

Department of Planning and Budget

2022 Fiscal Impact Statement

1. Bill Number: HB599

House of Origin ☒ Introduced ☐ Substitute ☐ Engrossed
Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. Patron: Danica A. Roem

3. Committee: General Laws

4. Title: Virginia Freedom of Information Act; charges for production of public records.

5. Summary: Prohibits a public body from charging a requester for any costs incurred during the first two hours spent accessing or searching for requested records when such requester has made four or fewer individual record requests to such public body within 31 consecutive days. The bill provides that for any additional time spent accessing or searching for such records, or when such requester makes five or more individual record requests to such public body within any 31-consecutive-day period, the public body shall not charge an hourly rate for accessing or searching for the records exceeding the lesser of the hourly rate of pay of the lowest-paid individual capable of fulfilling the request or \$33 per hour. The bill allows a public body to petition the appropriate court for relief from the \$33 per hour fee cap upon showing by a preponderance of the evidence that there is no qualified individual capable of fulfilling the request for \$33 per hour or less and requires such petition to be heard within seven days of when the petition is made, provided that the public body has sent and the requester has received a copy of the petition at least three working days prior to filing. The bill also provides that in certain instances a hearing on any petition shall be given precedence on a circuit court's docket over all cases that are not otherwise given precedence by law and that the time period the public body has to respond to a record request shall be tolled between the requester's receipt of the petition and the final disposition of the court. Finally, the bill prohibits a public body from charging a requester for any court costs or fees resulting from a petition and requires a public body to post on its website or otherwise publish a written policy (i) explaining how the public body assesses charges for accessing or searching for requested records and (ii) noting the current fee charged, if any, by the public body for accessing and searching for the requested records. This bill is a recommendation of the Virginia Freedom of Information Advisory Council.

6. Budget Amendment Necessary: No.

8. Fiscal Implications: The provisions of this bill could potentially create an indeterminate impact to state agencies and other public bodies covered by the Virginia Freedom of Information Act. The exact impact, if any, to a specific state agency or other public body will depend on the current policies implemented by such agencies or bodies to recover the costs associated with accessing and searching for records as part of responding to requests for information. To the extent that the provisions of this bill are in line with an agency's or public body's current practices, no negative impact is expected for that agency or body. To

the extent that an agency's or other public body's current policies allow for a higher charge than that outlined in this bill, they may experience a fiscal impact in the form of a reduction in the amount charged to requesting parties.

The Supreme Court of Virginia is also evaluating this bill. Once that analysis has been completed, this statement will be updated to reflect any additional costs.

- 9. Specific Agency or Political Subdivisions Affected:** All state agencies and other public bodies covered by the Virginia Freedom of Information Act.

10. Technical Amendment Necessary: No.

11. Other Comments:

Date: 1/25/2022