

The House Committee on Judiciary offers the following substitute to HB 283:

A BILL TO BE ENTITLED
AN ACT

To amend Article 4 of Chapter 18 of Title 50 of the Official Code of Georgia Annotated, relating to inspection of public records, so as to make the records of educational facilities that employ campus policemen and that relate to such police duties, activities, and functions open to inspection in the same manner as other records of public agencies; to provide that certain requests may be required to be in writing; to provide for the award of attorney's fees to a person or entity bringing a successful action to enforce compliance with the requirements relating to the inspection of public records; to increase punishment for violations of Article 4; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 4 of Chapter 18 of Title 50 of the Official Code of Georgia Annotated, relating to inspection of public records, is amended by revising subsections (a) and (f) of Code Section 50-18-70, relating to inspection of public records, as follows:

"(a) As used in this article, the term 'public record' shall mean all documents, papers, letters, maps, books, tapes, photographs, computer based or generated information, or similar material prepared and maintained or received in the course of the operation of a public office or agency. 'Public record' shall also mean all law enforcement records received or maintained by an educational facility, as defined in Code Section 20-8-1, that, pursuant to Chapter 8 of Title 20, employs campus policemen, that relate to the investigation of criminal conduct and crimes as defined under Georgia law, and which are not otherwise subject to protection from disclosure under this article. 'Public record' shall also mean such items received or maintained by a private person or entity on behalf of a public office or agency which are not otherwise subject to protection from disclosure; provided, however, this Code section shall be construed to disallow an agency's placing or causing such items to be placed in the hands of a private person or entity for the purpose

H. B. 283 (SUB)

1 of avoiding disclosure. Records received or maintained by a private person, firm,
2 corporation, or other private entity in the performance of a service or function for or on
3 behalf of an agency, a public agency, or a public office shall be subject to disclosure to the
4 same extent that such records would be subject to disclosure if received or maintained by
5 such agency, public agency, or public office. As used in this article, the term 'agency' or
6 'public agency' or 'public office' shall have the same meaning and application as provided
7 for in the definition of the term 'agency' in paragraph (1) of subsection (a) of Code Section
8 50-14-1 and shall additionally include any association, corporation, or other similar
9 organization which: (1) has a membership or ownership body composed primarily of
10 counties, municipal corporations, or school districts of this state or their officers or any
11 combination thereof; and (2) derives a substantial portion of its general operating budget
12 from payments from such political subdivisions."

13 "(f)(1) The individual in control of such public record or records shall have a reasonable
14 amount of time to determine whether or not the record or records requested are subject
15 to access under this article and to permit inspection and copying. In no event shall this
16 time exceed three business days. Where responsive records exist but are not available
17 within three business days of the request, a written description of such records, together
18 with a timetable for their inspection and copying, shall be provided within that period;
19 provided, however, that records not subject to inspection under this article need not be
20 made available for inspection and copying or described other than as required by
21 subsection (h) of Code Section 50-18-72, and no records need be made available for
22 inspection or copying if the public officer or agency in control of such records shall have
23 obtained, within that period of three business days, an order based on an exception in this
24 article of a superior court of this state staying or refusing the requested access to such
25 records.

26 (2) An agency or public officer may adopt a uniform policy requiring that requests for
27 records made pursuant to this article be submitted in writing, except that written requests
28 shall not be required when a requesting party requests:

29 (A) An agenda, summary of matters acted upon, or minutes of an agency's or public
30 officer's most recent meeting; or

31 (B) Any other records an agency or public officer determines, by ordinance, resolution,
32 or other official act of the agency, to be available without a written request.

33 Where requests are required to be in writing, the party requesting the records shall be
34 informed that the request shall be made in writing. The written request may be delivered
35 to an agency by mail, facsimile, courier, e-mail, or other delivery in person. The agency
36 or public officer shall prepare, and make available to persons requesting records, forms
37 upon which a person may make his or her written request, but the person shall not be

1 required to use an agency's or public officer's form. The agency or public officer shall
2 make a reasonable effort to assist a person making a request for records, as needed,
3 including preparing the written request for the requesting party upon request."

4 SECTION 2.

5 Said article is further amended by revising subsection (b) of Code Section 50-18-73, relating
6 to jurisdiction to enforce the inspection of public records, attorney's fees and litigation
7 expenses, and good faith reliance as defense to action, as follows:

8 "(b)(1) For purposes of this subsection, the term:

9 (A) 'Custodial party' means the person, agency, or other entity having custody of
10 records open to the public under this article.

11 (B) 'Requesting party' means the person, firm, corporation, or other entity bringing
12 an action against a custodial party to enforce compliance with the provisions of this
13 article.

14 (2) In any action brought to enforce the provisions of this chapter in which the court
15 finds in favor of the requesting party, the court shall assess in favor of the requesting
16 party reasonable attorney's fees and other litigation costs reasonably incurred.

17 (3) In any action brought to enforce the provisions of this chapter in which the court
18 determines that either the requesting party acted without substantial justification either
19 in not complying with this chapter or in instituting the litigation, the court shall, unless
20 it finds that special circumstances exist, assess in favor of the complaining custodial party
21 reasonable attorney's fees and other litigation costs reasonably incurred. Whether the
22 position of the complaining requesting party was substantially justified shall be
23 determined on the basis of the record as a whole which is made in the proceeding for
24 which fees and other expenses are sought."

25 SECTION 3.

26 Said article is further amended by revising subsection (a) of Code Section 50-18-74, relating
27 to penalty for violations of Article 4, as follows:

28 "(a) Any person knowingly and willfully violating the provisions of this article by failing
29 or refusing to provide access to records not subject to exemption from this article or by
30 failing or refusing to provide access to such records within the time limits set forth in this
31 article shall be guilty of a misdemeanor and upon conviction shall be punished by a fine
32 not to exceed ~~\$100.00~~ \$500.00."

SECTION 4.

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2 This Act shall become effective upon its approval by the Governor or upon its becoming law
3 without such approval.

SECTION 5.

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5 All laws and parts of laws in conflict with this Act are repealed.