

March 13, 2013

The Honorable Ralph Ostmeyer, Chairperson
Senate Committee on Federal and State Affairs
Statehouse, Room 136-E
Topeka, Kansas 66612

Dear Senator Ostmeyer:

SUBJECT: Fiscal Note for SB 10 by Senator LaTurner

In accordance with KSA 75-3715a, the following fiscal note concerning SB 10 is respectfully submitted to your committee.

SB 10 would amend current law to set a maximum fee of \$0.25 per page for copy expenses associated with requests for copies of public records. The bill would prohibit the inclusion of staff time when calculating the charge for making copies of records or providing access to records maintained on computers. The bill would prohibit charging any additional fees for making copies at other facilities separate from where the records are kept. The bill would also delete from current law the authority to establish a reasonable schedule of times for making copies at other facilities.

Further, the bill would require that minutes be kept at all open meetings established by the Legislature, administrative bodies, and agencies of the state, including boards, commissions, authorities, councils, committees, subcommittees, and other subordinate groups that are supported in whole or in part by public funds. It would be the duty of the presiding officer of the meeting to ensure that minutes are kept at each meeting. The Secretary of State would determine the format of the minutes.

Because of the far-reaching effect this bill would have on state agencies, a number were contacted to sample for fiscal effect information. The complexity and nature of open records requests can vary and the amount of staff time to respond varies accordingly. The effect SB 10 might have on the number and breadth of requests cannot be predicted.

The Office of the Attorney General indicates it is unable to determine an exact fiscal effect if SB 10 were enacted. To aid in the agency's fiscal effect assessment, the agency reviewed open records request that were received by the agency and were closed during FY 2012, which totaled 98 requests. For these requests, the Attorney General reported the following:

1. In 36 requests, the records were searched for and provided without charge. The agency states this is consistent with its policy to provide records free of charge if the records can be provided with less than one hour of staff time or there are less than 25 pages to be provided.
2. In 36 requests, records were searched for, but no responsive records were identified. Consistent with agency policy, the requester was not charged for the staff time to search for the records.
3. In 9 requests, the requester was asked to clarify the request.
4. In 17 requests, fees were requested to reimburse the actual costs, including staff time, of responding to the request. One request was for over 14,000 pages of electronic and paper records containing a substantial amount of confidential material. If the agency had been required to provide records without charging for actual costs, including staff time, the cost would have been approximately \$96,889 for all 17 requests.
5. Of the 17 requests where fees were requested, eight were requests from private attorneys or law firms, and five were from members of the media. The remaining four requests were from private individuals.

According to the Attorney General, there is a great deal of interest in the records held by the agency because of the nature of the cases it handles, including criminal, civil, and consumer protection cases. The agency indicates private attorneys often seek to conduct fact finding at little or no cost before filing a case and engaging in discovery, creating the likelihood that there would be an increase in open records requests resulting from enactment of this bill. The agency indicates the estimated increase in requests would require \$128,500 from the State General Fund in FY 2014 and future fiscal years for an attorney and an administrative assistant position to carry out the necessary work of searching for and responding to an increased number of open record requests. The agency also states it would require \$75,000 from the State General Fund in FY 2014 and future fiscal years for additional staff time necessary to respond to open records requests.

The Office of the Secretary of State indicates it would need \$36,017 from agency fee funds in FY 2014 and future fiscal years for a clerical position since it could no longer charge for staff time when responding to open records requests. The agency estimates SB 10 would apply to all records held by the Secretary of State. After reviewing prior year's revenue numbers, the agency subtracted all revenues, but for a \$0.25 per page copy fee. The agency estimates lost revenues of \$463,198 from agency fee funds in FY 2014 and \$1,766 that is remitted to the State General Fund from losing the authority to recover costs for open records request.

The Department for Children and Families (DCF) states the bill's limitation of copying charges to \$0.25 per page would have no fiscal effect because that is what the agency currently charges. However, DCF notes collections for staff time needed to assemble and copy the records could result in \$3,000 in lost revenue, which is current credited to an agency fee fund. In addition, DCF estimates it could see additional open records requests when the agency no longer

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charges for staff time. According to DCF, this could result in more copy time and double the lost revenue to \$6,000; however, the agency states it could implement the provisions of SB 10 within current resources. The Office of Judicial Administration indicates enactment of SB 10 would have no fiscal effect on the Judicial Branch. The League of Kansas Municipalities and the Kansas Association of Counties both indicate that enactment of SB 10 could have a fiscal effect upon local governments since cities and counties could no longer charge for staff time spent on open records requests. Any fiscal effect associated with SB 10 is not reflected in *The FY 2014 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven J. Anderson", with a long horizontal flourish extending to the right.

Steven J. Anderson, CPA, MBA
Director of the Budget

cc: Rachel Sciolaro, Secretary of State's Office
Larry Baer, League of Kansas Municipalities
Melissa Wangemann, Kansas Association of Counties
Pam Fink, Administration
Mary Rinehart, Judiciary
Willie Prescott, Attorney General's Office
Dave Halferty, Aging & Disability Services
Aaron Dunkel, KDHE
Ben Cleeves, Transportation
Jackie Aubert, Children & Family Services