

FISCAL IMPACT OF PROPOSED LEGISLATION

Measure: SB 41 - A

Seventy-Sixth Oregon Legislative Assembly – 2011 Regular Session
Legislative Fiscal Office

Prepared by: Matt Stayner
Reviewed by: Laurie Byerly
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Establishes deadlines by which public bodies must respond to public records requests. Limits the fees a public body may charge for responding to a public records request. Provides limited indemnification of public bodies who inadvertently disclose privileged records when making a good-faith effort to comply with the provisions of the measure. Requires the Attorney General to develop related training materials and model public record request forms. Exempts from disclosure public records relating to criminal investigations and certain non-criminal investigations. Exempts from disclosure of public records relating to personal privacy. Exempts from disclosure of certain public records relating to business. Exempts from disclosure of certain public records relating to crime victims. Exempts from disclosure of certain public records relating to whistleblower information. Exempts from disclosure of certain public records relating to security and emergency planning. Exempts from disclosure of certain public records relating to public employee privacy. Exempts from disclosure of certain public records relating to government operations. Repeals ORS 192.501 and 192.502 related to exemptions from disclosure of public records.

Government Unit(s) Affected:

Statewide, including Local Governments

Summary of Fiscal Impact:

Please see analysis

Local Government Mandate:

This bill does not affect local governments' service levels or shared revenues sufficient to trigger Section 15, Article XI of the Oregon Constitution.

Analysis:

The fiscal impact of the measure varies widely among public bodies depending on the existing rules, policies and procedures used by each, the historical number of public records requests, and the complexity of the public records kept. Few of the responding state agencies and other public bodies reported that the measure would have no fiscal impact to their operations. Roughly 40% of the public bodies responding reported a minimal fiscal impact from the measure and about another 40% of the public bodies responding reported a fiscal impact or a fiscal impact with an indeterminate total cost. The public bodies that were able to quantify the impact in terms of dollars and FTE in aggregate reported a total funds cost of just over \$1.5 million in the 2011-13 biennium. However, the costs to individual public bodies were generally dominated by the addition of a single or fractional FTE to establish and or manage the processes required by the measure. Secondary cost considerations included the training of staff and the allocation of resources. Indeterminate fiscal impact responses noted that although they believed that there would be a cost, and possibly a significant cost to the measure, they were unable to quantify that cost due to the items discussed below.

The measure contains a provision that removes the right of a person to inspection or to obtain a copy of a public record if the person has an outstanding balance of unpaid fees related to a prior public records request. In this case, the public body is still compelled to respond to the request, but only to notify the requestor of the unpaid balance and that the public body is under no obligation to fulfill the request until the balance is paid. This provision would require certain public bodies to establish and maintain systems whereby they could track the requests made by individuals, the amounts charged, and the

balance owing and then as new public records requests are made, each request would be checked against this system to determine the type of response required. For those public bodies that process a large volume of public record requests, do not have an existing system, or who's public records processing is a distributed function, this may result in a significant fiscal impact due to system development, training, or additional staffing requirements.

The measure requires an initial written response to a requester within five business days that at a minimum acknowledges the receipt of the request by the public body. Within ten business days, a public body must provide a response that, with exception, includes: the requested records, a statement that the public body does not possess the records, or a statement that the public body is the custodian of at least some of the records and the amount of time and fees to produce the requested records that is in compliance with the timelines set forth in the measure. The measure also provides for suspension of timelines due to, among other things, awaiting additional information or clarification from the requester which creates additional layers of timeline tracking on the part of the public body. Public bodies must establish systems, rules, policies and procedures that ensure compliance with the response time-line established by the measure, the fiscal impact of which varies widely between individual public bodies.

The limitation provided by the measure on the amount of costs recovered by a public body in providing the requested public records may be an impact to some public bodies and may require some reorganization and training of staff so that the actual costs of staff time comport with the measure's requirements.