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## State Government Committee

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### HB 1086

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

**Sponsors:** Representatives Moeller, Gregerson, Springer, S. Hunt and Fey.

#### Brief Summary of Bill

- Allows agencies to assess a cost recovery fee for the actual cost of providing a public record if the request is primarily for a commercial purposes.
- Establishes a civil penalty for misrepresenting the purpose of a request to avoid paying the cost recovery fee.
- Provides exemptions from the fee for certain purposes and for certain entities.

**Hearing Date:** 1/20/15

**Staff:** Sean Flynn (786-7124).

#### Background:

The Public Records Act (PRA) requires state and local agencies to make their written records available to the public for inspection and copying upon request, unless the information fits into one of the various specific exemptions. The stated policy of the PRA favors disclosure and requires narrow application of the listed exemptions.

An agency generally may not ask a requestor for the purpose of the request, except to determine whether the information is exempted from disclosure. For example, an agency may not provide access to lists of persons that are requested for commercial purposes, unless otherwise specifically authorized by law.

An agency may not charge a fee for locating and making records available for inspection. However, an agency may charge for the actual cost of copying the records up to 15 cents per page. Costs directly related to copying may be included, such as the labor for making copies and

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shipping costs, but general administrative and overhead costs are excluded. The agency may require a deposit up to 10 percent of the estimated actual copy costs for a request.

### **Summary of Bill:**

#### Cost Recovery Fee.

An agency may charge a cost recovery fee for the actual costs of making a public record available, if the primary purpose of the request is the sale or resale of any part of the record or information derived from the record. The fee may include the actual cost of locating, assembling, reviewing, redacting, copying, and providing the record. An agency also may charge a flat rate or per-record rate that does not exceed a reasonable estimate of the actual cost. The agency may require a deposit up to ten percent of the estimated actual costs of providing the records. The agency must adopt and publish a fee schedule before charging a fee.

#### Procedures.

An agency may require the requestor to provide information to establish whether the primary purpose of the request is for a commercial purpose. If the requestor has denied such a purpose, the agency may not assess a fee. However, the agency may require the requestor to sign a statement attesting that the request is not for sale or resale purposes. If the requestor intentionally misrepresents the purpose of the request, he or she may be liable for a civil penalty at least equivalent to the amount the agency would have assessed for the records.

In order to assess a cost recovery fee, the agency must provide a written basis for determining that the request is primarily for commercial purposes. A requestor has the option to appeal the fee assessment to the head of the agency within 30 days, though the agency appeal process is not required before any person may seek judicial review to challenge the assessment of a fee.

#### Exemptions.

The cost recovery fee may not be assessed under the following exemptions:

- The purpose of the request is deemed non-commercial, including the following purposes:
  - disseminating of news or current events of public interest;
  - academic, scientific, or public research or education;
  - petitioning the government, or contributing to the understanding of government operations; or
  - a request by a nonprofit organization in furtherance of its own purpose.
- The requestor is entitled to obtain the records pursuant to agreement with the agency, or under authority of law;
- The records are used to comply with government permitting requirements or regulations;
- The records are used by title insurers or data providers for purposes of title insurance, escrow closing, or related services as allowed by the insurance commissioner; or
- The records are used by real estate brokers, developers, or owners for real estate development purposes.

**Appropriation:** None.

**Fiscal Note:** Requested.

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