

Fiscal Note & Local Impact Statement

126th General Assembly of Ohio

Revised¹

Ohio Legislative Service Commission
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BILL: **Sub. H.B. 9** (LSC 126 0243-6) DATE: **March 14, 2006**

STATUS: **In House Civil and Commercial Law** SPONSOR: **Rep. Oelslager**

LOCAL IMPACT STATEMENT REQUIRED: **Yes**

CONTENTS: **Revises the Public Records Law, creates the Public Access Counselor in the Court of Claims, creates a library records commission in each public library and a special taxing district records commission in each special taxing district, and revises the records commission laws**

State Fiscal Highlights

STATE FUND/AGENCY	FY 2006*	FY 2007 - FUTURE YEARS
Court of Claims		
Revenues	- 0 -	- 0 -
Expenditures	- 0 -	Estimated \$952,335 increase in Court of Claims operating expenses for Office of the Public Access Counselor during its first year of operation; Estimated \$455,935 increase in Court's operating expenses annually thereafter
Ohio Historical Society		
Revenues	- 0 -	- 0 -
Expenditures	- 0 -	Likely, and potentially significant, increase in Ohio Historical Society's annual operating expenses for review of documents submitted by local records commissions
Office of the Attorney General		
Revenues	- 0 -	- 0 -
Expenditures	- 0 -	Minimal annual increase in Attorney General's Public Record Unit's operating expenses to administer public records training program for state and local elected officials
Auditor of State		
Revenues	- 0 -	- 0 -
Expenditures	- 0 -	Potential, at most minimal, increase in Auditor of State's annual operating costs to audit compliance with certain sections of the Public Records Law

¹ This fiscal analysis contains additional information regarding potential costs to the Ohio Historical Society and local governments.



STATE FUND/AGENCY	FY 2006*	FY 2007 – FUTURE YEARS
General Revenue Fund (GRF) and Other State Funds		
Revenues	- 0 -	Potential gain in revenues from: (1) Awards of court costs and attorney's fees associated with frivolous conduct; (2) Registration fees if state agency opts to contract with Attorney General as training service provider
Expenditures	- 0 -	Potential increase to cover mandamus action-related statutory damages, court costs, and attorney's fees

Note: The state fiscal year is July 1 through June 30. For example, FY 2006 is July 1, 2005 – June 30, 2006.

* This analysis assumes that any fiscal effects created for the state as a result of the bill will occur no earlier than FY 2007.

- **Court of Claims (Public Access Counselor)**. The bill establishes in the Court of Claims an office to be known as the Office of the Public Access Counselor. According to Court of Claims' staff, it will need to hire at least five full-time personnel in order to operate the office. During the first year of operation, costs are estimated to total approximately \$952,335, including \$496,400 in one-time start-up expenses. Annually thereafter, operating costs will total approximately \$455,935.
- **Ohio Historical Society**. Based on preliminary discussions with representatives of the Ohio Historical Society, it appears that the bill could create significant costs in terms of capital improvements for additional storage space as well as additional staffing expenses related to the review of documents submitted by local records commissions. It seems unclear as to whether some, all, or none of the documents scheduled for disposal are to be sent to the Society for its review, and there appears to be no provision with regard to the return of some or all of those documents to the appropriate local records commission. Additionally, it is unclear as to who would be responsible for any of the costs that might be incurred in relation to transporting documents to the Society and their subsequent return to the appropriate local records commission.
- **Office of the Attorney General**. The bill requires that the Attorney General develop, provide, and certify Public Records Law training programs and seminars and develop and provide to all public offices a model public records policy. As of this writing, it appears that the impact of these duties on the Attorney General's Public Records Unit may generate no more a minimal increase in its annual cost of doing business. It should also be noted that the Attorney General is not permitted to charge any elected official or the appropriate designee any fee for attending the training programs and seminars that the Attorney General conducts.
- **Contracting training with other entities**. The bill permits the Attorney General to contract with one or more other state agencies to conduct the training programs and seminars for elected officials or their appropriate designees. The contracting entity is permitted to charge a registration fee, to be determined by the Attorney General, based on the actual and necessary expenses associated with the training program and seminars. Presumably, any state governmental entity opting to contract with the Attorney General for the provision of training programs and seminars would only do so if the amount of revenue generated was at least equal to its expenditures.
- **Auditor of State**. The bill requires the Auditor of State, in the course of an annual audit or biennial audit of a public office pursuant to Chapter 117. of the Revised Code to audit the public office for compliance with certain sections of the Public Records Law. As this duty would be performed during an audit already required under current law, any additional annual cost to the Auditor of State would appear to be minimal, at most.

- **Public offices' public records policy.** The bill requires all public offices adopt a public records policy for responding to public records requests and perform other related duties. The requirements are largely one-time in nature, the cost of which for any given state agency would not appear to exceed minimal.
- **Mandatory training for elected officials.** All elected officials or their appropriate designees are required to attend three hours of training for every term of office for which the elected official was appointed or elected to the public office involved. If one of these individuals attends a training program or seminar conducted by the Attorney General, then there would be no fee charged. If, however, one of these individuals attends a training program or seminar conducted by a contractor, then a fee may be charged. As of this writing, it seems unlikely that the potential registration fee costs to the state if its elected officials or their appropriate designees opted to attend a contracted program or seminar will exceed minimal, if that.
- **Mandamus actions.** The potential cost to the state treasury due to the awarding of statutory damages, court costs, and attorney's fees depends on the future behavior of state officials, persons requesting public records, and courts, making the estimation of those costs for the purposes of this fiscal analysis rather problematic. Similarly, the amount of revenue that the state might gain if courts award court costs and reasonable attorney's fees if the court determines that a mandamus action commenced against a state public office was frivolous conduct is problematic to predict.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY2006 – FUTURE YEARS
Counties, Municipalities, Townships, School Districts, and Other Special Districts	
Revenues	Potential annual gain in revenues from: (1) Awards of court costs and attorney's fees associated with frivolous conduct; (2) Registration fees if local government agency opts to contract with Attorney General as training service provider
Expenditures	(1) Potential, minimal at most, annual increase for mandatory training and implementing a public records policy; (2) Potential annual increase to cover mandamus action-related statutory damages, court costs, and attorney's fees; (3) Potential increase to provide mandatory training (offset by registration fees); (4) Likely increase of uncertain magnitude in the operating expenses of local records commissions

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- **Mandatory training for elected officials.** All elected officials or their appropriate designees are required to attend three hours of training for every term of office for which the elected official was appointed or elected to the public office involved. If one of these individuals attends a training program or seminar conducted by the Attorney General, then there would be no fee charged. If, however, one of these individuals attends a training program or seminar conducted by a contractor, then a fee may be charged. As of this writing, it seems unlikely that the potential registration fee costs to local governmental entities if its elected officials or their appropriate designees opted to attend a contracted program or seminar will exceed minimal, if that.

- **Contracting training with other entities.** The bill permits the Attorney General to contract with one or more other local governmental agencies to conduct the training programs and seminars for elected officials or their appropriate designees. The contracting entity is permitted to charge a registration fee that is based on the Attorney General's determination of a reasonable amount for the registration fee based on the actual and necessary expenses associated with the training program and seminars. Presumably, any local governmental entity opting to contract with the Attorney General for the provision of training programs and seminars would only do so if the amount of revenue generated was at least equal to its expenditures.

- **Public offices' public records policy.** The bill requires all public offices adopt a public records policy for responding to public records requests and perform other related duties. The requirements are largely one-time in nature, the cost of which for local governmental entities would not appear to exceed minimal.

- **Mandamus actions.** The potential cost to local governments due to the awarding of statutory damages, court costs, and attorney's fees depends on the future behavior of local officials, persons requesting public records, and courts, making the estimation of those costs for the purposes of this fiscal analysis rather problematic. Similarly, the amount of revenue that local governments might gain if courts award court costs and reasonable attorney's fees if the court determines that a mandamus action commenced against a local public office was frivolous conduct is problematic to predict.

- **Local records commissions.** Relative to existing records commissions laws, the bill requires existing local records commissions to send any application for records disposal or schedule of records retention and disposition, including the original signed documents that constitute the records covered by the application, to the Ohio Historical Society for its review and creates local library records commissions and special taxing district records commissions. As of this writing, the potential effect on the workload and any related operating expenses of local records commissions

generally is uncertain. It seems unclear as to whether some, all, or none of the documents scheduled for disposal are to be sent to the Society for its review, and there appears to be no provision with regard to the return of some or all of those documents to the appropriate local records commission. Additionally, it is unclear as to who would be responsible for any of the costs that might be incurred in relation to transporting documents to the Society and their subsequent return to the appropriate local records commission.

Detailed Fiscal Analysis

Provisions of the bill

For the purposes of this fiscal analysis, the bill most notably:

- Revises the Public Records Law, including expansion of the definition of a public record, and requires public officials to comply with their obligations under that Law.
- Requires all elected officials or their appropriate designees to attend three hours of training for every term of office for which the elected official was appointed or elected to the public office involved.
- Requires the Attorney General to develop, provide, and certify Public Records Law training programs and seminars for all elected officials or their appropriate designees.
- Permits the Attorney General to contract with one or more other state agencies, political subdivisions, or other public or private entities to conduct the training programs and seminars for elected officials or their appropriate designees.
- Requires the Attorney General to develop and provide to all public offices a model public records policy.
- Requires all public offices adopt a public records policy for responding to public records requests and perform other related duties.
- Provides that an aggrieved person who files a mandamus action against a public office may recover statutory damages, reasonable attorney's fees, and all court costs.
- Requires the court to award court costs and reasonable attorney's fees to the public office if the court determines that a mandamus action was frivolous conduct.
- Requires the Ohio Historical Society to provide state archive administration services to additional local records commissions and review applications from local records commissions to dispose of certain records.
- Requires local records commissions to send applications to dispose of certain records, and related documents, to the Ohio Historical Society.
- Creates a library records commission in each public library and a special taxing district records commission in each special taxing district.
- Creates the Office of Public Access Counselor within the Court of Claims.

Provision of training programs and seminars for elected officials

Currently, the Attorney General is voluntarily providing training, free of charge, on the Public Records Law for all interested elected officials, which is a duty of the Public Records Unit. The bill requires the Office of the Attorney General to develop, provide, and certify training programs and seminars for all officials elected to a local or statewide office or their appropriate designees in order to enhance their knowledge of the duty to provide access to public records. The training must be three hours for every term of office for which the elected official was appointed or elected to the public office involved. The Attorney General is not permitted to charge any elected official or the appropriate designee any fee for attending the training programs and seminars that the Attorney General conducts. Based on prior discussions with the Attorney General on the As Introduced version of the bill, it appeared that the Public Records Unit anticipated no more than a minimal increase in its annual cost of doing business. From LSC fiscal staff's perspective, the substitute version does not appear to change that fiscal assessment.

Contracting training with other entities

The bill permits the Attorney General to contract with one or more other state agencies, political subdivisions, or other public or private entities to conduct the training programs and seminars for elected officials or their appropriate designees. The contracting entity is permitted to charge a registration fee that is based on the Attorney General's determination of a reasonable amount for the registration fee based on the actual and necessary expenses associated with the training program and seminars. Presumably, any state or local governmental entity opting to contract with the Attorney General for the provision of training programs and seminars would only do so if the amount of revenue generated was at least equal to its expenditures.

Model Public Records Policy

The bill requires the Attorney General to develop and provide to all public offices a model public records policy. Presumably, this duty would be performed by the Attorney General's Public Records Unit. Although uncertain as of this writing, it would not appear that the one-time cost for that Unit to develop and distribute this policy will be significant.

Auditor of State

Audit duties. The bill requires the Auditor of State, in the course of an annual audit or biennial audit of a public office pursuant to Chapter 117. of the Revised Code to audit the public office for compliance with certain sections of the Public Records Law. As this duty would be performed during an audit already required under current law, any additional annual cost to the Auditor of State would appear to be minimal, at most.

Local records commissions. Under current law, local records commissions are required to send a list of records scheduled for disposal to the Auditor of State, and the Auditor has 60 days to either approve or disapprove of the proposed action in whole or in part. Under the bill, the Ohio Historical Society would forward the information for the Auditor of State's approval or disapproval. As

of this writing, it does not appear that this provision will noticeably affect the Auditor of State's daily operations and related annual operating costs.

Mandatory training for elected officials

As noted, all elected officials or their appropriate designees must attend three hours of training for every term of office for which the elected official was appointed or elected to the public office involved. If one of these individuals attends a training program or seminar conducted by the Attorney General, then there would be no fee charged. If, however, one of these individuals attends a training program or seminar conducted by a contractor, then a fee may be charged. As of this writing, it would not appear that the registration fee costs to the state or any affected local jurisdiction will exceed minimal, if that, annually.

Public offices' public records policy

The bill requires all public offices adopt a public records policy for responding to public records requests, distribute the public records policy to all employees, require all employees to acknowledge receipt of a copy of the policy, post the policy in certain places, and include the policy in any general policies and procedures manual or handbook established for employees. The requirements are largely one-time in nature, the cost of which for the state or any local jurisdiction would not appear to exceed minimal.

Mandamus action

Current law allows an allegedly aggrieved person to commence a mandamus action to obtain a judgment that orders the public office to comply with certain provisions of the Public Records Law. Relative to a mandamus action, the bill:

- Provides that an aggrieved person who files a mandamus action against a public office may recover statutory damages (fixed at \$100 for each business day during which requested public records were not made available, up to a maximum of \$1,000).
- Requires the court to determine and award all court costs and, subject to certain reductions, reasonable attorney's fees.
- Requires the court to award court costs and reasonable attorney's fees to the public office if the court determines that a mandamus action was frivolous conduct.

As of this writing, from LSC fiscal staff's perspective, predicting the number of mandamus actions that will result from the alleged failure of a public official to comply with an obligation in accordance with the Public Records Law, as well as their outcomes, is rather problematic. Thus, the potential fiscal effects of the bill's mandamus action-related provisions on state and local government revenues and expenditures is uncertain.

Ohio Historical Society

The bill modifies existing law relative to the Ohio Historical Society's duty to function as the state archives administration for the state and its political subdivisions. Most notably: (1) the Society would be required to make its services available to the library and special taxing district commissions, which are created by the bill, (2) local records commissions would be required to send any application for records disposal or schedule of records retention and disposition, including the original signed documents that constitute the records covered by the application, to the Society for its review, and (3) the Society would then be required to forward the application or schedule to the Auditor of State for approval in whole or in part.

As of this writing, LSC fiscal staff has not been able to discern the potential fiscal impact of these requirements on the Ohio Historical Society. However, based on preliminary discussions with representatives of the Ohio Historical Society, it appears that the bill could create significant costs in terms of capital improvements for additional storage space as well as additional staffing expenses related to the review of documents submitted by local records commissions. It seems unclear as to whether some, all, or none of the documents scheduled for disposal are to be sent to the Society for its review, and there appears to be no provision with regard to the return of some or all of those documents to the appropriate local records commission. Additionally, it is unclear as to who would be responsible for any of the costs that might be incurred in relation to transporting documents to the Society and their subsequent return to the appropriate local records commission.

Local records commissions

Relative to existing records commissions laws, the bill most notably:

- Requires existing county records commissions, municipal records commissions, school district records commissions, educational service center records commissions, and township records commissions send any application for records disposal or schedule of records retention and disposition, including the original signed documents that constitute the records covered by the application, to the Society for its review.
- Creates a library records commission in each public library and a special taxing district records commission in each special taxing district and requires those commissions to function in a manner similar to existing local records commissions.

As of this writing, the potential effect on the workload and any related operating expenses of local records commissions generally is uncertain. As noted above, it is unclear as to who would be responsible for any of the costs that might be incurred in relation to transporting documents to the Society and their subsequent return to the appropriate local records commission.

Court of Claims

Public Access Counselor

The bill establishes in the Court of Claims an office to be known as the Office of the Public Access Counselor to assist the Attorney General, receive any informal and formal complaints, make recommendations to the General Assembly and the Supreme Court, and submit an annual report to

certain parties. According to Court of Claims staff, it will need to hire at least five full-time personnel in order to operate the office. During the first year of operation, costs are estimated to total approximately \$952,335. This amount includes about \$496,400 in one-time start-up costs. Annually thereafter, operating costs will total approximately \$455,935. The Court of Claims based these cost estimates after a similar program currently instituted in the state of Indiana as well as a program in the state of Connecticut.²

LSC fiscal staff: Jamie L. Duskocil, Senior Budget Analyst

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² For a more detailed analysis of the cost estimates calculated by the Court of Claims, please refer to the attached documentation (Attachments A and B) submitted to the Legislative Service Commission on March 7, 2006.

ATTACHMENT A

Public Access Counselor's Office*

Sub. H. B. No. 9
126th General Assembly

ESTIMATED COSTS

Category	Definition	Annual Costs	Additional Start-Up Costs	Total Estimated Costs for 1st Year
Purchased Personal Service	Payroll for 5 FTEs	\$ 292,735		
	Purchased Personal Service: Website Development		\$ 60,000	
	Website Maintenance	\$ 20,000		
Personal Services Subtotals:		\$ 312,735	\$ 60,000	\$ 372,735
Supplies & Maintenance	Office Supplies & Equipment (<\$300)	\$ 117,400	\$ 18,000	
	Software Purchases		\$ 140,000	
	Office Space Modification		\$ 93,000	
Supplies & Maintenance Subtotals:		\$ 117,400	\$ 251,000	\$ 368,400
Equipment	Office Equipment (>\$300)	\$ 25,800	\$ 24,000	
	Furniture & High Density Shelving		\$ 97,400	
	Computers & Computer Equipment		\$ 27,500	
	Copiers & Printers		\$ 36,500	
Equipment Subtotals:		\$ 25,800	\$ 185,400	\$ 211,200
TOTALS:		\$ 455,935	\$ 496,400	\$ 952,335

*Assumption: Effective FY2007
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ATTACHMENT B

Statistics & Resources

State	2004 Population Estimate*	Difference
Ohio	11,459,011	
Indiana	6,237,569	-45.57%

*Source: www.census.gov

Indiana's Public Access Counselor:

Fiscal Year	Caseload**
2006	unknown
2005	1,681
2004	2,704
2003	2,220

**Source: www.in.gov/pac/

Appropriation Summary†

FY 2007	\$153,570
FY2006	\$153,457

†Source: http://www.in.gov/sba/budget/2005_budget/as_passed/pdfs/ap_2005_c_1_5_gen_gov_data.pdf