~~Indicates Matter Stricken~~

Indicates New Matter

AMENDED

February 18, 2015

**H. 3191**

Introduced by Reps. Newton, Cole, Anderson, Bales, G.A. Brown, R.L. Brown, Finlay, Felder, Funderburk, Hart, Knight, Lucas, Murphy, Norman, Norrell, Pope, Putnam, Rivers, Southard, Spires, Tallon, Taylor, Wells, Williams, Willis, Long, Douglas, Henderson, G.M. Smith, G.R. Smith, McCoy and Clary

S. Printed 2/18/15--H.

Read the first time January 13, 2015.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Fiscal Impact Summary**

This bill would increase general fund recurring expenditures by $138,250 for 2 FTEs with total general fund expenditures for Fiscal Year 2015-2016 of $141,370 of which $3,120 is non-recurring funds.

**Explanation of Fiscal Impact**

**State Expenditure**

House Bill H. 3191 creates the Office of Freedom of Information Act Review within the Administrative Law Court. A citizen of this State, or a public body, may file a request for hearing with the Office of Freedom of Information Act Review in certain instances. The hearing officers and staff must be appointed, hired, contracted, and supervised by the Chief Judge.

The Administration Law Court states that this bill would require additional expenditures for 1 FTE for a hearing officer to conduct the hearings and 1 FTE for an administrative staff position to process the cases and schedule hearings. Recurring general fund expenditures for these FTE’s would total $138,250 in FY 2015-2016. Non-recurring general fund expenditures would also increase by $3,120 for a total general fund expenditure of $141,370 in FY 2015-2016.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 1‑23‑665 SO AS TO CREATE THE OFFICE OF FREEDOM OF INFORMATION ACT REVIEW WITHIN THE ADMINISTRATIVE LAW COURT, TO PROVIDE FOR THE ADMINISTRATION, FUNCTIONS, AND RELATED PROCEDURES OF THE OFFICE, ITS HEARING OFFICERS, AND APPEALS FROM DECISIONS OF THE OFFICE; TO AMEND SECTION 30‑4‑30, RELATING TO THE RIGHT TO INSPECT OR COPY PUBLIC RECORDS, SO AS TO EXPAND THE RIGHT TO INCLUDE RECEIPT OF EXISTING ELECTRONIC TRANSMISSIONS OF PUBLIC RECORDS, TO REVISE THE MANNER IN WHICH RELATED FEES AND CHARGES MAY BE ESTABLISHED AND COLLECTED, TO REDUCE THE TIME IN WHICH A PUBLIC BODY MUST RESPOND WITH NOTICE OF ITS FINAL DETERMINATION CONCERNING A RECORDS REQUEST FROM FIFTEEN TO TEN DAYS, TO PROVIDE TWO SETS OF TIME LIMITS WITHIN WHICH RECORDS SUBSEQUENTLY MUST BE FURNISHED OR MADE AVAILABLE FOR INSPECTION OR COPYING BASED ON WHETHER THE DOCUMENTS ARE LESS OR MORE THAN TWO YEARS OLD, TO INCLUDE AMONG THOSE RECORDS THAT MUST BE AVAILABLE FOR COPYING AND INSPECTION WITHOUT WRITTEN REQUEST DURING NORMAL BUSINESS HOURS 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, AND TO PROVIDE THAT A PUBLIC BODY MAY COMPLY WITH REQUIREMENTS FOR MAKING CERTAIN RECORDS AVAILABLE FOR COPYING AND INSPECTION WITHOUT WRITTEN REQUEST DURING NORMAL BUSINESS HOURS BY MAKING THE RECORDS AVAILABLE ON A PUBLICLY AVAILABLE INTERNET WEBSITE; TO AMEND SECTION 30‑4‑100, RELATING TO REMEDIES AVAILABLE FOR VIOLATIONS, SO AS TO INCLUDE HEARINGS BEFORE THE OFFICE OF FREEDOM OF INFORMATION ACT REVIEW TO SEEK SPECIFIC ENFORCEMENT, TO CHALLENGE THE REASONABLENESS OF FEES, AND TO SEEK RELIEF FROM UNDULY BURDENSOME, OVERLY BROAD, AND OTHERWISE IMPROPER REQUESTS TO PUBLIC BODIES; AND TO AMEND SECTION 30‑4‑110, RELATING TO PENALTIES FOR VIOLATIONS, SO AS TO REMOVE EXISTING CRIMINAL PENALTIES, TO PROVIDE A PRIVATE CAUSE OF ACTION FOR A VIOLATION, AND TO PROVIDE FOR THE AWARD OF DAMAGES AND ATTORNEY FEES.

Amend Title To Conform

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

SECTION 1. Article 5, Chapter 23, Title 1 of the 1976 Code is amended by adding:

“Section 1‑23‑665. (A) There is created within the Administrative Law Court the Office of Freedom of Information Act Review. The Chief Judge of the Administrative Law Court shall serve as the Director of the Office of Freedom of Information Act Review. The hearing officers and staff must be appointed, hired, contracted, and supervised by the chief judge of the court, shall exercise their adjudicatory functions, duties, and responsibilities under the auspices of the Administrative Law Court as directed by the chief judge, and shall perform such other functions and duties as the chief judge of the court prescribes. All employees of the office shall serve at the discretion of the chief judge. The chief judge is solely responsible for the administration of the office, the assignment of cases, and the administrative duties and responsibilities of the hearing officers and staff. Notwithstanding another provision of law, the chief judge also has the authority to promulgate rules governing practice and procedures before the Office of Freedom of Information Act Review. These rules are subject to review as are the rules of procedure promulgated by the Supreme Court pursuant to Article V of the South Carolina Constitution, 1895.

(B) Notwithstanding another provision of law, the hearing officers shall conduct hearings in accordance with Chapter 23, Title 1, the Administrative Procedures Act, and the rules of procedure for the Office of Freedom of Information Act Review, at suitable locations as determined by the chief judge.

(C) The hearing officers are bound by the Code of Judicial Conduct, as contained in Rule 501 of the South Carolina Appellate Court Rules. The sole grounds for discipline and sanctions for hearing officers are those contained in the Code of Judicial Conduct in Rule 502, Rule 7 of the South Carolina Appellate Court Rules. The Commission on Judicial Conduct, under the authority of the Supreme Court, shall handle complaints against hearing officers for possible violations of the Code of Judicial Conduct in the same manner as complaints against other judges. Notwithstanding another provision of law, an administrative law judge or hearing officer, and the judge’s or hearing officer’s spouse or guest, may accept an invitation to, and attend, a judicial‑related or bar‑related function, or an activity devoted to the improvement of the law, the legal system, or the administration of justice.

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

(E) A hearing officer must issue an order containing findings of fact and conclusions of law. If a hearing officer determines that records are not subject to disclosure, such a determination shall constitute a finding of good faith on the part of the public body or public official, and shall act as a complete bar against the award of attorney’s fees or other costs to the prevailing party should the hearing officer’s determination be reversed on appeal. If a hearing officer determines that a record is subject to disclosure, the order must set forth in writing what information must be disclosed and when that disclosure must occur. If the decision of the hearing officer is not timely appealed to the ALC, a prevailing party may apply to the ALC to enforce the determination. If the decision is appealed to the ALC, and the administrative law judge upholds a decision ordering disclosure of information, the administrative law judge may enforce the hearing officer’s determination as the court considers appropriate. If the administrative law judge rules that the determination must be enforced, the court may hold a person, the responsible officer, or the public official of a public body in civil contempt for failing to comply with the provisions of Section 30‑4‑30 or an order of the court relating to Section 30‑4‑30. The administrative law judge also may award attorney’s fees pursuant to Section 30‑4‑100(c).”

SECTION 2. Section 1‑23‑500 of the 1976 Code is amended to read:

“Section 1‑23‑500. There is created the South Carolina Administrative Law Court, which is an agency and a court of record within the executive branch of the government of this State. The court shall consist of a total of six administrative law judges. The administrative law judges shall be part of the state employees retirement system. For purposes of Title 8, Chapter 13, the Administrative Law Court is considered part of the unified judicial system.”

SECTION 3. Section 30‑4‑30 of the 1976 Code is amended to read:

“Section 30‑4‑30. (a)(1) ~~Any~~ A 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. This right does not extend to individuals serving a sentence of imprisonment in a state or county correctional facility in this State, in any other state, or in a federal correctional facility; however, this must not be construed to prevent such persons from exercising their constitutionally protected rights, including, but not limited to, their right to call for evidence in their favor in a criminal prosecution.

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

(b) The public body may establish and collect fees ~~not to exceed the actual cost of searching for or making copies of records~~ as provided for in this section. The public body may establish and collect reasonable fees not to exceed the actual cost of the search, retrieval, and redaction of records. The public body must develop a fee schedule to be posted on line. The fee for the search, retrieval, or redaction of records shall not exceed the prorated hourly salary of the lowest paid employee who, in the reasonable discretion of the custodian of the records, has the necessary skill and training to perform the request. 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 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 ~~fifteen~~ ten days (excepting Saturdays, Sundays, and legal public holidays) of the receipt of any ~~such~~ request, notify the person making ~~such~~ the request of its determination and the reasons ~~therefor.~~ for it; provided, however, that if the record is more than two years old at the date the request is made, the public body has twenty days (excepting Saturdays, Sundays, and legal public holidays) of the receipt to make this notification. Such a determination ~~shall~~ must 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 calendar days from the date on which the request was granted, unless the records are more than twenty‑four months old, in which case the public body has no later than thirty‑five calendar days from the date on which the request was granted to fulfill the request. If a deposit as provided in subsection (b) is required by the public body, the record must be furnished or made available for inspection or copying no later than thirty calendar days from the date on which the deposit is received, unless the records are more than twenty‑four months old, in which case the public body has no later than thirty‑five calendar days from the date on which the deposit was received to fulfill the request. 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~~ ten days (excepting Saturdays, Sundays, and legal public holidays) 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 complies with the provisions of subsection (d) by placing the records in a form that is both convenient and practical for use on a publicly available Internet website, provided that the public body also must produce documents pursuant to this section if requested to do so.”

SECTION 4. Section 30‑4‑100 of the 1976 Code is amended to read:

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

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

(1) to seek specific enforcement of a request made pursuant to Section 30‑4‑30 when the public body from which the records are requested fails to comply with the time limits provided in Section 30‑4‑30(c); and

(2) to challenge the reasonableness of a fee assessed pursuant to Section 30‑4‑30.

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

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

(~~b~~d) If a person or entity seeking ~~such~~ relief under this section prevails, he ~~or it~~ may be awarded reasonable attorney fees and other costs of litigation. If ~~such~~ the person or entity prevails in part, the court may in its discretion award him ~~or it~~, unless otherwise barred by a finding of good faith pursuant to Section 1‑23‑665(E), reasonable attorney fees or an appropriate portion ~~thereof~~ of them.”

SECTION 5. Section 30‑4‑110 of the 1976 Code is amended to read:

“Section 30‑4‑110. ~~Any person or group of persons who willfully violates the provisions of this chapter shall be deemed is guilty of a misdemeanor and, upon conviction shall be fined not more than one hundred dollars or imprisoned for not more than thirty days for the first offense, shall be fined not more than two hundred dollars or imprisoned for not more than sixty days for the second offense and shall be fined three hundred dollars or imprisoned for not more than ninety days for the third or subsequent offense.~~ A person aggrieved by a violation of this chapter may bring a civil action in a court of competent jurisdiction within one year after the occurrence of the alleged violation. If the court finds that the public body has arbitrarily and capriciously violated the provisions of this chapter by refusal or delay in disclosing or providing copies of a public record, it may, in addition to any actual or compensatory damages, a civil fine of five hundred dollars and reasonable attorney fees to the person seeking the right to inspect or receive a copy of a public record.”

SECTION 6. This act takes effect upon approval by the Governor.

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