

LEGISLATIVE FISCAL ESTIMATE
SENATE, No. 2930
STATE OF NEW JERSEY
221st LEGISLATURE

DATED: MARCH 13, 2024

SUMMARY

- Synopsis:** Makes various changes to process for access to government records; appropriates \$8 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	Up to \$8 million	Indeterminate
State Revenue Impact	Indeterminate	Indeterminate
Local Cost Impact	Indeterminate	Indeterminate
Local Revenue Increase	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 \$8 million in the first year the bill is in effect. If the full \$8 million is not expended in the first year, the residual amount will be spent in subsequent fiscal years until the full \$8 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.

- 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.
 - 5) Annual State revenue increases from the bill's establishment of registration fees for data brokers, and penalties for improper records requests made by data brokers.

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.

The bill also restricts the ability of certain records requestors, such as those who make requests anonymously or data brokers who request documents in order to profit from the data therein, to request public records. Under the bill, records custodians are directed to withhold or redact records which include personal identifying information, or information which the custodian has reason to believe would result in harassment or the conduct of another crime.

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 or eliminates 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, rather than mandatory, 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.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates 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 \$8 million in the first year the bill is in effect. If the full \$8 million is not expended in the first year, the residual amount will be spent in subsequent fiscal years until the full \$8 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.

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 prohibits requests by data brokers and 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 30 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.

There would 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, rather than mandatory.

Additionally, the bill would increase State revenues by establishing annual registration fees for data brokers, as well as penalties for improper records requests made by data brokers or those making requests on behalf of and for the use of a data broker.

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.).