

Department of Legislative Services
Maryland General Assembly

FISCAL NOTE

House Bill 1250 (Delegate Arnick)

Commerce and Government Matters

Public Information Act - Access to Information

This bill expands the definition of “public record” to include electronic records. In making any public record available, the official custodian must provide the record in any form or format requested, if the record is readily reproducible in that form or format. Fees must be limited to the reasonable standard charges for document search, duplication, and review. In addition, documents must be furnished without charge or at a charge below standard charges if disclosure of the information contributes significantly to the public understanding of the operations or activities of the government and is not primarily in the interest of the requestor.

A fee may not be charged if the costs of collection and processing of the fee are likely to exceed the amount of the fee or if any request exceeds 100 pages of duplication. Nothing in the bill may be construed to supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records.

Fiscal Summary

State Effect: Indeterminate but potentially significant effect on revenues and expenditures.

Local Effect: Indeterminate but potentially significant effect on revenues and expenditures.

Small Business Effect: Potential meaningful.

Fiscal Analysis

Background: In 1996, the U.S. Congress enacted amendments to the federal Electronic Freedom of Information Act. Under the law, federal agencies are required to provide access to any discloseable public record “in any form or format requested by the person if the record is readily reproducible in that form or format.” In addition, agencies must make reasonable efforts to maintain records in forms or formats that are reproducible in the manner desired by the requestor; search for public records in electronic form or format; redact electronic public

records in such a way that the existence and fact of the deleted confidential information is made clear; and expedite the processing of requests for access to public records if the requester demonstrates a compelling need for the agency to do so.

State Effect: Several State agencies, such as the Department of Labor, Licensing, and Regulation, the Department of General Services, the Office of the Attorney General, and the Department of Budget and Management, would not be affected by the bill. However, other agencies may be affected by the bill since they have a greater demand for access to public information. A major effect of responding to public information requests is the opportunity costs, since staff time spent on servicing requests is time not available for other activities.

Prohibition on Fees Above Reasonable Standard Charges Without Statutory Authority

Agencies that have specific statutory authority for setting the level of fees would not be affected by the bill. Certain agencies currently recover fees in excess of actual costs without statutory authority that provides for setting the level of fees for those particular types of records. For example, the Office of Planning's property mapping section relies on \$800,000 in fees to offset the costs to update and maintain the datasets. The prohibition against charging fees greater than the recovery of only the direct costs of the search, duplication, or review could result in the elimination of such operations. Similarly, the Department of Assessments and Taxation could lose about \$112,500 per year since there is no statutory authority for the current overcharge for the sale of certain data tapes and assessment worksheets.

Formats that are Readily Reproducible

Expenditures could increase based on the bill's requirement that State entities make a "reasonable effort" to maintain public records in the form or formats that are readily reproducible and search for records in electronic format. Any effect depends on the interpretation of what constitutes a "reasonable effort." The District Court advises that if it were required to provide certain public records in the form or format requested, it would need to purchase one additional high speed printer at \$150,000 and 25 recording machines at \$7,500.

Various Limitations on Fees

The bill specifies that fees be limited to reasonable standard charges for search, duplication, and review; that documents be furnished without charge or at a charge below standard charges if disclosure of the information contributes significantly to the public understanding

of the operations or activities of the government and is not primarily in the interest of the requestor; and that no fees may be charged if a request exceeds 100 pages of duplication. These limitations on fees would decrease revenues that agencies may collect for responding to requests for public information. For example, the Maryland Department of the Environment (MDE) advises that the prohibition on charging fees for requests that exceed 100 pages of duplication could result in a decrease of \$20,000 in revenues per year.

Local Effect: Local governments could be affected as discussed above. In particular, local governments could experience a reduction in revenue to the extent that they are restricted in the setting of fees for such information as geographical information system data.

Small Business Effect: Small businesses that access public records as a part of doing business would benefit to the extent that the bill makes public records more accessible and potentially less expensive.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Health and Mental Hygiene, Department of Budget and Management, Department of the Environment, Department of Transportation (Motor Vehicle Administration), Office of Planning, Department of Assessments and Taxation, Department of Legislative Services

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