy" includes transcribing by handwriting, photocopying, xerography, duplicating machine, duplicating electronically stored data onto a disk, tape, drum, or any other medium of electronic data storage, and reproducing by any other means.

~~(c)~~ **(d)** "Direct cost" means one hundred five percent (105%) of the sum of the cost of:

(1) the initial development of a program, if any;

(2) the labor required to retrieve electronically stored data; and

(3) any medium used for electronic output;

for providing a duplicate of electronically stored data onto a disk, tape, drum, or other medium of electronic data retrieval under section 8(g) of this chapter, or for reprogramming a computer system under section 6(c) of this chapter.

~~(d)~~ **(e)** "Electronic map" means copyrighted data provided by a public agency from an electronic geographic information system.

~~(e)~~ **(f)** "Enhanced access" means the inspection of a public record by a person other than a governmental entity and that:

(1) is by means of an electronic device other than an electronic device provided by a public agency in the office of the public agency; or

(2) requires the compilation or creation of a list or report that does not result in the permanent electronic storage of the information.

~~(f)~~ **(g)** "Facsimile machine" means a machine that electronically transmits exact images through connection with a telephone network.

~~(g)~~ **(h)** "Inspect" includes the right to do the following:

(1) Manually transcribe and make notes, abstracts, or memoranda.

(2) In the case of tape recordings or other aural public records, to listen and manually transcribe or duplicate, or make notes, abstracts, or other memoranda from them.

(3) In the case of public records available:

(A) by enhanced access under section 3.5 of this chapter; or

(B) to a governmental entity under section 3(c)(2) of this chapter;

to examine and copy the public records by use of an electronic

C o p y

device.

(4) In the case of electronically stored data, to manually transcribe and make notes, abstracts, or memoranda or to duplicate the data onto a disk, tape, drum, or any other medium of electronic storage.

~~(h)~~ **(i)** "Investigatory record" means information compiled in the course of the investigation of a crime.

~~(i)~~ **(j)** "Offender" means a person confined in a penal institution as the result of the conviction for a crime.

~~(j)~~ **(k)** "Patient" has the meaning set out in IC 16-18-2-272(d).

~~(k)~~ **(l)** "Person" means an individual, a corporation, a limited liability company, a partnership, an unincorporated association, or a governmental entity.

~~(l)~~ **(m)** "Provider" has the meaning set out in IC 16-18-2-295(b) and includes employees of the state department of health or local boards of health who create patient records at the request of another provider or who are social workers and create records concerning the family background of children who may need assistance.

~~(m)~~ **(n)** "Public agency", except as provided in section 2.1 of this chapter, means the following:

(1) Any board, commission, department, division, bureau, committee, agency, office, instrumentality, or authority, by whatever name designated, exercising any part of the executive, administrative, judicial, or legislative power of the state.

(2) Any:

(A) county, township, school corporation, city, or town, or any board, commission, department, division, bureau, committee, office, instrumentality, or authority of any county, township, school corporation, city, or town;

(B) political subdivision (as defined by IC 36-1-2-13); or

(C) other entity, or any office thereof, by whatever name designated, exercising in a limited geographical area the executive, administrative, judicial, or legislative power of the state or a delegated local governmental power.

(3) Any entity or office that is subject to:

(A) budget review by either the department of local government finance or the governing body of a county, city, town, township, or school corporation; or

(B) an audit by the state board of accounts that is required by statute, rule, or regulation.

(4) Any building corporation of a political subdivision that issues bonds for the purpose of constructing public facilities.

C o p y

(5) Any advisory commission, committee, or body created by statute, ordinance, or executive order to advise the governing body of a public agency, except medical staffs or the committees of any such staff.

(6) Any law enforcement agency, which means an agency or a department of any level of government that engages in the investigation, apprehension, arrest, or prosecution of alleged criminal offenders, such as the state police department, the police or sheriff's department of a political subdivision, prosecuting attorneys, members of the excise police division of the alcohol and tobacco commission, conservation officers of the department of natural resources, gaming agents of the Indiana gaming commission, gaming control officers of the Indiana gaming commission, and the security division of the state lottery commission.

(7) Any license branch staffed by employees of the bureau of motor vehicles commission under IC 9-16.

(8) The state lottery commission established by IC 4-30-3-1, including any department, division, or office of the commission.

(9) The Indiana gaming commission established under IC 4-33, including any department, division, or office of the commission.

(10) The Indiana horse racing commission established by IC 4-31, including any department, division, or office of the commission.

~~(n)~~ **(o)** "Public record" means any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material, regardless of form or characteristics.

~~(o)~~ **(p)** "Standard-sized documents" includes all documents that can be mechanically reproduced (without mechanical reduction) on paper sized eight and one-half (8 1/2) inches by eleven (11) inches or eight and one-half (8 1/2) inches by fourteen (14) inches.

~~(p)~~ **(q)** "Trade secret" has the meaning set forth in IC 24-2-3-2.

~~(q)~~ **(r)** "Work product of an attorney" means information compiled by an attorney in reasonable anticipation of litigation. The term includes the attorney's:

(1) notes and statements taken during interviews of prospective witnesses; and

(2) legal research or records, correspondence, reports, or memoranda to the extent that each contains the attorney's

C o p y

opinions, theories, or conclusions.

This definition does not restrict the application of any exception under section 4 of this chapter.".

Page 5, line 25, after "for" insert "**search and**".

Page 6, line 42, delete "run" and insert "**processing**".

Page 7, line 1, delete "an hour." and insert "**one (1) hour. If a fee is charged by a public agency under subsection (g), (h), (i), or (j) for a public record, the public agency may not charge a fee for searching for the record under this subsection.**".

Page 7, after line 1, begin a new paragraph and insert:

"SECTION 5. IC 36-2-11-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 10. **(a)** The recorder may record sheets conforming in size, color, weight, and texture to the pages of the appropriate official record book in which similar instruments are recorded, if:

(1) the complete text of a printed instrument comprising ten (10) or more printed pages has been accurately and legibly printed on the sheets;

(2) the original instrument is filed for record in his office at the same time; and

(3) he is satisfied that the complete text of the original instrument has been accurately and legibly printed on the sheets.

After the recorder has numbered the sheets and securely fastened them into the official record book at the proper place according to the date and time of the filing of the instrument for record, the instruments are considered to have been properly recorded.

(b) The recorder shall reject for filing or recording any document containing blood or other bodily fluids.".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1175 as printed February 1, 2013.)

HERSHMAN, Chairperson

Committee Vote: Yeas 9, Nays 0.

C o p y

SENATE MOTION

Madam President: I move that Engrossed House Bill 1175 be amended to read as follows:

Page 7, between lines 38 and 39, begin a new line block indented and insert:

"**(5) A copy of a public record that is made with a cellular telephone:**

(A) by a noncommercial entity; and

(B) for a noncommercial purpose.".

Page 10, line 6, delete "record, and" and insert "**record. A public agency**".

Page 10, line 7, delete "time." and insert "**time, and may not establish a minimum fee for searching for a record. A public agency must make a good faith effort to complete a search for a record within a reasonable time in order to minimize the amount of a search fee.**".

(Reference is to EHB 1175 as printed March 13, 2013.)

HOLDMAN

Copy