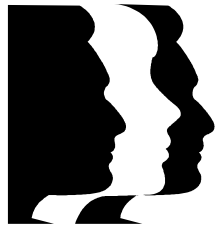


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Open Records Law Under Attack

Proposed amendments would 'decimate' open records act.

By Tonya Sprague

Associations representing cities, counties, school boards and other government agencies, support restricting access to public records because of the extra workload it inflicts on local officials. Open government advocates and media associations maintain that more transparent government is needed. What was intended to be the biggest expansion of Tennessee's

open records and open government laws in thirty years has emerged as a nightmare for those citizens requesting information.

House Bill 3637 and companion Senate Bill 3280 have been 'decimated' by proposed amendments that will make it more difficult to gain access to public records instead of easier.

House State and Local Government Committee chairman, Rep. Ulysses Jones, D-Memphis, won

the House subcommittee's approval for several amendments that would:

- Give only citizens of Tennessee access to public records.
- Allow agencies to charge citizens and media representatives for all costs, including the hourly wages of staff time if it takes more than one hour, associated with producing records. Current law permits agencies to charge reasonable copying fees.
- Allow any governmental entity of

a city of 155,000 or more (including Memphis, Knoxville, Nashville and Chattanooga) to take up to seven business days to respond to a public records request, rather than five days in the bill. The government's response at the end of the seven days may include a denial of access to the records, production of the records or a statement of how long it will take to produce records.

Rep. Mary Pruitt, D-Nashville, added an additional amendment that would require notification of every elected or appointed official named in or pertaining to requested documents or records, on the date the request is made.

These amendments were inspired by the Memphis City Atty. Elbert Jefferson Jr. on his visit to Nashville on April 9, 2008. Jefferson told a House subcommittee that requests for public records in Memphis require too much time for city employees to handle and are not always legitimate. Jefferson told the committee of Memphis city government policies that differ from most local governments.

According to one policy, requested public records, other than police reports, must be made in writing to his city attorney's office. Another policy indicates that his office routinely blocks what it says is "personal" e-mail from public access, despite their production and storage in city-owned computers.

That means, Jefferson said "someone in our office has to review every single document, every page, before it can be disclosed. I had to personally as city attorney go through every one of those documents, page by page, and if there was information in there that had to be redacted, you have to redact that document, make a copy of it, keep the original and present the person (requesting the records) the

redacted copy." That policy does not appear in state law.

The state's Open Records Act, which also applies to city and county governments and their agencies, does not require requests to be made in writing, nor that they be made through a central office. In state government, and most city and county governments, citizens make requests to individual offices or departments.

Frank Gibson, head of the Tennessee Coalition on Open Government, believes the new amendments "would set those gains back significantly, from where the law already is. It will make it harder for the public and the press to get records than what it already is and it will make it expensive."

In response to Rep. Pruitt's amendment, Gibson said that her amendment "would intimidate citizens from asking for records in some cases. It would intimidate public employees who fear they will make a mistake if they let a citizen see a public record that might have something about a public official in it. It would just decimate the public records law as we know it."

At press time, the amended House bill and the Senate version of the bill, which does not contain the Jones and Pruitt amendments, have yet to be reviewed by the House, State and Local Government Committee. House Bill 3637 is to be discussed by the House State Government Subcommittee. Its Senate companion, SB 3280, next moves on to the Senate Judiciary Committee. The full text of HB 3637 and SB 3280 can be read and tracked at www.legislature.state.tn.us.

Internet sources:
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