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**SUBSTITUTE HOUSE BILL 1037**

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**State of Washington**

**63rd Legislature**

**2013 Regular Session**

**By** House Government Operations & Elections (originally sponsored by Representatives Moeller, Fitzgibbon, Appleton, Hudgins, Morrell, and Bergquist)

READ FIRST TIME 02/21/13.

1       AN ACT Relating to establishing a cost recovery mechanism for  
2 public records sought for commercial purposes; amending RCW 42.56.120;  
3 reenacting and amending RCW 42.56.080; creating a new section; and  
4 prescribing penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6       NEW SECTION.   **Sec. 1.** The legislature finds that public agencies  
7 must remain capable of adequately informing the public of their  
8 activities through timely disclosure of public records. However,  
9 public agencies are increasingly burdened by broad record requests from  
10 commercial entities, including data miners, whose purpose is to sell or  
11 resell the public records for a profit. Public agencies expend  
12 taxpayer dollars to locate, assemble, redact, review, and provide the  
13 requested public records. Under existing law, except for copying and  
14 mailing costs, public agencies may not recover the true costs of  
15 providing this service. As a result, the taxpayers of this state  
16 effectively subsidize commercial requestors. Accordingly, the purpose  
17 of this act is to protect the public interest and prevent diversion of  
18 scarce agency resources by authorizing public agencies to recover their

1 costs through charging a reasonable fee when records are requested for  
2 the purpose of sale or resale.

3 **Sec. 2.** RCW 42.56.080 and 2005 c 483 s 1 and 2005 c 274 s 285 are  
4 each reenacted and amended to read as follows:

5 (1) Public records shall be available for inspection and copying,  
6 and agencies shall, upon request for identifiable public records, make  
7 them promptly available to any person ((including,)). If applicable,  
8 based on the agency's determination, public records shall be made  
9 available on a partial or installment basis as records that are part of  
10 a larger set of requested records are assembled or made ready for  
11 inspection or disclosure.

12 (2) Agencies shall not deny a request for identifiable public  
13 records solely on the basis that the request is overbroad.

14 (3) Agencies shall not distinguish among persons requesting  
15 records, and such persons shall not be required to provide information  
16 as to the purpose for the request, except to establish whether:

17 (a) Inspection and copying would violate RCW 42.56.070(9) or other  
18 statute which exempts or prohibits disclosure of specific information  
19 or records to certain persons; or

20 (b) The purpose of the request is the sale or resale of all or part  
21 of the record, including the sale or resale of a document or database  
22 containing all or part of the record.

23 (4) Agency facilities shall be made available to any person for the  
24 copying of public records except when and to the extent that this would  
25 unreasonably disrupt the operations of the agency. Agencies shall  
26 honor requests received by mail for identifiable public records unless  
27 exempted by provisions of this chapter.

28 **Sec. 3.** RCW 42.56.120 and 2005 c 483 s 2 are each amended to read  
29 as follows:

30 (1) Except as provided in subsection (2) of this section, no fee  
31 shall be charged for the inspection of public records((~~No fee shall~~  
32 ~~be charged~~)), for locating public documents ((and)), or for making them  
33 available for copying. A reasonable charge may be imposed for  
34 providing copies of public records and for the use by any person of  
35 agency equipment or equipment of the office of the secretary of the  
36 senate or the office of the chief clerk of the house of representatives

1 to copy public records, which charges shall not exceed the amount  
2 necessary to reimburse the agency, the office of the secretary of the  
3 senate, or the office of the chief clerk of the house of  
4 representatives for its actual costs directly incident to such copying.  
5 Agency charges for photocopies shall be imposed in accordance with the  
6 actual per page cost or other costs established and published by the  
7 agency. In no event may an agency charge a per page cost greater than  
8 the actual per page cost as established and published by the agency.  
9 To the extent the agency has not determined the actual per page cost  
10 for photocopies of public records, the agency may not charge in excess  
11 of fifteen cents per page. An agency may require a deposit in an  
12 amount not to exceed ten percent of the estimated cost of providing  
13 copies for a request. If an agency makes a request available on a  
14 partial or installment basis, the agency may charge for each part of  
15 the request as it is provided. If an installment of a records request  
16 is not claimed or reviewed, the agency is not obligated to fulfill the  
17 balance of the request.

18 (2) When a request for records is made for the purpose of sale or  
19 resale of all or part of the record, unless an exemption as provided in  
20 subsection (7) of this section is applicable, an agency may charge a  
21 fee to recover its actual costs in responding to the request. The fee  
22 may be a flat fee, fee per record, or other type of fee, but the fee  
23 shall not exceed a reasonable estimate of the actual cost to provide  
24 the records. The actual cost may include, but is not limited to, the  
25 cost of locating, assembling, reviewing, redacting, copying, and  
26 providing the record to the requestor.

27 (3) Where, as authorized in RCW 42.56.080(3)(b), an agency has  
28 required a person to provide information about whether the purpose of  
29 a request is the sale or resale of the requested records and the person  
30 has denied such a purpose, no cost recovery fee may ordinarily be  
31 assessed under subsection (2) of this section. However, if the agency  
32 has reason to believe that the purpose of the request has been  
33 misrepresented and the request is made for the purpose of sale or  
34 resale, the agency may require the requestor to sign a statement under  
35 penalty of perjury, attesting that the purpose of the record request is  
36 not sale or resale of all or part of the record.

37 (4) Before charging the fee authorized in subsection (2) of this

1 section, an agency must develop and adopt, with notice and public  
2 hearing, a fee schedule. The agency shall publish the fee schedule  
3 along with the methodology by which the fees were established.

4 (5) The agency must also establish an appeals process by which a  
5 requestor may appeal the amount of a fee. This process may be  
6 established by contracting or entering into an interlocal agreement  
7 with another agency. When a fee is charged pursuant to subsection (2)  
8 of this section, the agency must provide the requestor with notice of  
9 the appeals process.

10 (6) When an agency charges a cost recovery fee pursuant to  
11 subsection (2) of this section, it may require a requestor to post a  
12 deposit in an amount not to exceed ten percent of the estimated actual  
13 cost of providing the records. If an agency makes the request  
14 available on a partial or installment basis, the agency may require a  
15 deposit in an amount not to exceed ten percent of the estimated actual  
16 cost of providing the installment.

17 (7) The fee authorized in subsection (2) of this section may not be  
18 assessed when:

19 (a) The requestor is entitled to obtain the requested records  
20 pursuant to a contract, memorandum of understanding, or other binding  
21 agreement with the agency;

22 (b) The requestor is entitled to obtain the records under authority  
23 of law other than this chapter;

24 (c) The requestor is a representative of the news media affiliated  
25 with an organization that publishes or disseminates information, and  
26 where the request is made as part of news gathering and not for a  
27 different commercial use;

28 (d) The requestor is a representative of a religious, charitable,  
29 educational, or other nonprofit organization exempt from taxation under  
30 Title 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code of  
31 1986, as amended, and the request is made in furtherance of the  
32 organization's nonprofit purpose and not for a different commercial  
33 purpose;

34 (e) The requestor is a representative of an educational institution  
35 organized under the law of Washington or another state, and the purpose  
36 of the request is in furtherance of the educational institution's  
37 mission and not for a different commercial purpose;

1       (f) The requestor can demonstrate that the requested records will  
2 be used to comply with governmental permitting requirements or other  
3 regulations;

4       (g) The requestor is a title insurer licensed by the insurance  
5 commissioner, an agent of such a title insurer, or an entity that  
6 collects and provides data to such a title insurer or agent, as  
7 reasonably required to insure titles, to act as an escrow closing agent  
8 or, as allowed by the office of the insurance commissioner by rule, to  
9 provide related customer services; or

10       (h) The requestor is a person licensed under chapter 18.85 RCW, a  
11 prospective developer of real property, or a person seeking information  
12 about real property or buildings owned by that person, and the request  
13 is for the purpose of evaluating the viability of developing a specific  
14 parcel of real property for a particular use, and not for a different  
15 commercial purpose.

16       (8) A person or other legal entity that avoids paying the fee  
17 authorized in subsection (2) of this section, by intentionally  
18 misrepresenting the purpose for which the request is made or the  
19 requestor's eligibility for an exemption under subsection (7) of this  
20 section, or by intentionally inducing another person to knowingly or  
21 unknowingly make such a misrepresentation, is liable for a civil  
22 penalty at least equivalent to what the agency would have charged for  
23 the records. The civil penalty under this section is in addition to  
24 any other civil or criminal penalties and remedies available under any  
25 other law of this state.

26       (9) Nothing in this section or RCW 42.56.080 may be construed to  
27 create an obligation or authorization for an agency to create or  
28 provide access to lists of individuals requested for commercial  
29 purposes.

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