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**Government Operations & Elections  
Committee**

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**HB 1037**

**Brief Description:** Establishing a cost-recovery mechanism for public records sought for commercial purposes.

**Sponsors:** Representatives Moeller, Fitzgibbon, Appleton, Hudgins, Morrell and Bergquist.

**Brief Summary of Bill**

- Authorizes a public agency to obtain information from a public record requestor to determine whether the request is for a commercial purpose.
- Authorizes an agency to charge a fee to recover the cost of furnishing a public record, including an electronic record, where the request is for a commercial purpose and not otherwise exempted.
- Requires an agency to establish an appeals process allowing the requestor to appeal the fee amount or the agency's determination that the request is for a commercial purpose.
- Prohibits an agency from assessing the fee if the requestor is a member of news media, a nonprofit organization, an education institution, or a person or entity otherwise entitled to obtain the requested information.

**Hearing Date:** 1/23/13

**Staff:** Jasmine Vasavada (786-7301).

**Background:**

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

The Public Records Act (PRA) requires that state and local government agencies make all public records available for public inspection and copying unless they fall within certain statutory exemptions. The PRA disclosure provisions must be interpreted liberally, and the exemptions narrowly, in order to effectuate a public policy favoring disclosure. Agencies are prohibited from requiring requestor of public records to provide information about the purpose of the request, except to determine whether disclosure is exempted or prohibited by statute.

#### Charging fees to recover costs of furnishing public records

Unless authorized by statute, an agency cannot charge a fee for the inspection of records or for an agency's efforts to locate records or making them available for copying. An agency can assess a reasonable charge, not greater than fifteen cents per page, for the cost of providing copies and for the use of agency equipment for making copies. The agency's charges cannot exceed those necessary to reimburse the agency for the actual costs directly incident to copying and shipping the records; for example, the cost of the paper, the per page cost for use of the copying equipment, and the cost of postage or delivery charges.

An agency may charge for staff time to copy and mail the requested records, but otherwise may not charge for staff salaries, benefits, or other general administrative or overhead charges unless these costs are directly related to the actual cost of copying the public records. A statement of the actual per page cost or other costs of providing public records, and how these costs were determined, must be maintained by the agency for public inspection.

#### Access to lists of individuals

The Public Records Act does not authorize an agency to provide access to lists of individuals where such lists are requested for commercial purposes, unless specifically authorized or directed by law. For example, a statutory provision establishes that such lists shall be made available to professional associations and educational organizations recognized by their professional licensing board, upon payment of a reasonable fee. An agency may only refuse such a request for good cause, pursuant to a hearing under the Administrative Procedure Act.

#### **Summary of Bill:**

The intent of the bill is to enable public agencies to recover costs incurred in responding to broad requests for records from commercial entities, particularly the costs of responding to requests for electronic records.

#### Determining whether the request has a commercial purpose

Agencies are authorized to require persons requesting records to provide information about whether the request is for a commercial purpose, such as sale, resale, or solicitation. An agency may also require information to assist its determination of whether a request is for the purpose of producing a document or database containing all or part of the public record.

#### Assessment of a fee

Agencies may charge a fee where the purpose of the record request is commercial (sale, resale, or solicitation) or where the purpose is production of a document or database containing all or part of the public record. The fee may be a flat fee, a fee per record, or other type of fee, but it may not exceed the agency's actual cost to locate, assemble, copy, and provide the records. No

fee may be charged where a requested record is posted online and available through an internet web site.

If an agency adopts a "reasonable fee" as defined in the Uniform Health Care Information Act, the fee must not exceed sixty-five cents per page for the first thirty pages and fifty cents per page for all other pages, plus a clerical fee not to exceed fifteen dollars, or the adjusted fee established in the Washington Administrative Code.

Before charging fees, an agency must develop a fee schedule with notice and public hearing, and adopt the schedule pursuant to procedures set forth in applicable law, which may include the procedures established in the Administrative Procedures Act. The agency must publish the methodology by which its fees have been established. The agency must also establish a process by which a requestor can appeal the amount of a fee or the agency's determination that the request is for commercial purposes. An agency may contract with another agency to establish the appeals process.

Where an agency wishes to assess a fee, it must provide notice of the appeals process to the requestor. The agency must also provide an estimate of the cost to provide the requested records. A deposit in an amount not to exceed ten percent of the estimated cost may be required.

#### Exemptions from the cost recovery fee

Agencies are not authorized to assess the fee if the requestor is a member of news media, a nonprofit organization, or an education institution. The fee also may not be charged to a person or entity who is otherwise entitled, by an agency contract or a law other than the Public Records Act, to obtain the requested information. Finally, no fee may be charged where the requested record is needed by the requestor for the purpose of permitting or regulatory compliance.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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