

Date of Hearing: April 23, 2025

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Buffy Wicks, Chair

AB 541 (DeMaio) – As Amended March 28, 2025

Policy Committee: Judiciary

Vote: 12 - 0

Urgency: No

State Mandated Local Program: No

Reimbursable: No

SUMMARY:

This bill creates the Office of the California Public Records Act (CPRA) Ombudsperson (“the office”) to provide administrative review of CPRA requests denied by state agencies, subject to appropriation by the Legislature.

Specifically, among other provisions, this bill:

- 1) Requires the Governor to appoint the ombudsperson and provide necessary staff to the ombudsperson to perform the required functions.
- 2) Requires the ombudsperson to create a process by which a member of the public who believes a state agency improperly denied the person’s CPRA request may submit the request for review by the ombudsperson.
- 3) Requires the ombudsperson to determine whether each CPRA denial submitted for review was properly denied by the state agency that denied the request. The bill provides timelines for completion of the ombudsperson’s review and requires a state agency to provide the ombudsperson access to all relevant information, documents, and other records upon which the agency relied in denying the original request, along with any other information requested by the ombudsperson.
- 4) Permits a state agency to appeal a determination by the ombudsperson that the agency improperly denied a CPRA request by filing a petition in a superior court. Absent an appeal, if the ombudsperson makes a determination that a CPRA request was improperly denied by an agency, the bill requires the agency to provide the requested records to the person who requested them.
- 5) Requires the ombudsperson to establish a process by which a person whose information appears in a record subject to a CPRA denial under review by the ombudsperson may assert their privacy rights during the ombudsperson’s review.
- 6) Requires the ombudsperson to report annually to the Legislature, beginning in 2027, specified information about its activities and proposals that would allow the ombudsperson to function more independently and provide more transparency to the records of public agencies.

- 7) Requires the ombudsperson to, before March 1, 2028, report to the Legislature about whether CPRA denials by local agencies should be subject to review by the ombudsperson.

FISCAL EFFECT:

- 1) Costs (General Fund) to establish and operate the office, possibly in the millions of dollars annually. The office would require significant one-time startup costs and ongoing costs for office space and other overhead expenses. California state agencies receive tens of thousands of thousands of CPRA requests each year. Actual staffing costs for the office will depend on the number of CPRA denials submitted for review and the amount of workload required to review each request. Salary and benefits for the ombudsperson, five attorneys, and two analysts would be approximately \$1.5 million annually. Actual staffing needs will likely be higher to meet the response deadlines required by the bill, and will depend on the number of requests for review submitted to the office.
- 2) Ongoing costs (General Fund, special funds) of an unknown but definitely significant amount to state agencies to provide records and other information requested by the ombudsperson, possibly in the tens of millions of dollars in the aggregate statewide. Actual workload costs will depend on the number of CPRA denials submitted to the office for review, the volume of records implicated by each denial, and how much additional information is requested by the ombudsperson. Agencies will also likely incur litigation costs to appeal adverse determinations by the ombudsperson.
- 3) Cost pressures (Trial Court Trust Fund, General Fund) of an unknown amount to the courts to adjudicate state agency petitions appealing determinations by the ombudsperson. Actual costs will depend on the number of petitions filed and the amount of court time needed to resolve each case. It generally costs approximately \$1,000 to operate a courtroom for one hour. Although courts are not funded on the basis of workload, increased pressure on the Trial Court Trust Fund may create a demand for increased funding for courts from the General Fund. The fiscal year 2024-25 state budget provides \$37.3 million ongoing General Fund to backfill declining revenue to the Trial Court Trust Fund.

COMMENTS:

- 1) **Background.** The CPRA requires a government agency to make a public record available to a member of the public upon request unless the record is exempt from disclosure due to state or federal law, or the agency can show that the public interest in nondisclosure of the record clearly outweighs the public interest in disclosure. If a person requests a public record that is in the agency's possession but the agency believes the record is exempt from disclosure under the CPRA, the agency may deny the request and must inform the person of the exemption that applies to the record the agency is withholding. If the person who requested the record disagrees with the agency's decision to withhold the record, the person may file a writ of mandate in the superior court to ask the court to review the matter.

This bill establishes the Office of the CPRA Ombudsperson to create and operate an administrative review process for CPRA requests denied by California state agencies. Under the bill, a person whose CPRA request was denied by a state agency may seek administrative review by the ombudsperson. The bill provides the ombudsperson with broad authority to access any information or records the ombudsperson believes are needed to determine whether the agency's decision was lawful. If the ombudsperson determines the agency

improperly denied the person's CPRA request, the agency must provide the requested records to the person.

However, even if a person seeks review of a CPRA denial from the ombudsperson, a dispute over a CPRA decision may end in litigation. Under the bill, such a person may seek court review of the matter at any time, including after the conclusion of the ombudsperson's review. And an agency that disagrees with the outcome of a review by the ombudsperson may petition the court to review the matter *de novo* – meaning, regardless of the time and resources the ombudsperson devoted to reviewing the matter, the court will review it without giving deference to the ombudsperson's conclusion.

- 2) **Prior Legislation.** AB 469 (Fong), of the 2023-24 Legislative Session, was similar to this bill but would have established the PRA ombudsperson within the Office of the State Auditor. AB 469 was vetoed by Governor Newsom, who wrote:

State agencies diligently comply with the Public Records Act, and relief is currently available through the courts for those who feel an agency's decision was incorrect. This bill would create an unnecessary layer of review by an official who would interpret the law in a manner that may or may not be consistent with case law. Additionally, establishment of this office would result in tens of millions of dollars in cost pressures not considered in the annual budget process.

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