~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

May 30, 2012

**H. 3235**

Introduced by Reps. Taylor, Young, J.R. Smith, Bikas, Chumley, Quinn, Clemmons and Barfield

S. Printed 5/30/12--S.

Read the first time May 2, 2012.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 3235) to amend Section 30‑4‑30, Code of Laws of South Carolina, 1976, relating to fees and the time within which certain records must be furnished under, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

Majority favorable. Minority unfavorable.

VINCENT A. SHEHEEN C. BRADLEY HUTTO

For Majority. For Minority.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

ESTIMATED FISCAL IMPACT ON GENERAL FUND EXPENDITURES:

Minimal (Some additional costs expected but can be absorbed)

ESTIMATED FISCAL IMPACT ON FEDERAL & OTHER FUND EXPENDITURES:

Minimal (Some additional costs expected but can be absorbed)

**EXPLANATION OF IMPACT:**

South Carolina Department of Education (SCDE)

Department of Corrections

The department’s report this bill would have minimal impact on the agency and could be absorbed within existing resources.

State Budget and Control Board

The board reports that if the board is unable to charge a reasonable amount for staff time associated with gathering or reproducing records for the request, then the agency expects the number of FOIA requests to increase significantly.  The elimination of charging for staff time coupled with the reduction in the amount of time to respond to requests would require current or additional staff to be devoted to compiling records only.

Department of Disabilities and Special Needs

The department reports this bill would have no impact on the General Fund of the State or federal and/or other funds.

Commission on Higher Education

SC Department of Transportation

Department of Health and Environmental Control

The agencies have been forwarded a copy of the bill, but to date, has not submitted impact of the proposed bill.

*Approved By:*

Brenda Hart

Office of State Budget

**A** **BILL**

TO AMEND SECTION 30‑4‑30, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO FEES AND THE TIME WITHIN WHICH CERTAIN RECORDS MUST BE FURNISHED UNDER THE FREEDOM OF INFORMATION ACT, SO AS TO PROVIDE RECORDS MUST BE FURNISHED AT CURRENT MARKET VALUE TO THE PERSON REQUESTING THE RECORDS, AND TO PROVIDE WHERE A PUBLIC BODY GRANTS A REQUEST FOR RECORDS, IT MUST FURNISH THOSE RECORDS FOR INSPECTION OR COPYING IMMEDIATELY, BUT NO LATER THAN THIRTY DAYS AFTER THE DATE OF THE FORMAL REQUEST.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 30‑4‑30 of the 1976 Code is amended to read:

“Section 30‑4‑30.(a) Any person has a right to inspect ~~or~~, copy, or receive an electronic transmission of any public record of a public body, except as otherwise provided by Section 30‑4‑40, in accordance with reasonable rules concerning time and place of access.

(b) The public body may establish and collect fees not to exceed the actual cost of ~~searching for or~~ making copies of records. The public body may not charge for staff time associated with gathering or reproducing the records. Fees charged by a public body must be uniform for copies of the same record or document and may not exceed the prevailing commercial rate for the producing of copies. Copy charges may not apply to records that are stored or transmitted in an electronic format. However, members of the General Assembly may receive copies of records or documents at no charge from public bodies when their request relates to their legislative duties. The records must be furnished at the lowest possible cost to the person requesting the records. Records must be provided in a form that is both convenient and practical for use by the person requesting copies of the records concerned, if it is equally convenient for the public body to provide the records in this form. Documents may be furnished when appropriate without charge or at a reduced charge where the agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public. Fees may not be charged for examination and review to determine if the documents are subject to disclosure. ~~Nothing in this chapter prevents the custodian of the public records from charging a reasonable hourly rate for making records available to the public nor requiring a reasonable deposit of these costs before searching for or making copies of the records~~ A deposit not to exceed twenty‑five percent of the total cost for reproduction of the records may be required prior to the public body searching for or making copies of records.

(c) Each public body, upon written request for records made under this chapter, shall ~~within~~ as soon as possible but in no more than fifteen calendar days ~~(excepting Saturdays, Sundays, and legal public holidays)~~ of the receipt of any such request notify the person making such request of its determination and the reasons therefore. Such a determination shall constitute the final opinion of the public body as to the public availability of the requested public record and, if the request is granted, the record must be furnished or made available for inspection or copying no later than thirty days (excepting Saturdays, Sundays, and legal public holidays) from the date of the original request, unless the records are more than twenty‑four months old in which case the public body may use no more than forty‑five additional calendar days to produce the records. If written notification of the determination of the public body as to the availability of the requested public record is neither mailed nor personally delivered to the person requesting the document within the fifteen days allowed herein, the request must be considered approved.

(d) The following records of a public body must be made available for public inspection and copying during the hours of operations of the public body, unless the record is exempt pursuant to Section 30‑4‑40, without the requestor being required to make a written request to inspect or copy the records when the requestor appears in person:

(1) minutes of the meetings of the public body for the preceding six months;

(2) all reports identified in Section 30‑4‑50(A)(8) for at least the fourteen-day period before the current day; ~~and~~

(3) documents identifying persons confined in any jail, detention center, or prison for the preceding three months; and

(4) all documents produced by the public body or its agent that were distributed to or reviewed by any member of the public body during a public meeting for the preceding six month period.

(e) A public body can comply with subsection (d) by placing the records in a form that is both convenient and practical for use on a publicly available internet site, provided however that the public body must also produce documents pursuant to this section if requested to do so.”

SECTION 2. Section 30‑4‑40 of the 1976 Code, as last amended by Act 380 of 2006, is further amended to read:

“Section 30‑4‑40.(a) A public body may but is not required to exempt from disclosure the following information:

(1) Trade secrets, which are defined as unpatented, secret, commercially valuable plans, appliances, formulas, or processes, which are used for the making, preparing, compounding, treating, or processing of articles or materials which are trade commodities obtained from a person and which are generally recognized as confidential and work products, in whole or in part collected or produced for sale or resale, and paid subscriber information. Trade secrets also include, for those public bodies who market services or products in competition with others, feasibility, planning, and marketing studies, marine terminal service and nontariff agreements, and evaluations and other materials which contain references to potential customers, competitive information, or evaluation.

(2) Information of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy. Information of a personal nature shall include, but not be limited to, information as to gross receipts contained in applications for business licenses and information relating to public records which include the name, address, and telephone number or other such information of an individual or individuals who are handicapped or disabled when the information is requested for person‑to‑person commercial solicitation of handicapped persons solely by virtue of their handicap. This provision must not be interpreted to restrict access by the public and press to information contained in public records.

(3) Records of law enforcement and public safety agencies not otherwise available by state and federal law that were compiled in the process of detecting and investigating crime if the disclosure of the information would harm the agency by:

(A) disclosing identity of informants not otherwise known;

(B) the premature release of information to be used in a prospective law enforcement action;

(C) disclosing investigatory techniques not otherwise known outside the government;

(D) by endangering the life, health, or property of any person; or

(E) disclosing any contents of intercepted wire, oral, or electronic communications not otherwise disclosed during a trial.

(4) Matters specifically exempted from disclosure by statute or law.

(5) Documents of and documents incidental to proposed contractual arrangements and documents of and documents incidental to proposed sales or purchases of property; however:

(A) these documents are not exempt from disclosure once a contract is entered into or the property is sold or purchased except as otherwise provided in this section;

(B) a contract for the sale or purchase of real estate shall remain exempt from disclosure until the deed is executed, but this exemption applies only to those contracts of sale or purchase where the execution of the deed occurs within twelve months from the date of sale or purchase;

(C) confidential proprietary information provided to a public body for economic development or contract negotiations purposes is not required to be disclosed.

(6) All compensation paid by public bodies except as follows:

(A) For those persons receiving compensation of fifty thousand dollars or more annually, for all part‑time employees, for any other persons who are paid honoraria or other compensation for special appearances, performances, or the like, and for employees at the level of agency or department head, the exact compensation of each person or employee;

(B) For classified and unclassified employees, including contract instructional employees, not subject to item (A) above who receive compensation between, but not including, thirty thousand dollars and fifty thousand dollars annually, the compensation level within a range of four thousand dollars, such ranges to commence at thirty thousand dollars and increase in increments of four thousand dollars;

(C) For classified employees not subject to item (A) above who receive compensation of thirty thousand dollars or less annually, the salary schedule showing the compensation range for that classification including longevity steps, where applicable;

(D) For unclassified employees, including contract instructional employees, not subject to item (A) above who receive compensation of thirty thousand dollars or less annually, the compensation level within a range of four thousand dollars, such ranges to commence at two thousand dollars and increase in increments of four thousand dollars.

(E) For purposes of this subsection (6), ‘agency head’ or ‘department head’ means any person who has authority and responsibility for any department of any institution, board, commission, council, division, bureau, center, school, hospital, or other facility that is a unit of a public body.

(7) Correspondence or work products of legal counsel for a public body and any other material that would violate attorney‑client relationships.

(8) ~~Memoranda, correspondence, and working papers in the possession of individual members of the General Assembly or their immediate staffs; however, nothing herein may be construed as limiting or restricting public access to source documents or records, factual data or summaries of factual data, papers, minutes, or reports otherwise considered to be public information under the provisions of this chapter and not specifically exempted by any other provisions of this chapter.~~

~~(9)~~ Memoranda, correspondence, documents, and working papers relative to efforts or activities of a public body and of a person or entity employed by or authorized to act for or on behalf of a public body to attract business or industry to invest within South Carolina; however, an incentive agreement made with an industry or business: (1) requiring the expenditure of public funds or the transfer of anything of value, (2) reducing the rate or altering the method of taxation of the business or industry, or (3) otherwise impacting the offeror fiscally, is not exempt from disclosure after:

(A) the offer to attract an industry or business to invest or locate in the offeror’s jurisdiction is accepted by the industry or business to whom the offer was made; and

(B) the public announcement of the project or finalization of any incentive agreement, whichever occurs later.

(~~10~~9) Any standards used or to be used by the South Carolina Department of Revenue for the selection of returns for examination, or data used or to be used for determining such standards, if the commission determines that such disclosure would seriously impair assessment, collection, or enforcement under the tax laws of this State.

(~~11~~10) Information relative to the identity of the maker of a gift to a public body if the maker specifies that his making of the gift must be anonymous and that his identity must not be revealed as a condition of making the gift. For the purposes of this item, ‘gift to a public body’ includes, but is not limited to, gifts to any of the state supported colleges or universities and museums. With respect to the gifts, only information which identifies the maker may be exempt from disclosure. If the maker of any gift or any member of his immediate family has any business transaction with the recipient of the gift within three years before or after the gift is made, the identity of the maker is not exempt from disclosure.

(~~12~~11) Records exempt pursuant to Sections 9‑16‑80(B) and 9‑16‑320(D).

(~~13~~12) All materials, regardless of form, gathered by a public body during a search to fill an employment position, except that materials relating to not fewer than the final three applicants under consideration for a position must be made available for public inspection and copying. In addition to making available for public inspection and copying the materials described in this item, the public body must disclose, upon request, the number of applicants considered for a position. For the purpose of this item ‘materials relating to not fewer than the final three applicants’ do not include an applicant’s income tax returns, medical records, social security number, or information otherwise exempt from disclosure by this section.

(~~14~~13)(A) Data, records, or information of a proprietary nature, produced or collected by or for faculty or staff of state institutions of higher education in the conduct of or as a result of study or research on commercial, scientific, technical, or scholarly issues, whether sponsored by the institution alone or in conjunction with a governmental body or private concern, where the data, records, or information has not been publicly released, published, copyrighted, or patented.

(B) Any data, records, or information developed, collected, or received by or on behalf of faculty, staff, employees, or students of a state institution of higher education or any public or private entity supporting or participating in the activities of a state institution of higher education in the conduct of or as a result of study or research on medical, scientific, technical, scholarly, or artistic issues, whether sponsored by the institution alone or in conjunction with a governmental body or private entity until the information is published, patented, otherwise publicly disseminated, or released to an agency whereupon the request must be made to the agency. This item applies to, but is not limited to, information provided by participants in research, research notes and data, discoveries, research projects, proposals, methodologies, protocols, and creative works.

(C) The exemptions in this item do not extend to the institution’s financial or administrative records.

(~~15~~14) The identity, or information tending to reveal the identity, of any individual who in good faith makes a complaint or otherwise discloses information, which alleges a violation or potential violation of law or regulation, to a state regulatory agency.

(~~16~~15) Records exempt pursuant to Sections 59‑153‑80(B) and 59‑153‑320(D).

(~~17~~16) Structural bridge plans or designs unless: (a) the release is necessary for procurement purposes; or (b) the plans or designs are the subject of a negligence action, an action set forth in Section 15‑3‑530, or an action brought pursuant to Chapter 78 of Title 15, and the request is made pursuant to a judicial order.

(~~18~~17) Photographs, videos, and other visual images, and audio recordings of and related to the performance of an autopsy, except that the photographs, videos, images, or recordings may be viewed and used by the persons identified in Section 17‑5‑535 for the purposes contemplated or provided for in that section.

(~~19~~18) Private investment and other proprietary financial data provided to the Venture Capital Authority by a designated investor group or an investor as those terms are defined by Section 11‑45‑30.

(b) If any public record contains material which is not exempt under subsection (a) of this section, the public body shall separate the exempt and nonexempt material and make the nonexempt material available in accordance with the requirements of this chapter.

(c) Information identified in accordance with the provisions of Section 30‑4‑45 is exempt from disclosure except as provided therein and pursuant to regulations promulgated in accordance with this chapter. Sections 30‑4‑30, 30‑4‑50, and 30‑4‑100 notwithstanding, no custodian of information subject to the provisions of Section 30‑4‑45 shall release the information except as provided therein and pursuant to regulations promulgated in accordance with this chapter.

(d) A public body may not disclose a ‘privileged communication’, ‘protected information’, or a ‘protected identity’, as defined in Section 23‑50‑15 pursuant to a request under the South Carolina Freedom of Information Act. These matters may only be disclosed pursuant to the procedures set forth in Section 23‑50‑45.”

SECTION 3. This act takes effect upon approval by the Governor.

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