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## BILL ANALYSIS



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House Bill 5832 (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 create the “Enhanced Access to Public Records Act” to permit public bodies to provide enhanced access for the inspection or copying of public records. “Enhanced access” would mean a public record’s immediate availability for public inspection and copying by digital means; it would not include the transfer of ownership of a public record. A public body could charge a reasonable fee for providing enhanced access or for providing access to a geographical information system. A public body also could enter into a contract with a third party vendor for the provision of enhanced access to the public. A public body would have to adopt an enhanced access policy before providing enhanced access.**

Specifically, upon authorization of its governing body, a public body could provide enhanced access for the inspection or copying of a public record that was not confidential or otherwise exempt by law from disclosure. A public record made available by enhanced access would remain the property of the public body that provided the enhanced access to a member of the general public or to a third party vendor. (The terms “public body” and “public record” would be defined as they are in the Freedom of Information Act (FOIA).)

A public body could charge a reasonable fee established by its governing body for providing enhanced access. A public body could waive a fee for enhanced access in the same manner and under the same circumstances that a fee may be waived under the FOIA. (“Reasonable fee” would mean a charge calculated to enable a public body to recover over time only those operating expenses directly related to its provision of enhanced access. “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.)

A public body also could charge a reasonable fee established by its governing body for providing access to a geographical information system, or the output from a geographical information system. (“Geographical information system” would mean an informational unit or network capable of producing customized maps based on a digital representation of geographical data.)

In addition, a public body could authorize a person other than the public body to provide members of the general public with enhanced access on behalf of the public body. A public body also could

require a member of the general public to execute a contract with the public body as a condition of providing that member of the public with enhanced access.

The bill would not limit access to a public record under the FOIA. A public record available by enhanced access would have to be made available for inspection or copying in accordance with that Act. The section of the bill allowing public bodies to provide enhanced access and charge fees 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.

Before providing enhanced access to a third party vendor or a member of the general public, a public body that elected to provide enhanced access would have to adopt an enhanced access policy that complied with the bill. If a public body were providing enhanced access to a third party on the bill's effective date, the public body would not be required to comply with this requirement until six months after the effective date. A public body would not have to provide enhanced access with respect to a specific public record if the public body had not established an enhanced access policy with respect to that public record. ("Third party vendor" would mean a person who executed a contract with a public body to provide enhanced access as the public body's agent.)

A public body could elect to provide enhanced access through a third party vendor by executing a contract with the vendor. Selection of a third party vendor would be subject to open competitive bidding. At a minimum, the contract between the governing body of a public body and a third party vendor would have to provide for all of the following before the third party vendor made enhanced access to public records of the public body available to members of the general public:

- That members of the general public would pay to the vendor or to the public body a fee, if any, authorized by law.
- That the vendor could not provide members of the public with enhanced access to a public record that was confidential, exempt from disclosure, or not authorized by the public body to be disclosed by enhanced access.
- That the vendor could not alter information contained in an original public record.
- That the vendor would have to indemnify the public body for any claims against it arising from the vendor's provision of enhanced access.
- That the vendor would have to provide security measures satisfactory to the public body to prevent the unauthorized alteration or destruction of a public record, and to prevent unauthorized enhanced access.
- That the vendor would not obtain an ownership interest in a public record provided by the public body for enhanced access purposes under the bill.
- That the vendor would have to pay to the public body a fee authorized by statute for access to a public record received by the vendor, or, if no statutory fee were authorized, at least the actual cost or any incurred by the public body in providing a public record to the vendor for enhanced access purposes.

Three years after the bill's effective date, a bipartisan joint committee of three members of each house of the Legislature would have to review the operations of the bill and recommend appropriate changes. The members of the Senate would have to be appointed by the Senate Majority Leader. The members of the House of Representatives would have to be appointed by the Speaker of the House.

Legislative Analyst: S. Margules

## **FISCAL IMPACT**

The bill would have an indeterminate fiscal impact, which would depend on the number of public bodies that developed enhanced access to public records. The bill would allow a public body to charge a fee for providing access that would enable it to recover operating expenses. The bill also would allow a public body to charge a reasonable fee for access to a geographical information system.

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.