



**House
Legislative
Analysis
Section**

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ENHANCED ACCESS TO RECORDS

**House Bill 5832 as enrolled
Public Act 462 of 1996
Second Analysis (1-13-97)**

**Sponsor: Rep. Robert Brackenridge
House Committee: Local Government
Senate Committee: Local, Urban, and
State Affairs**

THE APPARENT PROBLEM:

The term "enhanced access" is being employed, generally speaking, to describe the access to government (or other) information through electronic means, often, but not always, at a distance. For example, if a governmental unit has a so-called web site or can be found on the Internet, anyone with the proper computer equipment in the home or at the office can gain access to the information offered there. Some governmental units, Oakland County among them, would like to make aggressive use of such opportunities to provide the public enhanced access to public information. A representative of Oakland County has said that the county "has embarked on an aggressive program to provide businesses and residents the opportunity to obtain government information in their offices and homes at the convenience of the individual requesting the information." There is demand for such information from business, education, and government leaders in the county, according to a report on Oakland County's enhanced access project. In some jurisdictions around the country, governments have joined forces with third-party vendors to provide enhanced access services.

Supporters of enhanced access say legislation is needed if such programs are to be encouraged. Currently, there is no specific grant of authority in statute for governmental units to engage in such programs and no specific authority to charge fees for access to information as a way of recovering the substantial investment involved in developing and maintaining enhanced access programs. Advocates of enhanced access worry about how such programs fit with the Freedom of Information Act. If expensive and innovative programs are developed, will it simply be available at low cost to be re-packaged for commercial purposes? If so, there is little incentive for governments to embark on enhanced access programs and for third party technology experts (such as Ameritech, which has the CivicLink service) to become involved. How can such programs be protected from unfair exploitation under FOIA while at the same time maintaining the public's traditional right to information

under that act? On the other hand, there are also concerns about how enhanced access programs will affect the availability of information currently relied upon by traditional users, and about the impact of new methods of compiling and transmitting information, and the impact of new methods of charging fees for access to information, on records subject to the Freedom of Information Act. Will the underlying records remain available or will only the technologically elite be able to gain access to public records? Legislation has been drafted to address issues raised by the advent of enhanced access.

THE CONTENT OF THE BILL:

The bill would create a new act, to be called the Enhanced Access to Public Records Act, under which a public body could provide "enhanced access" for the inspection and copying of public records only if it had adopted an enhanced access policy. A public body could also charge a reasonable fee for enhanced access. The act would not require a public body to provide enhanced access with respect to a specific public record if it had not established an enhanced access policy with respect to that public record.

The new act would specify that it does not limit access to a public record under the Freedom of Information Act. A public record available by enhanced access would have to be made available for inspection or copying in accordance with the Freedom of Information Act. The bill would not apply to public records prepared under an act or statute specifically authorizing the sale of those public records to the public, or where the amount of the fee for providing a copy of the public record was otherwise specifically provided by an act or statute.

The term "enhanced access" refers to a public record's immediate availability for public inspection and copying by digital means. Enhanced access would not include the transfer of ownership of a public record. The term "public body" is adopted from the Freedom of

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Information Act and 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.

Under the bill, a public body could do the following:

- Upon authorization of the governing body, provide enhanced access for the inspection or copying of a public record that was not confidential or otherwise exempt by law from disclosure.
- Charge a reasonable fee established by the governing body for providing enhanced access.
- Charge a reasonable fee established by the governing body for providing access to a geographical information system or the output from a geographical information system. (The term "geographical information system" would refer to an informational unit or network capable of producing customized maps based on a digital representation of geographical data.)

The term "reasonable fee" would mean a charge calculated to enable a public body to recover over time only those operating expenses directly related to the provision of enhanced access. The term "operating expenses" would include, but not be limited to, a public body's direct cost of creating, compiling, storing, maintaining, processing, upgrading, or enhancing information or data in a form available for enhanced access, including the cost of computer hardware and software, system development, employee time, and the actual cost of supplying the information or record in the form requested by the purchaser.

An individual elected or appointed to a board or governing body of a city, village, township, or county could not have an ownership interest in, or accept compensation from, a person who sells information that is obtained from a public record of that local unit. The provision would not apply to compensation accepted from a public body.

Three years after the effective date of the bill, a bipartisan joint committee of three members of each house of the legislature would have to review the operations of the new act and recommend appropriate changes. The House members would be appointed by the

Speaker of the House and the Senate members by the Majority Leader of the Senate.

FISCAL IMPLICATIONS:

The fiscal impact of House Bill 5832 is indeterminate, according to the House Fiscal Agency. (Fiscal note dated 5-6-96)

ARGUMENTS:

For:

The bill addresses the new arena of "enhanced access" to government information. It specifically authorizes governmental units to provide enhanced access to public records, after first adopting a policy on the subject. It also protects rights under the Freedom of Information Act. Advocates of enhanced access say that such programs are a service to the public that are in addition to the fundamental kind of access to information required under the Freedom of Information Act. Traditional means of inspecting and copying public records will still be available to the public. Charging fees for enhanced access is not, they say, a way of denying or rationing public information, but is justified as a way to recapture the investment and expenses associated with providing an additional service to the public.

Response:

There are a number of concerns about the issue of enhanced access generally that will continue to require monitoring as technology changes and as programs grow. There are concerns about the use of an exclusive "gatekeeper" to public information; about the impact of fees for enhanced access and whether certain kinds of information will ultimately be available only to an elite group of technologically sophisticated users; about whether traditional means of obtaining information will disappear and only enhanced access be available, at a cost; about whether governments will use access fees as a revenue generating measure to provide a basic service that ought to be funded through its general revenues; about whether new technology will be used as an excuse to increase the cost of obtaining information that government really only holds in trust for its citizens. These matters will no doubt require re-visiting over time.

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■ 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.