

PUBLIC RECORDS BILL VIOLATES CONSTITUTIONAL PRINCIPLE

Published April 11, 2011 by Susan Lynn

WEB MEMO #1

IN BRIEF

Public Records Bill Violates Important Constitutional Principle and Maxims

Deletes language prohibiting a records custodian from assessing a charge to view a public record; authorizes custodians of public records to charge persons for labor costs associated with producing the records, if it requires one hour or longer to produce the documents. This paper examines many of the important principles that these ideas violate, and questions the need for this legislation. We hope this analysis is helpful to your research.

SB1951 / HB1875

SB1951 / HB1875 allows citizens to be charged to view a public record and, if left unamended, will allow citizens to be charged a fee for a portion of the actual production of the record, not just for the creation of photo copies as the law exists now. Defines "labor cost" as the base hourly wages of any employee whose labor is reasonably necessary to produce records pursuant to a request.

This bill breaks several important principles of Tennessee and American government and of access to public records:

1. Article 1, Section 1 of the Tennessee constitution reads: ***All power inherent in the people — Government under their control. That all power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety, and happiness; for the advancement of those ends they have at all times, an unalienable and indefeasible right to alter, reform, or abolish the government in such manner as they may think proper.***

How can the people be reasonably considered to be in control of their own government if they are to be charged a fee for viewing the records of that government? How can the people retain the unalienable and indefeasible right to alter, reform or abolish the government if they are to be charged a fee to access the records of that government. A fee creates an encumbrance to freedom, an unreasonable policy for access to information, an encumbrance to discovery over compliance with the rule of law, and an unreasonable barrier to reform of the government.

LINK TO BILL

[SB1299 / HB1920](#)

A fee creates an encumbrance to freedom, an unreasonable policy for access to information, an encumbrance to discovery over compliance with the rule of law, and an unreasonable barrier to reform of the government.

2. If your money is taxed away from you, you have a right to know the purpose and to see the evidence for whatever it is your taxes are paying.
3. The people do not yield their sovereignty to the government agencies that serve them.
4. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know.
5. The people insist on remaining informed so that they may maintain control over the instruments that they have created.
6. The work contained in public records is work for which the people have already paid through their taxes, and the viewing of this work should not impose an additional tax on the people.

Inspection fee is an injustice to citizens.

It is no secret that some elected officials, government officials and employees there of do not like being asked for public records – however, it is the right of every Tennessean to view or obtain copies of any public record that is not considered confidential by law.

This bill would remove the provision in the TCA that disallows assessment of a fee to inspect or view a public record. Current law states in 10-7-503 (a) (7) (A) “ a records custodian may not require a written request **or assess a charge** to view a public record. This bill would delete “or assess a charge” from the law. Citizens can control the activities of their government only to the extent that they are able to know what their government is doing and how their tax dollars are being spent. Citizens own their government and all records held by their government. To assess a fee to citizens to view public records is a grave injustice to the citizens and to democracy, and will certainly prevent some from pursuing records.

Bill’s provision to charge a fee for actual labor costs for producing the records is broad and open to ethical problems.

Under current law a records custodian may not charge for inspection or viewing of public records - 10-7-503 (a) (7) (A). However, a custodian may charge for copies or duplication of records (TCA 10-7-506). A schedule of charges set by the Open Records Counsel of the state of Tennessee sets the rate at 15 cents per page and 50 cents per page for color copies.

Never to be taken into consideration is the reason for which records are requested – whether personal, educational or commercial.

An additional fee is allowed for some records which may have commercial value such as for maps or geographic data – however, this additional fee may not be charged to persons requesting these materials for personal use or to the news media – such pays no cost to view a record of commercial value or for the production of that record but only the cost of reproduction of any requested copies.

For those seeking the records for commercial value, the Open records Counsel of the state of Tennessee has created a schedule to help determine a fair rate for records of commercial value to include “labor charges” – time necessary to **locate, retrieve, review, redact, and copy the records, the use of an outside vendor to produce copies of any maps or geographic data, or any cost for retrieval from outside archives or other storage which may impose a cost to the records custodian. In addition, the law allows for the recovery of actual development of the record at a fraction of the actual cost - 10-7-506(c),**

The he people do not yield their sovereignty to the agencies that serve them.

The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know.

It is not unreasonable that government should always have upon it the burden to produce evidence of its work, without charge, for the public to inspect.

SB1951 / HB1875 will, for the first time, allow an additional fee similar to the fee charged for commercial records of value, such as for maps or geographical information, to be charged for all records – even to individuals and to the news media.

Burden of Production

The legal doctrine of burden of production is an obligation to come forward with sufficient evidence to support a particular proposition of fact. Taxpayers spend a great deal of money to support their government. It is not unreasonable that government should always have upon it the burden to produce evidence of its work, without charge, for the public to inspect.

This bill is bad policy which stands to close off government to the people of our state.

Full Bill Summary SB1299 / HB1920

As introduced, deletes language prohibiting a custodian from assessing a charge to view a public record; authorizes custodians of public records to charge persons for labor costs associated with producing the records, if it requires one hour or longer to produce the documents.

LINK TO

Bill Text

Fiscal Note

For more information please visit www.pulibnoticetn.com.