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House Bill 4001 (Substitute H-6 as passed by the House)
Sponsor: Representative Mike Shirkey
House Committee: Oversight, Reform, and Ethics
Senate Committee: Government Operations

Date Completed: 12-17-14

CONTENT

The bill would amend provisions of the Freedom of Information Act (FOIA) concerning fees charged by public bodies for public records, civil actions brought under the Act, and the receipt and denial of requests; and would add provisions allowing a person to appeal to a public body or bring a civil action if he or she believed that a fee was unreasonable.

The bill would do the following with respect to fees charged under the Act:

- Provide that, if a public body established or charged a fee under the Act, the total fee could not exceed the sum of components specified in the bill, including the costs of labor to locate or examine the records, separate or delete nonexempt information, and make copies or transfer digital records; the cost of computer discs or tapes, or other digital media, if public records were provided on nonpaper physical media; the cost of duplication or publication, if paper copies were provided; and the cost of postage.
- Require labor costs to be calculated as provided in the bill.
- Require a public body to furnish a public record without charge for the first \$50 of the fee (rather than \$20 as currently provided) to an indigent individual, and extend this requirement to a nonprofit organization designated by the State to carry out activities related to disability assistance or advocacy for people with mental illness.
- Allow a public body to charge a good-faith deposit of up to half of the total estimated fee if the fee would exceed \$100 (rather than \$50 as currently provided).
- Require a public body to reduce charges for labor costs if it did not respond to a FOIA request in a timely manner.
- Allow a public body to require an individual to pay a deposit of 100% of the estimated fee for a subsequent FOIA request, if the individual had failed to pay the full amount for copies of public records made available to him or her, and other conditions were met.

The bill would do the following if a requesting person had a good-faith belief that a fee for public records was unreasonable:

- Allow the person to appeal to the head of the public body if its procedures provided for fee appeals.
- Allow the person to bring a court action for a fee reduction if the public body's procedures did not provide for fee appeals, the head of the public body failed to respond to an appeal, or the person continued to believe that the fee was unreasonable after an appeal to the public body.
- Require the public body, within 10 days after receiving an appeal, to waive the fee, reduce the fee, uphold the fee, or extend the time to respond by up to 10 business days.
- In an action brought in court, allow or require the court, depending on the circumstances of the action, to award reasonable attorney fees, costs, and disbursements if the person asserting the right to a fee reduction prevailed.

- Require the court to award punitive damages of \$1,000 if it found that the public body had arbitrarily and capriciously violated the Act by charging an unreasonable fee.
- Specify that "unreasonable fee" would mean a fee or any component of a fee that unreasonably exceeds the amount properly calculated under the Act.

The bill also would do the following in regard to civil actions under the Act:

- Require an action to be brought in the Court of Claims, rather than the circuit court, if the complaint involved a State public body.
- Prohibit a public body from asserting an exemption in a civil action if it did not assert the exemption in a written denial of a request or an appeal to the head of the public body, unless it could show good cause.
- Require the court to reduce any fee otherwise permitted by 50% if the court found that the legal basis for a newly asserted exemption was clearly erroneous.
- Increase from \$500 to \$2,000 the amount of punitive damages the court must award if it determines that a public body arbitrarily and capriciously violated the Act by refusal or delay in disclosing or providing copies of a public record.
- Require the court to impose on public body a civil fine of not less than \$2,500 or more than \$7,500 for each occurrence, if the court found that the public body willfully and intentionally failed to comply with the Act or otherwise acted in bad faith.
- Require civil fine revenue to be deposited in the State's General Fund.

In addition, the bill provide that a FOIA request would not be received by a public body until one day after the body became aware of the request, if it were sent by e-mail and delivered to the public body's spam or junk mail folder. The bill also provides that failure to respond to a request within the time required would constitute a public body's final determination to deny the request if the failure were willful and intentional or if the request conveyed a request for information within the first 500 words or included specific terms on the front of an envelope or in the subject line of an e-mail, letter, or facsimile cover sheet.

MCL 15.234 et al.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill could have an indeterminate negative fiscal impact on public bodies complying with FOIA requests, in that public bodies could receive lower reimbursement revenue under the bill. Individuals eligible for a discount on the fees charged would receive the requested information for free if the amount of estimated costs were \$50 or less, up from the current \$20. Reimbursement costs for copying a public record would be limited to 10 cents per page. Additionally, the bill would set the hourly rates that could be charged by public bodies for complying with FOIA requests and limit the maximum amount of hours that could be billed. The bill also would require that fees be reduced by 10% for each day that a public body did not meet the statutory deadline for providing the requested information, up to a maximum reduction of 50%. The potential amount of decreased revenue to public bodies as a result of these changes is indeterminate and dependent on the number of requests received and the timeliness of the response to the request.

Also, as noted above, the bill would increase punitive damages paid by a public body, and would require a public body to pay a civil fine for willfully and intentionally failing to comply with the Act. These damages and fines would have a negative fiscal impact on a public body but the civil fines could result in additional revenue for the State's General Fund.

Fiscal Analyst: Joe Carrasco

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.