

Senate Bill 1362 (as enrolled)
Sponsor: Senator Bill Bullard, Jr.
Senate Committee: Government Operations
House Committee: Advanced Technology and Computer Development

PUBLIC ACT 550 of 1998

Date Completed: 1-26-99

RATIONALE

The Enhanced Access to Public Records Act was approved in 1996 to provide for the immediate availability of public records for public inspection, purchase, or copying by digital means; that is, access through computer technology. The Act also provides for access to a public body's "geographical information system" (GIS). The Act defines "geographical information system" as "an informational unit or network capable of producing customized maps based on a digital representation of geographical data". Evidently, a number of counties are in the process of producing these maps, which will include such information as land records, drain locations, and census data. In addition, some local units of government apparently have been developing regional databases that may be used with a GIS to produce information and analyses that may be useful to individuals, businesses, and governmental agencies. Reportedly, some local governments are beginning to use geographic information systems to visualize gaps in services--such as medical care, housing, and schools--as well as to provide public officials with customized maps that enable them to see and study resource needs, supplies, and patterns of distribution.

The cost of producing these systems apparently can be quite high. The GIS that has been designed to serve southeastern Michigan reportedly will cost approximately \$15 million, to be repaid over 20 years. Under the Act, although a public body may provide free access to its GIS, it also may charge a reasonable fee for providing access to the system or to output from the system. The Act's definition of "reasonable fee", however, permits a public body to recover only "those operating expenses directly related to the public body's provision of enhanced access". This meant that if a county provided access to its geographical maps to a municipality

without charge, and the municipality then provided access to a third party (such as a developer), the municipality could collect little, if anything, from the third party because the municipality incurred few expenses in providing the access. To help local units recoup the expenses of developing geographical information systems, it was suggested that, in such a situation, the public body providing access to the third party should be able to recover both its own expenses and the expenses of the public body that originally provided the information.

CONTENT

The bill amended the Enhanced Access to Public Records Act to allow a public body to provide another public body with access to or output from its geographical information system under an intergovernmental agreement; and to permit the public body receiving access or output to collect from a third party the expenses of both public bodies.

The Act defines "public body" with reference to the definition in the Freedom of Information Act. The bill defines "third party" as a person who requests a geographical information system or output from such a system under the Enhanced Access to Public Records Act; "third party" does not include a person from whom a fee authorized under the Act is waived in accordance with an intergovernmental agreement.

Under the bill, a public body may provide another public body with access to or output from its geographical information system for the official use of that other public body, without charging a fee, if the access is provided in accordance with a written intergovernmental agreement. The agreement

must state that the public body receiving access to or output from the system without charge is prohibited from providing access to the system's output to a third party unless that public body does both of the following:

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MCL 15.442 & 15.553

ARGUMENTS

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(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The bill will enable public bodies to continue sharing their geographical information maps with other public bodies (or with the public) for free, but eventually to recover their costs if a public body receiving the information then provides access or output to a third party. These maps can be beneficial to public bodies and members of the public, but producing them apparently is very expensive. If the information is provided to a third party, such as a developer or a mortgage company, then the public body that produced the maps should be able to recover its costs--either directly, if that public body deals with the third party, or indirectly, if another public body receives the information and then provides it to the third party. In addition, if the receiving public body added its own data to the maps, then that public body may recover its expenses from the third party as well.

Supporting Argument

The bill makes it clear that access to a GIS is to be provided only as specified in the Enhanced Access to Public Records Act, and fees may be charged as allowed in that Act. Otherwise, public records remain available as provided in the FOIA. Previously, the Enhanced Access Act stated that it did not limit access to records under the FOIA; the FOIA, however, allows a public body to charge fees only for searching for a public record, copying a public record for inspection, or providing a copy of a public record. Under the bill, a public body also may recover its operating expenses.

Legislative Analyst: S. Lowe

FISCAL IMPACT

The bill will have an indeterminate impact on State and local government. Under the bill, a public body that receives access to or output from a geographic information system from another public body will be able to charge third parties for operating expenses incurred by it and the public body that originally provided the access or output.

Fiscal Analyst: B. Bowerman

~~Collects from the third party a fee, or waives that fee in accordance with the terms of the intergovernmental agreement.~~

- ~~-- Conveys to the providing public body that portion of any fee collected from the third party that is directly attributable to the operating expenses of the providing public body in furnishing the output from the system to the third party.~~

The intergovernmental agreement also must specify the public purpose for which access to or output from the system is being provided, and specify the portion of any fee collected from a third party that the receiving public body must convey to the providing public body.

A public body that receives access to or output from a system under an intergovernmental agreement may collect a reasonable fee from a third party to whom it provides access to output from the system. The fee is to include an amount that enables the public body providing access or output to recover its operating expenses directly related to providing access to output from its system to a third party. The fee also is to include an amount that enables the receiving public body to recover over time its operating expenses directly related to providing a third party with access to or output from its system.

The bill specifies that the language of the Act relating to the sharing of access to or output from systems among public bodies must be liberally construed to facilitate the sharing of access to and output from systems without financial detriment to the public bodies.

Previously, the Act stated that it did not limit access to a public record under the Freedom of Information Act (FOIA), and that a public record available by enhanced access had to be made available for inspection or copying in accordance with the FOIA. The bill deleted those provisions. The bill states that access to or output from a geographic information system must be made available only as provided above. Except as otherwise provided, the Enhanced Access to Public Records Act does not limit the inspection and copying of a public record pursuant to the FOIA.

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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.