

47:1A-4

LEGISLATIVE HISTORY CHECKLIST

(Public records--suits for access--attorneys fees--require if citizen prevails--permit if agency prevails)

NJSA 47:1A-4

LAWS 1981

CHAPTER 338

Bill No. A1709

Sponsor(s) Herman & Stockman

Date Introduced May 19, 1980

Committee: Assembly Judiciary, Law, Public Safety & Defense

Senate Judiciary

Amended during passage Yes **according to Governor's recommendations:**

Date of Passage: Assembly Jan. 22, 1981

Senate June 18, 1981

Date of approval Dec. 16, 1981

**\*\*** Amendments denoted by asterisks.

Re-enacted 11-23-81

Re-enacted 12-16-81

Following statements are attached if available:

Sponsor statement Yes **\*\*** (Below)

Committee Statement: Assembly Yes **\*\***

Senate Yes **\*\***

Fiscal Note **xxx** No

Veto Message Yes **\*\***

Message on signing Yes **\*\***

Following were printed:

Reports **xxx** No

Hearings **xxx** No

Sponsors' statement:

The bill is designed to facilitate access to public records by providing an allowance of an attorney's fee and costs to a citizen who successfully prevails in a civil action for access to such records. This bill is consistent with the recommendations of the Governor in his veto message of the amended Assembly Bill No. 617 (1978).

(over)

6/22/81

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12-16-81

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## ASSEMBLY, No. 1709

## STATE OF NEW JERSEY

INTRODUCED MAY 19, 1980

By Assemblymen HERMAN and STOCKMAN

Referred to Committee on Judiciary, Law, Public Safety  
and Defense

AN ACT to amend "An act concerning public records and their examination by citizens of this State, providing certain exceptions to the right to examine public records, and conferring jurisdiction upon the Superior Court in respect to such examination," approved May 31, 1963 (P. L. 1963, c. 73).

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 1. Section 4 of P. L. 1963, c. 73 (C. 47:1A-4) is amended to read  
2 as follows:

3 4. Any such citizen of this State who has been or shall have been  
4 denied for any reason the right to inspect, copy or obtain a copy  
5 of any such record as provided in this act may apply to the Su-  
6 perior Court of New Jersey by a proceeding in lieu of prerogative  
7 writ for an order requiring the custodian of the record to afford  
8 inspection, the right to copy or to obtain a copy thereof, as pro-  
9 vided in this act. *A plaintiff in whose favor such an order issues*  
10 *shall be entitled to taxed costs and \***[allowance of]**\* \*may be*  
11 *awarded\* a reasonable attorney's fee \*\*not to exceed \$500.00\*\*.*  
12 *\*A defendant who prevails in preventing the issuance of such an*  
13 *order shall be entitled to taxed costs.\**

1 2. This act shall take effect immediately.

**EXPLANATION**—Matter enclosed in bold-faced brackets [thus] in the above bill  
is not enacted and is intended to be omitted in the law.

ASSEMBLY JUDICIARY, LAW, PUBLIC SAFETY  
AND DEFENSE COMMITTEE

STATEMENT TO  
ASSEMBLY, No. 1709

STATE OF NEW JERSEY

DATED: JUNE 16, 1980

The bill is designed to facilitate access to public records by providing an allowance of an attorney's fee and costs to a citizen who successfully prevails in a civil action for access to such records. The purpose of the bill is to help ensure good faith compliance with the law by public agencies. This bill is consistent with the recommendations of the Governor in his veto message of the amended Assembly Bill No. 617 (1978).

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SENATE JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1709

**STATE OF NEW JERSEY**

DATED: JUNE 8, 1981

As amended by the Senate Judiciary Committee, this bill is designed to facilitate access to public records by providing that a successful plaintiff in an action for access to such records shall be entitled to court costs and may be awarded a reasonable attorney's fee. A successful defendant in such an action would be entitled to court costs.

STATE OF NEW JERSEY  
EXECUTIVE DEPARTMENT

ASSEMBLY BILL NO. 617  
STATEMENT

I am filing Assembly Bill No. 617 in the State Library without my approval.

Under the provisions of Article V, Section I, Paragraph 14(b) of the Constitution, this bill does not become a law if it is not signed within the 45-day period, Sundays excepted, following the adjournment sine die of the Legislature. In these circumstances there is no provision for a veto, but I deem it to be in the public interest to state my reasons for deciding not to sign the bill.

This bill is designed to facilitate access to public records by providing an allowance of an attorney's fee and costs to a citizen who successfully prevails in a civil action for access to such records. This bill also provides that a court may award attorney's fees and costs to a defendant.

As currently phrased, this bill would invariably produce a chilling effect on parties who wish to institute suit to gain access to certain public records. The bill provides that a defendant, namely some arm of the State, who prevails in preventing the issuance of an order to inspect or copy certain records may be entitled to costs and reasonable attorney's fees. Inasmuch as case law has established that any action by a government entity is presumed valid, many plaintiffs will be fearful of whether they can successfully overcome this burden. Should a plaintiff be unsuccessful in a suit, he could be liable to the defendant for substantial sums of money.

Respectfully,

/s/

GOVERNOR

STATE OF NEW JERSEY  
EXECUTIVE DEPARTMENT

November 16, 1981

ASSEMBLY BILL NO. 1709 (OCR)

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14(b) of the Constitution, I am returning Assembly Bill No. 1709 (OCR), with my objections, for reconsideration.

This bill mandates the award of taxed costs to a plaintiff who successfully sues for and obtains an official record. Additionally, this bill permits a court to award a reasonable attorney's fee to a successful plaintiff. Defendants who successfully resist such actions are entitled to receive their taxed costs.

Actions such as this are not complicated. I am, therefore, concerned that this measure provides no upper limit on the attorney's fees a court may award. I am suggesting that the Assembly include language to limit the size of an award an attorney may receive.

Accordingly, I herewith return Assembly Bill No. 1709 (OCR) for reconsideration and recommend that it be amended as follows:

Page 1, Section 1, Line 11: After "fee" insert "not to exceed \$500"

Respectfully,

/s/ Brendan Byrne

GOVERNOR

[seal]

Attest:

/s/ Harold L. Hodes

CHIEF OF STAFF, SECRETARY

FROM THE OFFICE OF THE GOVERNOR

FOR IMMEDIATE RELEASE

FOR FURTHER INFORMATION:

DECEMBER 16, 1981

DAVID DE MAIO

Governor Brendan Byrne today signed the following bills into law:

A-1709, sponsored by Assemblyman Martin A. Herman (D-Salem), mandating that the court costs of a plaintiff who successfully sues for access to an official public record be returned to the plaintiff.

The bill also requires the court to reimburse a successful plaintiff for his attorney's fees. Successful defendants in civil actions are entitled to receive reimbursement for their costs.

Governor Byrne conditionally vetoed this legislation on November 16, 1981, suggesting that the Legislature place a \$500 ceiling on reimbursements for attorney's fees. The Legislature adopted his recommendations.

A-2029, sponsored by Assemblyman Daniel J. Dalton (D-Gloucester), increasing from \$2,500 to \$5,000 the ceiling on court reimbursements for attorney's and witness fees in civil actions filed under the "Environmental Rights Act." The Act gives all private citizens the right to sue for violations of environmental laws.

Governor Byrne conditionally vetoed the original bill, which eliminated the ceiling altogether, and suggested the \$5,000 cap later adopted by the Legislature.

A-292, sponsored by Assemblyman Frederic Remington (R-Essex), requiring that names and addresses of co-signers of loans obtained by candidates, political committees or organizations be included in financial reports filed with the Election Law Enforcement Commission (ELEC). Such information is currently required only of the primary signer of a loan.

The bill is intended to close a loophole in present election laws whereby a wealthy individual can arrange for a number of individuals to take loans out for a candidate which he would co-sign and alone repay, thus allowing him to contribute to his candidate far more than appears on financial disclosure papers.