



**SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE**  
**STATEMENT OF ESTIMATED FISCAL IMPACT**  
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**Bill Number:** H. 3352 Amended by House Judiciary on February 7, 2017  
**Author:** W. Newton  
**Subject:** Office of Freedom of Information Act Review  
**Requestor:** House Judiciary  
**RFA Analyst(s):** Gardner, Jolliff, and Wren  
**Impact Date:** February 9, 2017

**Estimate of Fiscal Impact**

	<b>FY 2017-18</b>	<b>FY 2018-19</b>
<b>State Expenditure</b>		
General Fund	See Below	\$0
Other and Federal	See Below	\$0
Full-Time Equivalent Position(s)	See Below	0.00
<b>State Revenue</b>		
General Fund	\$0	\$0
Other and Federal	\$0	\$0
<b>Local Expenditure</b>	Undetermined	\$0
<b>Local Revenue</b>	\$0	\$0

**Fiscal Impact Summary**

This bill will require some state and local agencies to hire additional staff and incur additional operating expenses, which will result in both a recurring and non-recurring expenditure impact on the General Fund, Other Funds and local governments. However, an aggregate expenditure impact is undetermined because information is limited as to the number of Freedom of Information Act cases currently heard in common pleas court and the varied agency capabilities to respond in the shorter timeframe. The bill may provide some cost savings for the Judicial Department, due to the assignment of exclusive jurisdiction for certain Freedom of Information Act (FOIA) cases to a new Administrative Law Court (ALC) office.

**Explanation of Fiscal Impact**

**Amended by House Judiciary on February 7, 2017**

**State Expenditure**

The bill creates within the Administrative Law Court (ALC) the Office of Freedom of Information Act Review. The Office of Freedom of Information Act Review has exclusive jurisdiction of cases arising out of right to inspect, copy, or receive an electronic transmission of a public record of a public body, and relating to challenges to statutory exemptions for specified types of information with certain exceptions. The bill also changes the time that a public body has to respond to Freedom of Information Act (FOIA) requests. Under current law, a public body has fifteen working days to respond to a request with a determination as to the availability of requested information. There is no specified timeframe after which the records must be made available, just that they must be provided for inspection or copying. The bill changes these provisions to specify that a public body has ten working days to make a determination about the

request and then thirty days following the determination to make the records accessible if the request is granted. For records older than twenty-four months, the timing extends to twenty days to reply to the request and thirty-five days to provide access to records when the request is granted.

In order to determine the potential impact of these provisions, the Revenue and Fiscal Affairs Office (RFA) surveyed a sample of fourteen of the largest state agencies. The agencies surveyed include the Department of Administration, Department of Corrections, Department of Disabilities and Special Needs, Department of Education, Department of Health and Environment Control, Department of Health and Human Services, Department of Juvenile Justice, Department of Mental Health, Department of Motor Vehicles, Department of Public Safety, Department of Social Services, Department of Transportation, State Board for Technical and Comprehensive Education, and the University of South Carolina. RFA received responses from seven of these larger agencies, as well as from the Administrative Law Court and the Judicial Department. Collectively, these responses indicate the impact is expected to vary, in many cases depending upon the number of FOIA requests an agency receives and its capacity to respond to the requests in a shorter timeframe. As such, the overall impact for agencies statewide is undetermined.

**Administrative Law Court.** Information is not available concerning the current number of FOIA actions heard in common pleas court that the Office of Freedom of Information Act Review would hear under this bill. As a result, a projection of an expenditure impact on the General Fund is undetermined. However, in creating the Office of Freedom of Information Act Review to process cases and schedule hearings, the Administrative Law Court (ALC) expects an expenditure impact of at least \$141,370. This amount covers hiring two additional FTEs, a hearing officer and an administrative staff person, for additional recurring General Fund expenditures of \$138,250 for salaries and employer contributions, and a one-time cost of \$3,120 for office equipment for the two new positions.

**Department of Administration.** The agency indicates it can absorb the cost to implement additional requirements within existing resources.

**Department of Disabilities and Special Needs.** The agency indicates that they expect to hire two additional FTEs, an Attorney I and an Administrative Specialist II, for additional General Fund expenditures of \$110,995 including salaries and employer contributions. FOIA requests are currently handled by one staff member who has other responsibilities. The agency states that these additional positions are necessary to comply with the change in response time and to have legal representation at hearings of the Office of Freedom of Information Act Review.

**Department of Education.** The agency indicates that they expect to hire two additional FTEs, a program coordinator and an education associate, for an increase in General Fund Expenditures of \$168,014 for salaries, employer contributions, and operating expenses. The increase in personnel is needed to comply with the provision that records must be produced within 30 days of an approved request.

**Department of Health and Human Services.** The agency indicates that the bill is expected to increase expenditures by \$141,378 for additional personnel and operating expenses. The agency anticipates hiring two FTEs, an Attorney II and a Statistical Research Analyst II, at a total estimated cost of \$128,178 for salaries and employer contributions. The agency also expects to contract with outside counsel to handle any FOIA litigation within the Office of Freedom of Information Act Review at an estimated cost of \$13,200. These costs would be divided between General Fund and Other Funds, specifically Medicaid, at an additional expenditure of \$70,689 from each source of funds.

**Department of Public Safety.** The agency indicates that the bill is expected to increase expenditures by \$178,716 for additional personnel and operating expenses. The agency anticipates hiring four Administrative Specialist II positions. The total salary and benefit projection per FTE is \$42,679 annually.

**Department of Transportation.** The agency indicates that they can absorb the additional requirements within existing resources.

**State Board for Technical and Comprehensive Education.** The agency anticipates an increase in operational expenditures by an undetermined amount for equipment, supplies, and other costs. At this time, the agency does not anticipate a need for additional personnel, but this may change depending upon the number of requests received.

**Judicial Department.** This bill creates the Office of Freedom of Information Act Review within the ALC and vests it with exclusive jurisdiction over certain FOIA cases currently within the jurisdiction of circuit court. The bill provides further that the ALC, including the Office of Freedom of Information Act Review, is considered part of the unified judicial system for purposes of the state ethics act. The Code of Judicial Conduct binds hearing officers of the Office of Freedom of Information Act Review, and the Commission on Judicial Conduct handles complaints against them.

The expenditure impact on the General Fund is undetermined, because information is not available concerning (1) the number of FOIA actions that would no longer be heard in common pleas court, or (2) the number of additional complaints the Commission on Judicial Conduct may handle for alleged violations of the Code of Judicial Conduct by Office of Freedom of Information Act Review hearing officers.

#### **State Revenue**

N/A

#### **Local Expenditure**

This bill adds to the current list of personal information that may be exempt from FOIA disclosure and adds to the current list of information that is deemed public for FOIA purposes. The Revenue and Fiscal Affairs Office contacted all 46 county governments and the Municipal Association of South Carolina regarding the expenditure impact of this portion of the bill and received two responses from the surveyed counties. One reporting county indicates that this bill would increase expenses of law enforcement for staffing needs, but the dollar amount would be

dependent upon the number of incidents, the number of deputies involved, and the nature of the cases. The other reporting county indicates that recurring expenses would increase by \$37,000 for an additional employee to process FOIA requests, and non-recurring expenses would increase by \$2,000 for additional equipment. Due to the limited number of responses, the expenditure impact of this portion of the bill on local governments is undetermined.

Additionally, the bill requires state agencies, local governments, and political subdivisions to provide notice to all people obtaining records pursuant to FOIA requests that using public records for commercial solicitation is prohibited. Also, measures must be taken to ensure that no person or private entity obtains or distributes personal information from a public record for commercial solicitation. Since this portion of the bill requires local governments to perform activities that will be conducted in the normal course of business, this section of the bill will have no expenditure impact on local governments.

**Local Revenue**

N/A



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Frank A. Rainwater, Executive Director