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FISCAL IMPACT REPORT

SPONSOR: Smith DATE TYPED: 02-14-01 HB _____
 SHORT TITLE: Limit Charge for Copying Public Records SB 444
 ANALYST: Gonzales

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
			See Narrative		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates SB444

SOURCES OF INFORMATION

Administrative Office of the Courts
 Attorney General's Office
 General Services Department
 Commission of Public Records
 Labor Department
 Children Youth and Families Department
 Corrections Department
 State Highway and Transportation Department
 Commission on Higher Education

SUMMARY

Synopsis of Bill

Senate Bill 444 amends a section of the Inspection of Public Records Act to limit charges for copying public records to a fee not to exceed the custodian's actual costs and to direct a custodian to copy electronic data by the means least expensive to the public. The bill also removes the \$1.00 per page cap on copy fees of documents eleven by seventeen or smaller.

Significant Issues

Allowing agencies to charge a reasonable fee, not exceeding its cost, could result in fees that exceed \$1.00 per page which is currently the cap for certain document copies.

FISCAL IMPLICATIONS

The Commission of Public Records reports the following fiscal implications:

Fees are collected for copies of public records held in the State Archives, the State Rules Division and the Records Warehouses of the Commission of Public Records. While the fees that are currently charged are based on the costs for copying records (excluding the costs for identifying and determining the availability of the record), there are special considerations for archival records that make the fees charged for copying more expensive than those customarily incurred by other agencies. Many of the State's public records exist in formats other than paper. Photocopying is the least expensive form of reproducing some of these records, however photocopying may not be an option. This is the case with reproducing photographs, film, and audio records.

The State Rules Division has reproduced the entire body of current regulations (in paper) upon request and payment of the copying fee. Such requests impose an administrative burden on the agency. We have, in the past, acquired temporary staff to complete the copying task – but only after rigid orientation and with close supervision by the staff of the division. Such projects tax the both the staff and equipment since it usually takes several weeks of committed attention to complete.

Many records, especially those in a format other than paper, cannot be handled or copied by the requestor and must be copied by staff or by contractor– in these cases, additional costs are incurred.

Copying electronic data for the public should be relatively simple, however the costs incurred by any agency responding to a request for electronic data will always be in identifying the records and isolating those for copying without losing the record's provenance and meaning for the requestor. Many agencies have implemented imaging systems to improve access to public records. The records stored in an imaging system are in electronic form and will be subject to the provisions of this legislation. Providing copies of these records should not prove difficult, but may be expensive if the cost of the system and migration are included.

ADMINISTRATIVE IMPLICATIONS

“Actual cost” is not defined; therefore, in determining how much to charge for copies may create administrative problems.

The State Highway and Transportation Department reports the following administrative implications:

By amending Section 14-2-9B to only allow a custodian to charge a reasonable fee not to exceed “actual costs” instead of a flat per page fee up to \$1.00, the bill will make it more difficult to determine how much to charge for copies. The “actual cost” is more than just the cost of paper and toner. Making copies of documents also involves substantial employee time in locating, sorting, separating, removing from boxes or files, unstapling, re-stapling, re-filing, re-sorting, re-boxing, returning the files to their proper place, and duplicating the documents. This labor cost must be included in determining a custodian's “actual costs” in addition to the costs of the equipment and supplies required to actually make the copies. This labor cost will vary greatly depending on the request. If a person requests copies of a large number of documents that are together in one file, are not stapled or bound and can be fed through a docu-

ment feeder of a copier, this will take an employee much less time than copying a similar number of documents that are stapled or bound together, and must be pulled from several different files or folders. In order to charge the person requesting the documents an amount not to exceed the "actual cost" of making the copies, the custodian will no longer be able to charge a flat per copy charge, but instead, will have to determine the per copy charge for the paper, toner and the copier, and then add the cost of the employee time in making the copies. This will take much longer than figuring a flat per copy charge. Also, if not carefully done, it may cause governmental entities to be susceptible to legal challenges concerning the cost of copies. Additionally, records custodians will not be able advise persons requesting documents how much the copies will cost in advance of making the copies. This is important because requestors often will modify their request if the charges are more than they can afford. It could even have a chilling effect on persons requesting public records because they may not want to obtain copies if they cannot be sure of the cost.

CONFLICT/DUPLICATION/COMPANIONSHIP/RELATIONSHIP

Section 34-2-5 NMSA 1978 sets forth the fees the Supreme Court can impose for copying court records; Section 34-5-6 NMSA 198 sets for the fees the Court of Appeals can impose for copying court records; Section 35-6-1 NMSA 1978 sets forth the fees the Magistrate and Metropolitan Courts can impose for copying court records; and Rule 1-099 of the Rules of Civil Procedure for the District Courts sets forth the fees the District Courts can impose for copying court records.

OTHER SUBSTANTIVE ISSUES

The limit on copying costs for electronic costs for electronic data may be difficult to enforcement, particularly since the absence of any objective standard. For example, there may be a variety of viewpoints regarding what constitutes the least expensive means and the availability of different means of copying electronic data may vary widely among records custodians.

As reported by various agencies, the current charges for duplicating documents currently varies across agencies.

JMG/njw