

February 9, 2015

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 98 by Senator LaTurner

In accordance with KSA 75-3715a, the following fiscal note concerning SB 98 is respectfully submitted to your committee.

SB 98 would limit charges for information under the Kansas Open Records Act. Charges would be based on the number of copies, staff time, and the method of delivery. Records that could be provided with the less than an hour of staff time or are less than 25 pages would be provided at no charge. The bill outlines the cost of requests involving more staff time or more than 25 copies. The charges for staff time would be capped at \$18 per hour for clerical time, \$60 per hour for attorney time and \$38 per hour for information technology services. The agency would provide an estimate of costs before the records are gathered. Also, payment may initially be required.

SB 98 would also require that the presiding officer of a meeting ensure that minutes are kept. The Secretary of State would determine the format of the minutes.

The Office of the Attorney General notes that SB 98 would set a limit on certain fees a public agency could charge for making records available. The agency would still be permitted to charge the costs of staff time at the rate of pay for each person whose time is used to respond to the request, subject to certain limits. This would include time spent to access computer records, as well as time spent determining whether public records are open and redacting open from closed information. The Office of the Attorney General currently provides records free of charge if the records can be provided with less than one hour of staff time or there are less the 25 pages of records to be provided. Thus the proposed changes in fees would be consistent with the fees the Attorney General currently charges to respond to records requests. Because of this, SB 98 would not have a fiscal effect.

The Office of Judicial Administration notes that it is likely that SB 98 would have a fiscal effect on the Judiciary. Currently, clerks of the district court spend a significant amount of time responding to requests for documents. Current law allows for copy and research fees to be established in accordance with Supreme Court rule which, in turn, permits the cost to be set by local rule. No fee is charged to government agencies. While the fees charged in most counties are similar to those prescribed by the bill, it is anticipated that there would be an increase in

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requests of less than 25 pages or which can be provided with less than one hour of staff time. It also is possible that persons requesting court documents would structure their request in a manner that keeps the request under the 25 pages or the one hour level, but that a subsequent request would be made for additional documents for the same case or for the same purpose. Nothing in the bill limits the number of requests that may be made within a specified time period by a requesting party.

The Board of Regents states that SB 98 would have a fiscal effect on its operations and the state universities. Currently the Board does not charge for simple requests. For more in-depth and involved requests, the Board charges actual costs for staff time. The amount charged varies greatly depending on which agency staff gathers the records or spends time on preparing the requested information. Board staff involved in responding to a request could be clerical, attorneys, directors, or vice presidents. During FY 2014, the Board received 11 in depth requests for information that took time to respond to. With the limit on the amount the agency could charge for specific staff time in SB 98, it could reduce the amount the agency recovers from the requester. The agency would no longer be recovering the actual cost of responding to the request. Since every request is different, it is difficult to estimate how much less the agency might collect with the changes proposed by the bill.

The Secretary of State indicates that SB 98 would have a fiscal effect on the agency. It would cause the loss of discretion to set fees for e-data transfers by disc and would impact the practice of charging \$50 for a CD of election data. The bill would also cap the hourly rate at \$18 which would affect the \$36 to \$38 per hour rate currently charged for the Deputy Director's time. In addition, the Secretary of State would have the responsibility of drafting and posting the acceptable forms for keeping meeting minutes. The legal and information technology time required for such a project would be approximately \$500. Any fiscal effect associated with SB 98 is not reflected in *The FY 2016 Governor's Budget Report*.

The Kansas Association of Counties currently can charge fees no greater than the cost of obtaining the copy. Under SB 98, counties could not charge these costs when the record is under 25 pages and takes less than an hour to procure. The precise amount of unrecovered costs cannot be determined.

Sincerely,



Shawn Sullivan,
Director of the Budget

cc: Pam Fink, DofA
Mary Rinehart, Judiciary
Desiree Taliaferro, Secretary of State's Office
Melissa Wangemann, KAC
Willie Prescott, Attorney General's Office
Kelly Oliver, Regents