

Department of Legislative Services

Maryland General Assembly

2002 Session

FISCAL NOTE

Revised

House Bill 1024

(Delegate Taylor)

Commerce and Government Matters

Education, Health, and Environmental Affairs

State Government - Public Information Act - Access to Public Records

This bill amends various provisions relating to the inspection of public records.

Fiscal Summary

State Effect: For most State agencies, the bill's reasonable fee provision codifies existing practice. The reasonable fee provision would not materially affect the finances of other State agencies. Because it is assumed that damages are awarded against units of State government in a limited number of cases, State expenditures should not be materially affected by the repeal of statutory damages provisions for civil actions concerning public records. The bill's other changes could be absorbed within existing budgeted resources.

Local Effect: Because it is assumed that damages are awarded against units of local government in a limited number of cases, local expenditures should not be materially affected by the repeal of statutory damages provisions for civil actions concerning public records. The bill's other changes could be handled with existing budgeted resources.

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill requires a custodian of public records to designate specific types of public records to be made available to any applicant immediately upon request and to maintain a list of the records designated. An applicant to inspect a public record does not need to submit a written application to the record's custodian if: (1) the record has been

designated to be made immediately available; or (2) the custodian waives the requirement for a written application.

The bill specifies time limits by which a custodian of a public record must: (1) give notice that a requested record is unavailable; or (2) grant or deny the request. The bill establishes restrictions on a custodian's determination of whether to grant an application to review a public record.

The bill defines a "reasonable fee" for reproduction of a public document as a fee bearing reasonable relationship to the recovery of actual costs incurred by a governmental unit. The bill establishes a "clear and convincing" evidentiary standard for liability to obtain in public records disclosure cases. The bill also repeals the provision permitting an award of punitive damages in such cases.

Current Law: With limited exceptions, a custodian of public records must permit a person or governmental unit to inspect any public record at any reasonable time. A custodian must adopt reasonable rules or regulations regarding production and inspection of a public record. A person who wishes to inspect a public record must submit a written application to the record's custodian. If the individual who received a person's application to inspect a public record is not the record's custodian, the individual must give the applicant, within ten working days: (1) notice; and (2) if known, the custodian's name and the record's location.

A custodian must grant or deny an application to inspect a public record within 30 days. If the custodian approves the application, the record must be produced immediately or, if the record must be retrieved, within 30 days. If a custodian denies the application, the custodian must immediately notify the applicant and give a written statement within ten days. A custodian may deny an individual access to a public record if the custodian believes inspection would be contrary to the public interest.

A custodian may charge an applicant a reasonable fee for the search, preparation, and reproduction of a public record, but may not charge a fee for the first two hours needed to search for a public record and prepare it for inspection. If another law sets a fee for a copy of a public record, that law applies. The custodian may waive a fee if the applicant asks and the official determines that the waiver would be in the public interest.

A person or governmental unit may file a complaint with the circuit court if an application for inspection of a public record is denied. In such a case, the defendant has the burden of sustaining a decision to deny inspection of a public record and may submit a memorandum in support of the decision to the court. The court may: (1) examine the public record in camera to determine whether any part of the record may be withheld; (2)

issue an injunction prohibiting the record from being withheld; (3) issue an order for the record's production; and (4) punish the employee responsible for noncompliance for contempt. A defendant governmental unit and an official custodian may be liable for actual and punitive damages for knowingly and willfully failing to fully disclose a public record that a complainant was entitled to inspect. A person, including an officer or employee of a governmental unit, may be liable for actual and punitive damages for unlawfully permitting inspection of a public record.

Additional Information

Prior Introductions: A similar bill, HB 1461, was introduced in the 2001 session but was withdrawn before receiving a hearing.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Office of the Attorney General, Department of Assessments and Taxation, Department of Budget and Management, Department of Legislative Services

Fiscal Note History: First Reader - March 11, 2002
ncs/jr Revised - House Third Reader - April 2, 2002

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