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1 IN THE HOUSE

2 HOUSE BILL NO. 405

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to public access to the information
7 of the state."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. LEGISLATIVE FINDINGS. The legislature finds that

10 (1) public access to government information is a fundamental
11 right that operates to check and balance the actions of elected and ap-
12 pointed officials and to maintain citizen control of government;

13 (2) computers and electronic data bases have proliferated
14 throughout government raising issues regarding access to electronic infor-
15 mation that are not addressed in present law;

16 (3) to protect the public's right to know, public records must
17 be available at nominal cost;

18 (4) if state agencies and departments increase electronic access
19 to the state's information systems, particularly for the more isolated
20 communities of the state, the delivery of state services and the availabil-
21 ity of information throughout the state would be enhanced;

22 (5) public access to the state's information systems will be
23 enhanced by establishing electronic services and products user fees that
24 are calculated to recover a reasonable portion of the costs associated with
25 building and maintaining a public information system.

26 * Sec. 2. AS 09.25.110 is amended to read:

27 Sec. 09.25.110. INSPECTION AND COPIES OF PUBLIC RECORDS. Unless
28 specifically provided otherwise, the [BOOKS, RECORDS, PAPERS, FILES,
29 ACCOUNTS, WRITINGS, AND TRANSACTIONS OF ALL AGENCIES AND DEPARTMENTS

1 ARE] public records of all agencies and departments are open to in-
2 spection by the public under reasonable rules during regular office
3 hours. Except as otherwise provided by AS 09.25.115, the [THE] public
4 officer having the custody of public records shall give on request and
5 payment of a fee for the search and copying costs a certified copy of
6 the public record. The fee may be reduced or waived by the agency or
7 department where appropriate. Electronic information that is provided
8 in printed form shall be made available without codes or symbols,
9 unless accompanied by an explanation of the codes or symbols.

10 * Sec. 3. AS 09.25 is amended by adding a new section to read:

11 Sec. 09.25.115. ELECTRONIC SERVICES AND PRODUCTS. (a) Upon
12 request and payment of a fee established under (b) of this section, an
13 agency or department may provide electronic services and products
14 involving public records to members of the public.

15 (b) The agency or department shall establish a fee for elec-
16 tronic services and products based on recovery of the actual, incre-
17 mental costs of providing the electronic services and products, and a
18 reasonable portion of the costs associated with building and maintain-
19 ing the information system of the agency or department. The fee may
20 be reduced or waived by the agency or department if the electronic
21 services and products are to be used for a public purpose, including
22 agency or department program support, nonprofit activities, journal-
23 ism, and academic research.

24 (c) Agencies and departments shall include in a contract for
25 electronic services and products terms that protect the security and
26 integrity of the information system of the agency or department and
27 that limit the liability of the agency or department providing the
28 services and products.

29 (d) The commissioner of administration shall separately account

1 for the fees received by each agency or department under this section
2 and deposited in the general fund. The annual estimated balance in
3 the accounts may be used by the legislature to make appropriations to
4 the agency to carry out the activities of the agency or department.

5 * Sec. 4. AS 09.25.120 is amended to read:

6 Sec. 09.25.120. INSPECTION AND COPYING OF PUBLIC RECORDS. Every
7 person has a right to inspect a public [WRITING OR] record in the
8 state, including public [WRITINGS AND] records in recorders' offices
9 except (1) records of vital statistics and adoption proceedings which
10 shall be treated in the manner required by AS 18.50; (2) records
11 pertaining to juveniles; (3) medical and related public health re-
12 cords; (4) records required to be kept confidential by a federal law
13 or regulation or by state law. Every public officer having the custo-
14 dy of records not included in the exceptions shall permit the inspec-
15 tion, and give on demand and on payment of the [LEGAL] fees under
16 AS 09.25.110 - 09.25.115 [THEREFOR] a certified copy of the [WRITING
17 OR] record, and the copy shall in all cases be evidence of the origi-
18 nal. Recorders shall permit memoranda, transcripts, and copies of the
19 public [WRITINGS AND] records in their offices to be made by photo-
20 graphy or otherwise for the purpose of examining titles to real estate
21 described in the public [WRITINGS AND] records, making abstracts of
22 title or guaranteeing or insuring the titles of the real estate, or
23 building and maintaining title and abstract plants; and shall furnish
24 proper and reasonable facilities to persons having lawful occasion for
25 access to the public [WRITINGS AND] records for those purposes, sub-
26 ject to reasonable rules and regulations, in conformity to the direc-
27 tion of the court, as are necessary for the protection of the [WRIT-
28 INGS AND] records and to prevent interference with the regular dis-
29 charge of the duties of the recorders and their employees.

1 * Sec. 5. AS 09.25.220 is amended to read:

2 Sec. 09.25.220. DEFINITIONS. In AS 09.25.100 - 09.25.220
3 [AS 09.25.150 - 09.25.220], unless the context otherwise requires,

4 (1) "electronic services and products" means computer-
5 related services and products provided by an agency or department,
6 including

7 (A) electronic manipulation of the data contained in
8 public records in order to tailor the data to the person's re-
9 quest or to develop a product that meets the person's request;

10 (B) duplicating or providing periodic updates of an
11 electronic file or data base;

12 (C) providing on-line access to an electronic file or
13 data base;

14 (D) providing information that cannot be retrieved or
15 generated by the existing computer programs of the agency or
16 department;

17 (E) providing functional electronic access to the
18 information system of the agency or department; in this subpara-
19 graph, "functional access" includes the capability for alpha-
20 numeric query and printing, graphic query and plotting, nongra-
21 phic data input and analysis, and graphic data input and analy-
22 sis;

23 (2) "news organization" means

24 (A) an individual, partnership, corporation or other
25 association regularly engaged in the business of

26 (i) publishing a newspaper or other periodical
27 that reports news events, is issued at regular intervals and
28 has a general circulation;

29 (ii) providing newsreels or other motion picture

1 news for public showing; or
2 (iii) broadcasting news to the public by wire,
3 radio, television or facsimile;

4 (B) a press association or other association of indi-
5 viduals, partnerships, corporations, or other associations de-
6 scribed in (A)(i), (ii), or (iii) of this paragraph engaged in
7 gathering news and disseminating it to its members for publica-
8 tion;

9 (3) [(2)] "privilege" means the conditional privilege gran-
10 ted to public officials and reporters to refuse to testify as to a
11 source of information;

12 (4) [(3)] "public official" means a person elected to a
13 public office created by the Constitution or laws of this state,
14 whether executive, legislative, or judicial, and who was holding that
15 office at the time of the communication for which privilege is
16 claimed;

17 (5) "public records" means books, papers, files, accounts,
18 writings, including drafts and memorializations of conversations, and
19 other items, regardless of format or physical characteristics, that
20 are developed or received by an agency or department, and that are
21 preserved for their informational value or as evidence of the orga-
22 nization or operation of the agency or department; "public records"
23 does not include software programs;

24 (6) [(4)] "reporter" means a person regularly engaged in the
25 business of collecting or writing news for publication, or presenta-
26 tion to the public, through a news organization; it includes persons
27 who were reporters at the time of the communication, though not at the
28 time of the claim of privilege.

29 * Sec. 6. AS 40.21.030(a) is amended to read:

1 (a) In order to carry out the archival program, the state archi-
2 vist shall:

3 (1) negotiate for, acquire, and receive public records of
4 permanent value including public records of the state and political
5 subdivisions of the state and of defunct public agencies;

6 (2) establish and operate a state archival depository that
7 [WHICH] shall provide for the preservation, arrangement, repair,
8 rehabilitation, duplication, reproduction, description, and exhibition
9 of permanent public records or other documentary material transferred
10 to, or acquired by the state archivist;

11 (3) review and approve all agency records retention sched-
12 ules to identify and to ensure the preservation of those records
13 having permanent value;

14 (4) make permanent records under the supervision of the
15 archivist, other than those required by AS 09.25.120 to be kept confi-
16 dential, available for public use at reasonable times;

17 (5) for a fee established under AS 09.25.110 - 09.25.115,
18 make available to any person [FOR A REASONABLE FEE] copies of archival
19 material under AS 09.25.120;

20 (6) adopt a seal for official use and for certification of
21 record copies which copies shall have the same force and effect as if
22 made by the original custodian of the records;

23 (7) negotiate payment for the acquisition of public records
24 with the possessor of them;

25 (8) if negotiations under (7) of this subsection are unsuc-
26 cessful or if the person in possession of the public records is un-
27 willing to enter into those negotiations, arrange with the person in
28 possession for the microfilming of the records;

29 (9) accept gifts, bequests, and endowments for purposes

1 consistent with the objectives of this chapter;

2 (10) prepare inventories, indexes, catalogs, and other
3 finding aids or guides to facilitate the use of the archives;

4 (11) accept documents, including motion picture film, still
5 pictures, and sound recordings, that are appropriate for preservation
6 by the state as evidence of its organization, functions, policies,
7 decisions, procedures, and transactions.