**South Carolina General Assembly**

118th Session, 2009-2010

**H. 4704**

**STATUS INFORMATION**

General Bill

Sponsors: Rep. J.E. Smith

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Introduced in the House on March 9, 2010

Currently residing in the House Committee on **Judiciary**

Summary: FOIA

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

3/9/2010 House Introduced and read first time [HJ](file:///h:\HJ%20Archive\2010\03-09-10.docx)‑5

3/9/2010 House Referred to Committee on **Judiciary** [HJ](file:///h:\HJ%20Archive\2010\03-09-10.docx)‑6

**VERSIONS OF THIS BILL**

[3/9/2010](file:///p:\pprever\2009-10\4704_20100309.docx)

**A** **BILL**

TO AMEND SECTION 30‑1‑50, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE CRIMINAL PENALTY FOR FAILING TO DELIVER PUBLIC RECORDS AT THE EXPIRATION OF A PERSON’S TERM OF OFFICE OR EMPLOYMENT, SO AS TO DELETE THE PROVISION REQUIRING THAT A CERTIFIED LETTER BE DELIVERED TO THE PERSON HAVING CUSTODY OF THE RECORDS AND TO FURTHER SPECIFY THE TERMS OF THE CRIMINAL VIOLATION; TO AMEND SECTION 30‑4‑30, RELATING TO THE RIGHT OF A PERSON TO INSPECT OR COPY PUBLIC RECORDS, SO AS TO ESTABLISH THE MAXIMUM AMOUNT THAT CAN BE CHARGED FOR RESEARCHING AND COPYING RECORDS AND TO PROVIDE THAT UPON THE DETERMINATION THAT REQUESTED RECORDS ARE SUBJECT TO PUBLIC AVAILABILITY, THE RECORDS MUST BE PRODUCED AS SOON AS PRACTICABLE; AND BY ADDING SECTION 30‑4‑105 SO AS TO ESTABLISH A PRIVATE CAUSE OF ACTION TO ENFORCE THE PROVISIONS OF THE FREEDOM OF INFORMATION ACT THROUGH A NONJURY, EXPEDITED HEARING WHEN RECORDS ARE NOT PRODUCED WITHIN TWENTY DAYS OF THE REQUEST HAVING BEEN MADE AND TO PROVIDE THAT THE COURT SHALL AWARD ATTORNEY FEES AND COURT COSTS IF THE PARTY SEEKING RELIEF PREVAILS.

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

SECTION 1. Section 30‑1‑50 of the 1976 Code is amended to read:

“Section 30-1-50. ~~Fifteen days after receipt of a certified letter from the legal custodian of the record or the Director of the Archives,~~ It is unlawful for a person in possession of a public record ~~who refuses~~ to refuse or ~~fails~~ fail to deliver the public record as required ~~in this chapter the record to the requesting party~~ by Section 30‑1‑40.

(B) A person who violates subsection (A) is guilty of a misdemeanor and, upon conviction, ~~is~~ must be fined not ~~exceeding~~ more than five hundred dollars.

(C) In addition, the legal custodian of the public records or the Director of ~~the~~ Archives may apply by verified petition to the court of common pleas in the county of residence of the person withholding the records, and the court shall upon proper showing issue orders for the return of the records to the lawful custodian or the Director of ~~the~~ Archives.”

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

“Section 30‑4‑30. ~~(a)~~(A) ~~Any~~ A person has a right to inspect or copy 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)~~(B) The public body may establish and collect fees not to exceed the actual cost of searching for or making copies of records not to exceed seven dollars and fifty cents an hour for searching and seven cents per page for copies. Fees charged by a public body must be uniform for copies of the same record or document. 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~~ an hourly rate in accordance with this subsection for making records available to the public ~~nor~~ or requiring a reasonable deposit of these costs before searching for or making copies of the records.

~~(c)~~(C) Each public body, upon written request for records made under this chapter, shall within fifteen days (excepting Saturdays, Sundays, and legal public holidays) of the receipt of ~~any such~~ a request notify the person making ~~such~~ the request of ~~it’s~~ the public body’s determination and the reasons ~~therefor~~ for the determination. ~~Such a~~ This determination ~~shall constitute~~ constitutes 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 as soon as practicable. 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~~ required by this subsection, the request ~~must be considered~~ is deemed approved.

~~(d)~~(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 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.”

SECTION 3. Chapter 4, Title 30 of the 1976 Code is amended by adding:

“Section 30‑4‑105. (A)(1) In addition to the relief provided for in Section 30‑4‑100, a private cause of action is created to enforce the provisions of this chapter. If a person, who has requested public records that the agency has determined are subject to public availability, has not received the records within twenty days of the original request being made, the person may file a petition with the court seeking an expedited, nonjury hearing on the matter. The court shall conduct a hearing within ten days of the filing of the petition unless the court is notified by the plaintiff that the records have been produced.

(2) A person also may bring and action pursuant to this section for the assessment of improper charges for searching or copying records, or both, which must be conducted as a nonjury matter but which is not entitled to an expedited hearing.

(B) If a person seeking relief pursuant to this section prevails, the court shall award attorney fees and court costs.”

SECTION 4. This act takes effect upon approval by the Governor.

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