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[HF 786](#) – Open Records Costs (LSB2184HV)  
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Fiscal Note Version – New

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### **Description**

[House File 786](#) relates to the assessment of fees associated with public record requests under Iowa Code chapter [22](#). The Bill provides that the lawful custodian of public records must make every effort to provide a requested public record at little to no cost. If expenses are necessary, such expenses must be reasonable, and any expense in excess of \$500 creates a rebuttable presumption that such expenses are not reasonable. A requester may seek relief as provided in Iowa Code section [23.5](#), and the prevailing party may be awarded reasonable attorney fees.

The Bill also provides that the fees charged for supervising the examination and copying of public records must not exceed \$15 per hour, and the costs for legal services should only be utilized for the redaction or review of legally protected confidential information.

### **Background**

Under Iowa Code chapter 22, all expenses for the examination and copying of public records are paid by the person desiring to examine or copy the record. Government bodies can include expenses directly attributable to supervising the examination of and making and providing copies of public records and cannot include charges for ordinary expenses or costs such as employment benefits, depreciation, maintenance, electricity, or insurance associated with the administration of the office.

The estimated fiscal impact is categorized by governmental entity, as provided below.

## **Iowa Public Information Board**

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### **Background**

The Iowa Public Information Board (IPIB) provides alternative means by which to secure compliance with and enforcement of the requirements of Iowa Code chapters [21](#) and [22](#) through the provision by the IPIB to all interested parties of an efficient, informal, and cost-effective process for resolving disputes. Under Iowa Code chapter [23](#), timely complaints can be filed with the IPIB regarding enforcement of the requirements of Iowa Code chapters 21 and 22.

### **Assumptions**

- There may be an increase in complaints and inquiries to the IPIB regarding possible violations under Iowa Code section [22.3](#). The IPIB estimates the increase in formal and informal filings to be between 30.0% and 40.0%.
- Public record expenses in excess of \$500 will be reviewed and evaluated by the IPIB or district court.

### **Fiscal Impact**

Due to the possibility that HF 786 may increase the volume of inquiries under Iowa Code section 23.5, the IPIB estimates that it would need to hire two full-time equivalent (FTE) positions at the Attorney 2 and Administrative Assistant 2 classifications. The estimate below assumes these positions are not filled until September 1, 2021. Costs associated with filling these FTE positions are provided in **Table 2**.

**Table 2 — Estimated FTE Position Costs for the IPIB**

|                               | <u>FY 2022</u>    | <u>FY 2023</u>    | <u>FY 2024</u>    |
|-------------------------------|-------------------|-------------------|-------------------|
| <b>Salary and Benefits</b>    |                   |                   |                   |
| Attorney 2                    | \$ 71,000         | \$ 85,000         | \$ 85,000         |
| Administrative Assistant 2    | 70,000            | 84,000            | 84,000            |
| <b>Equipment</b>              |                   |                   |                   |
| Office, Phone, IT Costs, Etc. | 13,000            |                   |                   |
| <b>Total</b>                  | <b>\$ 154,000</b> | <b>\$ 169,000</b> | <b>\$ 169,000</b> |

Funding for these FTE positions and related costs would likely be appropriated from the General Fund.

### **Board of Regents**

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#### **Background**

The current fee schedule at all three Regents universities is set at \$30 per hour, with the first hour provided free of charge. In instances where a request requires database extraction, there is an initial set-up fee of \$75 and \$75 per hour after the first hour.

#### **Assumptions**

- In FY 2020, there were more than 300 hours of staff time spent on open record requests, for a total collection of approximately \$10,000 in fees, at one university. For calculation purposes, the same number of hours and total fees collected are assumed at the other two universities.
- Open record requests may become more wide-ranging in scope due to less cost-prohibitive fees assessed to obtain voluminous records.

#### **Fiscal Impact**

At a rate of \$15 per hour per open record request, the Board of Regents estimates that each university would see a decrease in revenue of approximately \$6,500 per year for a total decrease in revenue of approximately \$19,500 annually across all three schools.

The Board of Regents stated that it is rare for single requests to incur fees exceeding \$500; however, if public record requests were to become more wide-ranging in scope, the Board of Regents estimates that each university may need to hire one additional FTE position at approximately \$70,000 per year for salary and benefits to assist with the increased requests.

### **State Agencies**

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#### **Assumptions**

- Costs will vary for State agencies based on whether legal services are provided in-house or through outside services.

- Costs will vary for State agencies based on the extent to which legal fees are already absorbed by the agency.
- Costs will vary for governmental entities based on size and average volume of existing public record requests, as well as the variability of requests throughout a fiscal year. There may be an increase in the quantity of public record requests and the scope of public record requests due to less cost-prohibitive fees assessed to obtain records.
- Not all State agencies receiving public record requests will incur increased costs as a result of this Bill.
- In instances where an open record request exceeds \$500, the agency will absorb the additional expenses above \$500 in addition to any potential attorney fees if the agency did not prevail against a requestor seeking relief as provided in Iowa Code section 23.5.
- For agencies that currently charge above \$15 per hour for examination and copying of records, the agency will absorb the additional expenses that account for that difference.

### **Fiscal Impact**

The estimated fiscal impact of HF 786 varies across State agencies. Not all State agencies submitted data to the Legislative Services Agency regarding HF 786, and the fiscal impact discussion below is intended to convey the potential fiscal impact of the Bill based on a sample of State agencies of varying sizes.

Based on a sample of agencies that responded to a request for information and reported fiscal estimates, the fiscal impact reported by two agencies included the potential need for one additional FTE position in the case of increased public record requests. The annual costs for the additional FTE position ranged from \$49,000 to \$84,000.

However, in the sample of agencies that responded to a request for information, there were six agencies of varying size that indicated no fiscal impact and two agencies that stated that any potential fiscal impact is likely to be minimal, citing an insignificant number of requests with expenses in excess of \$500 and variability in the number and complexity of record requests. Due to the variability across agencies and the inability to predict future open record requests above \$500, it is not possible to estimate the overall fiscal impact to State agencies at this time.

## **Local Governments**

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### **Assumptions**

- Costs will vary for local governments (cities, counties, and schools) based on size and average volume of existing public record requests, as well as the variability of requests throughout a fiscal year.
- Costs will vary for local governments based on whether legal services are provided in-house or through outside services.
- Costs will vary for local governments based on the extent to which fees are already absorbed by the entity and the fee rate charged to the requestor.
- Not all local government entities currently charge for open record requests and some have not had requests that required charging fees to the requestor. As a result, not all local governmental entities receiving public record requests will incur a cost as a result of this Bill.

### **Fiscal Impact**

The fiscal impact of HF 786 on local governments cannot be estimated at this time. Additional costs that may be absorbed by a local government are expected to vary based on the size of the entity, the current hourly rate charged for services, and the volume and scope of the

requests received in a given year. Not all local government entities will experience a fiscal impact as a result of this Bill.

**Sources**

Judicial Branch  
Department of Public Safety  
Iowa Civil Rights Commission  
Board of Regents  
Iowa League of Cities  
Iowa Association of School Boards  
Iowa Public Information Board  
Secretary of State's Office

/s/ Holly M. Lyons

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April 19, 2021

Doc ID 1216842

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The fiscal note for this Bill was prepared pursuant to [Joint Rule 17](#) and the Iowa Code. Data used in developing this fiscal note is available from the Fiscal Services Division of the Legislative Services Agency upon request.

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