



February 18, 2020

**SUMMARY OF ORIGINAL BILL:** Authorizes a records custodian to seek an injunction against and be awarded damages by requestors of public records in certain circumstances. Establishes a process by which such requestor may continue to request public records.

FISCAL IMPACT OF ORIGINAL BILL:

NOT SIGNIFICANT

**SUMMARY OF AMENDMENT (014901):** Deletes and rewrites all language after the enacting clause such that the substantive changes: (1) prohibit a records custodian from seeking injunctive relief unless the records custodian has notified the harassing requestor in writing that their behavior constitutes harassment; (2) require the records custodian to provide such notification after the fifth harassing request; (3) require a harassing requestor to reimburse the records custodian for labor costs if the records custodian prevails in the matter of the petition; (4) authorize, instead of require, a court to enjoin a person found to be a harassing requestor from requesting public records for a period of up to one year; (5) require a records custodian to provide a written report to the Office of Open Records Counsel (OORC) regarding any petitions or injunctions issued; (6) require the OORC to provide a summary of such reports received in an annual report; and (7) repeal the provisions of the proposed legislation as amended on July 1, 2024.

**FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:**

**Unchanged from the original fiscal note.**

Assumptions for the bill as amended:

- The proposed legislation would:
  - Authorize a records custodian to seek an injunction against a person who makes six or more public records requests within one year that are made in a harassing manner if the records custodian has notified the person after the fifth request that such requests are made in a harassing behavior;

- Establish that the court may issue an injunction to enjoin the person from making public records requests for up to one year, if the court finds by a preponderance of evidence that the records requests constituted harassment;
- Authorize enjoined persons to petition the court for public records.
- Authorize the release of the public records if the person proves that the request does not constitute harassment.
- Require a records custodian to continue to provide records requests until a petition is decided; upon which the harassing requestor is required to reimburse the records custodian for labor costs incurred in producing records.
- Based on responses to the 2017 Local Government Survey conducted by the Fiscal Review Committee staff, of the 26 percent of county and municipal government officials reporting, there were approximately 31,742 open records requests made locally in 2017. It is unknown how many public records requests are made at the state level.
- Records custodians will be required to provide written notice to a harassing requestor after the fifth public records request which is considered harassing. It is assumed that once receiving a written notice from a records custodian, such requestor will either discontinue harassing behavior, or postpone records requests for one year; therefore any increase in local government expenditures associated with petitioning the court for a petition of injunction is considered not significant.
- Requiring records custodians to provide information to the OORC and the OORC to publish a summary of such information will not result in any significant fiscal impact to state or local government.
- The proposed language is not estimated to result in a significant increase in the total case load of the court system.

**CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.



Krista Lee Carsner, Executive Director

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