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House Bill 5726

Sponsor: Rep. Robert Brackenridge

Committee: Local Government

Complete to 4-16-96

A SUMMARY OF HOUSE BILL 5726 AS INTRODUCED 3-28-96

The bill would amend the Freedom of Information Act (MCL 15.232 et al.) in the following ways.

** A public body would be permitted to do the following:

-- in accordance with a nondiscriminatory policy, allow a person to duplicate or obtain a duplicate copy of a computer tape, computer disk, microfilm, or other similar or analogous record system that contains a public record of the public body.

-- in accordance with a contract, provide a person with enhanced access to a public record.

-- permit a governmental entity (i.e., a county, city, township, or village) to use an electronic device to inspect and copy a public record of a public body.

(The term "enhanced access" would be defined to mean a public record's availability for inspection and copying by a person who is not a governmental entity, under either of the following circumstances: a) the inspection or copying is available by means of an electronic device other than an electronic device provided by a public body in the office of a public body; or b) the inspection or copying requires the compilation or creation of a list or report that does not result in the permanent electronic storage of the information. The term "electronic device" is not defined.)

A public body could provide a person with enhanced access to a public record only if the body had entered into a contract with the person. The contract would have to provide that the person would pay to the public body a fee for enhanced access and that the person would not engage in 1) the receipt of unauthorized enhanced access to a public record, 2) the alteration of public records, or 3) the disclosure of confidential public records.

** Under the bill, a public body could charge a reasonable fee for the provision of enhanced access to a public record (as specified in the contract), for a governmental entity's inspection of a public record by means of an electronic device (although that fee could be waived), and for providing an electronic map, with that fee to be uniform to all purchasers. (An "electronic map" would be defined as "copyrighted data provided by a public body from an electronic geographical information system." The fee for providing the map would have to be based on a reasonable percentage of the public body's direct cost of creating, maintaining, upgrading, and enhancing the electronic map and for the direct cost of supplying the electronic map in the form requested by the purchaser.) A public body could waive the fees cited above

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if the public record or the electronic map was for a non-commercial purpose, including a public body program support, nonprofit activities, disclosure of a matter of public interest, or academic research.

(The term "reasonable fee" would be defined so as to include, but not be limited to, the public body's cost in creating, compiling, storing, maintaining, processing, upgrading, or enhancing the information or data, including the cost of employee time, the actual cost of supplying the information or record in the form requested by the purchaser, computer hardware and software, and system development.)

** A political subdivision (i.e., county, township, city, or village) charging an enhanced access fee would be required to establish an enhanced access fund whose purposes would be the replacement, improvement, and expansion of capital expenditures and the reimbursement of operating expenses incurred in providing enhanced access to public information. A political subdivision charging an electronic map fee would have to establish an electronic map generation fund the purposes of which would be the creation, maintenance, upgrading, and enhancement of the electronic map and the reimbursement of expenses incurred in providing the electronic map.

** Currently, the act says a public body "may make reasonable rules necessary to protect its public records and to prevent excessive and unreasonable interference with the discharge of its functions." The bill would replace this language and require a public body protect public records from loss, alteration, mutilation, or destruction, and regulate any material interference with the regular discharge of the functions or duties of the public body or public employees. A public body would be required to take precautions that protect public records and the contents of public records from unauthorized enhanced access, unauthorized access by an electronic device, or alteration.

** Under the bill, the term "public record" would not include a document that is in the possession of a public body solely because that public body is acting as custodian of the record for another public body. In such circumstances, the document would be subject to disclosure only by request to the public body from which the document originated.

** Under the bill, the circuit court in the county in which a record or the public body was located could, upon application, issue a protective order to prohibit abusive requests under the act.

The term "public body" in the act refers to various state officers, employees, departments, agencies, etc., in the executive branch of state government (but not the governor and lieutenant governor and their executive offices and employees); agencies, boards, commissions, and councils in the legislative branch; counties, cities, townships, villages, regional bodies, school districts, etc.; and all other bodies created by state or local authority or primarily funded by or through state or local authority. The term does not apply to the judiciary, including the office of county clerk (and employees) when acting as clerk to the circuit court.

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.