

BILL AS INTRODUCED  
2008

S.229  
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S.229

Introduced by Senator White of Windham District

Referred to Committee on *Government Operations*

Date: *1/2/08*

Subject: Public records; records management; access to records

Statement of purpose: This bill proposes to amend requirements regarding access to public records. The bill would amend the authority of an agency to charge for the cost of staff time in response to public records requests and would limit the rate charged by an agency for staff time to a maximum of \$20.00 per hour. The bill would also establish a public records advisory office within the office of the secretary of state. The public records advisory office would provide advisory opinions to the public and public agencies regarding public records requests. The bill would also establish a public records act review committee, which would be charged with reviewing the requirements of the public records act, reviewing the numerous exemptions to that act, and recommending changes to the public records act and its exemptions. In addition, the bill would require all certificates of birth, marriage, civil union, divorce, death, and fetal death to be issued on unique paper with antifraud features.

AN ACT RELATING TO ACCESS TO PUBLIC RECORDS

*Sec. 1. 1 V.S.A. § 318 is amended to read:*

*§ 318. PROCEDURE*

*\* \* \**

*(b) Any person making a request to any agency for records under subsection (a) of this section shall be deemed to have exhausted ~~his~~ the person's administrative remedies with respect to each request if the agency fails to comply within the applicable time limit provisions of this section. Upon any determination by an agency to comply with a request for records, the records shall be made available promptly to the person making such request. Any notification of denial of any request for records under this section shall set forth the names and titles or positions of each person responsible for the denial of such request.*

*(c) Any denial of access by the custodian of a public record may be appealed to the head of the agency. The head of the agency shall make a written determination on an appeal within five business days after the receipt of the appeal. A written determination shall include the asserted statutory basis for denial and a brief statement of the reasons and supporting facts for denial. If the head of the agency reverses the denial of a request for records, the records shall be promptly made available to the person making the request. A failure by the agency to comply with any of the time limit provisions of this section shall be deemed a final denial of the request for records by the agency.*

*Sec. 2. 18 V.S.A. § 5001 is amended to read:*

*§ 5001. VITAL RECORDS; FORMS OF CERTIFICATES*

*(a) Certificates of birth, marriage, civil union, divorce, death, and fetal death shall be in form prescribed by the commissioner of health and distributed by the health department.*

*(b) Beginning January 1, 2010, all certificates of birth, marriage, civil union, divorce, death, and fetal death shall be issued on unique paper with antifraud features approved by the commissioner of health and available from the health department.*

*Sec. 3. 1 V.S.A. § 317(b) is amended to read:*

*(b) As used in this subchapter, "public record" or "public document" means ~~all papers, documents, machine readable materials, or any other written or recorded matters, regardless of their physical form or characteristics, that are produced or acquired in the course of agency business~~ any written or recorded information, regardless of physical form or*

characteristics, which is produced or acquired in the course of public agency business. Individual salaries and benefits of and salary schedules relating to elected or appointed officials and employees of public agencies shall not be exempt from public inspection and copying.

ATTESTED TO:

*David R. Gibson*  
DAVID R. GIBSON  
Secretary of the Senate

*Brian R. Kelly*

PRESIDENT OF THE SENATE

*Carolyn M. Spence*

SPEAKER OF THE HOUSE OF REPRESENTATIVES

*Amintor J. DiGirolamo*

GOVERNOR

*5/3/08*  
Date

1 ~~Sec. 1. 1 V.S.A. § 316 is amended to read:~~

2 § 316. ACCESS TO PUBLIC RECORDS AND DOCUMENTS

3 \* \* \*

4 (c) In the following instances an agency may also charge and collect the  
5 cost of staff time associated with ~~complying with a request for a copy of~~  
6 copying or redacting a requested public record: (1) the time directly involved  
7 in complying with the request exceeds 30 minutes; (2) the agency agrees to  
8 create a public record; or (3) the agency agrees to provide the public record in  
9 a nonstandard format and the time directly involved in complying with the  
10 request exceeds 30 minutes. The cost of staff time charged under this  
11 subsection shall not include the first 30 minutes of staff time associated with  
12 complying with a request to inspect or copy a public record and shall not  
13 include the costs of locating, retrieving, or refiling a requested public record.  
14 The rate charged by an agency for staff time shall not exceed \$20.00 per hour.  
15 Prior to charging for staff time and within three days of receiving a request, the  
16 agency shall provide to the person making the public records request an  
17 estimate of the time necessary to complete the request and of the total cost. If  
18 the record request involves an unusual circumstance that requires an extension  
19 of the time limits for response, as set forth in subdivision 381(a)(5) of this title,  
20 the requirement for an estimate shall also be extended until the agency has  
21 ~~gathered sufficient information on which to base an estimate. The agency may~~

1 ~~require that requests subject to staff time charges under this subsection be~~  
2 ~~made in writing and that all charges be paid, in whole or in part, prior to~~  
3 ~~delivery of the copies. Upon request, the agency shall provide an estimate of~~  
4 ~~the charge.~~

5 (d) The secretary of state, after consultation with the secretary of  
6 administration, shall establish the actual cost of providing a copy of a public  
7 record that may be charged by state agencies. ~~The secretary shall also~~  
8 ~~establish the amount that may be charged for staff time, when such a charge is~~  
9 ~~authorized under this section.~~ To determine "actual cost" cost, the secretary  
10 shall consider the following only: the cost of the paper or the electronic media  
11 onto which a public record is copied, a prorated amount for maintenance and  
12 replacement of the machine or equipment used to copy the record, and any  
13 utility charges directly associated with copying a record. The secretary of state  
14 shall adopt, by rule, a uniform schedule of public record charges for state  
15 agencies.

16 (e) After public hearing, the legislative body of a political subdivision shall  
17 establish actual cost charges for copies of public records. ~~The legislative body~~  
18 ~~shall also establish the amount that may be charged for staff time, when such a~~  
19 ~~charge is authorized under this section.~~ To determine actual cost charges, the  
20 legislative body shall use the same factors used by the secretary of state. If a  
21 ~~legislative body fails to establish a uniform schedule of charges, the charges~~

1 ~~for that political subdivision shall be the uniform schedule of charges~~  
2 established by the secretary of state until the local legislative body establishes  
3 such a schedule. A schedule of public records charges shall be posted in  
4 prominent locations in the town offices.

5 \* \* \*

6 Sec. 2. 1 V.S.A. § 318 is amended to read:

7 § 318. PROCEDURE

8 \* \* \*

9 (b) Any person making a request to any agency for records under  
10 subsection (a) of this section shall be deemed to have exhausted ~~his~~ the  
11 person's administrative remedies with respect to each request if the agency  
12 fails to comply within the applicable time limit provisions of this section.  
13 Upon any determination by an agency to comply with a request for records, the  
14 records shall be made available promptly to the person making such request.  
15 Any notification of denial of any request for records under this section shall set  
16 forth the names and titles or positions of each person responsible for the denial  
17 of such request.

18 (c) Any denial of access by the custodian of a public record may be  
19 appealed to the head of the agency. The head of the agency shall make a  
20 written determination on an appeal within five business days after the receipt  
21 ~~of the appeal. A written determination shall include the asserted statutory basis~~

1 ~~for denial and a brief statement of the reasons and supporting facts for denial.~~  
2 If the denial of a request for records is in whole or in part upheld, the agency  
3 shall notify the person of the right under section 318a of this title to petition the  
4 public records advisory office for an advisory opinion as to the propriety of the  
5 agency's denial of the request. If the head of the agency reverses the denial of  
6 a request for records, the records shall be promptly made available to the  
7 person making the request. A failure by the agency to comply with any of the  
8 time limit provisions of this section shall be deemed a final denial of the  
9 request for records by the agency.

10 Sec. 3. 1 V.S.A. § 318a is added to read:

11 § 318a. PUBLIC RECORDS ADVISORY OPINION

12 (a) Any person aggrieved by a denial of a request for public records under  
13 this subchapter may petition the public records advisory office within the  
14 office of the secretary of state for an advisory opinion regarding the propriety  
15 of an agency's denial of a request. A petition for an advisory opinion from the  
16 public records advisory office shall be in writing and shall be made within 10  
17 business days of a final, written, adverse determination by the agency or within  
18 10 business days of the agency's failure to comply with applicable time limits.

19 (b) The public records advisory office shall issue an advisory opinion  
20 within 15 business days of receipt of a petition under subsection (a) of this

21 ~~section. When a petition for an advisory opinion poses novel or significant~~

1 ~~issues of law or policy, the office may extend the time limit for its response to~~  
2 30 business days upon written notice to the person petitioning for the opinion.  
3 The public records advisory office shall file a copy of a final advisory opinion  
4 in certified form with the secretary of state and shall transmit a copy of the  
5 opinion to the person that petitioned for the opinion and the agency that denied  
6 the public records request.

7 Sec. 4. 1 V.S.A. § 321 is added to read:

8 § 321. PUBLIC RECORDS ACT REVIEW COMMITTEE

9 (a) There is established a committee to review the requirements of the  
10 public records act and the numerous exemptions to that act in order to assure  
11 the integrity, viability, and the ultimate purposes of the act. The review  
12 committee shall consist of the following members:

13 (1) One member of the senate appointed by the committee on  
14 committees;

15 (2) One member of the house of representatives appointed by the  
16 speaker of the house;

17 (3) The attorney general or his or her designee;

18 (4) The secretary of administration or his or her designee;

19 (5) The state archivist or his or her designee;

20 (6) One representative of municipal interests, appointed by the

21 ~~committee on committees;~~

1 ~~(7) One representative of newspaper publishers, broadcasters, or other~~  
2 ~~press interests appointed by the speaker of the house;~~

3 (8) One representative of school or educational interests appointed by  
4 the governor; and

5 (9) One representative of a statewide coalition of advocates of freedom  
6 of access appointed by the speaker of the house.

7 (b) The review committee shall review and analyze each of the exemptions  
8 in statute to the review and disclosure of public records required by section 317  
9 of this title. Prior to each legislative session, the committee shall report to the  
10 house and senate committees on government operations and the house and  
11 senate committees on judiciary with recommendations concerning whether any  
12 public records act exemption should be repealed, amended, or remain  
13 unchanged. The report of the committee may take the form of draft legislation.

14 (c) In reviewing and making recommendation regarding an existing public  
15 records act exemption under subsection (b) of this section, the committee shall  
16 review the following criteria:

17 (1) Whether a record protected by an exemption is required to be  
18 collected and maintained;

19 (2) The value to an agency or to the public in maintaining a record  
20 protected by the exemption;

21 ~~(3) Whether federal law requires a record to be confidential;~~

1 ~~(4) Whether the exception protects an individual's privacy interest and,~~  
2 if so, whether that interest substantially outweighs the public interest in the  
3 disclosure of records;

4 (5) Whether public disclosure puts a business at a competitive  
5 disadvantage and, if so, whether that business's interest substantially  
6 outweighs the public interest in the disclosure of records;

7 (6) Whether public disclosure compromises the position of a public  
8 agency in negotiations and, if so, whether that public agency's interest  
9 substantially outweighs the public interest in the disclosure of records;

10 (7) Whether public disclosure jeopardizes the safety of a member of the  
11 public or the public in general and, if so, whether that safety interest  
12 substantially outweighs the public interest in the disclosure of records;

13 (8) Whether the exception is as narrowly tailored as possible; and

14 (9) Any other criteria that assist the review committee in determining  
15 the value of the exception as compared to the public's interest in the record  
16 protected by the exception.

17 (d) The review committee may hold public hearings and solicit the input of  
18 interested parties regarding exemptions under its review. The agency of  
19 administration and the office of the attorney general shall provide staff services  
20 to the committee. Members of the committee may receive a per diem and  
21 ~~expenses pursuant to section 1010 of Title 32.~~

1 ~~Sec. 5. 3 V.S.A. chapter 5, subchapter 4 is added to read:~~

2 Subchapter 4. Public Records Advisory Office

3 § 140. PUBLIC RECORDS ADVISORY OFFICE

4 (a) A public records advisory office is created within the office of the  
5 secretary of state. The public records advisory office shall have a director and  
6 necessary staff. The director of the public records advisory office shall be  
7 appointed by the secretary of state and shall be an exempt employee.

8 (b) The duties of the public records advisory board shall include the  
9 following:

10 (1) Issue advisory opinions under 1 V.S.A. § 318a to interpret the public  
11 records law of the state upon the request of a person. However, the board may  
12 not issue an advisory opinion concerning a specific matter with respect to  
13 which a lawsuit has been filed under 1 V.S.A. § 319;

14 (2) Provide public agencies with legal guidance and advisory opinions  
15 regarding public records requests under chapter 5 of Title 1 and disposal of  
16 public records; and

17 (3) Consult with and provide legal advice to the office of the state  
18 archives, the commissioner of buildings and general services, and the  
19 department of information and innovation regarding records management  
20 requirements for public agencies.

1 ~~Sec. 6. 18 V.S.A. § 5001 is amended to read:~~

2 § 5001. VITAL RECORDS; FORMS OF CERTIFICATES

3 (a) Certificates of birth, marriage, civil union, divorce, death, and fetal  
4 death shall be in form prescribed by the commissioner of health and distributed  
5 by the health department.

6 (b) Beginning January 1, 2008, all certificates of birth, marriage, civil  
7 union, divorce, death, and fetal death shall be issued on unique paper with  
8 antifraud features approved by the commissioner of health and available from  
9 the health department.

10 Sec. 7. APPROPRIATIONS

11 In addition to any other funds appropriated to the office of the secretary of  
12 state in fiscal year 2009, there is appropriated from the general fund to the  
13 office of the secretary of state \$150,000.00 in fiscal year 2009 for the purpose  
14 of establishing the public records advisory office.

15 Sec. 8. REPEAL

16 22 V.S.A. §§ 456 (public records advisory board) and 457 (duties of public  
17 records advisory board) are repealed.

ORIGINAL

S.229

AN ACT RELATING TO ACCESS TO PUBLIC RECORDS.

Read the first time and referred to Committee on Government Operations  
*[Signature]*  
Asst. Secretary

SENATE CHAMBER  
3/13, 2008  
Entered on the Calendar for Notice.  
*[Signature]*  
Assistant Secretary

SENATE CHAMBER  
3/13, 2008  
Bill, being on calendar for notice and affecting revenues of State; under the rule was referred to Committee on Finance.  
*[Signature]*  
Assistant Secretary

SENATE CHAMBER  
3/18, 2008  
Entered on the Calendar for Notice.  
*[Signature]*  
Assistant Secretary

SENATE CHAMBER  
3/18, 2008  
Bill, being on calendar for notice and carrying an appropriation, under the rule was referred to Committee on Appropriations.  
*[Signature]*  
Assistant Secretary

SENATE CHAMBER

January 8, 2008

Introduced by Senator White of Windham District.

Assistant Secretary  
*[Signature]*  
Entered on the Calendar for Notice.  
3/20, 2008  
SENATE CHAMBER

SENATE CHAMBER  
3/25, 2008  
Reported favorably with recommendations/proposals of amendment. Read second time, recommendations/proposals of amendment agreed to; and third reading ordered.

Thereupon, Sen. Condes moved to amend the bill by adding a new section, & then req. & granted lv to withdraw.  
Thereupon, Sens. Collins & Kittel moved to amend & then req. & granted lv to withdraw.  
Thereupon, 3rd reading was ordered.

*[Signature]*

SENATE CHAMBER  
3/27, 2008  
Read and referred to  
*[Signature]*  
Assistant Secretary

SENATE CHAMBER  
3/27, 2008  
On motion of Sen. Shelton rules were suspended and bill was ordered messaged to House forthwith.  
*[Signature]*  
Assistant Secretary

HOUSE OF REPRESENTATIVES  
3/28, 2008  
READ AND REFERRED TO THE COMM ON Gov ops  
*[Signature]*  
ASST. CLERK

HOUSE OF REPRESENTATIVES  
4/14, 2008  
ENTERED ON THE CALENDAR FOR NOTICE.  
*[Signature]*  
ASST. CLERK

HOUSE OF REPRESENTATIVES  
4/15, 2008  
REPORTED FAVORABLE, READ 2ND TIME AND 3RD READING ORDERED.  
*[Signature]*  
ASST. CLERK

HOUSE OF REPRESENTATIVES  
4/16, 2008  
READ THIRD TIME AND PASSED IN CONC. W/ PROPOSAL OF AMENDMENT.  
*[Signature]*  
ASST. CLERK