



February 5, 2024

The Honorable Susan Humphries, Chairperson  
 House Committee on Judiciary  
 300 SW 10th Avenue, Room 582-N  
 Topeka, Kansas 66612

Dear Representative Humphries:

**SUBJECT:** Fiscal Note for HB 2599 by House Committee on K-12 Education Budget

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2599 is respectfully submitted to your committee.

HB 2599 would establish limits to the fees Executive Branch agencies may charge for access to or copies of public records. The bill would allow Executive Branch agencies to charge a fee equal to or less than \$0.25 per page for printed copies of public records and would not allow fees to be charged for electronic copies of records. For costs related to employee time to make records available, the bill would allow executive branch agencies to charge a fee that cannot exceed the lowest hourly rate of an employee qualified to provide the requested records. The bill would prohibit Executive Branch agencies from charging fees for a search to determine whether the requested records exist or for any employee or administrator review of records.

Estimated State Fiscal Effect			
	FY 2024	FY 2025	FY 2026
<b>Expenditures</b>			
State General Fund	--	\$536,455	\$556,455
Fee Fund(s)	--	--	--
Federal Fund	--	--	--
Total Expenditures	--	\$536,455	\$556,455
<b>Revenues</b>			
State General Fund	--	--	--
Fee Fund(s)	--	(\$1,000)	(\$1,000)
Federal Fund	--	--	--
Total Revenues	--	(\$1,000)	(\$1,000)
FTE Positions	--	6.00	6.00

The Kansas Bureau of Investigation (KBI) indicates that while it does not charge for preliminary inquiries to determine whether there may be records available for a particular request, it does charge to recall records kept in off-site storage as well as for reviewing those records to determine if they are subject to release under the Kansas Open Records Act (KORA). The agency is required to pay \$28 for the first file box, and \$3 for each subsequent box to a third-party vendor when it recalls records from off-site storage. The agency indicates it frequently recalls boxes from long-term storage to access records due to storage limitations. One such recall in FY 2023 totaled \$2,400 to recall 32 boxes and 25 hours of staff time to review the records and redact any personally identifiable information. In FY 2023, the agency handled approximately 100 KORA requests, with about half of such requests abandoned by the requester who did not wish to pay the cost of staff time. The agency utilizes one attorney for routine correspondence, records searches, and review along with a legal assistant and intern.

The KBI notes that while many records from newer cases are stored electronically and accessible without recall of the physical file, other records, such as audio and video files, cannot be stored digitally due to system constraints. Audio and video files are stored on removable media with the paper portion of an investigative file and the whole file must be recalled to review or copy the removable media when requested. The agency notes that requests vary from a simple search, which takes minimal staff time and generally does not result in charges to the requester, to a much more involved search, such as is the case in requests regarding homicides, which takes considerable staff time and expenditures to fulfill.

The KBI indicates that if administrative time to review records cannot be assessed for a fee, then it anticipates a significant increase in the quantity of KORA requests and additional resources would be required. The agency estimates it would need \$136,455 from the State General Fund beginning in FY 2025 for 2.00 FTE positions to ensure proper processing of KORA requests in a timely manner. Of this amount, \$90,064 would be for salaries and wages and \$46,391 would be for benefits. The agency notes that if administrative costs for searching to determine whether requested records exist cannot be assessed, then many requests that are currently abandoned by the requestor due to cost would go forward. The agency also states that additional training for staff would be necessary due to the specialized nature of the various exemptions in KORA as well as training on what constitutes an open record and how to properly redact personally identifiable information. The 2.00 FTE positions would ensure timely responses as required by KORA.

The Office of the Attorney General (OAG) indicates that most of the requests for records it receives are for electronic copies and that finding and reviewing such records requires a substantial amount of staff time to ensure no confidential information is inadvertently released. The OAG states that larger requests for records are frequently received, but not frequently paid for when requested by the Office. This allows the OAG to deny requests if a payment deadline is not met. This option to deny requests would be eliminated by the passage of the bill and would require the OAG to hire 2.00 Attorney FTE positions and 2.00 Administrative Assistant FTE positions at a total annual cost of \$400,000 from the State General Fund in FY 2025 (\$125,000 for each attorney and \$75,000 for each administrative assistant). For FY 2026, the agency states \$420,000 from the State General Fund would be required for salaries and wages of the additional positions.

One attorney would be hired to handle larger requests for records and one attorney would be hired to enhance the OAG's open government enforcement team. The administrative assistants would help scan records and comply with the bill's provisions regarding fee limitations. The OAG also notes that the records production fees it collects would be reduced by approximately \$1,000 each year because most of records are electronic and it would lose the ability to charge for attorney time for processing some aspects of the records requests.

The Governor's Office indicates enactment of the bill could require additional resources and FTE positions in its Legal Division to handle a potential increase in the number and scope of submitted requests. However, a precise fiscal effect cannot be determined because the additional workload cannot be estimated.

The Department of Health and Environment indicates enactment of the bill would have a negligible fiscal effect that could be absorbed within existing resources. The Department notes that it generally does not charge fees for copies of public records and regularly waives any costs related to requests for public information than can be accommodated using regular sized paper or email attachments when page counts are less than 100.

The Department of Corrections indicates that enactment of the bill may have a fiscal effect on the agency, but the effect cannot be determined at this time. The Department notes that a prohibition on charging fees for record searches and reviews may increase the number of requests it receives, which would increase the amount of staff time dedicated to this work. Each record must be reviewed, and any personally identifiable information and safety and security-related information must be redacted. The Department states that an increase in staff time related to records requests could reduce staff availability to perform regular duties.

The Department for Children and Families (DCF) indicates enactment of the bill would have a negligible fiscal effect that could be handled within existing resources. The Department states that current DCF policy limits any fees to the actual costs to prepare the copies of the requested information. This policy would need to be amended to comply with the fee limits created by the bill, but any fiscal effect would be minimal as DCF has not collected fees related to public records requests for several years.

The Department for Aging and Disability Services (KDADS) indicates enactment of the bill would not have a fiscal effect on the agency. KDADS states that it rarely provides paper copies as most requests for information are for electronic copies. When paper copies are requested by a Kansas resident, the first 100 pages are free and \$0.25 is charged for each page beyond 100. However, KDADS charges \$50 for cost reports, which it indicates would still fall within the limitations of the bill.

The Office of the Secretary of State indicates enactment of the bill could result in the need for additional funding and staff if requests for public information extend beyond its current capacity. However, a precise fiscal effect cannot be determined because the amount and scope of additional requests cannot be estimated. The Office notes that fulfilling requests promptly may be problematic during certain events, such as during and around elections, and that certain large scope

requests can be very costly and can take months or even years to complete. The Office also notes that the costs of specific professional staff can be substantial, such as staff that perform a legal review for redaction of specific information. Certain large scope requests for electronic or digital data may produce substantial costs to the Office which could not be recovered from the requestor.

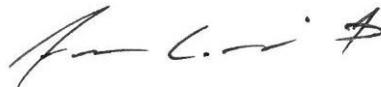
The Department of Labor indicates it rarely charges fees for records requests and enactment of the bill would have no fiscal effect on the agency.

The Governmental Ethics Commission indicates that it does not charge for KORA requests but reserves the right to do so for larger requests. However, sizable KORA requests are not typical for the agency and enactment of the bill would not have a fiscal effect on the agency.

The Department of Administration and the Department of Revenue indicate enactment of the bill would have no fiscal effect on the agencies.

Any fiscal effect associated with HB 2599 is not reflected in *The FY 2025 Governor's Budget Report*.

Sincerely,



Adam C. Proffitt  
Director of the Budget

cc: Tamara Emery, Department of Administration  
Ethan Belshe, Office of the Governor  
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