

HB 1002 - AS AMENDED BY THE HOUSE

1Feb2024... 0197h

2024 SESSION

24-2001
05/08

HOUSE BILL

1002

AN ACT

relative to fees for records under the right-to-know law.

SPONSORS:

Rep. Kuttub, Rock. 17; Rep. M. Cahill, Rock. 10; Rep. Ball, Rock. 25; Rep. Maggiore, Rock. 23; Rep. Ankarberg, Straf. 7; Rep. DeSimone, Rock. 18; Rep. Dunn, Rock. 16; Rep. J. Nelson, Rock. 13; Rep. B. Boyd, Hills. 12; Rep. Edwards, Rock. 31; Rep. Grassie, Straf. 8; Sen. Carson, Dist 14; Sen. Gannon, Dist 23; Sen. Watters, Dist 4; Sen. Lang, Dist 2; Sen. Avard, Dist 12

COMMITTEE:

Judiciary

ANALYSIS

This bill establishes parameters for when a public body may charge a fee for records provided under RSA 91-A.

Explanation:

Matter added to current law appears in ***bold italics***.

Matter removed from current law appears ~~[in brackets and struckthrough]~~

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Four

AN ACT relative to fees for records under the right-to-know law.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Right-to-Know; Fees for Records. Amend RSA 91-A:4, IV to read as follows:

2 IV.(a) Each public body or agency shall, upon request for any governmental record
3 reasonably described, make available for inspection and copying any such governmental record
4 within its files when such records are immediately available for such release.

5 (b) If a public body or agency is unable to make a governmental record available for
6 immediate inspection and copying the public body or agency shall, within 5 business days of a
7 request:

8 (1) Make such record available;

9 (2) Deny the request; or

10 (3) Provide a written statement of the time reasonably necessary to determine
11 whether the request shall be granted or denied and the reason for the delay, ***and an estimate of***
12 ***the cost of making the record available if a charge would be incurred under paragraph***
13 ***VIII.***

14 (c) A public body or agency denying, in whole or part, inspection or copying of any record
15 shall provide a written statement of the specific exemption authorizing the withholding of the record
16 and a brief explanation of how the exemption applies to the record withheld.

17 (d) If a computer, photocopying machine, or other device maintained for use by a public
18 body or agency is used by the public body or agency to copy the governmental record requested, the
19 person requesting the copy may be charged the actual cost of providing the copy, which cost may be
20 collected by the public body or agency. No cost or fee shall be charged for the inspection or delivery,
21 without copying, of governmental records, whether in paper, electronic, or other form, ***unless the***
22 ***time to make the record available exceeds 10 hours, as provided in paragraph VIII.*** Nothing
23 in this section shall exempt any person from paying fees otherwise established by law for obtaining
24 copies of governmental records or documents, but if such fee is established for the copy, no additional
25 costs or fees shall be charged.

26 (e) ***A public body or agency may suggest to the requestor a reasonable***
27 ***modification of the scope of the request, if doing so would enable the body or agency to***
28 ***produce records sought more efficiently and affordably.***

29 2 New Paragraph; Fees for Records. Amend RSA 91-A:4 by inserting after paragraph VII the
30 following new paragraph:

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1 VIII. A reasonable charge may be made for employee, contractor, or attorney time in excess
2 of 10 hours to make the record available to the requestor, including time to search, retrieve,
3 duplicate, redact, and otherwise make the record available for the requestor; provided that no charge
4 may be made for time spent with the requestor to review the records. Hourly costs shall not exceed
5 \$25 per hour, and no costs shall be charged for requests under 10 hours. Prior to charging any fees,
6 the public body or agency shall create a policy so that practices are transparent, uniform, and
7 consistent. Multiple requests from any person or entity to the same public body within a 30 day time
8 period shall be considered one request. If a party believes the estimated number of hours or cost to
9 make the records available is unreasonable, the party may file a complaint with the ombudsman
10 pursuant to RSA 91-A:7-b for a determination of whether the estimate is reasonable.

11 3 Effective Date. This act shall take effect 60 days after its passage.

HB 1002- FISCAL NOTE
AS AMENDED BY THE HOUSE (AMENDMENT #2024-0197h)

AN ACT relative to fees for records under the right-to-know law.

FISCAL IMPACT: [X] State [X] County [X] Local [] None

Estimated State Impact - Increase / (Decrease)				
	FY 2024	FY 2025	FY 2026	FY 2027
Revenue	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Revenue Fund(s)	General Fund Right to Know Ombudsman filing fees (\$25)			
Expenditures	\$0	Indeterminable	Indeterminable	Indeterminable
Funding Source(s)	General Fund			
Appropriations	\$0	\$0	\$0	\$0
Funding Source(s)	None			

- Does this bill provide sufficient funding to cover estimated expenditures? [X] N/A
- Does this bill authorize new positions to implement this bill? [X] No

Estimated Political Subdivision Impact - Increase / (Decrease)				
	FY 2024	FY 2025	FY 2026	FY 2027
County Revenue	\$0	Indeterminable	Indeterminable	Indeterminable
County Expenditures	\$0	Indeterminable	Indeterminable	Indeterminable
Local Revenue	\$0	\$0	\$0	\$0
Local Expenditures	\$0	\$0	\$0	\$0

The Office of Legislative Budget Assistant is awaiting information from the Department of Justice. The Department of Justice was originally contacted on 2/1/24 for a fiscal note worksheet. If information is received, a revised fiscal note will be forward to the House Clerk’s Office.

METHODOLOGY:

This bill establishes parameters for when a public body may charge a fee for records provided under RSA 91-A. The Office of the Right to Know Ombudsman indicates the bill impacts RSA 91-A:4 by adding a new paragraph VIII to provide that a reasonable charge of \$25 per hour or less may be made for time in excess of 10 hours spent by the personnel of a public entity for providing copies of documents available to requestors under the Right to Know law. It also provides that if a person believes that an estimated charge imposed by a public entity is

unreasonable, the person may file a complaint with the Right to Know Ombudsman (RKO) for a determination of the reasonableness. Complaints filed with the RKO must generally be accompanied by a \$25 filing fee which is deposited in the general fund. The Office assumes this bill could increase the workload of the RKO (a single-person agency) by an unknown amount which would depend entirely upon the unknowable number of additional complaints. The Office states the bill would also impact other state agencies and governmental units at the county and local level, as well as other public bodies or agencies as defined in RSA 91-A: 1-a, V and VI. The Office notes the bill appears to suggest that a complaint regarding the reasonableness of any fee must be filed with the RKO, eliminating the option of pursuing such matters in superior court. The bill is therefore likely to increase the workload of the RKO to an indeterminable degree, resulting in a greater expenditure of RKO time. However, because the RKO is a salaried position, the expenditure of additional time would not necessarily lead to an additional expenditure of state funds. The Office states it cannot be known at this time whether the increased workload would require hiring of an additional person or persons to work in the Office, a matter which might be necessary even absent the bill. The Office indicates the ultimate fiscal impact of the bill is necessarily indeterminable.

The New Hampshire Municipal Association does not anticipate a direct impact on local revenue or expenditures as this bill provides for a local option.

The New Hampshire Association of Counties state, while requests of this size are rare, the Association is not able to predict what members of the public will request under the right to know law. The Association assumes the fee would not cover the cost of responding to a request.

It is assumed that any fiscal impact would occur after fiscal year 2024.

AGENCIES CONTACTED:

Department of Justice, Office of the Right to Know Ombudsman, New Hampshire Municipal Association and New Hampshire Association of Counties