

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

SENATE, No. 2930

STATE OF NEW JERSEY 221st LEGISLATURE

DATED: MAY 15, 2024

SUMMARY

- Synopsis:** Makes various changes to process for access to government records; appropriates \$10 million.
- Type of Impact:** Annual State and local cost and revenue impacts.
- Agencies Affected:** Department of Community Affairs; State, local government, and school district agencies.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Annually Thereafter</u>
State Cost Impact	Increase of up to \$10 million	Indeterminate
State Revenue Impact	Indeterminate	Indeterminate
Local Cost Impact	Indeterminate	Indeterminate
Local Revenue Impact	Increase of up to \$4 million	Indeterminate

- The Office of Legislative Services (OLS) concludes that this bill will result in an indeterminate net impact on the finances of State and local public agencies.
- The OLS determines that the bill may result in a State cost increase of up to \$10 million in the first year the bill is in effect. If the full \$10 million is not expended in the first year, the residual amount will be spent in subsequent fiscal years until the full \$10 million is exhausted.
- The bill appropriates \$4 million for the Department of Community Affairs to provide grants to political subdivisions of the State to make government records available to the public electronically, including through shared services agreements. The State expenditure increase would lead to a concurrent revenue increase for counties, municipalities, and school districts that receive grants under the program.
- The bill also appropriates \$4 million to the Department of Community Affairs for the operations of the Government Records Council, and an additional \$2 million for the Government Records Council to implement certain provisions of the bill.

- Beyond the appropriated amount, the OLS is unable to estimate the direction and magnitude of the bill's net impact on State and local finances. This is so because of the countervailing effects of the bill, some examples of which include:
 - 1) Annual expenditure and revenue decreases for public agencies from an overall reduction in the number of requests to which an agency must respond and the number of records which must be produced.
 - 2) Potential annual expenditure increases for public agencies to make any adjustments and modifications necessary to meet accelerated records request fulfillment and complaint adjudication timelines.
 - 3) Annual State expenditure increase for a new salary of \$12,000 for each of the eight public members of the Government Records Council, pursuant to the bill.
 - 4) Annual expenditure decrease for public agencies resulting from the bill's provision that removes the mandatory awarding of attorney's fees to a requestor who prevails in any complaint proceeding against a public agency.

BILL DESCRIPTION

This bill makes various changes to the law governing access to government records, commonly known as the open public records act. The bill appropriates funds to assist local public agencies in moving public records online, where members of the public can search for such documents.

Under the bill, records custodians are directed to withhold or redact records which include personal identifying information, information which the custodian has reason to believe would result in identity theft, and indecent or graphic images or video footage without prior written consent from the subject of the images or video footage.

The bill makes it a disorderly persons offense to make public indecent or graphic images or video footage obtained through a public record request, without the prior written consent of the subject of the image or video footage.

This bill revises the structure and membership of the Government Records Council and provides a salary to each of its members.

The bill also modifies several fees which may be charged by the custodian for certain records requests; makes the award of attorney's fees in a dispute over access to a government record discretionary unless the public agency is found to have unreasonably denied access, acted in bad faith, or knowingly and willfully violated the law; and shifts responsibility for fines and penalties awarded as the result of an improper denial of a request for a public record from the custodian to the public agency that employs the custodian.

The bill creates an extended timeline for records custodians to respond to requests from "commercial requestors" who intend to use the record to generate a profit. The bill authorizes a custodian to charge a special service fee to a commercial requestor who would like to receive the record in seven business days instead of 14 business days.

This bill requires the Administrative Office of the Courts, on behalf of the Superior Court, to provide the Government Records Council with a report of all cases related to the open public records act at the end of each court year.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS concludes that this bill will result in an indeterminate net impact on the finances of State and local public agencies.

The OLS determines that the bill may result in a State cost increase of up to \$10 million in the first year the bill is in effect. If the full \$10 million is not expended in the first year, the residual amount will be spent in subsequent fiscal years until the full \$10 million is exhausted.

The bill appropriates \$4 million for the Department of Community Affairs to provide grants to political subdivisions of the State to make government records available to the public electronically, including through shared services agreements. The State expenditure increase would lead to a concurrent revenue increase for counties, municipalities, and school districts that receive grants under the program.

The bill also appropriates \$4 million to the Department of Community Affairs for the operations of the Government Records Council, and an additional \$2 million for the Government Records Council to implement certain provisions of the bill.

Beyond the appropriated amount, the OLS is unable to estimate the direction and magnitude of the bill's net impact on State and local finances. This is so because of the countervailing effects of the bill, some of which are summarized in the following paragraphs.

The bill would result in annual expenditure and revenue decreases for public agencies from an overall reduction in the number of requests to which an agency must respond and the number of records which must be produced. For example, the bill permits requests for government records to be fulfilled by providing the requestor with the online location of the records requested, which would reduce agency costs. However, reducing the overall volume of records requests and removing the option for a public agency to charge the actual cost of duplicating a record would also reduce agency revenues.

The bill may also result in potential annual expenditure increases for certain public agencies to make any adjustments and modifications necessary to meet accelerated records request fulfillment and complaint adjudication timelines. Under the bill, the Government Records Council would be required to adjudicate all complaints that come before it within 90 days of the complaint's filing, with the possibility of extending the deadline by 45 days in certain circumstances. Also, the bill would require State and local election agencies to make records and information specified in the bill available within two business days of receiving the request.

Pursuant to the bill, there would be an annual State expenditure increase for a new salary of \$12,000 for each of the eight public members of the Government Records Council. The OLS estimates these new salaries and related employment benefits would increase State costs by \$107,000 annually.

The bill would increase State expenditures by shifting the responsibility for civil penalties awarded for the improper denial of a record request from the custodian to the public agency that employs the custodian.

There may also be an annual State expenditure decrease for public agencies resulting from the bill's provision that removes the mandatory awarding of attorney's fees to a requestor who prevails in any complaint proceeding against a public agency. The bill makes the award of attorney's fees

in a dispute over access to a government record discretionary, unless the public agency is found to have unreasonably denied access, acted in bad faith, or knowingly and willfully violated the law.

Additionally, the bill would increase State revenues by establishing fines for requestors who intentionally fail to certify that they have made a public record request for a commercial purpose.

The bill would also increase State expenditures by requiring the Administrative Office of the Courts to compile and provide the Government Records Council with a report detailing every case filed with the Superior Court related to the open public records act, at the end of each court year.

The bill may also increase State and local expenditures by making it a disorderly persons offense to make public indecent or graphic images or video footage obtained through a public record request, without the prior written consent of the subject of the image or video footage. Implementation of this provision would require increased monitoring and investigation to be conducted by law enforcement agencies, and prosecutions for violations. Disorderly persons offenses are adjudicated by municipal courts, in most circumstances.

Finally, the OLS notes the overall expenditure and revenue impacts for any one public agency will depend on the change in the number of government records requests and the change in the number of complaints filed by requestors. The OLS does not have specific data regarding the government records requests handled by public agencies in the State.

Section: State Government

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This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).