

Department of Legislative Services  
Maryland General Assembly

**FISCAL NOTE**

Senate Bill 387 (Senator Conwav. *et al.*)

Economic and Environmental Affairs

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**Public Information - Access to Electronic Public Records**

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This bill provides that: (1) the State's policy is that an applicant may obtain a copy of a public record at the actual cost of reproduction, defined as the direct chargeable costs as determined by generally accepted accounting principles, unless a different fee is otherwise specifically provided by law; (2) an applicant requesting a public record is not required to disclose the motive for the request; (3) an applicant may not be denied a copy of a public record because confidential information is commingled with non-confidential information; and (4) a copy of a public record must be provided in the form or format requested by the applicant if it is readily reproducible in that form or format.

The bill specifies that an official custodian may charge only the actual cost of reproduction and a reasonable special service charge if, in order to comply with a request, the custodian makes greater use of its clerical or supervisory personnel or information technology resources than has been established for the entity to comply with requests for access to public information. The bill repeals the provision that specifies that a custodian may not charge a fee for the first two hours that are needed to search for a public record and prepare it for inspection. Complaints may be filed in writing with the State Open Meetings Law Compliance Board. If overcharged, the applicant may recover three times the amount of the overcharge if the custodian failed to act in good faith. The bill prohibits the State or local governments from claiming a copyright to public information unless expressly authorized by an enactment of the General Assembly.

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**Fiscal Summary**

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

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

**Small Business Effect:** Potential meaningful impact on small businesses.

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## **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, make reasonable efforts to 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, including the Department of Labor, Licensing, and Regulation, Department of General Services, Department of Budget and Management, and the Office of the Attorney General advise that there would be no fiscal impact from 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 cost, since staff time spent on servicing requests is time not available for other activities. As an example, the Administrative Office of the Courts advises that depending on the frequency and extent of requests, there could be disruption to ongoing projects.

### *Restriction on Sale of Public Records Above the Actual Costs of Reproduction*

The Office of Planning’s property mapping section, among others, relies solely on fees to offset the costs to update and maintain the datasets. The Office of Planning advises that as a result of the bill such zero-funded operations would cease and revenues would decrease by about \$800,000 per year and 11 positions would have to be eliminated. Similarly, according to the Department of Assessments and Taxation, since there is no statutory authority for the current overcharge, an estimated \$112,500 per year in revenue would be lost for sale of certain data tapes and assessment worksheets.

The Motor Vehicle Administration advises that the sale of public records and certified and non-certified driver/vehicle records would not be affected by this bill. Similarly, the Division of State Documents advises that it would not be affected by the bill since the State Government Article sets the guidelines for the pricing and sale of publications and electronic data by the division.

#### *Separation of Confidential Information*

The bill specifies that if necessary in order to permit access to a public record, the custodian must separate the confidential from non-confidential information and the unit to whom the custodian is responsible must bear the cost of separation. This could result in an increase in expenditures although the actual amount is indeterminate at this time. For example, according to Maryland Department of the Environment (MDE), this is substantially different from current departmental practice and MDE would need to hire one additional person to review files containing confidential information. The District Court could be affected to the extent that changes to computer systems are required based on changes to what information is deemed confidential. It is noted that over time adjustments to the way data is collected and stored may reduce the costs of separating confidential information.

#### *Formats that are Readily Reproducible and Likely to Be Requested*

Expenditures could increase based on the requirement that State entities make a “reasonable effort” to maintain public records in the form or formats that are readily reproducible and likely to be requested, and search for public records in electronic format. For example, providing a public record in the form or format requested, even if readily reproducible in that form, can be costly to the District Court. Thus, the District Court advises that the bill would require the purchase of one additional high speed printer at \$150,000 and 25 recording machines at \$7,500.

#### *Repeal of Limit on Charges for First Two Hours of Searches*

The bill repeals the provision that an official custodian may not charge a fee for the first two hours that are needed to search a public record and prepare it for inspection. While revenues could increase as a result, they may be offset by increased expenditures associated with a more detailed billing process in order for agencies to make the special service charge described in the bill. For example, MDE advises it would need two additional staff persons to maintain the expanded records to track all requests and manage billing (one in the Water Management Administration and one in the Technical and Regulatory Services Administration). The District Court advises that it would need to hire a total of six additional clerks in larger districts in part to review costs and billing.

**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.

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**Information Source(s):** Office of Planning; Department of the Environment; Department of Public Safety and Correctional Services; Department of Assessments and Taxation; Department of General Services; Department of Budget and Management; Department of Labor, Licensing and Regulation; Department of Health and Mental Hygiene; Department of Transportation (Motor Vehicle Administration); Office of the Secretary of State (Division of State Documents); Office of the Attorney General; Judiciary (Administrative Office of the Courts, District Court of Maryland); Baltimore City; Montgomery, and Prince George's counties

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