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A BILL

10 TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA,
11 1976, BY ADDING SECTION 1-23-665 SO AS TO CREATE THE
12 OFFICE OF FREEDOM OF INFORMATION ACT REVIEW
13 WITHIN THE ADMINISTRATIVE LAW COURT, TO PROVIDE
14 FOR THE ADMINISTRATION, FUNCTIONS, AND RELATED
15 PROCEDURES OF THE OFFICE, ITS HEARING OFFICERS,
16 AND APPEALS FROM DECISIONS OF THE OFFICE; TO
17 AMEND SECTION 30-4-30, RELATING TO THE RIGHT TO
18 INSPECT OR COPY PUBLIC RECORDS, SO AS TO EXPAND
19 THE RIGHT TO INCLUDE RECEIPT OF EXISTING
20 ELECTRONIC TRANSMISSIONS OF PUBLIC RECORDS, TO
21 REVISE THE MANNER IN WHICH RELATED FEES AND
22 CHARGES MAY BE ESTABLISHED AND COLLECTED, TO
23 REDUCE THE TIME IN WHICH A PUBLIC BODY MUST
24 RESPOND WITH NOTICE OF ITS FINAL DETERMINATION
25 CONCERNING A RECORDS REQUEST FROM FIFTEEN TO
26 TEN DAYS, TO PROVIDE TWO SETS OF TIME LIMITS
27 WITHIN WHICH RECORDS SUBSEQUENTLY MUST BE
28 FURNISHED OR MADE AVAILABLE FOR INSPECTION OR
29 COPYING BASED ON WHETHER THE DOCUMENTS ARE
30 LESS OR MORE THAN TWO YEARS OLD, TO INCLUDE
31 AMONG THOSE RECORDS THAT MUST BE AVAILABLE
32 FOR COPYING AND INSPECTION WITHOUT WRITTEN
33 REQUEST DURING NORMAL BUSINESS HOURS ALL
34 DOCUMENTS PRODUCED BY THE PUBLIC BODY OR ITS
35 AGENT THAT WERE DISTRIBUTED TO OR REVIEWED BY
36 ANY MEMBER OF THE PUBLIC BODY DURING A PUBLIC
37 MEETING FOR THE PRECEDING SIX MONTH PERIOD, AND
38 TO PROVIDE THAT A PUBLIC BODY MAY COMPLY WITH
39 REQUIREMENTS FOR MAKING CERTAIN RECORDS
40 AVAILABLE FOR COPYING AND INSPECTION WITHOUT
41 WRITTEN REQUEST DURING NORMAL BUSINESS HOURS
42 BY MAKING THE RECORDS AVAILABLE ON A PUBLICLY

1 AVAILABLE INTERNET WEBSITE; TO AMEND SECTION
2 30-4-100, RELATING TO REMEDIES AVAILABLE FOR
3 VIOLATIONS, SO AS TO INCLUDE HEARINGS BEFORE THE
4 OFFICE OF FREEDOM OF INFORMATION ACT REVIEW TO
5 SEEK SPECIFIC ENFORCEMENT, TO CHALLENGE THE
6 REASONABLENESS OF FEES, AND TO SEEK RELIEF FROM
7 UNDULY BURDENSOME, OVERLY BROAD, AND
8 OTHERWISE IMPROPER REQUESTS TO PUBLIC BODIES;
9 AND TO AMEND SECTION 30-4-110, RELATING TO
10 PENALTIES FOR VIOLATIONS, SO AS TO REMOVE
11 EXISTING CRIMINAL PENALTIES AN TO PROVIDE A
12 PRIVATE CAUSE OF ACTION FOR A VIOLATION, AND TO
13 PROVIDE FOR THE AWARD OF DAMAGES AND
14 ATTORNEY FEES.

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

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19 SECTION 1. Chapter 23, Title 1 of the 1976 Code is amended by
20 adding:

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22 “Section 1-23-665. (A) There is created within the
23 Administrative Law Court the Office of Freedom of Information Act
24 Review. The chief judge of the Administrative Law Court shall
25 serve as the director of the Office of Freedom of Information Act
26 Review. The hearing officers and staff must be appointed, hired,
27 contracted, and supervised by the chief judge of the court, shall
28 exercise their adjudicatory functions, duties, and responsibilities
29 under the auspices of the Administrative Law Court as directed by
30 the chief judge, and shall perform such other functions and duties as
31 the chief judge of the court prescribes. All employees of the office
32 shall serve at the discretion of the chief judge. The chief judge is
33 solely responsible for the administration of the office, the
34 assignment of cases, and the administrative duties and
35 responsibilities of the hearing officers and staff. Notwithstanding
36 another provision of law, the chief judge also has the authority to
37 promulgate rules governing practice and procedures before the
38 Office of Freedom of Information Act Review. These rules are
39 subject to review as are the rules of procedure promulgated by the
40 Supreme Court pursuant to Article V of the South Carolina
41 Constitution.

42 (B) Notwithstanding another provision of law, the hearing
43 officers shall conduct hearings in accordance with Chapter 23, Title

1 1, the Administrative Procedures Act, and the rules of procedure for
2 the Office of Freedom of Information Act Review, at suitable
3 locations as determined by the chief judge.

4 (C) The hearing officers are bound by the Code of Judicial
5 Conduct, as contained in Rule 501 of the South Carolina Appellate
6 Court Rules. The State Ethics Commission is responsible for the
7 enforcement and administration of those rules and for the issuance
8 of advisory opinions on the requirements of those rules for
9 administrative law judges and hearing officers pursuant to the
10 procedures contained in Section 8-13-320. Notwithstanding another
11 provision of law, an administrative law judge or hearing officer, and
12 the judge's or hearing officer's spouse or guest, may accept an
13 invitation to, and attend, a judicial-related or bar-related function, or
14 an activity devoted to the improvement of the law, the legal system,
15 or the administration of justice.

16 (D) Appeals from decisions of the hearing officers must be filed
17 with the ALC pursuant to the court's appellate rules of procedure.
18 Recordings of all hearings must be made part of the record on
19 appeal, along with all evidence introduced at hearings, and copies
20 will be provided to parties to those appeals at no charge. The chief
21 judge shall not hear any appeals from these decisions.

22 (E) A hearing officer must issue an order containing findings of
23 fact and conclusions of law. If a hearing officer determines that
24 information is subject to disclosure, the order must set forth in
25 writing what information must be disclosed and when that
26 disclosure must occur. If the decision of the hearing officer is not
27 timely appealed to the ALC, a prevailing party may apply to the
28 ALC to enforce the determination. If the decision is appealed to the
29 ALC, and the administrative law judge upholds a decision ordering
30 disclosure of information, the administrative law judge may enforce
31 the hearing officer's determination as the court considers
32 appropriate. If the administrative law judge rules that the
33 determination must be enforced, the court may hold a person, the
34 responsible officer, or the public official of a public body in civil
35 contempt for failing to comply with the provisions of Section
36 30-4-30 or an order of the court relating to Section 30-4-30. The
37 administrative law judge may also award attorney's fees pursuant to
38 Section 30-4-100(c)."

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40 SECTION 2. Section 30-4-30 of the 1976 Code is amended to read:

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42 "Section 30-4-30. (a)(1) ~~Any~~ A person has a right to inspect ~~or~~,
43 copy, or receive an electronic transmission of any public record of a

1 public body, except as otherwise provided by Section 30-4-40, in
2 accordance with reasonable rules concerning time and place of
3 access.

4 (2) A public body is not required to create an electronic
5 version of a public record when one does not exist to fulfill a records
6 request.

7 (b) The public body may establish and collect ~~fees not to exceed~~
8 ~~the actual cost of searching for or making copies of records.~~ Fees
9 ~~charged by a public body must be uniform for copies of the same~~
10 ~~record or document. Fees charged by a public body must be uniform~~
11 ~~for copies of the same record or document~~ a fee not to exceed one
12 hundred dollars per hour to fulfill a records request; provided,
13 however, that the public body may not charge or collect any fee for
14 the first two hours used to fulfill a records request. The public body
15 also may charge a copy fee not to exceed the prevailing commercial
16 rate for copies made to fulfill a request, but may impose no copy
17 charge for documents provided electronically. The public body may
18 impose a charge not to exceed the prevailing commercial rate for
19 media, if any, on which public records provided to fulfil a records
20 request are stored and given to the person making the request.
21 ~~However,~~ Members of the General Assembly may receive copies of
22 records or documents at no charge from public bodies when their
23 request relates to their legislative duties. ~~The records must be~~
24 ~~furnished at the lowest possible cost to the person requesting the~~
25 ~~records.~~ Records must be provided in a form that is both convenient
26 and practical for use by the person requesting copies of the records
27 concerned, if it is equally convenient for the public body to provide
28 the records in this form. Documents may be furnished when
29 appropriate without charge or at a reduced charge where the agency
30 determines that waiver or reduction of the fee is in the public interest
31 because furnishing the information can be considered as primarily
32 benefiting the general public. Fees may not be charged for
33 examination and review to determine if the documents are subject
34 to disclosure. ~~Nothing in this chapter prevents the custodian of the~~
35 ~~public records from charging a reasonable hourly rate for making~~
36 ~~records available to the public nor requiring a reasonable deposit of~~
37 ~~these costs before searching for or making copies of the records~~ A
38 deposit not to exceed twenty-five percent of the total cost for
39 reproduction of the records may be required prior to the public body
40 searching for or making copies of records.

41 (c) Each public body, upon written request for records made
42 under this chapter, shall within ~~fifteen~~ ten days (excepting
43 Saturdays, Sundays, and legal public holidays) of the receipt of any

1 ~~such~~ request, notify the person making ~~such~~ the request of its
2 determination and the reasons ~~therefor~~ for it; provided, however,
3 that if the record is more than two years old at the date the request
4 is made, the public body has twenty days (excepting Saturdays,
5 Sundays, and legal public holidays) of the receipt to make this
6 notification. Such a determination shall must constitute the final
7 opinion of the public body as to the public availability of the
8 requested public record and, if the request is granted, the record
9 must be furnished or made available for inspection or copying no
10 later than thirty calendar days from the date on which the request
11 was granted, unless the records are more than twenty-four months
12 old, in which case the public body has no later than thirty-five
13 calendar days from the date on which the request was granted to
14 fulfill the request. If written notification of the determination of the
15 public body as to the availability of the requested public record is
16 neither mailed nor personally delivered to the person requesting the
17 document within the ~~fifteen~~ ten days (excepting Saturdays, Sundays,
18 and legal public holidays) allowed ~~herein~~, the request must be
19 considered approved.

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

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

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

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

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

35 (e) A public body complies with the provisions of subsection (d)
36 by placing the records in a form that is both convenient and practical
37 for use on a publicly available Internet site, provided that the public
38 body also must produce documents pursuant to this section if
39 requested to do so."

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41 SECTION 3. Section 30-4-100 of the 1976 Code is amended to
42 read:
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1 “Section 30-4-100. (a) ~~Any~~ A citizen of the State may apply to
2 the circuit court for ~~either or both~~ a declaratory judgment ~~and,~~
3 injunctive relief, ~~or both,~~ to enforce the provisions of this chapter in
4 appropriate cases ~~as long as such~~ if the application is made no later
5 than one year ~~following~~ after the date ~~on which the~~ of the alleged
6 violation ~~occurs~~ or one year after a public vote in public session,
7 whichever comes later. The court may order equitable relief as it
8 considers appropriate, and a violation of this chapter must be
9 considered to be an irreparable injury for which no adequate remedy
10 at law exists.

11 (b) A citizen of this State may file a request for hearing with the
12 Office of Freedom of Information Act Review pursuant to Section
13 1-23-665 in the following instances:

14 (1) To seek specific enforcement of a request made pursuant
15 to Section 30-4-30 when the public body from which the records are
16 requested fails to comply with the time limits provided in Section
17 30-4-30(c).

18 (2) To challenge the reasonableness of a fee assessed pursuant
19 to Section 30-4-30.

20 A determination of the Office of Freedom of Information Act
21 Review may be appealed to the Administrative Law Court or
22 enforced by an administrative law judge pursuant to Section
23 1-23-665.

24 (c) A public body may file a request for hearing with the Office
25 of Freedom of Information Act Review pursuant to Section
26 1-23-665 to seek relief from unduly burdensome, overly broad, or
27 otherwise improper requests.

28 (bd) If a person or entity seeking such relief under this section
29 prevails, he or it may be awarded reasonable attorney fees and other
30 costs of litigation. If such the person or entity prevails in part, the
31 court may in its discretion award him or it reasonable attorney fees
32 or an appropriate portion thereof of them.”

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34 SECTION 4. Section 30-4-110 of the 1976 Code is amended to
35 read:

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37 “Section 30-4-110. ~~Any person or group of persons who willfully~~
38 ~~violates the provisions of this chapter shall be deemed is guilty of a~~
39 ~~misdemeanor and, upon conviction shall be fined not more than one~~
40 ~~hundred dollars or imprisoned for not more than thirty days for the~~
41 ~~first offense, shall be fined not more than two hundred dollars or~~
42 ~~imprisoned for not more than sixty days for the second offense and~~
43 ~~shall be fined three hundred dollars or imprisoned for not more than~~

1 ~~ninety days for the third or subsequent offense.~~ A person aggrieved
2 by a violation of this chapter may bring a civil action in a court of
3 competent jurisdiction within three years after the occurrence of the
4 alleged violation. If the court finds that the public body has
5 arbitrarily and capriciously violated the provisions of this chapter by
6 refusal or delay in disclosing or providing copies of a public record,
7 it may, in addition to any actual or compensatory damages, award
8 punitive damages of five hundred dollars and reasonable attorney
9 fees to the person seeking the right to inspect or receive a copy of a
10 public record.”

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SECTION 5. This act takes effect upon approval by the Governor.

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