

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

April 17, 2007

TO: Honorable Helen Giddings, Chair, House Committee on Business & Industry

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB59 by Isett, Carl (Relating to the management, security, and protection of personal information and governmental records; providing a criminal penalty.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB59, As Introduced: a negative impact of (\$2,277,238) through the biennium ending August 31, 2009.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

| Fiscal Year | Probable Net Positive/(Negative) Impact to General Revenue Related Funds |
|-------------|--|
| 2008 | (\$710,459) |
| 2009 | (\$1,566,779) |
| 2010 | (\$3,821,791) |
| 2011 | (\$5,374,792) |
| 2012 | (\$6,130,567) |

All Funds, Five-Year Impact:

| Fiscal Year | Probable (Cost) from <i>GENERAL REVENUE</i> <i>FUND</i> 1 | Probable (Cost) from <i>STATE HIGHWAY</i> <i>FUND</i> 6 | Probable (Cost) from <i>FEDERAL FUNDS</i> 555 | Change in Number of State Employees from FY 2007 |
|-------------|---|---|--|--|
| 2008 | (\$710,459) | (\$8,619,335) | (\$370,260) | 178.0 |
| 2009 | (\$1,566,779) | (\$6,074,595) | \$0 | 178.0 |
| 2010 | (\$3,821,791) | (\$6,074,595) | \$0 | 178.0 |
| 2011 | (\$5,374,792) | (\$5,288,937) | \$0 | 158.0 |
| 2012 | (\$6,130,567) | (\$5,288,937) | \$0 | 158.0 |

Fiscal Analysis

The bill provides that a state or local governmental entity may not disclose personal information such as social security number, date of birth, address, etc, unless the Office of the Attorney General (OAG) authorizes the disclosure after determining that there is a compelling governmental interest in disclosing the information that cannot be effectively accomplished without the disclosure. In addition, the bill provides that a state or local governmental entity shall develop a privacy policy that completely describes in plainly written language the reasons that the governmental entity requires or collects each category of personal information. The bill further requires the OAG to establish additional guidelines for local entities to follow when responding to open records requests.

The bill would also amend the Penal Code by enhancing the punishment for the offense of fraudulent

use or possession of identifying information from a state jail felony to a felony of the third degree.

Methodology

The Office of the Attorney General (OAG) indicates that enactment of the provisions of the bill would significantly increase the workload of the agency. As a result, the OAG indicates that it would require an additional 6 FTEs within its Open Records Division to adopt new procedural and legal standards for responding to requests and to handle decisions, training, inquiries, and complaints. The salary cost for these additional FTEs would be \$409,037 in General Revenue per year. Associated general operating costs for these additional FTEs would be \$28,290 per year. A one-time cost of \$48,017 in General Revenue would be required for capital equipment such as computers, furniture, etc.

The OAG also indicates that the Child Support Division within the agency would be significantly impacted by the provisions of the bill. As a result, the agency would incur a one-time cost of \$561,000 for programming modifications to the child support automated system. This cost would be allocated between two methods of finance, \$370,260 in Federal Funds and \$190,740 in General Revenue.

The Department of Public Safety (DPS) indicates that enactment of the provisions of the bill would significantly increase the workload of the agency within its Crime Records Service, Driver License Division, Regulatory Licensing Service, and Information Management Service. As a result, it is assumed that the agency would require an additional 152 FTEs per year to change data currently stored by automated means to revert back to manual process of storage, comparison, and search. The salary cost for these additional FTEs would be \$4,500,317 in General Revenue. Associated general operating costs for these additional FTEs would be \$788,620 per year. A one-time cost of \$2,495,720 in General Revenue would be required for capital equipment such as computers, printers, furniture, fingerprint matching equipment, etc.

An additional 20 FTEs would be required for the first 3 years for initial conversion of records to comply with the provisions of the bill. The salary cost for these additional FTEs would be \$650,122 in General Revenue. Associated general operating costs for these additional FTEs would be \$135,536 in General Revenue. A one-time cost of \$49,020 in General Revenue would be required for equipment such as, furniture, storage, etc.

The provision of the bill relating to enhancing the punishment for the offense of fraudulent use or possession of identifying information would have a significant fiscal impact. In fiscal year 2006, 213 admissions to state jail were convicted of the offense of fraudulent use or possession of identifying information. As third degree felons, such offenders would serve on average 635 additional days incarcerated than they would as state jail felons. In order to estimate the future impact of the proposal, the changes proposed for admission and release policy are applied in a simulation model, to (1) prison admissions that reflect the distribution of offenses, sentence lengths, and time served, and (2) the increase in the number of people on parole supervision, as a result of third degree felony offenders being released from prison and added to parole supervision caseloads. Costs of incarceration by the Department of Criminal Justice are estimated on the basis of \$40 per inmate per day for prison facilities, reflecting approximate costs of either operating facilities or contracting with other entities. As a result, the cost to General Revenue associated with this provision of the bill would be \$34,375 in 2008, \$1,129,452 in 2009, \$3,384,464 in 2010, \$4,937,465 in 2011, and \$5,693,240 in 2012.

Technology

The technology impact for the bill would be \$561,000 in General Revenue.

Local Government Impact

Harris County reported that they have approximately 204 million images to be redacted, most of them on microfilm. The county estimates that it would take up to five years to convert the microfilm images to optical images, which could then be redacted. During the redaction period, the County Clerk would have to prevent the public from having unsupervised access to the records. An additional 50 to 75 clerks would have to be hired at a cost of approximately \$8.3 million in fiscal year 2008. These costs would cover salaries and wages, capital outlay, operational costs, redaction, and other miscellaneous

charges. The costs would drop to \$5.9 million in fiscal year 2009 (no computer outlay) but would rise again to \$6.1 million by fiscal year 2012.

The provisions of Section 3 of the bill would possibly eliminate the use of the AFIS system, a fingerprint identification system used by law enforcement agencies. Other important systems may be jeopardized as well; including the "Pupilometers" used for drug testing that must compare eye-scans with a baseline scan for that person. Other new systems of identification would have to be created and utilized, at great cost to law enforcement agencies.

There could be some costs to local governments to discontinue the use of an individual's social security number upon request from the individual, but the costs would depend on the number of requests.

There would be some costs to local governments that have not yet established data collection procedures or a general or Internet privacy policy. These costs are not expected to be significant.

The redistribution of unexpended records management and preservation fees would result in no significant impact to the overall budget of a county.

The bill would require local entities to be trained on and comply with two sets of laws relating to public information requests. There will be an operational and fiscal impact to local governments to comply with the law.

Source Agencies: 302 Office of the Attorney General, 308 State Auditor's Office, 313 Department of Information Resources, 327 Employees Retirement System, 405 Department of Public Safety

LBB Staff: JOB, JRO, MS, JM, KJG