

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

301 State House  
(317) 232-9855

**FISCAL IMPACT STATEMENT**

**LS 6909**

**BILL NUMBER: SB 1**

**DATE PREPARED:** Apr 6, 1999

**BILL AMENDED:** Apr 5, 1999

**SUBJECT:** Public Access Counselor and complaint procedure.

**FISCAL ANALYST:** Susan Preble

**PHONE NUMBER:** 232-9867

**FUNDS AFFECTED: X GENERAL  
DEDICATED  
FEDERAL**

**IMPACT:** State

**Summary of Legislation:** (Amended) This bill creates the Office of the Public Access Counselor and it provides for the appointment of a Public Access Counselor by the Governor. It establishes an informal inquiry and formal complaint procedure for the Office of the Public Access Counselor and provides that the making of an informal inquiry or a formal complaint does not toll the running of any applicable statutes of limitation.

It prohibits the Public Access Counselor from issuing an advisory opinion concerning a matter that is in litigation. It requires a court to expedite the hearing of an action filed under the Open Door Law (IC 5-14-1.5) or the Public Records Law (IC 5-14-3). It requires, rather than permits, a court to award reasonable attorney's fees, court costs, and other reasonable expenses of litigation to a prevailing plaintiff.

It provides that a plaintiff is not eligible for attorney's fees, court costs, and other reasonable expenses if the plaintiff filed a civil action in without first seeking and receiving an informal inquiry response or advisory opinion from the Public Access Counselor unless the plaintiff can show: (1) the filing of the civil action was necessary to prevent a violation of the open door law; or (2) the filing of the civil action was necessary because the denial of access to the public record would prevent the plaintiff from presenting that record to a public agency preparing to act on a matter or relevance to the public record whose disclosure was denied.

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. It provides that when a civil action is filed under the Open Records Law, the public agency must notify each person who supplies any part of the public record whether the denial was in compliance with an informal inquiry request or advisory opinion of the Public Access Counselor.

It provides that a court in determining whether to declare a policy, decision, or final action of a public agency void as a result of a violation of the Open Door Law, may consider whether the plaintiff acted in compliance

with an informal inquiry response or advisory opinion of the Public Access Counselor.

It provides immunity to an employee or official of a public agency who discloses confidential information in reliance on an advisory opinion issued by the Public Access Counselor. It requires the Public Access Counselor to submit a report to the Legislative Services Agency not later than June 30 of each year concerning the activities of the Counselor for the previous year.

**Effective Date:** July 1, 1999.

**Explanation of State Expenditure:** 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:**

**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.