



February 1, 2013

HOUSE BILL No. 1175

DIGEST OF HB 1175 (Updated January 29, 2013 12:14 pm - DI 87)

Citations Affected: IC 5-14.

Synopsis: Fees for public records requests. Allows a state or local government public agency to charge a fee for any records search in excess of two hours. 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 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 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. 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.

Effective: July 1, 2013.

Friend, Richardson, Saunders

January 10, 2013, read first time and referred to Committee on Government and Regulatory Reform.
January 31, 2013, amended, reported — Do Pass.

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February 1, 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.

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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:

- 1 SECTION 1. IC 5-14-3-3, AS AMENDED BY P.L.134-2012,
2 SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2013]: Sec. 3. (a) Any person may inspect and copy the public
4 records of any public agency during the regular business hours of the
5 agency, except as provided in section 4 of this chapter. A request for
6 inspection or copying must:
7 (1) identify with reasonable particularity the record being
8 requested; and
9 (2) be, at the discretion of the agency, in writing on or in a form
10 provided by the agency.
11 No request may be denied because the person making the request
12 refuses to state the purpose of the request, unless such condition is
13 required by other applicable statute.
14 (b) A public agency may not deny or interfere with the exercise of
15 the right stated in subsection (a). Within a reasonable time after the
16 request is received by the agency, the public agency shall either:
17 (1) provide the requested copies to the person making the request;

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1 or
 2 (2) allow the person to make copies:
 3 (A) on the agency's equipment; or
 4 (B) on the person's own equipment.
 5 (c) Notwithstanding subsections (a) and (b), a public agency may or
 6 may not do the following:
 7 (1) In accordance with a contract described in section 3.5 of this
 8 chapter, permit a person to inspect and copy through the use of
 9 enhanced access public records containing information owned by
 10 or entrusted to the public agency.
 11 (2) Permit a governmental entity to use an electronic device to
 12 inspect and copy public records containing information owned by
 13 or entrusted to the public agency.
 14 (d) Except as provided in subsection (e), a public agency that
 15 maintains or contracts for the maintenance of public records in an
 16 electronic data storage system shall make reasonable efforts to provide
 17 to a person making a request a copy of all disclosable data contained
 18 in the records on paper, disk, tape, drum, or any other method of
 19 electronic retrieval if the medium requested is compatible with the
 20 agency's data storage system. This subsection does not apply to an
 21 electronic map.
 22 (e) A state agency may adopt a rule under IC 4-22-2, and a political
 23 subdivision may enact an ordinance, prescribing the conditions under
 24 which a person who receives information on disk or tape under
 25 subsection (d) may or may not use the information for commercial
 26 purposes, including to sell, advertise, or solicit the purchase of
 27 merchandise, goods, or services, or sell, loan, give away, or otherwise
 28 deliver the information obtained by the request to any other person for
 29 these purposes. Use of information received under subsection (d) in
 30 connection with the preparation or publication of news, for nonprofit
 31 activities, or for academic research is not prohibited. A person who
 32 uses information in a manner contrary to a rule or ordinance adopted
 33 under this subsection may be prohibited by the state agency or political
 34 subdivision from obtaining a copy or any further data under subsection
 35 (d).
 36 (f) Notwithstanding the other provisions of this section, a public
 37 agency is not required to create or provide copies of lists of names and
 38 addresses (including electronic mail account addresses) unless the
 39 public agency is required to publish such lists and disseminate them to
 40 the public under a statute. However, if a public agency has created a
 41 list of names and addresses (excluding electronic mail account
 42 addresses) it must permit a person to inspect and make memoranda

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1 abstracts from the list unless access to the list is prohibited by law. The
 2 lists of names and addresses (including electronic mail account
 3 addresses) described in subdivisions (1) through (3) may not be
 4 disclosed by public agencies to any individual or entity for political
 5 purposes and may not be used by any individual or entity for political
 6 purposes. In addition, the lists of names and addresses (including
 7 electronic mail account addresses) described in subdivisions (1)
 8 through (3) may not be disclosed by public agencies to commercial
 9 entities for commercial purposes and may not be used by commercial
 10 entities for commercial purposes. The prohibition in this subsection
 11 against the disclosure of lists for political or commercial purposes
 12 applies to the following lists of names and addresses (including
 13 electronic mail account addresses):

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

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

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

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

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

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

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

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

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

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1 (2) that requires the public to obtain a license or pay copyright
 2 royalties for obtaining the right to inspect and copy the records
 3 unless otherwise provided by applicable statute;
 4 if the contract, obligation, license, or copyright unreasonably impairs
 5 the right of the public to inspect and copy the agency's public records.

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

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

15 SECTION 2. IC 5-14-3-8, AS AMENDED BY P.L.16-2008,
 16 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 17 JULY 1, 2013]: Sec. 8. (a) For the purposes of this section, "state
 18 agency" has the meaning set forth in IC 4-13-1-1.

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

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

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

24 ~~(2) (3) To search for, examine or review a record to determine~~
 25 ~~whether the record may be disclosed.~~

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

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

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

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

40 (d) This subsection applies to a public agency that is not a state
 41 agency. The fiscal body (as defined in IC 36-1-2-6) of the public
 42 agency, or the governing body, if there is no fiscal body, shall establish

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1 a fee schedule for the certification or copying of documents. The fee for
 2 certification of documents may not exceed five dollars (\$5) per
 3 document. The fee for copying documents may not exceed the greater
 4 of:

- 5 (1) ten cents (\$0.10) per page for copies that are not color copies
- 6 or twenty-five cents (\$0.25) per page for color copies; or
- 7 (2) the actual cost to the agency of copying the document.

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

13 (e) If:

- 14 (1) a person is entitled to a copy of a public record under this
- 15 chapter; and
- 16 (2) the public agency which is in possession of the record has
- 17 reasonable access to a machine capable of reproducing the public
- 18 record;

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

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

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

- 37 (1) The agency's direct cost of supplying the information in that
- 38 form.
- 39 (2) The standard cost for selling the same information to the
- 40 public in the form of a publication if the agency has published the
- 41 information and made the publication available for sale.
- 42 (3) In the case of the legislative services agency, a reasonable

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

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

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

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

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

- 28 (1) Public agency program support.
- 29 (2) Nonprofit activities.
- 30 (3) Journalism.
- 31 (4) Academic research.

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

- 37 (1) the hourly rate of the person making the search; or
- 38 (2) twenty dollars (\$20) per hour.

39 **A public agency charging an hourly fee under this subsection for**
 40 **searching for a record may charge only for time that the person**
 41 **making the search actually spends in searching for the record, and**
 42 **may not charge for computer run time. The fee shall be prorated**

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1 **to reflect any search time of less than an hour.**

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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

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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



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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 ".".



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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.**".

Re-number 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.

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