

LEGISLATIVE FISCAL ESTIMATE
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 3648
STATE OF NEW JERSEY
218th LEGISLATURE

DATED: MARCH 26, 2019

SUMMARY

- Synopsis:** Extends statute of limitations in civil actions for sexual abuse claims; expands categories of potential defendants in civil actions; creates two-year window for parties to bring previously time-barred actions based on sexual abuse.
- Types of Impact:** Annual State expenditure and revenue increases, General Fund. Annual expenditure increases to local governmental units and school districts.
- Agencies Affected:** State and local governmental units, including school districts.

Office of Legislative Services Estimate

Fiscal Impact	
Annual State Expenditure Increase	Indeterminate
Annual State Revenue Increase	Indeterminate
Annual Local Expenditure Increase	Indeterminate

- The Office of Legislative Services (OLS) expects that the bill will expose the State, school districts, and local units of government to civil claims that may result in added legal defense expenditures and substantial settlements and judgments against affected governments. The OLS, however, has no information on the number of cases that may be brought against the State, school districts, and local units of government; the number of cases that may result in a settlement or court-awarded damages against governmental entities; and the amount of settlements and damages awarded. In part, the magnitude of the additional expenditures will depend on jurisprudence to be developed.
- For governmental entities that self-insure, such as the State, each individual settlement or judgment could produce expenditures in the several hundred of thousands of dollars, if not millions of dollars.
- Local governmental units and school districts are either self-insured or pay liability insurance premiums. Depending on the number of claims against local governmental units and school

districts and the amount of any settlements and judgements, it would be reasonable to expect that annual liability insurance premiums for all local governmental units and school districts that do not self-insure will increase, perhaps even substantially.

- The State Judiciary will incur an indeterminate increase in annual operating expenditures, as additional resources will likely have to be allocated to an increased civil caseload. The OLS also anticipates collections from court filing fees to grow in tandem with the caseload, although that impact is likely to be nominal.

BILL DESCRIPTION

This bill extends the statute of limitations period in civil actions for sexual abuse claims and creates a two-year window for parties to bring previously time-barred actions based on sexual abuse. The bill also expands the categories of potential defendants in civil actions, and for some actions permits retroactive application of standards of liability to past acts of abuse for which liability did not previously exist. The provisions of the bill apply to lawsuits which could be filed beginning on December 1, 2019.

Among its provisions, the bill voids the existing immunity of governments from lawsuits based on injuries resulting from acts of sexual abuse. Consequently, any public entity may be held liable in any such suit in the same manner as a private organization. The bill also eliminates the current statutory two-year statute of limitations period for bringing a sexual abuse lawsuit against a public entity, as well as certain other related procedural requirements. Public entities are also subject, just like a private organization, to the new, extended statute of limitations periods for victims of abuse (child victims must file suit by the 55th birthday, or within seven years of discovering the injury; adult victims must file suit within seven years of discovering the injury).

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS expects that the bill will expose the State, school districts, and local units of government to civil claims that may result in added legal defense expenditures and substantial settlements and judgments against affected governments. The OLS, however, has no information on the number of cases that may be brought against the State, school districts, and local units of government; the number of cases that may result in a settlement or court-awarded damages against governmental entities; and the amount of settlements and damages awarded.

In part, the OLS' uncertainty is attributable to jurisprudence that will have to be developed on the extent to which governmental entities and their individual employees and officials will become civilly liable for failing to provide security deemed adequate at public facilities, on public lands, or generally; and exercising discretion in not opting for the most severe course of action allowable vis-à-vis suspects, defendants, and inmates eligible for parole.

The OLS notes that because of the two-year window for parties to bring previously time-barred actions; the State, school districts, and local units of government are likely to face an elevated number of claims that will have to be defended in the first few years after the bill's enactment. Once these retroactive, previously impermissible claims will have been adjudicated or settled, the count of additional cases filed as a result of this bill will normalize.

Each individual settlement or judgment could produce expenditures in the several hundred of thousands of dollars, if not millions of dollars. For example, a review of payments out of the State's Tort Claims Liability Fund between FY 2013 and FY 2015 shows three payments related to sexual abuse and assault, notwithstanding the immunity currently granted to the State: \$175,000 in a sexual assault case in FY 2015, \$200,000 in a sexual abuse case in FY 2014, and \$3,425,000 in a sexual abuse in foster care case in FY 2013.

State Impact: The OLS does not have sufficient information to quantify the increase in annual expenditures the bill will cause to the State. By way of background, the State is self-insured and does not purchase liability insurance policies. The Tort Claims Liability Fund provides funding for the payment of claims arising from wrongful actions or omissions. The FY 2019 appropriation to pay for claim settlements against State entities is \$22.4 million. Budget language provides that additional funds may be appropriated for the purpose of paying tort claims as recommended by the Attorney General and as determined by the Director of the Office of Management and Budget.

In addition, the Judiciary will incur an indeterminate increase in annual operating expenditures, as additional resources will likely have to be allocated to an increased civil caseload. The OLS also anticipates collections from court filing fees to grow in tandem with the caseload, although that impact is likely to be nominal.

Local Government and School District Impact: The OLS does not have sufficient information to quantify the increase in annual expenditures the bill will cause to local governmental units and school districts. Some local governments and school districts are self-insured, while others pay liability insurance premiums. Depending on the number of claims against local governmental units and school districts and the amount of any settlements and judgements, it would be reasonable to expect that annual liability insurance premiums for all local governmental units and school districts that do not self-insure will increase, perhaps even substantially. Local governmental units and school districts that self-insure, in turn, will have to defend themselves against additional tort claims and pay additional, potentially substantial, settlements and judgments.

School districts may be the most exposed to the filing of additional tort claims if the bill were enacted, given the nature of their responsibilities. To underscore that point, 465 teaching applicants and employees were disqualified from teaching over the past five years, with 189 having been disqualified for sexual offenses and 276 for child abuse.

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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.).