

Fiscal Impact Review

2019 General Assembly Session

Date: February 8, 2019

Bill number: SB 1101 (Introduced); Office of the Attorney General; representation of members of General Assembly for violations of FOIA

Review requested by: Chairmen Norment and Hanger, Senate Finance Committee

JLARC Staff Fiscal Estimates

JLARC staff do not concur with DPB's fiscal impact statement that SB 1101 would have an estimated cost of \$439,000 per year. SB 1101 would allow the Office of the Attorney General to represent a member of the General Assembly in a lawsuit alleging a violation of Virginia's Freedom of Information Act. Given the rarity of such lawsuits, the fiscal impact is likely to be much smaller.

An explanation of the JLARC staff review is included on the pages that follow.

Authorized for release:



Hal E. Greer, Director

Bill summary

SB 1101 allows a member of the General Assembly to request representation by the Office of the Attorney General (OAG) in a civil lawsuit alleging violation of Virginia's Freedom of Information Act (FOIA), provided the member was acting in their official capacity.

Fiscal implications

In its Fiscal Impact Statement, DPB estimates that three full-time OAG staff would be needed on an ongoing basis to represent General Assembly members accused of FOIA violations: a senior attorney, a junior attorney, and a paralegal. OAG staff provided this estimate based in part on their experience in an ongoing FOIA lawsuit against OAG (not involving a General Assembly member) that began about two years ago.

The fiscal impact of SB 1101 depends primarily on the annual number of lawsuits alleging violation of FOIA by General Assembly members, because each lawsuit would require OAG staff participation.

Civil actions alleging violation of FOIA may be brought in general district court or circuit court. According to staff at the Supreme Court of Virginia, which maintains the data systems for general district and circuit courts, their data systems cannot reliably identify FOIA law suits against General Assembly members.

The FOIA Officer for the Senate of Virginia identified only one lawsuit (in 2017) since 1990 against a sitting member of the Senate alleging a violation of FOIA. The FOIA Officer for the Virginia House of Delegates recalled no FOIA lawsuits against a sitting member of the House of Delegates. Staff at the Virginia Freedom of Information Advisory Council also could not recall a FOIA lawsuit against a General Assembly member other than the 2017 lawsuit against a senator.

Because the historical evidence suggests that the number of lawsuits alleging FOIA violation by a member of the General Assembly is likely to be less than one per year on average, OAG should not need three ongoing full-time staff for such lawsuits.

Budget amendment necessary? No

Agencies affected: Office of the Attorney General

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