

HOUSE BILL REPORT

HB 1684

As Reported by House Committee On:
State Government
Appropriations

Title: An act relating to charges for the cost of providing public records in response to public records requests.

Brief Description: Concerning charges for the cost of providing public records in response to public records requests.

Sponsors: Representatives Takko, Nealey, Springer, S. Hunt, Gregerson, Walsh, Manweller, Fagan, Moeller, Wylie, Tharinger and Jinkins.

Brief History:

Committee Activity:

State Government: 2/3/15, 2/19/15 [DPS];
Appropriations: 2/26/15, 2/27/15 [DPS(SG)].

Brief Summary of Substitute Bill

- Allows state agencies to charge for public records provided electronically.
- Requires a deposit be paid before processing a request if more than 10 percent of the agency's records are responsive to a public records request.

HOUSE COMMITTEE ON STATE GOVERNMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives S. Hunt, Chair; Bergquist, Vice Chair; Holy, Ranking Minority Member; Van Werven, Assistant Ranking Minority Member; Appleton, Gregory and Hawkins.

Staff: Marsha Reilly (786-7135).

Background:

The Public Records Act (PRA) allows state and local agencies to impose a reasonable charge for providing copies of public records. An agency must make available a statement of the

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actual per page cost that it charges and the factors used to determine the cost. Such factors include the actual cost of the paper, the per page cost for use of agency equipment, postage or delivery fees, and the cost of the envelope or container. Staff salaries may be included, but only to the extent that those costs are directly related to copying and mailing the public record.

If an agency does not calculate actual per page costs, it may charge up to 15 cents per page plus the actual postage or delivery charge and the cost of an envelope or container for mailing purposes.

An agency may require a deposit not to exceed 10 percent of the estimated cost of providing copies of a request and may charge a person per installment. If an installment is not claimed or reviewed, the agency may cease fulfilling the request.

Summary of Substitute Bill:

In recognition of the trend toward electronic document retention and producing electronic copies of records, agencies may establish a charge for an electronic transmission of public records. The same factors to determine a per page cost for copying may be used to determine a cost for an electronic transmission of records, including scanning or electronic reproduction, transmission costs, and the cost of storage devices used.

An agency that does not calculate an electronic transmission cost may not charge more than 2 cents per page to scan paper records or to use agency equipment to make scanned electronic copies. The first 10 megabytes of data copied or transmitted may not be charged, but for each megabyte beyond that, the agency may charge 15 cents per megabyte plus the actual cost to transmit or mail the data, including any container and storage device, except as follows:

- for installments, no more than \$50 may be charged for the first installment, regardless of the size of the transmission, and no more than \$100 may be charged for subsequent installments, regardless of size; and
- for video data transmitted, the first 5 minutes are transmitted at no charge, and for each minute after the first five minutes, an agency may not charge in excess of 10 cents per minute.

An agency may not charge in excess of the actual postage or delivery charge or the cost of any container, envelope, or storage device used to mail or send the records.

If an agency determines that more than 10 percent of its records are responsive to a public records request, it may require a deposit in an amount not to exceed the estimated cost of providing 10 percent of all agency records before processing the request. An installment of a records request not paid as charged relieves the agency of its obligation to fulfill the balance of the request.

Substitute Bill Compared to Original Bill:

The substitute bill allows agencies to establish the actual costs of electronic transmissions. When providing records through electronic transmissions on an installment basis, agencies may not charge more than \$50 for the first installment, regardless of the size, and may not charge in excess of \$100 for subsequent installments. Agencies may not charge for the first five minutes of video data transmitted electronically, but may charge a fee of 10 cents per minute thereafter.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Agencies should be able to recoup reasonable costs associated with electronic records requests. One of the provisions in the bill requires that 10 percent of the cost for large records requests must be paid before processing the request. This is a reasonable way to address requests for millions of records.

This bill will allow the PRA to grow with changing technology. It applies equivalency of the cost of providing paper records to the cost of providing electronic records. Many people no longer want to review records before requesting copies. A considerable amount of resources goes into supplying electronic records. Some concerns were voiced about the cost for media files, which would require some fine tuning. A reasonable charge is also assessed for scanning records.

School districts support the bill. School districts have issues with serial and harassing requestors. Requiring a deposit may provide some relief. Transparency under the PRA and Open Public Meetings Act should not be impeded. There is a financial issue in what the law is costing. Using the PRA as a way to attack agencies is a tool of disruption. Holding a school district hostage is a concern and our tax dollars should not be used for these purposes.

There are a wide variety of concerns due to harassing requests and the bill addresses those concerns. Providing requests in installments can only be successful if the requestor is required to pay up front. At present, there are no charges for providing records electronically. Charging for electronic records can help reduce harassment requests, but it does not hinder serious requests. There is no disincentive to harassers when the records are free.

(Opposed) None.

(Other) The bill contains quantifiable methods for the recouping of some costs in disclosing public records electronically, but does not include the time used to search for the records. Different types of media require different amounts of data. For 15 cents, one might get a second of some types of video, color photographs, or a spreadsheet. The details need to be

worked out. Charges can be used to recoup a cost and can also be used to test the seriousness of the requestor's intent. There is sympathy for governments who get huge requests of records. Records and requests are both rising. This may be a tool for governments to use to address harassment requests.

Persons Testifying: (In support) Representative Takko, prime sponsor; Candice Bock, Association of Washington Cities; Deb Merle, Washington State School Directors Association; John Campbell, North Mason School Board; and Ramsey Ramerman, City of Everett.

(Other) Rowland Thompson, Allied Daily Newspapers.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill by Committee on State Government be substituted therefor and the substitute bill do pass. Signed by 18 members: Representatives Hunter, Chair; Ormsby, Vice Chair; Carlyle, Cody, Dunshee, Hansen, Hudgins, S. Hunt, Jinkins, Kagi, Lytton, Pettigrew, Sawyer, Senn, Springer, Sullivan, Tharinger and Walkinshaw.

Minority Report: Do not pass. Signed by 14 members: Representatives Chandler, Ranking Minority Member; Parker, Assistant Ranking Minority Member; Wilcox, Assistant Ranking Minority Member; Buys, Condotta, Dent, Haler, G. Hunt, MacEwen, Magendanz, Schmick, Stokesbary, Taylor and Van Werven.

Minority Report: Without recommendation. Signed by 1 member: Representative Fagan.

Staff: Meghan Bunch (786-7119).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On State Government:

No new changes were recommended.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Open government is important, and the Public Records Act (PRA) is a valuable tool. However, the PRA was adopted in 1972 and has not grown with technology. People are no longer requesting paper documents and now need electronic files. Currently, there is no way of charging for electronic copies. Some people make requests just to harass state and

local governments. This bill provides a system for cost recovery. The bill allows agencies to charge a reasonable fee and does not change the system for paper copies or the fact that people can come in and inspect records for free.

This is a fiscal situation for cities and counties, who are struggling to manage day-to-day functions and all the tasks they must handle. Many functions are important, but not funded. The PRA has always contemplated for agencies to receive payment for records in paper form. Sometimes there are very large requests, which would cost a couple hundred dollars if they were requested by paper. Even simple requests can cost more than 185 hours of gathering, reviewing, and redacting. In addition, counties have to purchase software for data redaction.

Sometimes the practice of requesting records is legal, but not morally ethical. It is a crime against children. School districts want to keep providing records, but to legitimate requestors. Serial requestors are not often, but they cost a lot of money and can be really disruptive to schools. Some superintendents have to look through 10,000 documents, which is expensive, takes time from leadership, and denies students time and programs.

(Opposed) Existing statutes provide there is cost recovery. With this bill, it is hard to understand the bulk cost of electronic requests. The fiscal note says the impact is indeterminate, which is concerning. There is no objection to fair costs, but it is hard to understand how this bill plays out.

(Other) This bill is quantifiable and verifiable in how charges will be made, but the devil is in the details and this is a more complex issue. There is a wide method of formats. Some are data rich and data heavy and very expensive, while others are not. There are a lot of cost shifts that would occur within this system.

Persons Testifying: (In support) Representative Takko, prime sponsor; Candice Bock, Association of Washington Cities; Laura Merrill, Washington Association of Counties; Sara Di Vittorio, Snohomish County; Deb Merle, Washington State School Directors Association; Rocco J. Gianni, South Whidbey School District; and John Campbell, North Mason School District and Mason Transit Authority.

(Opposed) Cliff Webster, Consumer Data Industry Association.

(Other) Rowland Thompson, Allied Daily Newspapers of Washington.

Persons Signed In To Testify But Not Testifying: None.