

HB0096S01 compared with HB0096

~~text~~ shows text that was in HB0096 but was deleted in HB0096S01.

text shows text that was not in HB0096 but was inserted into HB0096S01.

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Representative Dan N. Johnson proposes the following substitute bill:

GOVERNMENT RECORDS FEE AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Dan N. Johnson

Senate Sponsor: ~~_____~~ Chris H. Wilson

LONG TITLE

General Description:

This bill modifies provisions of the Government Records Access and Management Act related to fees.

Highlighted Provisions:

This bill:

- ▶ modifies a provision relating to a prohibition against a governmental entity charging a fee for the first quarter hour of staff time;
- ▶ prohibits a governmental entity from charging a fee for the first quarter hour of staff time spent responding to a record request, unless the person who submitted the request ~~also~~ submitted a separate request within the preceding 10 days and is not a Utah media representative; and
- ▶ makes technical changes.

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Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63G-2-203, as last amended by Laws of Utah 2016, Chapter 90

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **63G-2-203** is amended to read:

63G-2-203. Fees.

(1) (a) ~~[A]~~ Subject to Subsection (5), a governmental entity may charge a reasonable fee to cover the governmental entity's actual cost of providing a record. ~~[This fee]~~

(b) A fee under Subsection (1)(a) shall be approved by the governmental entity's executive officer.

(2) (a) When a governmental entity compiles a record in a form other than that normally maintained by the governmental entity, the actual costs under this section may include the following:

(i) the cost of staff time for compiling, formatting, manipulating, packaging, summarizing, or tailoring the record either into an organization or media to meet the person's request;

(ii) the cost of staff time for search, retrieval, and other direct administrative costs for complying with a request; and

(iii) in the case of fees for a record that is the result of computer output other than word processing, the actual incremental cost of providing the electronic services and products together with a reasonable portion of the costs associated with formatting or interfacing the information for particular users, and the administrative costs as set forth in Subsections (2)(a)(i) and (ii).

(b) An hourly charge under Subsection (2)(a) may not exceed the salary of the lowest paid employee who, in the discretion of the custodian of records, has the necessary skill and training to perform the request.

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~~[(c) Notwithstanding Subsections (2)(a) and (b), no charge may be made for the first quarter hour of staff time.]~~

(3) (a) Fees shall be established as provided in this Subsection (3).

(b) A governmental entity with fees established by the Legislature:

(i) shall establish the fees defined in Subsection (2), or other actual costs associated with this section through the budget process; and

(ii) may use the procedures of Section 63J-1-504 to set fees until the Legislature establishes fees through the budget process.

(c) Political subdivisions shall establish fees by ordinance or written formal policy adopted by the governing body.

(d) The judiciary shall establish fees by rules of the judicial council.

(4) A governmental entity may fulfill a record request without charge and is encouraged to do so if it determines that:

(a) releasing the record primarily benefits the public rather than a person;

(b) the individual requesting the record is the subject of the record, or an individual specified in Subsection 63G-2-202(1) or (2); or

(c) the requester's legal rights are directly implicated by the information in the record, and the requester is impecunious.

(5) (a) As used in this Subsection (5), "media representative":

(i) means a person who requests a record to obtain information for a story or report for publication or broadcast to the general public; and

(ii) does not include a person who requests a record to obtain information for a blog, podcast, social media account, or other means of mass communication generally available to a member of the public.

~~(f5) b)~~ A governmental entity may not charge a fee for:

~~(a)~~ (i) reviewing a record to determine whether it is subject to disclosure, except as permitted by Subsection (2)(a)(ii); ~~[or]~~

~~(b)~~ (ii) inspecting a record~~[-]; or~~

~~(c)~~ (iii) the first quarter hour of staff time spent in responding to a request under Section 63G-2-204~~[-, unless]~~.

(c) Notwithstanding Subsection (5)(b)(iii), a governmental entity is not prevented from

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charging a fee for the first quarter hour of staff time spent in responding to a request under Subsection 63G-2-204 if the person who ~~submitted~~ submits the request:

(i) is not a Utah media representative; and

(ii) previously submitted a separate request within the 10-day period immediately before the date of the request to which the governmental entity is responding.

(6) (a) A person who believes that there has been an unreasonable denial of a fee waiver under Subsection (4) may appeal the denial in the same manner as a person appeals when inspection of a public record is denied under Section 63G-2-205.

(b) The adjudicative body hearing the appeal:

(i) shall review the fee waiver de novo, but shall review and consider the governmental entity's denial of the fee waiver and any determination under Subsection (4); and

(ii) has the same authority when a fee waiver or reduction is denied as it has when the inspection of a public record is denied.

(7) (a) All fees received under this section by a governmental entity subject to Subsection (3)(b) shall be retained by the governmental entity as a dedicated credit.

(b) Those funds shall be used to recover the actual cost and expenses incurred by the governmental entity in providing the requested record or record series.

(8) (a) A governmental entity may require payment of past fees and future estimated fees before beginning to process a request if:

(i) fees are expected to exceed \$50; or

(ii) the requester has not paid fees from previous requests.

(b) Any prepaid amount in excess of fees due shall be returned to the requester.

(9) This section does not alter, repeal, or reduce fees established by other statutes or legislative acts.

(10) (a) Notwithstanding Subsection (3)(c), fees for voter registration records shall be set as provided in this Subsection (10).

(b) The lieutenant governor shall:

(i) after consultation with county clerks, establish uniform fees for voter registration and voter history records that meet the requirements of this section; and

(ii) obtain legislative approval of those fees by following the procedures and requirements of Section 63J-1-504.

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