CHAPTER 49
HB 1002 - FINAL VERSION

1Feb2024... 0197h
21Mar2024... 1173h

2024 SESSION

24-2001
05/08

HOUSE BILL ***1002***

AN ACT relative to fees for records under the right-to-know law.

SPONSORS: Rep. Kuttab, Rock. 17; Rep. M. Cahill, Rock. 10; Rep. Ball, Rock. 25; Rep. Maggiore, Rock. 23; Rep. Ankarberg, Straf. 7; Rep. DeSimone, Rock. 18; Rep. Dunn, Rock. 16; Rep. J. Nelson, Rock. 13; Rep. B. Boyd, Hills. 12; Rep. Edwards, Rock. 31; Rep. Grassie, Straf. 8; Sen. Carson, Dist 14; Sen. Gannon, Dist 23; Sen. Watters, Dist 4; Sen. Lang, Dist 2; Sen. Avard, Dist 12

COMMITTEE: Judiciary

ANALYSIS

This bill establishes parameters for when a public body may charge a fee for records provided under RSA 91-A.

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Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Four

AN ACT relative to fees for records under the right-to-know law.

Be it Enacted by the Senate and House of Representatives in General Court convened:

49:1 Right-to-Know; Fees for Records. Amend RSA 91-A:4, IV to read as follows:

IV.(a) Each public body or agency shall, upon request for any governmental record reasonably described, make available for inspection and copying any such governmental record within its files when such records are immediately available for such release.

(b) If a public body or agency is unable to make a governmental record available for immediate inspection and copying the public body or agency shall, within 5 business days of a request:

(1) Make such record available;

(2) Deny the request; or

(3) Provide a written statement of the time reasonably necessary to determine whether the request shall be granted or denied and the reason for the delay*, and an itemized estimate of the cost of making the record available if a charge would be incurred under paragraph VIII*.

(c) A public body or agency denying the request in whole or in part shall provide a written statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld.

(d) If a computer, photocopying machine, or other device maintained for use by a public body or agency is used by the public body or agency to copy the governmental record requested, the person requesting the copy may be charged the actual cost of providing the copy, which cost may be collected by the public body or agency. No cost or fee shall be charged for the inspection or delivery, without copying, of governmental records, whether in paper, electronic, or other form, *except as provided in paragraph VIII.* Nothing in this section shall exempt any person from paying fees otherwise established by law for obtaining copies of governmental records or documents, but if such fee is established for the copy, no additional costs or fees shall be charged.

(e) A public body or agency may suggest to the requestor a reasonable modification of the scope of the request, if doing so would enable the body or agency to produce records sought more efficiently and affordably.

(f) A public body or agency responsible for responding to a records request shall not be liable for damages in a civil action caused by its fault or by fault attributable to it, arising out of disclosure of information exempt from disclosure pursuant to this chapter, provided that the public body or agency acted in good faith to redact any information that may be exempt from disclosure, unless the public body or agency can be shown to have acted in a wanton or reckless manner. The use of automated software to produce redactions or other automated processes to speed production in concert with spot checks shall qualify as good faith.

49:2 New Paragraphs; Fees for Records. Amend RSA 91-A:4 by inserting after paragraph VII the following new paragraphs:

VIII. A reasonable per electronic communication charge in addition to the actual cost of providing the copy under paragraph IV(d) may be made for requests for electronic communications in excess of 250 communications. Per electronic communication charges may not exceed $1.00 per communication and may be charged whether the records are delivered in hard copy or electronically. No charge may be incurred for the first 250 electronic communications. For the purposes of this paragraph, attachments to electronic communications shall be considered part of a single communication, and e-mails and responses under a single subject line shall be considered a single communication. Text or chat message threads regarding the same topic shall be considered a single communication unless exceeding 50 individual messages at which point each additional group of 50 messages shall be considered another single message. The public body or agency shall create a policy so that practices are transparent, uniform, and consistent, including a provision consistent with paragraph IX for the waiver of such fees for requestors who are deemed indigent, or who can demonstrate that such fees would present a financial hardship. Multiple requests from any person or entity to the same public body within a 30 day time period shall be considered one request. If a party believes that the estimated cost to make the records available is unreasonable or that a waiver under paragraph IX was improperly denied by the public body or agency, the party may seek relief according to RSA 91-A:7-b for a determination of whether the cost is reasonable or whether any waiver under paragraph IX applies. The burden shall be on the public body in establishing that the cost to make the records available is reasonable. A determination shall be made within 10 business days.

IX. The public body or agency shall waive any per electronic communication charge provided for in paragraph VIII for search or retrieval when the person requesting the records is an indigent individual as established by the federal poverty line or if the disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requestor, except media requestors. Media requestors are organizations or individuals who publish information in accepted digital, print, or broadcast formats and to standards generally recognized by professional news organizations that do not serve primarily as a platform to promote the interest and/or opinions of a special interest group, government, individual or cause.

49:3 Effective Date. This act shall take effect 60 days after its passage.

Approved: June 14, 2024
Effective Date: August 13, 2024

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