

BY: Education, Health, and Environmental Affairs Committee

AMENDMENTS TO SENATE BILL NO. 240

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 4, after “security;” insert “requiring the Office of the Attorney General to report to the Governor and the General Assembly on or before a certain date;”; and in line 8, after “10-618(a)” insert “, 10-622, and 10-623”.

AMENDMENT NO. 2

On pages 1 and 2, strike beginning with the first “A” in line 24 on page 1 down through “SECURITY” in line 2 on page 2 and substitute:

“(1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A CUSTODIAN MAY DENY INSPECTION OF:

(I) RESPONSE PROCEDURES OR PLANS PREPARED TO PREVENT OR RESPOND TO EMERGENCY SITUATIONS, THE DISCLOSURE OF WHICH WOULD REVEAL VULNERABILITY ASSESSMENTS, SPECIFIC TACTICS, SPECIFIC EMERGENCY PROCEDURES, OR SPECIFIC SECURITY PROCEDURES;

(II) 1. BUILDING PLANS, BLUEPRINTS, SCHEMATIC DRAWINGS, DIAGRAMS, OPERATIONAL MANUALS, OR OTHER RECORDS OF AIRPORTS AND OTHER MASS TRANSIT FACILITIES, BRIDGES, TUNNELS, EMERGENCY RESPONSE FACILITIES OR STRUCTURES, BUILDINGS WHERE HAZARDOUS MATERIALS ARE STORED, ARENAS, STADIUMS, AND WASTE AND WATER SYSTEMS, THE DISCLOSURE OF WHICH WOULD REVEAL THE BUILDING’S OR STRUCTURE’S INTERNAL LAYOUT, SPECIFIC LOCATION, LIFE, SAFETY, AND SUPPORT SYSTEMS, STRUCTURAL ELEMENTS, SURVEILLANCE TECHNIQUES, ALARM OR SECURITY SYSTEMS OR TECHNOLOGIES, OPERATIONAL AND TRANSPORTATION PLANS OR PROTOCOLS, OR PERSONNEL DEPLOYMENTS; OR

(Over)

2. RECORDS OF ANY OTHER BUILDING OR STRUCTURE OWNED OR OPERATED BY THE STATE OR ANY OF ITS POLITICAL SUBDIVISIONS, THE DISCLOSURE OF WHICH WOULD REVEAL THE BUILDING'S OR STRUCTURE'S LIFE, SAFETY, AND SUPPORT SYSTEMS, SURVEILLANCE TECHNIQUES, ALARM OR SECURITY SYSTEMS OR TECHNOLOGIES, OPERATIONAL AND EVACUATION PLANS OR PROTOCOLS, OR PERSONNEL DEPLOYMENTS; OR

(III) RECORDS PREPARED TO PREVENT OR RESPOND TO EMERGENCY SITUATIONS IDENTIFYING OR DESCRIBING THE NAME, LOCATION, PHARMACEUTICAL CACHE, CONTENTS, CAPACITY, EQUIPMENT, PHYSICAL FEATURES, OR CAPABILITIES OF INDIVIDUAL MEDICAL FACILITIES, STORAGE FACILITIES, OR LABORATORIES ESTABLISHED, MAINTAINED, OR REGULATED BY THE STATE OR ANY OF ITS POLITICAL SUBDIVISIONS.

(2) THE CUSTODIAN MAY DENY INSPECTION OF A PART OF A PUBLIC RECORD UNDER PARAGRAPH (1) OF THIS SUBSECTION ONLY TO THE EXTENT THAT THE INSPECTION WOULD:

(I) JEOPARDIZE THE SECURITY OF ANY STRUCTURE OWNED OR OPERATED BY THE STATE OR ANY OF ITS POLITICAL SUBDIVISIONS;

(II) FACILITATE THE PLANNING OF A TERRORIST ATTACK; OR

(III) ENDANGER THE LIFE OR PHYSICAL SAFETY OF AN INDIVIDUAL”.

AMENDMENT NO. 3

On page 2, after line 2, insert:

“10-622.

(a) This section does not apply when the official custodian temporarily denies inspection under § 10-619 of this subtitle.

(b) If a unit is subject to Subtitle 2 of this title, a person or governmental unit may seek administrative review in accordance with that subtitle of a decision of the unit, under this Part III of

this subtitle, to deny inspection of any part of a public record.

(c) A person or governmental unit need not exhaust the remedy under this section before filing suit.

10-623.

(a) Whenever a person or governmental unit is denied inspection of a public record, the person or governmental unit may file a complaint with the circuit court for the county where:

(1) the complainant resides or has a principal place of business; or

(2) the public record is located.

(b) (1) Unless, for good cause shown, the court otherwise directs and notwithstanding any other provision of law, the defendant shall serve an answer or otherwise plead to the complaint within 30 days after service of the complaint.

(2) The defendant:

(i) has the burden of sustaining a decision to deny inspection of a public record; and

(ii) in support of the decision, may submit a memorandum to the court.

(c) (1) Except for cases that the court considers of greater importance, a proceeding under this section, including an appeal, shall:

(i) take precedence on the docket;

(ii) be heard at the earliest practicable date; and

(iii) be expedited in every way.

(Over)

(2) The court may examine the public record in camera to determine whether any part of it may be withheld under this Part III of this subtitle.

(3) The court may:

(i) enjoin the State, a political subdivision, or a unit, official, or employee of the State or of a political subdivision from withholding the public record;

(ii) pass an order for the production of the public record that was withheld from the complainant; and

(iii) for noncompliance with the order, punish the responsible employee for contempt.

(d) (1) A defendant governmental unit is liable to the complainant for actual damages and any punitive damages that the court considers appropriate if the court finds that any defendant knowingly and willfully failed to disclose or fully to disclose a public record that the complainant was entitled to inspect under this Part III of this subtitle.

(2) An official custodian is liable for actual damages and any punitive damages that the court considers appropriate if the court finds that, after temporarily denying inspection of a public record, the official custodian failed to petition a court for an order to continue the denial.

(e) (1) Whenever the court orders the production of a public record that was withheld from the applicant and, in addition, finds that the custodian acted arbitrarily or capriciously in withholding the public record, the court shall send a certified copy of its finding to the appointing authority of the custodian.

(2) On receipt of the statement of the court and after an appropriate investigation, the appointing authority shall take the disciplinary action that the circumstances warrant.

(f) If the court determines that the complainant has substantially prevailed, the court may assess against a defendant governmental unit reasonable counsel fees and other litigation costs that the complainant reasonably incurred.

SECTION 2. AND BE IT FURTHER ENACTED, That, on or before December 1, 2007, the Office of the Attorney General shall review the changes made to § 10-618 of the State Government Article by this Act and shall submit a report to the Governor and to the General Assembly, in accordance with § 2-1246 of the State Government Article, on the continued necessity of this Act and any recommendations for changing or modifying this Act.”.

On page 2, in line 3, strike “2.” and substitute “3.”.