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Sequence Number: 06-38-12
 Rule ID(s): 5231-5232
 File Date: 6/27/12
 Effective Date: 9/25/12

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205

Agency/Board/Commission:	Environment and Conservation
Division:	Office of the Commissioner
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Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
0400-01-01	Fees and Charges for Certain Departmental Services
Rule Number	Rule Title
0400-01-01-.01	Access to Department of Environment and Conservation Public Records

Chapter Number	Chapter Title
0400-05-01	Fees for Copies of Departmental Public Records
Rule Number	Rule Title
0400-05-01-.01	Fees for Copies of Departmental Public Records

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Repeal

0400-05-01

Fees for Copies of Departmental Public Records

Chapter 0400-05-01 Fees for Copies of Departmental Public Records is repealed.

Authority: T.C.A. §§ 11-1-101 and 4-5-201 et seq.

Amendment

Chapter 0400-01-01

Fees and Charges for Certain Departmental Services

The Table of Contents of Chapter 0400-01-01 Fees and Charges for Certain Departmental Services is amended by replacing "Reserved" with "Access to Department of Environment and Conservation Public Records" as the title of Rule 0400-01-01-.01.

0400-01-01-.01 Reserved is amended by deleting "Reserved" and replacing it with the following so that, as amended the rule shall read:

0400-01-01-.01 Access to Department of Environment and Conservation Public Records

(1) Production Costs

Upon request for records under Tennessee's Public Records Act, T.C.A. § 10-7-501, et seq., the Department shall charge the requesting party a reasonable charge for production costs, including labor, duplication and delivery, based on the most current Schedule of Reasonable Charges issued by the Office of Open Records Counsel, available at the website of the Open Records Counsel in the Comptroller's Office.

(2) Payment of Production Costs

The Department shall provide the requesting party an estimate of the production costs, including labor, duplication and delivery, before the initial production of the requested documents. The Department shall require the requesting party to provide full payment of the production costs before copies of the requested records are delivered or otherwise made available.

(3) Waiver of Production Costs.

(a) The Department shall waive production cost if the total production cost, including labor, duplication and delivery, is less than ten dollars (\$10).

(b) When the requesting party is a federal, state, or local government agency, the Department shall provide the requested copies of public records without charge. A request made by a federal, state, or local government agency on behalf of a citizen under the Tennessee Public Records Act shall be treated as a request by a citizen and charged accordingly.

(4) Reduction of Fees.

The Commissioner may reduce any part of the fees calculated under these rules upon a determination that such reduction is in the best interest of the public.

Authority: T.C.A. §§ 11-1-101 and 4-5-201 et seq.

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner on 05/31/2012 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 10/31/11

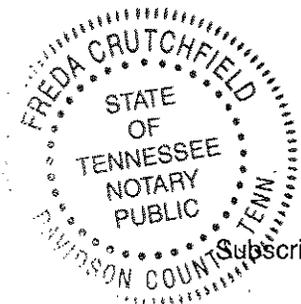
Rulemaking Hearing(s) Conducted on: (add more dates). 01/05/12

Date: 5-31-12

Signature: [Handwritten Signature]

Name of Officer: Robert J. Martineau, Jr.

Title of Officer: Commissioner



Subscribed and sworn to before me on: May 31, 2012

Notary Public Signature: [Handwritten Signature]

My commission expires on: May 03, 2016

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

[Handwritten Signature]

Robert E. Cooper, Jr.
Attorney General and Reporter

6-24-12
Date

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Effective on: 9/25/12

[Handwritten Signature]

Tre Hargett
Secretary of State

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

There were no comments received during the public comment period.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

- (1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule.

This proposed rule will replace an existing rule regarding access to public records and is designed to conform the Department's existing rule regarding access to public records with similar rules in other Departments. All persons including small businesses that request records from the Department are subject to this proposed rule.

- (2) The projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record.

There are not administrative costs associated with this proposed rule. The only costs result when person wish be obtain public records.

- (3) A statement of the probable effect on impacted small businesses and consumers.

This proposed rule should not result in an added impact to small businesses and consumers.

- (4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business.

No alternative exists for the goal of conforming this Department's rules with the other Departments in the state.

- (5) A comparison of the proposed rule with any federal or state counterparts.

Federal government and other states have rules for gaining access to public records.

- (6) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

It was not possible to exempt small businesses from this proposed rule.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The Department does not anticipate an impact on local governments from this proposed rule.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

This rulemaking repeals the Department's existing rules regarding access to public records and replaces it with provisions that track those of the Comptroller's Office of Open Records Counsel's Schedule of Reasonable Charges.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

These rules are being promulgated under the authority of T.C.A. § 11-1-101.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

All persons who request access to public records will be affected by this proposed rule. No person commented on this rulemaking.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

The Department is not aware of any.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

This rulemaking will not result in an increase or decrease in state or local government revenues or expenditures.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

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- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Alan M. Leiserson
Legal Services Director, Office of General Counsel
Tennessee Department of Environment and Conservation

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

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Tennessee Department of Environment and Conservation
20th Floor, L&C Tower
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(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

The Department is not aware of any.