

Commission on Local Government

Estimate of Local Fiscal Impact

2017 General Assembly Session

Bill: HB 1539

Patron: LeMunyon

Date: 1/12/2017

In accordance with the provisions of §30-19.03 of the Code of Virginia, the staff of the Commission on Local Government offers the following analysis of the above-referenced legislation:

Bill Summary:

Virginia Freedom of Information Act (FOIA); public access to records of public bodies. Clarifies the definition of public record. The bill also (i) defines "personal contact information" that is excluded from FOIA's mandatory disclosure provisions in certain cases; (ii) clarifies that a requester has the right to inspect records or receive copies at his option; (iii) clarifies language in certain record exclusions under FOIA that certain records may be disclosed at the discretion of the custodian; (iv) consolidates the personnel record exclusion with the limitation on the application of that exclusion, and specifically clarifies that the name, in addition to position, job classification, and salary, of a public employee is public information as per opinions of the Attorney General and the FOIA Council; (v) eliminates, effective July 1, 2018, the exclusion for the Alcoholic Beverage Control Authority relating to operating and marketing strategies; (vi) eliminates the exclusion for correspondence of local officials as unnecessary; (vii) consolidates various public safety exclusions relating to building plans and drawings and critical infrastructure into a single exclusion; (viii) eliminates the exclusion for administrative investigations of the Department of Human Resource Management, as the exclusion is already covered under the personnel records exclusion; (ix) expands the exclusion for personal information provided to the Virginia College Savings Plan to cover qualified beneficiaries, designated survivors, and authorized individuals, which terms are defined in the bill; (x) consolidates the various record exclusions for the Department of Health Professions and the Department of Health into single exclusions for each Department; (xi) clarifies certain Department of Social Services exclusions; (xii) provides an exclusion for local finance boards that provide postemployment benefits other than pensions; and (xiii) eliminates the record exclusion for Virginia Wildlife Magazine. The bill also eliminates the correspondence exclusion for certain state and local officials. The bill contains numerous technical amendments. This bill is a recommendation of the Freedom of Information Advisory Council pursuant to the HJR 96 FOIA study (2014-2016).

Executive Summary:

HB 1539 defines, clarifies, expands, consolidates, excludes and eliminates some provisions of the existing Virginia Freedom of Information Act (FOIA), localities have evaluated negative fiscal impact ranging from \$0.01 - \$40,000.00. Please note that one locality noted that they do not charge for any FOIA request, and one locality expects there could be a net revenue increase but didn't provide any estimate. Some localities noted that the impact would be indeterminate, and some noted that they do not see any fiscal impact due to the provision of this bill.

Despite their inability to quantify an estimate, some localities noted that the bill would be a fiscal burden to them in general as the bill would add administrative responsibilities that could be absorbed by new staff. Localities also noted that the provisions of the bill would require localities to provide access to original documents and records for inspection, which could create issues such as (i) redacting parts of a record that are protected from FOIA release, (ii) access to sensitive computer databases which ultimately could create the risk of a malicious software attack, and (iii) increase the risk of destroying the historic value of old documents that are being preserved by the localities.

Local Analysis:

Locality: City of Danville

Estimated Fiscal Impact: \$40,000.00

The City has no objection to providing records for public inspection. In some cases, providing access to the original for inspection may pose issues. Further clarification is needed.

If one had an option to view an original or a copy, would that open up computer systems to inspection? For example, records created from certain software or computer programs. Allowing a requestor to “inspect” certain originals may require access to sensitive computer databases, instead of providing a copy of the material. The person could alter records as well and even introduce malicious software into the system if the records are electronic. Would the City be in violation if the original is not provided as requested? In addition, it will be almost impossible to redact and shield protected confidential information when allowing inspection of the original, requested record.

In some cases, providing a copy is the only reasonable way to ensure that the database holding the record is not compromised by outsiders and to protect the database’s security. It is also the only way in many cases to redact (remove) parts of a record that are protected from FOIA release. There is no way to allow member of the public to access government computers without compromising both security and the rights of those with confidential information contained in the computers or the servers to which they are connected.

Also, if you have sensitive originals or items of historic value that you are trying to preserve, a person will have to accompany the requestor through their time to ensure no information is destroyed or tampered. Additionally, if an opposing counsel in litigation wishes to use FOIA as a discovery tool, this will also require a person to be present at inspection to ensure proper care.

Considering these factors, as proposed, this could potentially impact the city with the addition of a position for FOIA.

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**Locality:** City of Lynchburg

**Estimated Fiscal Impact:** \$1.00

The City of Lynchburg does not estimate any fiscal impact. It's the City's procedure to not charge for responses and to try and provide information requested in the most efficient manner possible.

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Locality: City of Manassas

Estimated Fiscal Impact: \$0.01

We see no impact from this legislation.

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**Locality:** City of Martinsville.

**Estimated Fiscal Impact:** \$0.01

No significant fiscal impact anticipated. City of Martinsville rarely receives FOIA requests and the proposed changes will have little to no effect on our locality.

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Locality: City of Norfolk

Estimated Fiscal Impact: \$1.00

The cost of this bill is indeterminate at this time. The city annually collects approximately \$7,000 in revenue related to public information requests (mostly staff time). Altering the scope of information subject to FOIA regulations may increase staff time required to fill such requests. The local impact may be an increase in revenue for the city.

Locality: Fairfax County.

Estimated Fiscal Impact: \$1.00

The proposed revisions may add to the administrative burden. For example, ii) clarifies a requester has the right to inspect records, which in the case of electronic documents such as e-mail, could require the preparation of custom reports to allow access only to information related to the request. This could have a fiscal impact; however, the total cost cannot be estimated at this time. It should be noted that as a result of HB 817, signed into law by the Governor during the 2016 General Assembly, Fairfax County appropriated additional funding to hire staff to serve as a point of contact for members of the public requesting public records and to accommodate compliance with the revised provisions of the Act. As a result, increases to the administrative burden from HB 1539 could likely be absorbed by the additional staff.

Locality: Spotsylvania County

Estimated Fiscal Impact: \$0.01

No financial impact.

Locality: Town of Boones Mill

Estimated Fiscal Impact: \$1.00

There would be no fiscal impact upon the Town of Boones Mill.

Locality: Town of Christiansburg

Estimated Fiscal Impact: \$500.00

The financial impact to the Town would be minimal - we may need to process a few more FOIA requests as a result of some of the changes to exclusions (staff time costs).

Locality: Wise County

Estimated Fiscal Impact: \$1.00

No impact to Wise County.