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## FISCAL IMPACT REPORT

SPONSOR: Irwin DATE TYPED: 02/05/03 HB 205

SHORT TITLE: Charges for Public Record Copying SB \_\_\_\_\_

ANALYST: Gonzales

### REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY03	FY04			
	\$0.1		Recurring	Records Center Re- volving Fund and Other Funds

(Parenthesis ( ) Indicate Revenue Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Commission of Public Records

New Mexico State Library, Office of Cultural Affairs

### SUMMARY

#### Synopsis of Bill

House Bill 205 amends the Inspection of Public Records Act to: require that copying charges not exceed the record custodian's actual costs; remove the current \$1.00 limitation on charges for copying public records 11 x 17 inches and smaller; and mandate that electronic data be copied by the means least expensive to the public.

#### Significant Issues

This bill removes the \$1.00 per page cap on copy fees of documents 11 x 17 or smaller so that agencies must charge reasonable fees that do not exceed their costs for all copying. However, this could, in some cases, result in fees for the 11 X 17 copies that exceed \$1.00 per page. Additionally, the bill provides no mechanism for determining "actual costs" would be a very time consuming process, as those costs could vary greatly for each request.

Furthermore, this bill requires that the custodian copy electronic data by the least expensive method; however, this proposed changes conflict with Section 14-3-15.1 NMSA 1978, which allows the state to charge fees and royalties for computer database information.

Both Attorney General opinion and court decision have affirmed that the right to inspect public records carries with it the right to make copies thereof, subject to reasonable restrictions and conditions.

## **FISCAL AND ADMINISTRATIVE IMPLICATIONS**

According to the Commission of Public Records, the agency currently bases its fees on its actual costs, subject to the one-dollar limitation on 11 x 17 and smaller copies, but it is possible that some fees for these copies could increase with the deletion, given the special nature of some records in the custody of the agency.

The Records Center Revolving Fund is created in statute and money from the sale of services (including copying), equipment, supplies, and materials provided by the Commission of Public Records is deposited in it. The fund is used to support activities related to the provision of those services, supplies, etc. It is critical that the agency be able to impose fees sufficient to recover the costs of providing services and materials (including copying), etc. to other governmental entities and the public; otherwise, it would be forced to seek general fund support to underwrite these activities or perhaps be unable to meet all requests, especially requests for copies of materials that require special handling.

Fees are collected for copies of public records held in the State Archives, the Administrative Law 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 paper documents held in the Archives are extremely fragile and require special handling and must, if not available in another medium such as microform, be copied by staff. Public records also exist in formats other than paper, and many of those also cannot be handled or copied by the requestor and must be copied by staff or a contractor. In these cases additional costs are incurred. Further, while photocopying is the least expensive form of reproducing some of these records, it may not be an option. This is the case with reproducing photographs, film, and audio records.

The Administrative Law Division has, in the past, 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. The agency has acquired temporary staff to complete the copying task – but only after rigid orientation and with close supervision by the staff of the division. While this extensive copying of rules has now virtually stopped since the rules compilation (the New Mexico Administrative Code or NMAC) is now produced in-house and is available free online, copying public records in their various formats for patrons is still a time-consuming and sometimes costly but essential activity of an agency committed to providing access to public records. But the agency must continue to be able to recover its costs, which this bill would permit.

The Commission recalculates costs, including costs to reproduce electronic data, each time it amends its rule on fees. Copies of public records held by the agency are offered, depending on

the record, either on a self-service basis or a staff provided basis. Self-service fees are based upon the actual cost of supplies, equipment (depreciated) and equipment maintenance. Staff-provided fees are calculated using the same factors plus staff time to locate and copy the record. However, the identification and calculation of those cost components can be time-consuming.

The New Mexico State Library states: “the service intent is to give as broad an access as possible to patrons, both to public records and to other library materials. Generally, the patron does his/her own copying. Therefore, computer page copies coming off the printer are free for the first five pages. Additional pages are \$.10 (ten cents) for each. This price policy was set to encourage copying but discourage frivolous copying and waste. The public copy machines in the State Library portion of the building charge \$.10 (ten cents) a page for 8.5” x 11” pages and \$.15 (fifteen cents) for 11” x 17” copies. This policy was set to encourage copying and to recover some costs for contracts, maintenance, and supplies on the machines. State Library reference staff will make unlimited copies free for state government employees, legislators, and judicial office employees. Therefore, removing the \$1.00 cap would have little effect on this division’s performance.”

The State Highway and Transportation Department indicates it currently charges a fixed cost of one dollar per page for copies of documents eleven inches by seventeen inches or smaller. The agency state it would be much more time consuming for SHTD’s designated records custodians to determine the “actual cost” of providing those copies, rather than assign a cost per page since. SHTD receives several hundred requests for copies of public records every year ranging from a small number of documents hundreds or thousands of documents.

The actual costs of employee time in finding the documents, removing the documents from the files, removing staples and binders, copying the documents, putting the documents back together, and replacing them back in their original location, plus the costs of paper, toner, electricity and the copier can vary greatly for each request. The variables involved include the number of documents, how easy it is to locate the documents, and whether the documents are loose or bound together in some manner which can affect the ease of copying.

## **CONFLICT**

Section 14-3-15.1 NMSA 1978 should be reviewed with respect to its provisions for copy fees to ensure they are compatible with the "least expensive" provision in this bill.

## **OTHER SUBSTANTIVE ISSUES**

The following issues were reported by the Commission of Public Records:

(1) 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 either compromising any confidentiality provisions or losing the record’s provenance and meaning for the requestor. Section 15-3-15.1 NMSA 1978 mandates that fees shall be charged for searching, manipulating, or retrieving data from a database or for copying a database.

(2) 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.

(3) Finally, it must be noted that the person requesting electronic copies may prefer the copies be provided in a particular medium or format – a diskette or a CD, for example – and the use of that preferred medium or format, which is factored into the cost of reproduction, may not result in the "least expensive means" of copying. Since the amendatory language on page 2, lines 15 and 16 mandates the custodian to "copy the electronic data by the means least expensive to the public," does this imply that the custodial agency will not be able to provide the customer the information in the customer's preferred medium or format if it is more expensive, even if the request is reasonable and within the agency's capability?

It seems that the reason the law was originally written was so that custodians could impose a per page cost for copies rather than "actual cost" to make the most efficient use of the time of public records custodians so they could timely respond to public records requests in accordance with the law. By changing the law to require custodians to determine the "actual cost" of copies, it will make it more difficult to comply with the fifteen day time limit for responding to inspection of public records requests, which can often be a difficult task in responding to some requests.

### **POSSIBLE QUESTIONS**

The provision of this bill requires that the custodian copy the electronic data by the least expensive means; however, will the agency be able to provide the requested information in a medium or format requested by the customer if it is more expensive ?

**JMG/prr**