

February 8, 2012

The Honorable Lance Kinzer, Chairperson
House Committee on Judiciary
Statehouse, Room 165-W
Topeka, Kansas 66612

Dear Representative Kinzer:

SUBJECT: Fiscal Note for HB 2549 by House Committee on Judiciary

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2549 is respectfully submitted to your committee.

HB 2549 would add electronic records to the list of records that would need to be retained by a public entity, which includes e-mails and text messages. The bill defines "electronic records." The bill would require each state agency to retain electronic records in an electronic format, to remain usable, searchable, retrievable, and authentic for the length of the designated retention period. State agencies would also be required to maintain a security backup of active records, which would be compatible with the current system configuration in use by the agency.

E-mails and texts created and received by a state or local agency or public official in the transaction of public business would be subject to all the laws and regulations governing the retention, disclosure, destruction, and archiving of public records. The e-mails and texts of all elected government officials and public employees would be subject to the records retention periods and disposition promulgated by the State Records Board. The bill would require any and all e-mails and texts with archival value to be retained. State and local agencies and public officials may be relieved of the obligation to permanently retain archival e-mail and texts by transmitting them to the custody of the State Historical Society. HB 2549 specifies that this portion of the bill would not apply to state legislators or members and records of the Judiciary.

HB 2549 states that any record created with government-provided digital equipment would be a public record. Any electronic record made or received concerning government business would be a public record even if a public official uses his or her personal digital or electronic equipment. The bill states that the Legislature recognizes that e-mail and texting are a dominant means of communication today and any exception carved out for e-mail and texting communication is held to be bad public policy.

The Board of Regents states that it is difficult to estimate a fiscal effect resulting from the passage of HB 2549, particularly for text messages. Most text messages would be sent on an employee's personal device, and there are applications to back up text messages at approximately \$10 per device, or there are cloud-based services to back up text messages; however, either of those services would significantly increase, and most likely double, the number of text messages, which could create an additional personal charge for the employee. Additionally, the Board states there is some enterprise software for managing mobile devices at a cost of at least \$9,100 for two years, but the Board is not clear whether the software would save text messages.

The State Historical Society states that in cooperation with all three branches of government, it is in the process of building a trusted digital repository called the Kansas Enterprise Electronic Preservation System (KEEPS). The agency states it would need additional funding and FTE positions in FY 2013 if it starts receiving e-mails and texts from other state agencies and local governments to store in KEEPS. The agency cannot provide a precise fiscal effect at this time because it has no way of knowing how many state agencies or local governments transmit e-mail and text messages.

The Department of Administration indicates more hours would be spent by staff to review and compile records for Open Records Act requests, but cannot provide a precise fiscal effect at this time. The League of Kansas Municipalities states there would be a negligible fiscal effect for cities that presently have a retention/destruction policy in place for electronic records or one that could easily be modified to include electronic records. For cities without a retention/destruction policy, there would be a fiscal effect for additional staff time necessary to develop and revise an appropriate policy. Additionally, the League notes that for cities that choose not to develop or use a retention/destruction program and prefer to retain all electronic records, the cost could be significant to establish and maintain a computer server or file server with adequate storage and retrieval capacity. The League states it is not known how many cities have current retention programs or how many cities would need to develop policies or upgrade computer systems to maintain the necessary storage. The Kansas Association of Counties indicates that any fiscal effect to counties resulting from the passage of HB 2549 would be negligible because the bill puts into statute what counties already practice. Any fiscal effect associated with HB 2549 is not reflected in *The FY 2013 Governor's Budget Report*.

Sincerely,



Steven J. Anderson, CPA, MBA
Director of the Budget

cc: Marilyn Jacobson, Administration
Debbie White, Historical Society
Kelly Oliver, Board of Regents
Melissa Wangemann, Kansas Association of Counties
Larry Baer, League of Kansas Municipalities