

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 332

with Senate committee amendments

STATE OF NEW JERSEY

DATED: JUNE 23, 1997

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 332 with amendments.

Senate Bill No. 332, the "Open Public Records Act," as amended, repeals the present Right to Know Law and revise New Jersey's law with regard to access to public documents. In general, the bill expands the category of public records to which access will be guaranteed by statute and establishes more specifically the particular types of documents which, although defined as public records, may be withheld from disclosure.

In order to examine a public record under common law, courts require that a citizen demonstrate some "personal" or "particular" interest in the material sought to be examined. If a court determines that a party has both an interest and a need for certain documents, the court then engages in a weighing process balancing the citizen's right to access against the public interest in confidentiality. Often this process involves an in camera review of the documents sought and a release of only such information which the court deems appropriate.

The present Right to Know Law, N.J.S.A.47:1A-1 et seq., was enacted in 1963. Unlike common law, the Right to Know Law does not require that a person seeking access to a public record demonstrate any particular need or interest in a public record in order to examine that record. However, the definition of public record under the Right to Know Law is much narrower than the common law definition of public record. Under the Right to Know Law, only documents "required by law to be made, maintained or kept on file" are deemed public records and are unqualifiedly available to all citizens for examination and copying. It should also be noted that under the Right to Know Law, documents classified as confidential by statute, regulation or executive order are not subject to public access.

Under the Right to Know Law, public records are available for examination during regular business hours. The Right to Know Law also authorizes the custodian of a public record to charge a fee for copies of public records.

Under this bill, all records maintained by State, county and

municipal government agencies, including independent authorities, will be available at all times for public inspection and copying and for the purchase of copies. Exceptions to the right of access are established for certain criminal intelligence and criminal investigation information, certain personal data relating to specifically identifiable individuals and certain other limited situations. In the case of the Legislature, only records required by law to be made, maintained or kept on file would be accessible. Records could also be exempted from disclosure by resolution of either or both houses of the Legislature, Executive Order of the Governor, rule of court, or federal regulation.

The bill establishes detailed procedures for requesting information from public entities and for responding to requests for access. Such procedures are presently not included as part of the Right to Know Law. Under this bill, every public agency will be required to designate a custodian for its records, establish a fee schedule for the purchase of copies of records and develop a standard form for requesting access to information held by that agency. Agencies are required to respond promptly to each request by providing either the information requested or a written explanation of why the information cannot be provided.

The bill also provides for enforcement of the right of access by filing of actions in the Superior Court. The custodian will have the burden of demonstrating that the denial of access is justified. This bill allows the court to award reasonable attorney fees and other reasonable litigation expenses to a member of the public who prevails in such an action. The Right to Know Law currently limits fee awards in such cases to \$500.00.

The bill permits partial disclosure of documents when part of the material is protected from access, and allows custodians to obtain a court order protecting otherwise accessible records if the custodian can demonstrate that disclosure would cause substantial harm to the public interest. This bill preserves the common law right to inspect public records.

COMMITTEE AMENDMENTS:

The committee amended the bill to provide that "public agency" includes various local government districts, independent local authorities, commissions, or similar entities, as well as subordinate bodies thereof and combinations thereof. The definition of "public record" is also expanded to include information stored in additional formats. In the case of the Legislative Branch of State government, only those records required by law to be made, maintained or kept on file (the same standard as under existing law) will be accessible. Certain motor vehicle records also will be protected from access.

The amendments provide that in the case of a municipality, the municipal clerk will be the custodian of records and in the case of the Legislature, the custodian will be the Secretary of the Senate, the

Clerk of the General Assembly, the Executive Director of the Office of Legislative Services, or the chairman of any other entity in the Legislative Branch, as appropriate. The amendments increase the fees established in the bill for the purchase of copies of public records and allow additional charges when reproducing a record requires extensive effort.

In addition, the amendments: allow a custodian of records to require an individual requesting records to provide certain identification; permit certain criminal or civil investigative information to be protected from access; extend the time periods within which a custodian of records must identify a legal problem affecting disclosure and notify the requestor of the problem; permit a custodian of records to provide access in a different format or at a later time when a request is burdensome or disruptive; eliminate the requirement that public records be kept in the building where they are ordinarily used and the requirement that worn records be copied or repaired; provide that records may be exempted from disclosure by resolution of either or both houses of the Legislature, Executive Order of the Governor, rule of court, federal law or federal regulation; exempt from access certain advisory, consultative or deliberative communications between an elected or appointed official and staff; exempt from access certain records of the New Jersey Division of Archives and Records Management, a grand jury, the Office of the Public Defender or a municipal tax office; make accessible certain credit card records, payroll records and settlement agreements of public agencies; and provide that the bill will take effect 180 days (instead of 60 days) after enactment.

FISCAL IMPACT:

The OLS cannot estimate the potential cost of the provisions of this bill on the State or any political subdivision thereof because it cannot determine the potential effect of the bill on the number and kind of records requested by the public. However, the OLS notes that several provisions of the bill have the potential to decrease current services performed by the State and its political subdivisions, or increase taxation, or some combination of both, so that the increased costs associated with the expanded record access guaranteed under this bill can be achieved.