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BILL ANALYSIS

Senate Fiscal Agency

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MAY 31 1988**House Bill 5262 (as reported without amendment)****Sponsor: Representative Floyd Clack****House Committee: Corrections****Senate Committee: Criminal Justice, Urban Affairs, and Economic Development****Date Completed: 3-10-88****RATIONALE**

The Freedom of Information Act (FOIA) was signed into law in 1976 to provide for public access to most records of public bodies. Reportedly, the Department of Corrections handles a greater volume of FOIA disclosure requests than any other public agency. Through October 1987, the Department had processed over 17,000 disclosure requests in that year alone. The Department's total number of requests for 1987 was projected to be about 20,500. Most of the requests are made by, or on behalf of, prisoners under the Department's jurisdiction. Since the FOIA requires a public body to satisfy requests quickly and without inquiry as to the reason for the request, the Department must provide requested information (unless that information is statutorily exempted from disclosure) or face legal action on the part of the requesting party. Further, since all prisoners are considered indigent, the first \$20 worth of copied records must be supplied free of charge to virtually all of the Department's requesters. Some contend that prisoners routinely use their rights to disclosure of information under the FOIA to harass the Department and its employees by requesting records that are irrelevant to their particular cases. They feel that limits should be placed on the type of information people can request of the Department. (For a more detailed explanation of the FOIA, see BACKGROUND.)

**CONTENT**

The bill would amend the Freedom of Information Act to conform to Senate Bill 585, which would amend the Department of Corrections (DOC) Act to provide that DOC records requested by prisoners would not fall within the FOIA's provision under which individuals who can verify that they are either indigent or receiving public assistance may receive the first \$20 of copied records free of charge.

The bill is tie-barred to Senate Bill 585, which also would exempt certain specified information and records from the disclosure requirements of the FOIA when that information was requested by, or on behalf of, a prisoner under the jurisdiction of the Corrections Commission.

MCL 15.234

**BACKGROUND**

Under the FOIA, a public agency must respond to an oral or written request for disclosure of a public record within five business days of receiving the request, if the request describes the record sufficiently to enable the public body to find it. Any agency document is subject to disclosure under the FOIA unless there is a statutory exemption for the document. The reason for a disclosure request generally is not required to be divulged (Kestenbaum v Michigan State University, 97 Mich App 5 (1980)), and,

unless the requested records are specifically exempted from disclosure, a public body has a duty to provide access to the records sought or to release copies of those records (Pennington v Washtenaw County Sheriff, 125 Mich App 556 (1983)). If the agency denies a request for disclosure of information, it is required to inform the requester of his or her right to sue the agency. (Failure to meet the five-day disclosure requirement is considered a denial.) Further, if a requesting individual is receiving public assistance, or can show an inability to pay for the cost of providing a copy of a public record, the first \$20 of copying expenses is required to be provided free of cost.

**FISCAL IMPACT**

The bill would result in an indeterminate GF/GP expenditure reduction in FY 1987-88. Until further cost analysis can be completed by the Department of Corrections, however, the magnitude of the reduction cannot be assessed.

**ARGUMENTS****Supporting Argument**

Together with Senate Bill 585 the bill would apply legitimate and much-needed restrictions on information that may be requested from the Department of Corrections by or on behalf of prisoners under the Department's jurisdiction. As evidenced by the staggering number of FOIA disclosure requests received by the Department, prisoners have abused their right to information disclosure. Prisoners routinely request the disclosure of records whose contents are irrelevant to the prisoners' legal battles. Further, upon being granted access to records and notified of copying charges due, prisoners often have altered requests to include only the first \$20 worth of copies (which must be given free of charge under the FOIA). By waiving free copying in some instances, the bill would reduce disclosure requests and save the State money.

**Opposing Argument**

Such restrictions on FOIA disclosure would violate prisoners' legal rights. Since prisoners' mobility is restricted by their confinement, their ability to gain access to information already is limited. The bill would compound that limitation. Further, although the bill together with Senate Bill 585 could effectively reduce the abuses of the FOIA, it would do so at the expense of some prisoners whose disclosure requests were legitimate.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.

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