

Commission on Local Government

Estimate of Local Fiscal Impact

2022 General Assembly Session

Bill: HB 599

Special Session:

Patron: Roem

Date: 1/24/2022

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; charges for production of public records. 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.

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### Executive Summary:

Localities have evaluated a negative fiscal impact ranging from \$0 - \$1.5 million.

For the localities that did report a negative fiscal impact, the costs would stem from the potential increases in volume and complexity of FOIA requests. One locality noted the volume of information that is considered covered by FOIA, and the variety of mediums those exist in. That locality noted that the potential increase in demand by the public for complex FOIA requests, requiring redaction and digitizing of public records, could present a significant cost to the locality. Another mentioned that complex FOIA requests in some localities would require an employee above the 33\$/hr for review.

Some localities reported that the bill would produce no fiscal impact, as their localities processed small volumes of FOIA requests, or mostly processed FOIA requests below the two-hour threshold. One locality noted that small population localities (small counties, cities, and towns), would see relatively little negative fiscal impacts.

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### Local Analysis:

**Locality:** Amherst

**Estimated Fiscal Impact:** \$0.00

We do not charge very often for this

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Locality: City of Harrisonburg

Estimated Fiscal Impact: \$0.00

Not possible to come up with an estimate on fiscal impact. There are plenty of FOIA requests that we receive that require an employee above \$33/hour to process and review. We would then go through a process of whether it's worth the effort to go through the petition process.

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**Locality:** City of Manassas

**Estimated Fiscal Impact:** \$0.00

While there may be an isolated instance of the \$33/hour cap not covering actual costs, we do not believe there will be a significant impact with this legislation. The City tries to proactively share as much information as possible through our website to make access to information easy for our residents.

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Locality: City of Roanoke

Estimated Fiscal Impact: \$25,000.00

In FY2021 Roanoke City issued 385 FOIA invoices totaling \$12,537. If FOIA requests become free, it could be conceivable that requests would double. Therefore, the potential total cost could be approximately \$25,000.

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**Locality:** City of Winchester

**Estimated Fiscal Impact:** \$0.00

No real affect other than we'd have to rechange the policy we just implemented. Most of our requests will fall below the 2-hour threshold and the \$33/hr requirement (except DSS and Police).

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Locality: County of Bland

Estimated Fiscal Impact: \$0.00

Traditionally, Bland County does not charge for FOIA requests unless it is requested for significant amount of paper copies or if the request requires more than two hours of labor to access the requested information. At which time, a fee is applied based on the number of sheets of that need copied.

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**Locality:** County of Fauquier

**Estimated Fiscal Impact:** \$1,500,000.00

This bill would have a profoundly negative impact on our FOIA process. The proponents of this bill should understand the breadth of what constitutes public records, and the level of work required to complete such requests for smaller sized local government organizations. Each County department generates hundreds of public documents per day, especially when you consider email. Such a measure would require full time staff for each department solely dedicated/responsible for uploading documents daily. In addition, documents could only be uploaded after staff reviewed each document to determine if it contained any information exempt from FOIA entirely or requires redaction. That level of review is not something that can be done by a file clerk; it commands a higher level of experience with FOIA and the exercise of discretion which is not delegated to a file clerk. As it currently stands, when someone makes a FOIA request, we have the ability to charge for staff's review for redaction and FOIA exemption. If this bill passed, we'd still have an obligation to do redaction review on every document but we would not be reimbursed for the tremendous expense the County incurs for that review. Furthermore, departments like Community Development receive documents daily that are not in a format that is easily uploaded via a traditional copier/scanner; think plats that are huge – two feet wide by three feet tall. So in addition to needing staff, we'd have to purchase scanning equipment to be able to put those documents in electronic format for uploading; additional storage space (virtual or on site servers); and data security measures.

While we understand the need for open and transparent government, we also have to ensure the capability and resources to fulfill such a measures which would be tolling on resources both financial and personnel related.

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Locality: County of Mecklenburg

Estimated Fiscal Impact: \$0.00

In general, this bill will impose fiscal impacts on localities; however, given the volume of such requests presently received by the County, there would not likely be much revenue lost as a result of this change.

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**Locality:** Town of Blacksburg

**Estimated Fiscal Impact:** \$1,000.00

The Town currently only charges for FOIA requests if the request is very time consuming and the costs are communicated with the requestor prior to the work being performed. The Town charges the lowest hourly rate possible for the work performed. Therefore, the Town does not have much "revenue" from FOIA requests. We have a FOIA Officer and all requests are delegated thru this position so the number of times a request is made is tracked so the provisions of Subsection F would not cause massive time or expense to the Town's process.

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Locality: Town of Leesburg

Estimated Fiscal Impact: \$165,000.00

This would be a 39% reduction off of our actual costs. Could do a Regional fee schedule/hr. Equates to ten free hours of work by Town staff per month X # of requests. Current code requires "reasonable" costs.

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**Locality:** Town of Marion.

**Estimated Fiscal Impact:** \$0.00

currently in place  
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Locality: Town of Scottsville

Estimated Fiscal Impact: \$0.00

No fiscal impact upon Scottsville or similarly situated small towns.

Our town receives only a few FOIA requests each year, with no persistent requesters and no large billed costs to requesters.

Looking at the Town's activity in 2020 or 2021, there would have no fiscal impact from this bill changing our activity. It seems likely to have more effect on larger localities.

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**Locality:** Wise County

**Estimated Fiscal Impact:** \$0.00

Wise County does not normally charge if the effort is less than 2 hours.

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