



Date: December 21, 2018

To: Representative Greg Davids, Chair
Representative Paul Marquart
Representative Jim Knobloch, Chair
Representative Lyndon Carlson Sr.

Senator Roger Chamberlain, Chair
Senator Ann Rest
Senator Julie Rosen, Chair
Senator Richard J. Cohen

From: Britta Reitan, State Budget Director 

Subject: Local Impact Note Request: HF 1185 (Scott) - Correspondence defined in government record retention law; minimum three-year retention period for correspondence provided

Minnesota Management and Budget has completed the local impact note requested for HF 1185-1E (Scott) – *Correspondence defined in government record retention law; minimum three-year retention period for correspondence provided*. A copy of the note is attached.

Local impact notes are similar to the fiscal notes that you are familiar with, but they focus on the fiscal impact of proposed legislation on local governments rather than the state. This process is described in Minnesota Statutes 2018, sections 3.987 and 3.988. This statute requires MMB to gather and analyze information on local costs of legislation when requested by the chair or ranking minority member of the House and Senate Tax committees, the House Ways and Means committee, or the Senate Finance committee.

HF 1185-1E expands the type of records required to be preserved by governmental units. It removes limitations currently in statute that confine retention laws to official records, and it requires correspondence to be retained for at least three years. MMB worked with local government associations over a matter of months to understand the potential fiscal impacts of HF 1185-1E. MMB received 27 responses to our survey from a variety of local governments. After analyzing their responses, we believe HF 1185-1E will impose state-mandated costs on units of local government. However, the 27 local governments' cost estimates varied widely, and the number of local governments that responded are a small fraction of the over 3,500 units of local government that exist in Minnesota. Given this, MMB determined that assigning a statewide local fiscal impact in this local impact note implies a level of precision and certainty that does not exist for this bill. Instead, this note thoroughly discusses the types and ranges of costs identified by the local governments that responded to the survey.

If you or your staff has any questions about the local impact note, do not hesitate to contact Executive Budget Officer Paul Moore at 651-259-3776.

cc: Representative Peggy Scott
Legislative Staff
MMB Staff

December 21, 2018

HF 1185-1E (Scott)

Correspondence defined in government record retention law, and minimum three-year retention period for correspondence provided.

Local Fiscal Impact					
Net Expenditure Increase/Revenue Loss or (Expenditure Decrease/Revenue Gain) Dollars in Millions, Calendar Years					
	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>
Statewide	Yes - Unknown	Yes - Unknown	Yes - Unknown	Yes - Unknown	Yes - Unknown

Background and Bill Description

Minnesota Statutes 2018, section 15.17, subdivision 1, requires state and local governments to “make and preserve all records necessary to a full and accurate knowledge of their official duties.” The retention and destruction of these official records are subject to approval by the State Records Disposition Panel authorized under Minnesota Statutes 2018, section 138.17. The panel reviews and approves retention schedules as well as specific applications for record disposal. Governmental units can adopt the general retention schedules created by the panel or submit their own for approval. Governmental units have also developed their own retention policies and practices related to data they deem to not be official records.

HF 1185-1E expands the type of records required to be preserved by governmental units. It removes limitations currently in statute that confine retention laws to records related to “official activities” and “the transaction of public business” (i.e., official records). The exemption from retention laws for “data and information that does not become part of an official transaction” is also removed. Furthermore, the bill requires governmental units to maintain a retention schedule of at least three years for correspondence. The bill defines “correspondence” as “any written or electronic text-based communication to or from officers, elected officials, administrators, managers, professionals, and all other staff that document events, decisions, business, and functions of the agency, public authority, or political entity.”

Local Impact Methodology

The changes contained in HF 1185-1E would apply to all political subdivisions of the state, including counties, cities, towns, school districts, and other special districts. According to the U.S. Census Bureau, Minnesota ranks eighth among all states with 3,672 units of local government as of June 30, 2012, the most recent period Census of Governments data is available.¹

Due to the significant number of local government units involved, Minnesota Management and Budget (MMB) solicited responses through several local government associations:

- Association of Minnesota Counties
- League of Minnesota Cities

¹ <https://www2.census.gov/govs/cog/2012isd.pdf>.

- Minnesota Association of School Administrators
- Minnesota Association of Townships
- Minnesota Inter-County Association

MMB provided a survey to the associations that contained a standardized spreadsheet for units of local governments to record cost estimates. Local governments were asked to itemize and quantify the annual cost of new or expanded activities required under HF 1185-1E. Moreover, local governments were asked to cite the line number(s) in the bill that mandate each activity. MMB received 27 responses, which are listed below and organized by region according to the Minnesota Department of Employment and Economic Development (DEED) Planning Areas.²

<i>DEED Planning Area</i>	Number of Responses by Region				
	<i>Counties</i>	<i>Cities</i>	<i>Townships</i>	<i>School Districts</i>	<i>Total</i>
Northeast	1	2	0	0	3
Northwest	4	0	0	0	4
Central	2	0	0	0	2
7 County Metro	1	8	0	1	10
Southeast	3	3	0	0	6
Southwest	2	0	0	0	2
Total	13	13	0	1	27

The size of the units of local government that responded also varied. The following table organizes responding local governments by the resident population as of 2017 U.S. Census estimates in the case of cities and counties, and the size of the student population according to the Minnesota Report Card reported on the Minnesota Department of Education website in the case of the one school district that responded.

<i>Population Ranges</i>	Number of Responses by Population Served				
	<i>Counties</i>	<i>Cities</i>	<i>Townships</i>	<i>School Districts</i>	<i>Total</i>
0-999	0	0	0	0	0
1,000-9,999	2	2	0	1	5
10,000-79,999	8	7	0	0	15
80,000 or more	3	4	0	0	7
Total	13	13	0	1	27

Based on the responses from the 27 units of local government, HF 1185-1E will have state-mandated costs on local governments pertaining to two interrelated changes in the bill:

- 1. Expanded definition of data requiring retention:** Sections 1, 2, and 3 have the effect of expanding the definition of data requiring retention to include all non-personal “written and text-based” communications from elected officials and public employees. Respondents indicated that these changes will expand the types of data requiring retention and will involve modes of communication, such as text

² <https://apps.deed.state.mn.us/assets/lmi/areamap/plan.shtml>.

messages and instant messages, that are generally not used for official records and thus are not currently involved in data retention procedures.

2. **Length of retention for correspondence:** Section 4 requires units of local government to retain correspondence for no less than three years. A significant amount of data, most notably in the form of emails, are not currently interpreted by local governments to be official records. While governmental entities may store this data for some time, the three year timeframe exceeds the current retention policies in place for many units of local government that responded to the survey. This necessitates local governments retaining data for a longer period of time, which will also result in local governments retaining more cumulative data at any given time.

While it is known that many units of local governments will incur increased costs as a result of HF 1185-1E, projecting annual statewide costs with a degree of certainty proved challenging. A few factors unique to this bill contribute to this difficulty. With over 3,500 units of local government in Minnesota, MMB would need many more responses than the amount received to constitute a representative sample. The 27 responses actually received was after over six months of engagement with and solicitation from the local government associations. Moreover, local governments' current policies and capabilities vary. Responses demonstrated that local governments have different practices for what kinds of data are archived, how they are archived, and for how long. Because each unit of local government has its own data practices in place under current law, it is difficult to project with confidence that a respondent's experience would be true for the local governments that did not respond. For example, the proposed three year retention schedule is substantially longer than certain local governments' current practices, resulting in a need for additional staffing and IT capacities for many respondents, whereas two local governments indicated that they have the existing IT infrastructure to meet the three year requirement at no additional cost.

Instead of providing a statewide local fiscal impact in the table, which presents a level of precision and certainty that does not exist for this bill, this local impact note will outline the types and range of costs respondents believe they would incur from HF 1185-1E.

Assumptions

The following assumptions underlie the types of costs identified by units of local government and described below:

1. Local governments were instructed to only calculate the costs to comply with HF 1185-1E *beyond* the cost of their current practices. For example, if a unit of local government already retains correspondence for two years, they were instructed to calculate the cost of retaining that data for an additional year.
2. MMB organized the lists of costs provided by units of local government into common categories. As noted, MMB is unable to provide statewide fiscal impact figures. Instead, each category lists an annual cost range. No one category of costs was identified by every respondent; thus, it is assumed that that is not a potential cost to the unit of local government. Therefore, each category shows \$0 as the low end of the cost range. The high end figure is the greatest cost reported by a unit of local government for that category.

Discussion of Local Costs

Email Storage. Annual cost range: \$0-\$1,964,000

20 of 27 (74%) respondents identified additional IT costs for retaining three years of emails. Respondents believe that HF 1185-1E will require the retention of most or all employee emails for at least three years, which is not current practice for most of the responding local governments. For example, one city in the Southeast region

noted that the current email retention policy is 60 days. Of the seven entities that did not identify additional IT costs, four did not specifically mention IT costs on their list cost drivers, whereas two counties stated that the requirements in HF 1185-1E align with their current policy of retaining all emails for at least three years. One county stated that no aspect of the bill will result in additional costs, and one county estimated a cost savings of \$1,500 annually because the new legal requirement of three years is less than the current practice of storing data for four years, and the county assumed it would change its practice to align with the minimum legal requirement. For the 20 entities identifying new IT costs, the estimates ranged significantly—from \$2,000 to \$1,964,000 annually. Thirteen entities, or 65% of those identifying IT costs for emails, estimate the cost to total \$20,000 or less annually. Five local governments estimated these annual costs at \$100,000 or greater, with four of these entities serving populations of 80,000 or more. The entity that does not serve a population of 80,000 or more but reported costs of \$100,000 or more combined email costs and the costs of other archival. The highest estimate of \$1,964,000 was provided by an urban core government in the 7 County Metro region.

The type of IT solutions proposed by the respondents to meet the three year requirement varied. There was no discernable pattern as to what types of solutions were driving lower or higher costs. Two counties limited costs to increased licensing costs from their email service providers. Several others noted the need for new or additional cloud-based storage services or other email archiving systems. Most units of local government noted that they would need to purchase more equipment and storage capacities, such as servers. Notably, of the five respondents identifying costs totaling \$100,000 or more, two explicitly acknowledged that the costs were calculated assuming the continuation of current storage procedures. Their estimates did not contemplate changes in practice to accommodate potential budget pressures arising from the bill's requirements. In both instances, the local governments maintain their own storage equipment, which includes both active and backup servers. One entity estimated the storage costs attributable to the bill's requirements at \$200,000 annually, whereas the other estimated \$1,964,000.

Archival of other forms of data. Annual cost range: \$0-\$86,400

Six (22%) respondents also identified a need to archive types of data other than email. Examples included text messages, instant messages, faxes, voicemails, and social media posts. Current law does not exempt these forms of data from retention requirements. However, many units of local government do not automatically archive these data because they do not contain official records. Some respondents interpreted the new retention requirements for "correspondence" to include data that are transmitted via these formats.

The six respondents listing this type of cost included two counties, three cities, and one school district. For five of the local governments, annual cost estimates ranged from \$10,000 to \$86,400. Another local government combined these costs with email costs and estimated both to total \$420,000 annually. Generally, these costs are attributable to new IT systems needed to archive these forms of data. It is notable that while the six respondents collectively listed text messages, instant messages, faxes, voicemails, and social media posts, no one respondent accounted for *all* of these data formats in their costs.

Staff for data retention management and data request response. Annual cost range: \$0-\$8,490,000

Minnesota's state and local governments must provide access to its data and records upon request. Under the Minnesota Data Practices Act, government data is presumed to be public unless exceptions are created in law. When records contain a mix of public and not public information, government entities must redact or separate the not public data before providing the records to the requestor. Several respondents noted that the redaction of emails is the most time consuming aspect of responding to data requests. Because more emails will be retained and for a longer length of time as a result of HF 1185-1E, 17 (63%) respondents indicated additional staff costs related to managing this new data and responding to data requests. For those indicating new costs, estimates ranged from \$6,000 annually for a suburban government in the 7 County Metro region to \$8,490,000

annually for an urban core government in the 7 County Metro region. Twelve respondents estimated costs in excess of \$40,000 annually. Among the five entities that listed costs in excess of \$100,000 annually, all but one serve populations of 80,000 or more. The costs in terms of FTE ranged from less than 0.1 through approximately 5 FTE annually for those respondents that provided FTE counts, except for an urban core government that estimated 150 FTE dedicated to this new work.

Several respondents also noted that this bill would require new approaches to data management beyond solely responding to data requests. Indeed, the local government estimating 150 FTE predicted staff being dedicated on a division- or unit-level to maintain and review data as well as serve as a liaison to attorneys responding to data requests. While this amount of staff time dedicated to these activities was an outlier among respondents, other units of local government predicted taking similar approaches. Two suburban cities, a city in the Southeast region, a city in the Northeast region, and the responding school district predicted needing to dedicate around 1 to 4 FTE to the function of maintaining and preserving correspondences, including the collection and archival of paper documents, instant messages, and faxes.

eDiscovery Software. Annual cost range: \$0-\$240,000

eDiscovery software gives organizations tools to search large amounts of data when responding to information requests. Three (11%) local governments indicated they would need to purchase eDiscovery software to facilitate the data request response process due to the substantial increase in email records that would be stored under HF 1185-1E requirements. All three respondents are large governments serving populations of 80,000 or more. Their cost estimates ranged from \$200,000-\$240,000 annually. Two entities noted that their data request collection, review, and redaction processes are entirely manual currently, which would no longer be feasible under the new standards in the bill. One entity already utilizes some eDiscovery programs but believes it would incur increased licensing costs due to the increased amount of data subject to search.

Business cell phones. Annual cost range: \$0-Unknown

Cell phones have become an important part of organizations' business activities. Three (11%) respondents—two counties and one city—noted that some employees use personal cell phones for business purposes. One entity explicitly acknowledged that employees are reimbursed for a portion of their cell phone bills, while two did not mention if their employees are reimbursed. These entities all noted that employees would need to be moved to business cell phones because the correspondence retention mandate in HF 1185-1E would require the local government to review and archive the phones' data (e.g., text messages and voicemails). Costs are listed as unknown, however, because one local government did not quantify the potential impact, whereas the other two did not provide an explanation as to whether employees currently receive reimbursements, and if so, what cost savings would result from no longer reimbursing employees for their personal cell phone plans.

Trainings. Annual cost range: \$0-12,632

Two (7%) cities identified the need to train employees on the new data retention requirements. Because HF 1185-1E expands Minnesota data retention requirements to correspondence, several local governments remarked that much of what employees produce would be subject to retention laws and would need to be preserved. That is a significant change in practice. Some local governments believe employees will need extensive training so that they understand their new responsibilities under this bill. While one city did not quantify the costs of trainings, a suburban city in the 7 County Metro region estimated those costs at over \$12,500 annually. This calculation assumes both the costs of producing a training as well as lost working time of 150 FTE spending one hour at the training annually.