Fiscal Note & Local Impact Statement

122 nd General Assembly of Ohio

BILL: **Sub. H.B. 114** DATE: **June 18, 1997**

STATUS: **As Passed by the House** SPONSOR: **Rep. Terwilleger**

LOCAL IMPACT STATEMENT REQUIRED: **Yes**

CONTENTS: **Requires that reasonable expenses be awarded to a relator who prevails in a taxpayer's suit, plus court costs when the mandamus action occurs under the Public Records Law**

State Fiscal Highlights

STATE FUND	FY 1997	FY 1998	FUTURE YEARS
General Revenue Fund			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	- 0 -	*Possible significant increase & Possible minimal avoidance	*Possible significant increase & Possible minimal avoidance

- Currently, reasonable expenses (attorney's fees and court costs) are awarded to a prevailing plaintiff in a taxpayer's suit under §733.59 of the Ohio Revised Code at the discretion of the presiding judge. However, under §149.43 of the Ohio Revised Code there is no provision for the awarding of reasonable expenses to a successful plaintiff in a mandamus action under the Public Records Law. This bill would require the awarding of attorney's fees, court costs and reasonable expenses when a plaintiff prevails in either action.

- The possibility exists that either fewer lawsuits will be filed or litigation may be shortened due to the desire to avoid increased costs that may be absorbed by a defending litigant.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 1997	FY 1998	FUTURE YEARS
Counties			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	- 0 -	*Possible significant increase & Possible minimal avoidance	*Possible significant increase & Possible minimal avoidance

- Currently, reasonable expenses (attorney's fees and court costs) are awarded to a prevailing plaintiff in a taxpayer's suit under §733.59 of the Ohio Revised Code at the discretion of the presiding judge. However, under §149.43 of the Ohio Revised Code there is no provision for the awarding of reasonable expenses to a successful plaintiff in a mandamus action under the Public Records Law. This bill would require the awarding of attorney's fees, court costs and reasonable expenses when a plaintiff prevails in either action.

- The possibility exists that either fewer lawsuits will be filed or litigation may be shortened due to the desire to avoid increased costs that may be absorbed by a defending litigant.

* The number of lawsuits each year is very small, but legal fees and other reasonable costs can exceed $75,000 per case

Detailed Fiscal Analysis

In general, the number of taxpayer's suits filed each year under O.R.C §733.59, Municipal Corporation Law, or O.R.C §149.43, Public Records Law, are few. In the majority of instances, the public official or body settles out of court, loses the action or successfully continues the litigation until the plaintiff can no longer afford to continue. While cases are few, the costs can be considerably high. There is no compiled record of the number of cases initiated, settled or decided in the State of Ohio. Legal fees and other reasonable expenses can easily exceed $75,000 per case.

This bill would require the awarding of fees, court costs and other reasonable costs to a successful plaintiff in either action. Currently, a successful plaintiff in an action under the public records law receives only reasonable attorney's fees. A successful plaintiff in a taxpayer's suit filed under the municipal corporation law may receive costs and attorney's fees at the discretion of the presiding court. If this bill is enacted, successful plaintiffs should not absorb any fiscal burden for requiring public officials or entities to operate under the laws of the state.

While the potential exists for a significant increase in expenditures, the probable effect of this bill would be to increase the resistance of officials and public entities in maintaining these legal actions. It will become more likely that suits will be avoided or settled earlier on in the process. If a plaintiff can recover the financial costs of such suits, then they would be less likely to drop such actions because of rising litigation costs. The increased costs and decreased likelihood that plaintiffs would eventually be financially unable to continue legal action should be a motivating factor in the decision whether to defend a public action or rather to concede and provide public records or provide a public duty.

❑ *LBO staff: Corey C. Schaal, Budget/Policy Analyst*

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