

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 4045

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 10, 2024

The Assembly Appropriations Committee reports favorably and with committee amendments Assembly Bill No. 4045 (1R).

As amended by the committee, this bill makes various changes to the law governing access to government records, commonly known as the open public records act, including the following:

- modifies the conditions under which a records custodian has to respond to a request for records, allowing the custodian discretion to deny duplicative requests;

- encourages and allocates funds to assist public agencies in moving documents online, making these records searchable via an online database, to the extent feasible;

- creates a comprehensive definition of “personal identifying information” which, in many cases, is redacted by the records custodian;

- establishes specific timelines for responses to records requests occurring under various circumstances, such as when a record may be unavailable or in storage, and adds additional specificity and clarity to the items and information which are exempt from public access;

- transfers the responsibility for violations from the custodian to the public agency, and allows, in limited circumstances, for the courts to issue a protective order to shield the agency from harassment;

- alters the composition of the Government Records Council, adding more public members, establishing staggered five year terms and annual salaries, and ensuring partisan balance;

- adds labor organizations, contractor signatories, and nonprofit organizations to the list of parties exempt from “commercial purpose”;

 - defines “labor organization”;

- removes record request limitations and registration fees on data brokers;

- removes the following from exemption from public record requests: notes, draft material, deliberative material, information

related to negotiating positions, logs of telephone calls, logs of texts, logs of emails, and electronic or paper calendars for individuals;

specifies legal next of kin, legal representatives, attending physicians, when permitted by a court, and courts may have access to visual autopsy records;

specifies that releasing security footage is permitted as long as it does not compromise the integrity of the security system;

prohibits indecent or graphic images of a person's intimate parts from release by a record request;

requires the custodian to provide a requestor with an itemized list of charges and permit the requestor to challenge the charges;

determines charges are reasonable and places burden of proof upon requestor to determine that charges are not reasonable;

allows public agency to charge certain fees or not complete a request if the medium of the record requested is unavailable;

specifies that a request submitted anonymously will not be considered incomplete;

requires the Government Records Council to create a uniform record request form that will be adopted by all public agencies;

allows a commercial requestor to pay a special service fee to receive a record in seven business days instead of 14 business days;

specifies that the court or Government Records Council may award a reasonable attorney's fee to any requestor who prevails in any proceeding, but determines that a requestor will always receive a reasonable attorney's fee if the public agency has been determined to have denied the record unreasonably, acted in bad faith, or knowingly and willfully violated the open public records act;

requires the Superior Court and the Administrative Office of the Courts to report certain data on actions brought before the court regarding record requests;

removes the Police Record Access Improvement Task Force; and

appropriates an additional \$2,000,000 for the Government Records Council to effectuate the purposes of the bill.

Nothing in this bill is intended to modify Daniel's Law restrictions on the disclosure or re-disclosure of covered person's home address, including street address or other home address identifiers, or unpublished home phone number information following a request for removal.

As amended and reported by the committee, Assembly Bill No. 4045 (1R) is identical to Senate Bill No. 2930 (2R).

COMMITTEE AMENDMENTS:

The committee amended the bill to:

add labor organizations, contractor signatories, and nonprofit organizations to the list of parties exempt from "commercial purpose";

define "labor organization;"

remove record request limitations and registration fees on data brokers;

remove the following from exemption from public record requests: notes, draft material, deliberative material, information related to negotiating positions, logs of telephone calls, logs of texts, logs of emails, and electronic or paper calendars for individuals;

specify legal next of kin, legal representatives, attending physicians, when permitted by a court, and courts may have access to visual autopsy records;

specify that releasing security footage is permitted as long as it does not compromise the integrity of the security system;

prohibit indecent or graphic images of a person's intimate parts from release by a record request;

require the custodian to provide a requestor with an itemized list of charges and permit the requestor to challenge the charges;

determine charges are reasonable and places burden of proof upon requestor to determine that charges are not reasonable;

allow public agency to charge certain fees or not complete a request if the medium of the record requested is unavailable;

specify that a request submitted anonymously will not be considered incomplete;

require the Government Records Council to create a uniform record request form that will be adopted by all public agencies;

allow a commercial requestor to pay a special service fee to receive a record in seven business days instead of 14 business days;

specify that the court or Government Records Council may award a reasonable attorney's fee to any requestor who prevails in any proceeding, but determines that a requestor will always receive a reasonable attorney's fee if the public agency has been determined to have denied the record unreasonably, acted in bad faith, or knowingly and willfully violated the open public records act;

require the Superior Court and the Administrative Office of the Courts to report certain data on actions brought before the court regarding record requests;

remove Police Record Access Improvement Task Force; and

appropriate an additional \$2,000,000 for the Government Records Council to effectuate the purposes of the bill.

Nothing in this bill is intended to modify Daniel's Law restrictions on the disclosure or re-disclosure of covered person's home address, including street address or other home address identifiers, or unpublished home phone number information following a request for removal.

FISCAL IMPACT:

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 \$6 million to the Department of Community Affairs for the establishment and 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.