

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

301 State House
(317) 232-9855

FISCAL IMPACT STATEMENT

LS 6656

BILL NUMBER: HB 1002

DATE PREPARED: Jan 28, 1999

BILL AMENDED: Jan 27, 1999

SUBJECT: Public records and open door compliance.

FISCAL ANALYST: Susan Preble

PHONE NUMBER: 232-9867

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: State

Summary of Legislation: (Amended) This bill creates the Office of the Public Access Counselor. It provides for the appointment of a public access counselor by the Governor and establishes a formal complaint procedure for the Office of the Public Access Counselor. It provides that the filing of an informal inquiry or formal complaint does not toll the running of any applicable statutes of limitation and prohibits the Public Access Counselor from issuing an advisory opinion concerning a matter that is in litigation. The bill also creates the Public Access Education Account within the State General Fund for the following purposes: (1) Conducting seminars and educational programs for the public and public agencies on public access. (2) Creating publications and educational materials on public access.

The bill also requires a court to expedite the hearing of an action filed under the open door law or the public records law. It provides that if an employee or officer of a public agency knowingly violates the open door law or the public records law, a court may assess a civil penalty not to exceed \$1,000. It provides that the civil penalty is a personal liability of the employee or officer and that the public agency may not pay the penalty or reimburse the employee or officer. It provides that if a public agency violates the open door law or the public records law, a court may assess a civil penalty not to exceed \$1,000. It also requires the court clerk to remit the civil penalties to the Treasurer of the State for deposit in the Public Access Education Account. The bill requires a court to award reasonable attorney's fees, court costs, and other reasonable expenses of litigation to a prevailing plaintiff. (Current law allows a court to award attorney's fees, court costs, and other reasonable expenses of litigation to a prevailing plaintiff if the court finds the defendant's violation was knowing and intentional.)

It requires, rather than permits, a court to award reasonable attorney's fees, court costs, and other reasonable expenses of litigation to a prevailing defendant if the court finds that the action is frivolous or vexatious. (The introduced version of this bill was prepared by the Interim Study Committee on State Government Issues.)

Effective Date: July 1, 1999.

Explanation of State Expenditures: Court caseloads may be impacted due to the requirement that hearings on actions filed under the public access law be expedited, depending upon the number of hearings required and the extent that court dockets must be rearranged.

The bill provides that the Office of the Public Access Counselor be funded and gives the Counselor the discretion to hire additional staff if necessary to carry out the duties of the Office. Currently, the Office of the Public Access Counselor is funded through the operating fund of the Commission on Public Records. The appropriation for the Commission on Public Records is \$1,526,074 for FY 99. The estimated expense for the Public Access Counselor for FY 99 is \$108,359. The Commission is requesting \$115,359 in FY 2000 and \$107,459 in FY 2001 for the Public Access Counselor.

Explanation of State Revenues: The bill establishes the Public Access Education Account which consists of all mandatory civil penalties assessed by courts for violations of the public records law without a reasonable basis in law.

The bill requires that the Account be used to conduct seminars and educational programs for the public and public agencies on public access and to create publications and educational materials on public access. Upon approval of the Budget Agency, the funds in the Account may also be used to supplement the appropriation to the Office of the Public Access Counselor in order to carry out the public education duties of the Office.

Funds in the Account do not revert to the state General Fund at the end of the state fiscal year.

Explanation of Local Expenditures:

Explanation of Local Revenues:

State Agencies Affected: Office of the Public Access Counselor

Local Agencies Affected:

Information Sources: Fred Biesecker, Office of the Governor, 232-4567; Anne Mullin O'Connor, Public Access Counselor, 233-9435.