

Commission on Local Government

Estimate of Local Fiscal Impact

2022 General Assembly Session

Bill: HB 154

Special Session:

Patron: March

Date: 1/19/2022

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; public records database. Requires the establishment of a publicly available, centralized database for all public records. All public bodies will be required to transfer any public records in its possession to the database. The bill directs VITA, in consultation with the FOIA Council, to (i) convene a workgroup consisting of representatives from state and local public bodies in every region of the Commonwealth to conduct research, evaluate data, and determine a plan for implementation of the database and (ii) report its recommendations to the Governor and the Chairmen of the House Committee on General Laws and the Senate Committee on General Laws and Technology on or before December 1, 2022. The provisions of the bill that establish the central public records database shall become effective on July 1, 2023, and the provisions of the bill requiring every public body to submit its public records to VITA for inclusion in the central public records database shall become effective on January 1, 2024.

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### Executive Summary:

Localities evaluated a negative fiscal impact ranging from \$0 - \$4.5 million;

All localities responded stated that the provisions of the bill would represent a significant negative fiscal impact, both in terms of dollar totals and administrative costs. One noted a statewide cost of ~\$20 million, assuming one FTE at each locality and school division.

Many responding localities reported that implementing the provisions of the bill would necessitate additional staff. Smaller localities reported not having the staff or the infrastructure in place to meet bill requirements; for example, one locality reported that they would need to hire an IT director for the first time. Larger localities would need to hire data positions to manage the volume of records. Other named staff needs included: attorneys, designated FOIA officers, and individuals specifically for digitizing documents. Further, many localities also reported that implementing the provisions of the bill would require new equipment or technology. Several localities noted that the term "record" is broad, and applies to nearly every document used in local governance; the bill as written would require the inclusion of public records across a variety of media; consolidating those records into a single database would represent considerable effort for many localities.

Localities also noted specific, but not estimated implementation difficulties which could increase the negative fiscal impact of the bill. These included: digitizing paper documents; redacting FOIA exempt information in documents, digital storage costs, special treatment for confidential documents, and clarification as to confidential document storage.

Several localities noted that they received relatively minimal FOIA requests on an annual basis. As such, localities would need to source the funds to meet the bills requirements from sources besides fees.

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### Local Analysis:

**Locality:** Amherst

**Estimated Fiscal Impact:** \$100,000.00

Implementing such a requirement would require increased Information Technology software and security as well as an additional employee to maintain the information being sent to VITA.

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Locality: Augusta County

Estimated Fiscal Impact: \$724,749.00

The records held by a single department within the County are voluminous, which would be multiplied by 22 departments within the County. Add this to all the localities in the Commonwealth with a similar number of departments and the undertaking of creating a public records portal is massive. There would be costs for storage of all the data, and personnel to manage the equipment and data.

Most public records are not in a standard format or computer system or platform, so transitioning data would be different for each department within a locality and for each locality within the Commonwealth. For example, the County uses BAI Municipal software for a financial package, Laserfiche for some document storage, Central Square for RMS, Image Trend for ambulance transport billing, Microsoft Office, Google docs, to name a few. Each of the public records within these systems would need to be converted to the format of the statewide public records center.

Not all data is of public record, so records would need to be redacted to ensure compliance with FOIA exemptions. The security of the documents would need to be considered.

At the State level, who would be responsible for managing the data? Will this cost be distributed among the users or will it be paid by the State? Who would be responsible for the release of the data?

Estimated cost to implement a records department at County. Such a department would transfer information into the standard state format, review, and redact information. Amounts for each department are salary and wages for staff to complete the work.

Public Safety records (3) \$199,500
General Government records (2) \$102,088
Judicial records (2) \$92,494
County Attorney (2) \$184,420
IT (1) \$46,247
Equipment/Software* \$100,000
TOTAL \$724,749
*servers or cloud storage, document imaging

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**Locality:** City of Alexandria..

**Estimated Fiscal Impact:** \$4,500,000.00

Estimated cost of \$4.5 million minimum. Given the scope of this proposed bill as written, it is hard to estimate this cost. For instance, current estimate is the City would have 6,351 cubic feet of boxes to digitize to meet this obligation; it would take > two years to comply with this effort. This is an extensive proposal that would require the onboarding of multiple staff members as well as the purchase of a sophisticated system to extract the City's data and upload to the State's system. Dedicated ITS/Records/City Attorney staff would be needed for several years to manage this system, scan non-digital files, establish a data classification process and purge classified data to name a few.

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Locality: City of Danville

Estimated Fiscal Impact: \$200,000.00

At minimum, this bill would require two additional staff to comply. This does not include ongoing system maintenance.

The city would be required to setup flat file exports for every system. Some files cannot be easily transferred into a database format. This management, security of this data transfer would require at least two additional IT staff (security + database); + management outside IT. Some of the information in our current systems is not all "public" so a script would need to be created to redact data. Additionally, depending on the definition of "public records", the cost could increase.

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**Locality:** City of Harrisonburg

**Estimated Fiscal Impact:** \$500,000.00

This is likely a conservative estimate. The city estimates that 4-5 additional employees (including IT support) who would need to be hired to review all emails to ensure information is appropriate to be made publicly available and to gather any other types of records such as paper based records on an ongoing basis.

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Locality: City of Manassas

Estimated Fiscal Impact: \$1,300,000.00

This proposed legislation would have significant fiscal impact, both for the state and for all localities. The bill requires that ALL public records held by the locality be uploaded to a central database maintained by VITA. This would require digitizing millions of pages of paper documents that are not currently in electronic format. These documents must be reviewed and redacted as appropriate according to the legislation and existing law. In addition, all future public documents would be required to be uploaded, which means additional digitization for those records received and not created in electronic form. We anticipate a minimum expense of \$100,000 to \$150,000 per million pages of digitization.

We expect to hire three to four additional full-time employees to meet this requirement at an annual, recurring expense (salary and benefits) of \$250,000 to \$300,000. For example, all police body camera footage must be reviewed and appropriately redacted before it can be released. This would be daily work that needs completing. Currently, only footage that is requested through FOIA must be so analyzed and redacted.

The City of Manassas fully supports transparency and making records available. We make numerous records available on our website. Given the relatively low number of FOIA requests the City receives during the year -- approximately 100 to 150 -- the number of documents actually requested is extremely small. This legislation would create a tremendous amount of work and expense to put records in a centralized database that our information shows would be rarely, if ever, accessed.

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**Locality:** City of Roanoke

**Estimated Fiscal Impact:** \$84,000.00

An estimate is almost too difficult to determine without knowing what documents would be required to be submitted. With little information to go off of if we were to assume 100 hours per week at \$15/hour that would be \$84,000.

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Locality: City of Winchester

Estimated Fiscal Impact: \$150,000.00

This would greatly impact the City negatively with our low staffing, we would need to hire additional staff to accomplish this, that would be around \$50,000. The other amounts include \$50,000 for software and \$50,000 for a contractor to scan.

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**Locality:** County of Bland

**Estimated Fiscal Impact:** \$250,000.00

This bill would require substantial resources that rural localities do not have. The total number of public documents in a localities possession is astronomical. In Bland County, we do not have Information Technology staff nor the equipment needed to perform such a task. Multiple people will need to be hired to not only scan the vast amount documents that have accumulated over time, but also to handle the daily creation of new documents. In addition, there is question on how localities will handle the disposal of documents in accordance with the Library of Virginia. The estimated cost could be significantly higher once you factor in all the various records in the various Constitutional Offices. \$250,000 is the equivalent of a 10% increase in real estate tax in Bland County.

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Locality: County of Mecklenburg

Estimated Fiscal Impact: \$0.00

Costs related to this bill would be expensive, but not calculable. Records held are extensive in volume, in time-series, and formats. This would require much digitization to be able to upload, especially related to minutes that date back decades and are contained in large bound book format or are maps and other different sized documents, as well as the need for creation of metadata if the desire is to provide the format in a searchable by date format. Another issue would be if the record upload is a searchable or non-searchable PDF format. While the enactment clauses to provide a workgroup is helpful, the bill itself should provide a re-enactment clause depending on the cost estimate resultant from Enactment 2 (iii) rather than simply a delayed enactment after the study's conclusion; or should provide that only records created after the date included in enactment clause 4 are eligible to be included in the database. Additionally, the bill should be predicated upon the inclusion in the Budget of the Commonwealth of a substantial sum for digitization grants to local governments.

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**Locality:** County of York

**Estimated Fiscal Impact:** \$250,000.00

The data base legislation being considered under HB154 requires the submittal of thousands of public records that cannot be done by one or even a few individuals. The task to review every record received and determine those that should be withheld versus those that should be released is difficult to envision. The public body's workforce would require regular training so that they could recognize what records actually meet the definition of "public record." Would the records need to be saved in a specific format prior to sending to the state? If so, that may require software not currently in our possession that would need to be acquired. In addition, a team of employees may be needed to provide oversight and review certain records if the staff member(s) are unsure of their status. This proposed bill would put tremendous strains on public bodies not only in the area of funding, but also in the increased workload.

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Locality: Fairfax County

Estimated Fiscal Impact: \$1.00

Fairfax County supports transparency. However, this legislation is far-reaching and, while the financial impact cannot be estimated, it is likely to be substantial. Some information/records in the County's possession are in hard copy (not digitized or even able to be digitized like historical land records). Some information/records update hourly, daily, monthly, etc. (crime stats, property tax sales, vaccination rates). Some information/records are stored in a way that it would not be technically feasible to transmit to VITA (e.g., social media, GIS databases, emails, text messages). Some information/records would require conversion and/or redaction prior to transmission (as a great deal of protected information is included in County records and cannot be disclosed publicly), which could be very costly and time consuming.

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**Locality:** Herndon

**Estimated Fiscal Impact:** \$2,105,919.00

this would be costly to smaller jurisdictions as the time to gather the data and implement the database

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Locality: Montgomery County

Estimated Fiscal Impact: \$65,000.00

Based on our understanding of the bill and subsequent requirements, we believe there would be an added expense to the County if this bill were to be passed in the form of a temporary hire for approximately 9 to 12 months to assist the Public Information Office (in collaboration with other County departments, and offices) with both gathering all records that need to be uploaded to the identified platform and ensuring the records were in a format that could be uploaded. In addition, we would work with a temporary employee to create and implement a system for uploading documents on an ongoing and regular basis in order to comply with the requirements. Finally, depending on the identified system the County implements to ensure we were able to continue to meet the requirements, we may need to purchase additional software.

Locality: Norfolk

Estimated Fiscal Impact: \$750,000.00

The City of Norfolk would need to hire additional Data Analysts, Data Scientists, and Management Analysts to evaluate, clean, and prepare the data for launch into the database. These employees would also need to work with the departments to understand the use of data and report refreshing requirements. The definition of "records" is extremely voluminous, the hours and labor for this task could be expensive and time consuming. Cost includes needed technological equipment for the employees as well. The City of Norfolk's Open Data portal already links to the state's open data portal and could link records through this means.

Locality: Rappahannock County

Estimated Fiscal Impact: \$20,000,000.00

It is very hard to put a fiscal impact from the local perspective on this bill. Besides the fiscal impact on the state (VITA) to provide the infrastructure to accommodate such a database of records, the local cost and impact would be severe.

Of critical importance is the understanding that nearly every document (electronic or paper) in a locality is a "public record." This means that every single piece of paper held by a locality would have to be reviewed, redacted if appropriate, and uploaded to the VITA database. This includes all historical records going back in time for those categories that must be retained forever such as elected body and CAO records (per records retention act). Further, every single document created going forward must be scanned and sent to the VITA database (including email, written notes, financial records, meeting notes, etc.).

At a minimum this would require one new staff person in each public body who would be responsible to tackle this insurmountable challenge. Many larger localities would have to have teams of staff. Just assuming that 135 localities + 133 school districts hire one person and assuming an average salary of \$75,000 per year (burdened with fringes) would require a \$20,000,000 investment before even considering all of the other local and state public bodies.

Locality: Richmond County

Estimated Fiscal Impact: \$5,000.00

We would need to implement a new software program to implement this requirement. Additional staff time and money would also be needed. It is doubtful that small localities would have the ability to do this process with current staffing.

Locality: Rockingham County

Estimated Fiscal Impact: \$150,000.00

The County would need to hire a new employee to manage the flow of the data to the database. We would also need to upgrade software in order to be most efficient.

Locality: Smyth County

Estimated Fiscal Impact: \$500,000.00

The cost of this bill would be completely unknown in reality. Requiring the locality to store ALL data in a single database is difficult to get your arms around. The various entities that are involved (law enforcement, elected officials, da-to-day operations, etc) would make for a difficult process to combine. What happens to confidential public records? Do they require a separate storage location which would require an entirely different set of protocols to maintain.

Locality: Town of Amherst

Estimated Fiscal Impact: \$65,000.00

I anticipate that there would need to be a position added to our staff to manage the inclusion of these records. Currently, we have no person who manages the overall records of the town. With the definition of public record being so broad, this would require the inclusion of a vast number of documents from all departments.

Locality: Town of Blacksburg

Estimated Fiscal Impact: \$100,000.00

This amount is an annual impact. This bill would require a dedicated staff member to ensure that all public records are in the format needed for the centralized database plus the license fee required by the state for the Town's portion of the system. Public records are in many formats and at the inception of this bill, it will take many staff hours to determine which public records will need to be transferred to the format necessary for the centralized database. This cost is not estimated but would be staff time already budgeted but dedicated to this project instead of their regular duties.

Locality: Town of Chincoteague, Inc

Estimated Fiscal Impact: \$100,000.00

Coordination of collection of all public records now held by the Town many of which are not digitized, has the potential to be an extremely expensive lump sum cost for the Town. The searching of archives which is now done on an as required basis with existing staff, would require the employment of at least one new clerk as well as coordination and services from our IT contractor and an imaging service. The costs for a 6 month project could potentially be \$50,000 to \$100,000. This does not consider the potential legal exposure resulting from an inadvertent omission.

Locality: Town of Christiansburg

Estimated Fiscal Impact: \$2,500,000.00

This would require a huge investment by every locality to 100% digital for the purpose of providing such records to a central database. There would be significant up front costs in excess of \$2 million to improve digitization to this level and most likely a 18-month implementation schedule is not feasible. The Town is currently implementing a \$1.7 million enterprise software system with a lower level of digitization, but a more robust would be needed. Depending on the final make-up of these standards, it is likely that a permanent records staffing would be needed to manage this program. It is estimated that 1 1/2 to 2 FTEs would be needed with estimated annual cost of \$200,000.

Implementation would likely take a minimum of 5 years utilizing consultants.

Locality: Town of Leesburg

Estimated Fiscal Impact: \$4,451,820.00

First Full Year \$4,451,820 on-going annual cost \$3,136,520 May not be doable, impractical, and not needed. Current FOIA process provides public's need well.

Locality: Town of Luray

Estimated Fiscal Impact: \$50,000.00

The Town Manager serves as the Town's FOIA Officer. If the Town were required to continually upload all public records to a central website, the Town would need to create an IT related position.

Any consideration of the centralized FOIA records site would need to accompany relief of the locality to respond to FOIA requests.

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**Locality:** Town of Marion.

**Estimated Fiscal Impact:** \$100,000.00

The onerous task of converting all public records to electronic form, then cataloging them and sending them to a central port, would require a full time position with part time assistance, and this would be an annual expense

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Locality: Town of Scottsville

Estimated Fiscal Impact: \$50,000.00

This bill has a massive impact on local government operations. Requiring duplication of every FOIA-able record and transfer to a state database effectively doubles the burden of routine office work. Almost every local document, from emails and memos to spreadsheets and presentations, is subject to FOIA. It now includes digital records hosted on other platforms, such as the YouTube presence of public meeting videos.

Complying with this law would be difficult and labor intensive, even for a small town. In Scottsville, the town administrator serves as the trained FOIA official, but only responds to a handful of FOIA requests each year, without much difficulty. This dramatic change to FOIA would require creation of a FOIA Compliance Clerk position. The fiscal impact of a new position is noted.

Such a position would serve only the purpose of transparency, duplicating Town data in a state system. It would not deliver any tangible services to Town residents.

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**Locality:** Town of Warsaw

**Estimated Fiscal Impact:** \$50,000.00

Although I understand the theoretical benefits of this and the perceived increase in transparency, this adds an undue hardship on already distressed localities that are having a difficult time competing with the private sector for employees. Resources such as time, funding, etc., will have to be utilized to maintain this system. If it is to pass, localities with less than 3,500 residents should be exempt due to a lack of staff.

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