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BILL



ANALYSIS

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House Bill 5726 (Substitute H-3 as passed by the House)

Sponsor: Representative Robert Brackenridge

House Committee: Local Government

Senate Committee: Local, Urban and State Affairs

Date Completed: 9-18-96

CONTENT

The bill would amend the Freedom of Information Act to do the following:

- **Exclude computer programming and software from the Act.**
- **Exclude from the Act information contained on a license issued under the Michigan Vehicle Code.**
- **Require public bodies to protect public records from loss, unauthorized alteration, mutilation, or destruction.**
- **Revise the calculation of costs that may be charged under the Act.**
- **Provide that records of a public body's security measures would be exempt from disclosure.**
- **Revise the current exemption for information of a personal nature.**

Public Records

The Act provides that a person has a right to inspect, copy, or receive copies of a public record of a public body, unless an exemption applies, upon an oral or written request that describes the public record sufficiently to enable the public body to find it. "Public record" means a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created.

The bill specifies that "public record" would not include computer programming or software. "Software" would mean "a set of statements or instructions that when incorporated in a machine usable medium is capable of causing a machine or device having information processing capabilities to indicate, perform, or achieve a particular function, task, or result".

The bill also would include in the definition of "public record" information contained on a license issued by the State or a public body, other than a license issued under the Michigan Vehicle Code.

The Act defines "writing" as handwriting, typewriting, printing, photostating, photographing, photocopying, and every other means of recording, including (among other things) magnetic or paper tapes, microfilm, microfiche, magnetic or punched cards, discs, drums, or other means of recording or retaining meaningful content. The bill also would include any other medium of electronic or digital storage.

Exemptions

Currently, a public body may exempt from disclosure specific types of records and information, including “information of a personal nature where the public disclosure of the information would constitute a clearly unwarranted invasion of an individual’s privacy”. The bill, instead, would allow an exemption for personnel files, medical files, and similar files or information, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The bill would create an exemption for records of a public body’s security measures, including security plans, security codes and combinations, passwords, passes, keys, and security procedures, to the extent that the records related to the ongoing security of the public body.

Fee

The Act permits a public body to charge a fee for providing a copy of a public record. The fee must be limited to actual mailing costs, and to the actual incremental cost of duplication or publication including labor, the cost of search, examination, review, and the deletion and separation of exempt from nonexempt information.

In calculating the costs, a public body may not attribute more than the hourly wage of the lowest paid, full-time, permanent clerical employee of the employing body to the cost of labor incurred in duplication and mailing and to the cost of examination, review, separation, and deletion. The bill provides, instead, that in calculating the cost of labor incurred in duplication and mailing and the cost of examination, review, separation, and deletion, a public body could not charge more than the hourly wage of the lowest paid public body employee capable of retrieving the information necessary to comply with a request under the Act.

Currently, a copy of a public record must be furnished without charge for the first \$20 of the fee for each request, to an individual who submits an affidavit stating that he or she is receiving public assistance or stating facts showing indigency. The bill would refer to a sworn affidavit submitted under penalty of perjury, making those statements.

The section of the Act providing for fees does not apply to public records prepared or used 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 is otherwise specifically provided for by an act or statute. The bill would add, “regardless of which public body actually receives the initial request for the copy of that public record, or which public body ultimately provides the copy of that public record”.

MCL 15.232 et al.

Legislative Analyst: S. Margules

FISCAL IMPACT

Changes in the bill regarding the method of calculating costs incurred in providing information, and providing that charges for records specified by other statutes apply regardless of which public body received the request, would result in cost savings to the State and local units of government.

Fiscal Analyst: B. Bowerman

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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.