

Multiple Agency Fiscal Note Summary

Bill Number: 1595 HB PL	Title: Public records request costs
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Estimated Cash Receipts

Agency Name	2017-19		2019-21		2021-23	
	GF- State	Total	GF- State	Total	GF- State	Total
SWF Statewide Fiscal Note - OFM	Non-zero but indeterminate cost and/or savings. Please see discussion.					
Total \$	0	0	0	0	0	0

Estimated Expenditures

Agency Name	2017-19			2019-21			2021-23		
	FTEs	GF-State	Total	FTEs	GF-State	Total	FTEs	GF-State	Total
Department of Enterprise Services	.0	0	0	.0	0	0	.0	0	0
SWF Statewide Fiscal Note - OFM	.0	0	0	.0	0	0	.0	0	0
Total	0.0	\$0	\$0	0.0	\$0	\$0	0.0	\$0	\$0

Local Gov. Courts *									
Loc School dist-SPI									
Local Gov. Other **	Non-zero but indeterminate cost and/or savings. Please see discussion.								
Local Gov. Total									

Estimated Capital Budget Impact

NONE

Prepared by: Shane Hamlin, OFM	Phone: (360) 902-0547	Date Published: Final 4/25/2017
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* See Office of the Administrator for the Courts judicial fiscal note

** See local government fiscal note

FNPID: 48891

FNS029 Multi Agency rollup

Individual State Agency Fiscal Note

Bill Number: 1595 HB PL	Title: Public records request costs	Agency: 179-Department of Enterprise Services
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Part I: Estimates

☒ No Fiscal Impact

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- ☐ If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- ☐ If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- ☐ Capital budget impact, complete Part IV.
- ☐ Requires new rule making, complete Part V.

Legislative Contact:	Phone:	Date: 04/20/2017
Agency Preparation: Keith Williams	Phone: (360) 407-9247	Date: 04/25/2017
Agency Approval: Ashley Howard	Phone: (360) 407-8159	Date: 04/25/2017
OFM Review: Shane Hamlin	Phone: (360) 902-0547	Date: 04/25/2017

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Briefly describe by section number, the significant provisions of the bill, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.

Revises the public records act with regard to:

- (1) Requiring statements of actual costs for photocopies and electronically produced copies to be adopted by the agency only after public notice and a hearing;
- (2) Allowing the denial of a bot request;
- (3) Requiring that a request be for identifiable records; and
- (4) Expanding information on agency charges.

The department of enterprise services assumes this can be prioritized within our existing workload and, therefore, has no fiscal impact.

II. B - Cash receipts Impact

Briefly describe and quantify the cash receipts impact of the legislation on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.

II. C - Expenditures

Briefly describe the agency expenditures necessary to implement this legislation (or savings resulting from this legislation), identifying by section number the provisions of the legislation that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing functions.

Part III: Expenditure Detail

Part IV: Capital Budget Impact

Part V: New Rule Making Required

Identify provisions of the measure that require the agency to adopt new administrative rules or repeal/revise existing rules.

LOCAL GOVERNMENT FISCAL NOTE

Department of Commerce

Bill Number: 1595 HB PL	Title: Public records request costs
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Part I: Jurisdiction-Location, type or status of political subdivision defines range of fiscal impacts.

Legislation Impacts:

- ☒ Cities: An indeterminate but non-zero expenditure impact with the likelihood that expenditure savings are produced
- ☒ Counties: An indeterminate but non-zero expenditure impact with the likelihood that expenditure savings are produced
- ☒ Special Districts: An indeterminate, but non-zero expenditure impact with the likelihood that expenditure savings are produced
- ☐ Specific jurisdictions only:
- ☐ Variance occurs due to:

Part II: Estimates

- ☐ No fiscal impacts.
- ☐ Expenditures represent one-time costs:
- ☒ Legislation provides local option: Local governments have the option to study and produce a summary statement of actual costs. A local option to produce rules or regulations declaring reasons for not producing a summary statement of actual costs
- ☒ Key variables cannot be estimated with certainty at this time: The number of local governments that would exercise the local option to produce an actual statement of costs, and the impact this legislation may have on increasing or decreasing public records requests

Estimated revenue impacts to:

Indeterminate Impact

Estimated expenditure impacts to:

Indeterminate Impact

Part III: Preparation and Approval

Fiscal Note Analyst: Buck Lucas	Phone: 360/725-5040	Date: 04/25/2017
Leg. Committee Contact:	Phone:	Date: 04/20/2017
Agency Approval: Steve Salmi	Phone: (360) 725 5034	Date: 04/25/2017
OFM Review: Shane Hamlin	Phone: (360) 902-0547	Date: 04/25/2017

Part IV: Analysis

A. SUMMARY OF BILL

Provide a clear, succinct description of the bill with an emphasis on how it impacts local government.

This legislation would modify the fee structure for public records requests.

Section 1 -- Amendatory language removing shall and placing may into the establishment and availability of the actual costs charged for providing photocopies of public records as well as electronically produced copies. A statement of costs must be approved via the public hearings process. The actual cost calculation may include the actual costs of the electronic production or file transfer of a record, including the costs to use cloud-based data storage, and the costs to transmit public records in an electronic format, including the use of any physical media device.

Section 3 -- Charges for public records may only be those costs as established by a jurisdiction through a public process. Jurisdictions have the option to calculate the actual costs for a records request if it would be unduly burdensome to do so. Changes the cost structure of public records requests to reflect a fee-based structure. The fee structure proposed by this legislation is as follows:

- \$0.15 cents for photocopies, printed copies of electronic records, or the use of a jurisdiction's photocopy equipment, in addition to the actual postage or delivery charge and the cost of the container or envelope;
- \$0.10 cents per page scanned into electronic format or use of a jurisdiction's equipment;
- \$0.05 cents per each group of four attachments uploaded to email, cloud-based data storage service, or other electronic delivery;
- \$0.10 cents per gigabyte for the transmission of public records or use of a jurisdiction's equipment; and
- \$2.00 flat fee for any request as an alternative to the fees established under this standard. Levying the flat fee precludes an agency from charging additional fees, and the work to meet the request must be reasonably estimated and documented to be clearly equal to or more than \$2 prior to charging the flat fee.

Requires agencies to provide an estimate of charges to fulfill a records request before any copies are made, and allows requestors to modify a request to reduce the number of copies made.

A jurisdiction may include a customized service charge if the agency estimates the request would require information technology expertise, prepared data compilations, or customized access services. This charge must be no more than the actual cost of providing records. An agency must notify a requestor regarding the applicability of a customized service charge prior to imposing the fee.

A jurisdiction may waive any charges assessed for services pursuant to agency rules and regulations. A jurisdiction may also enter a contract or other agreement with a requestor that provides an alternative fee arrangement, or in response to a voluminous or frequent request.

Section 5 -- Relating to court proceedings. Upon denial of an opportunity for a requestor to inspect or copy a public record, a superior court in the county where the record is maintained may require the agency to show cause as to why it refused to allow inspection or copying of a specific record or class of records. If a requestor believes an agency has not made a reasonable estimate of the time to fulfill a request, the superior court where the record is maintained may require the agency to show that the estimate it provided is reasonable.

Any person, or requestor prevailing against an agency in any action in the courts shall be awarded all costs, including reasonable attorney fees incurred the legal action. In addition, the court may levy a \$100 award for each day that the requestor was denied the right to inspect or copy public records.

B. SUMMARY OF EXPENDITURE IMPACTS

Briefly describe and quantify the expenditure impacts of the legislation on local governments, identifying the expenditure provisions by section number, and when appropriate, the detail of expenditures. Delineate between city, county and special district impacts.

This legislation would likely result in an indeterminate reduction in local government expenditures. According to the State Auditor's Office, requesters paid less than 1 percent of the actual cost for a public records request statewide, and 66 percent of all public records requests went to local governments (cities and towns, counties, and special districts). This legislation would require that public records requesters pay the actual costs to locate and copy public records if a jurisdiction exercised the local option to impose an actual statement of costs. The level of expenditure reductions based on the actual cost standard is unknown and would vary based on the number of local governments that adopt an actual statement of costs, the level of activity for public records requests, and the number of public records requests that advance to superior court.

Local governments may experience expenditure reductions for records requests that are not for identifiable records, along with reductions in requests for all records containing a name or keyword. The number of public records requests for records other than identifiable records

and requests relating to keywords and names that may be denied by a jurisdiction are also unknown. The magnitude of expenditure savings for the denial of public records requests for records would vary based on the magnitude of requests for records that qualify as unidentifiable records requests, and requests for all records containing particular keywords or names. There is no current data on the number of requests for records that meet these criteria.

In addition, the most likely area for expenditure increases under this standard would be for a public hearing process to adopt an actual statement of costs, in addition to the staff-related expenditures to study, review, and draft the statement of actual costs. This legislation also establishes this process as a local option, and it is unknown how many jurisdictions would choose to develop and pass an actual statement of costs.

PUBLIC HEARINGS COSTS:

For jurisdictions that exercise the local option to produce a statement of actual costs, Local Government Fiscal Note Program staff assume a moderate to complex hearing process would be required. The range of costs for a moderate-to-complex public hearings process, public notification included, would be between \$824 and \$1,300 per jurisdiction. These costs assume meeting material preparation 50 percent by professional staff and 50 percent by administrative and technical staff, two publications, and two special mailings; in addition to meeting attendance by one management, lead professional, and one administrative staff member.

COURT COSTS:

Under the proposed legislation, a local government may experience additional but indeterminate expenditures to represent their interests in any legal action taken by a requestor. These costs are indeterminate and would increase with the frequency and intensity of any legal challenges issued. In addition, were a superior court to rule in favor of a requestor, a local government would be liable for reasonable attorney fees and a \$100 penalty for each day a requestor could not inspect or copy public records. The duration of a denial for a public records request, and any attorney fees incurred by a requestor are unknowable. For these reasons, any legal impacts under this standard are indeterminate and cannot be estimated with clarity.

Court impacts, including judicial costs, clerk costs, and court fees, are described in fiscal notes prepared by the Administrative Office of the Courts (AOC). Local government fiscal notes include city and county expenditures for law enforcement investigations and arrests, indigent defenders, county prosecutors and jail costs. Please see the AOC fiscal note for a discussion of impacts to city and county courts.

C. SUMMARY OF REVENUE IMPACTS

Briefly describe and quantify the revenue impacts of the legislation on local governments, identifying the revenue provisions by section number, and when appropriate, the detail of revenue sources. Delineate between city, county and special district impacts.

This legislation would produce additional, but indeterminate local government revenues that result from the proposed public records fee structure. However, this legislation would not produce a local government revenue gain. The fee structure proposed under this standard must represent the actual costs to provide services, and for this reason local governments may not expect a net revenue gain.

The level to which local governments may experience increased revenues, which must be applied to meeting public records requests, is indeterminate. The number of public records requests that would fit the cost recovery criteria proposed within the fee structure is unknowable. For this reason, the amount of cost recovery revenue generated by this standard and which may be applied to meeting public records requests cannot be estimated with any clarity.

SOURCES:

Municipal Research and Services Center (MRSC)
State Auditor's Office
City of Seattle

Individual State Agency Fiscal Note

Bill Number: 1595 HB PL	Title: Public records request costs	Agency: SWF-SWF Statewide Fiscal Note - OFM
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Part I: Estimates

☒ No Fiscal Impact

Estimated Cash Receipts to:

Non-zero but indeterminate cost. Please see discussion.

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

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- ☐ Capital budget impact, complete Part IV.
- ☐ Requires new rule making, complete Part V.

Legislative Contact:	Phone:	Date: 04/20/2017
Agency Preparation: Jim Jenkins	Phone: 360-902-0403	Date: 04/25/2017
Agency Approval: Aaron Butcher	Phone: (360) 902-5555	Date: 04/25/2017
OFM Review: Shane Hamlin	Phone: (360) 902-0547	Date: 04/25/2017

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Briefly describe by section number, the significant provisions of the bill, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.

The Office of Financial Management does not anticipate any additional costs or resources needed to implement this bill. While some minor rulemaking may be required for some agencies, we expect any impact can be absorbed.

II. B - Cash receipts Impact

Briefly describe and quantify the cash receipts impact of the legislation on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.

The Office of Financial Management (OFM) estimates the bill will generate approximately \$300 in additional revenue per year for agencies of similar size as OFM (250 FTEs) and smaller. The source of the revenue would be from fees charged to public records requesters asking for electronic records under RCW 42.56.

Because larger agencies could have a significantly higher number of requests or requests that may be more complex, we cannot estimate the impact on them. Therefore, the impact is indeterminate.

II. C - Expenditures

Briefly describe the agency expenditures necessary to implement this legislation (or savings resulting from this legislation), identifying by section number the provisions of the legislation that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing functions.

Part III: Expenditure Detail

Part IV: Capital Budget Impact

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