



GOVERNOR'S OFFICE OF  
BUDGET AND PROGRAM PLANNING

## Fiscal Note 2023 Biennium

**Bill #** SB0393

**Title:** Generally revise laws related to public's right to know and participate

**Primary Sponsor:** Keenan, Bob

**Status:** As Introduced

- Significant Local Gov Impact     
  Needs to be included in HB 2     
  Technical Concerns  
 Included in the Executive Budget     
  Significant Long-Term Impacts     
  Dedicated Revenue Form Attached

### FISCAL SUMMARY

|   | <u>FY 2022</u><br><u>Difference</u> | <u>FY 2023</u><br><u>Difference</u> | <u>FY 2024</u><br><u>Difference</u> | <u>FY 2025</u><br><u>Difference</u> |
|---|-------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|
| <b>Expenditures:</b>                    |                                     |                                     |                                     |                                     |
| General Fund                            | \$99,764                            | \$86,712                            | \$88,013                            | \$89,333                            |
| State Special Revenue                   | \$41,384                            | \$35,800                            | \$36,336                            | \$36,882                            |
| Other                                   | \$65,200                            | \$65,200                            | \$66,179                            | \$67,172                            |
| <b>Revenue:</b>                         |                                     |                                     |                                     |                                     |
| General Fund                            | \$0                                 | \$0                                 | \$0                                 | \$0                                 |
| State Special Revenue                   | \$0                                 | \$0                                 | \$0                                 | \$0                                 |
| Other                                   | \$4,700                             | \$4,700                             | \$4,771                             | \$4,842                             |
| <b>Net Impact-General Fund Balance:</b> | <u>(\$99,764)</u>                   | <u>(\$86,712)</u>                   | <u>(\$88,013)</u>                   | <u>(\$89,333)</u>                   |

**Description of fiscal impact:** SB 393 modifies sections of MCA concerning public meetings to accommodate the use of electronic meeting software and remote participation. The bill also sets a deadline of 10 business days to acknowledge a request for information, a deadline of 5 additional days to provide information that is readily available, and a deadline of an additional 60 days for information that must be compiled or research. Finally the bill amends 2-6-107, MCA, to clarify prohibitions on agency use of distribution lists to make unsolicited contact.

The fiscal impact to the state varies, depending on each agency's ability to accommodate remote meetings, respond to public information requests, and manage any distribution lists.

### FISCAL ANALYSIS

**Assumptions:** *Agencies with No or Minimal Fiscal Impact*

**Board of Public Education**

1. The Board of Public Education has been offering remote meetings via Zoom since May 2020.

2. The board has not received any requests for public information in the last few years. The last request received was approximately five years ago, and the requestor did not wish to continue the request after they were notified of the fee for what was requested. This was the only request with a fee attached.
3. The board maintains distribution lists for disseminating meeting information and materials. Participation on the lists is by request of the recipient. SB 393, if passed, will not affect the board's lists.

**Commissioner of Political Practices**

4. The Commissioner of Political Practices responds to numerous public information requests and routinely makes documents and information available to the public. The commissioner does not anticipate that the changes proposed in SB 393 will have a significant financial impact to the office.
5. The office already has remote meeting capabilities.
6. The office does not have distribution lists referenced in 2-6-1017, MCA.

**Department of Agriculture**

7. The Department of Agriculture already offers remote meetings via Zoom and Microsoft Teams.
8. The department typically receives less than 25 public information requests per year. If responding to the public information request exceeds a certain amount of time, the department can, and will, charge fees.
9. The department does not have distribution lists per 2-6-1017, MCA.

**Department of Commerce**

10. The Department of Commerce has elected to hold public meetings remotely in the past and anticipates no fiscal impact from complying with the regulations established by the bill if the department decides to hold remote meetings in the future.
11. Section 4 of the bill revises the response time and fees charged related to public information requests. The department's legal staff is responsible for researching and responding to public information requests. Under current law, fees charged for such requests are based on the legal staff's hourly wages for time spent that is directly attributable to researching, and responding, to the request.
12. The department receives three to five public information requests from members of the media and 40 to 50 other public information requests each year. The department only charges for requests that take longer than 30 minutes to fill (approximately 20 requests per year).
13. Under SB 393, the fees charged would be based on the hourly wage of an IT systems analyst 1. The difference between these two rates is \$16.86/hr.
14. The department estimates that legal staff spend an average of 18 hours annually researching and responding to public information requests. The estimated cost to the department would be \$303.48 (\$16.86 x 18).

**Department of Corrections (Also See Technical Concerns)**

15. The infrastructure currently exists to make remote meeting access possible so this requirement should not have a fiscal impact to the Department of Corrections (DOC).
16. The DOC will acknowledge the receipt of public information requests within 10 business days. If requests for public information require the agency to search, compile, or gather data that is not kept in a uniform format, storage, or software to make the information accessible for the requester to examine, the DOC may respond by providing an estimate of the fees that may be charged.
17. The department may charge for actual staff time spent responding at the amount equal to the current hourly mid-point rate for an IT system analyst in the broadband pay plan. However, the DOC does not foresee a change in revenue collection.
18. The number of information requests that the DOC receives is approximately 500 per year. These requests vary in scope and the length of time to respond.
19. There is also the potential increase in litigation costs that would result if, despite good faith efforts, the DOC is unable to fulfill a request within the designated time period.
20. The section pertaining to distribution lists does not affect the current business practices of DOC.

**Department of Fish, Wildlife and Parks**

21. This bill would allow an agency to hold a meeting remotely. There is no fiscal impact from this requirement, since the Department of Fish, Wildlife and Parks currently has the capability to facilitate remote meetings.

22. This bill would revise fees the department can charge and establishes time requirements when responding to requests for public information. Over the past three years, the department has received an average of 136 public information requests (162 in FY 2018, 119 in FY 2019, and 128 in FY 2020).
23. The changes described in this bill will not create a fiscal impact to the department. The department already has the resources to response to information requests that may not be readily available to the public.
24. The department does not have any distribution lists referenced in 2-6-1017, MCA.

**Department of Labor and Industry (Also See Technical Concerns)**

25. The fiscal impact of this legislation is not anticipated to go above and beyond what the Department of Labor and Industry presently incurs for meeting costs and public record requests.
26. The department current has the capability to offer remote meetings.  
The department does not track records requests over time but will charge for the public information request if significant staff hours are used to compile the requested information.
27. The department currently distributes lists for persons holding professional or occupational licenses, and SB 393 does not impact the department’s ability to continue providing these lists. The department receives requests fairly often, as providers of continuing education want to use the lists to advertise their services.

**Department of Livestock**

28. The Department of Livestock already complies with the remote meeting requirement in SB 393.
29. The department estimates it received 24 public information requests in FY 2020. Most of these requests were related to livestock brands, and the department is easily able to provide this information from their electronic systems.
30. The department will charge for requests that involve more than a half hour of staff time, and for copies and other materials. These costs are not anticipated to have a material fiscal impact on the department.
31. The department has multiple listings, depending on its programs (i.e., Milk, Animal Health, and Brands Enforcement). The department’s main distribution list goes out to about 180 stakeholders.
32. The department either will not distribute a list for purposes that appear to be for solicitation or will remove enough information from the lists in order to make it difficult to use the information for solicitation.

**Department of Military Affairs**

33. There is no impact to the Department of Military Affairs from SB 393.

**Department of Natural Resources and Conservation (Also See Technical Concerns)**

34. The Department of Natural Resources and Conservation (DNRC) currently offers remote options for lease sales and meetings of attached boards. There is no anticipated fiscal impact to the department from continuing or expanding this practice.
35. The department receives, on average, 20 to 45 public information requests each year. Of these, less than 25% require the amount of staff time that triggers the department to charge fees.
36. Any differences in payments for the completion of public information requests resulting from the new fee structure imposed by SB 393 will likely cancel each other out.
37. The department currently maintains, and uses, many distribution lists that would fit the definition in SB 393. As written, the department will be prevented from adding to or using these lists if SB 393 is passed. Examples include, but are not limited to, notification lists for the Land Board, rules, timber sales, lease sales, public comment, and water rights users. There would be significant impact to daily operations for the DNRC as a result of this change in definition for distribution lists.

**Department of Revenue**

38. The Department of Revenue will handle remote meetings with existing resources.
39. In FY 2019, the department received 172 public information requests; in FY 2020, the department received 131 requests. The department will administer the provisions of SB 393 with existing resources.
40. The department does have distribution lists subject to 2-6-1017, MCA. However, SB 393 will not change the department’s current processes as it relates to these lists.

**Judicial Branch**

41. The Judicial Branch already offers remote meeting capabilities and receives “only a few” public information requests. The branch does not charge a fee.
42. The branch does not maintain or distribute lists with individuals’ contact information.

**Legislative Branch**

43. The Legislative Branch already offers remote meetings and has the capability to continue to offer these meetings in the future.
44. The branch receives from 12 to 24 public information requests a year. The branch follows the Department of Administration’s fee schedule, but most requests can be fulfilled within a half hour, and via an electronic response, so there is rarely a need to charge a fee.
45. The Legislative Branch provides the legislator roster on their website and a method to download a file of legislator names and addresses. There are no limitations to the use of this list, as legislators are public officials and the legislative process is one that, although not specifically solicited, allows for the public’s right to participate.

**Montana Arts Council**

46. The Montana Arts Council already offers remote meetings.
47. The council has not received a public information requests since 2016. If a request is received, a fee may be charged, depending on how much staff time would be needed to fulfill the request.
48. The council uses Granicus (state-contracted software) to manage the council’s eNews distribution list. Participants sign up via the website or social media, or they are included on the list due to being a grant recipient or awardee. Participants can opt out of receiving future emails. Since people have to sign up, the proposed amendment in SB 393 does not affect the council’s current process.

**Montana Consumer Counsel**

49. The Montana Consumer Counsel is part of the Legislative Branch. The agency already has established procedures for committee meeting notices and how to participate in those meetings on its legislative website via GovDelivery.

**Montana Historical Society**

50. The Montana Historical Society (MHS) already utilizes Zoom for public meetings.
51. Although MHS receives ongoing research requests, the society does not normally have other public information requests.
52. The MHS does not provide distribution lists per 2-6-1017, MCA, so there is no fiscal impact from the changes proposed in SB 393.

**Montana State Fund**

53. Montana State Fund (MSF) already has remote meeting capabilities and has been conducting remote meetings for the past year.
54. Montana State Fund receives four to five requests for public information annually, generally related to board meetings. The MSF does not charge a fee for the requested public information.
55. Montana State Fund does not currently provide, distribute, or sell distributions lists.

**Montana State Library**

56. The Montana State Library already conducts remote meetings and does have distribution lists.
57. Although the library receives numerous research requests, which are handled through normal operations, the library does not receive public information requests.

**Montana Public Employees’ Retirement Administration**

58. There is no fiscal impact for the Montana Public Employees’ Retirement Administration. The administration currently offers remote meeting capabilities and has received a “handful” of public information requests, for which they charge a fee.
59. The administration does not provide or distribute lists per 2-6-2017, MCA.

**Montana Public Service Commission**

60. The Public Service Commission (PSC) already meets remotely and has the capability to do so moving forward without a significant fiscal impact.

61. Of the public information requests received annually by the commission (roughly 10), the great majority can be handled with current resources under SB 393. However, on a semi-regular basis, the commission receives very broad requests (e.g. “all emails for Commissioner ‘X’ for date range: ‘Y’”). Under SB 393, if such requestors were unwilling to negotiate a response date beyond the 60-day window, it would be difficult, if not impossible, for the commission to satisfy the mandate of the bill without additional resources.
62. The Public Service Commission maintains interested person lists for purposes of distributing PSC materials (i.e., weekly agendas), but the commission does not disseminate the lists per 2-6-1017, MCA.

**Office of the Commissioner of Higher Education**

63. The Office of the Commissioner of Higher Education (OCHE) currently meets the public right to know and participate as outlined in SB 393.
64. The office offers remote meetings and has already purchased all the equipment to continue remote meetings with no additional fiscal impact.
65. The office estimates they receive 30 to 50 public information requests annually, with more requests occurring in legislative years. At this level, OCHE can continue to meet the requirements in the bill with existing resources.
66. The office does not distribute lists subject to 2-6-1017, MCA.

**Office of Public Instruction**

67. The Office of Public Instruction does not believe the changes in SB 393 will increase its costs.

**Teachers’ Retirement System**

68. The Teachers’ Retirement System (TRS) already complies with the requirements for conducting public meetings by remote means in New Section 1.
69. The proposed amendments to 2-6-1006, MCA, in Section 4 of the bill will require minimal revisions to TRS’ existing “Requests for Public Information or Public Records” policy.
70. Current TRS policy and practices generally conform with the proposed amendments in SB 393, and any cost to implement the bill would be negligible.

**Assumptions: Agencies with Fiscal Impact**

**Department of Environmental Quality (Also See Technical Concerns)**

71. SB 393 would require the Department of Environmental Quality (DEQ) to comply with specified timelines associated with acknowledging and fulfilling requests for public information. The department will need additional resources to ensure the public information timelines in the bill could be met consistently.
72. This bill would also establish limits on the fees the agency may charge a requester to cover the cost of copies and staff time. In FY 2021, DEQ estimates total revenue from fees collected on information requests will be approximately \$9,400. DEQ estimates that fees collected on information requests that would fall into new section 2-6-1006(2)(b), MCA, account for approximately 50% of total fees projected to be collected in FY 2021. Therefore, implementation of SB 393 would result in lost revenue in an amount of at least \$4,700 annually.
73. The department will continue to acknowledge receipt of a request for public information within 10 days of receiving the request.
74. Processing information requests requires review by an attorney prior to releasing information to the requestor to ensure there is no sensitive or privileged information included. Implementation of SB 393 would require an additional 0.50 FTE (Attorney, Band 7) to prioritize legal review of information requests due to competing legal deadlines and workload on existing staff. Salary and benefits are estimated at \$52,581 for FYs 2022 and 2023. A 1.5% inflationary factor is applied to this amount for FYs 2024 and 2025.
75. The department charges a 24% indirect cost rate for operating costs associated with personal services. For FYs 2022 and 2023, operating costs are projected to be \$12,619 annually. A 1.5% inflationary factor is applied to this amount for FYs 2024 and 2025.
76. The majority of the information requests received by DEQ are requests for information that would fall under new section 2-6-1006(2)(b), MCA.

77. SB 393 does not allow agencies to charge fees for staff time spent responding to a request under 2-6-1006(2)(b), MCA. Therefore, DEQ would not be able to charge for time spent responding to the majority of the requests received by the agency.

78. There is no fiscal impact to the department related to distribution lists.

**Department of Justice**

79. The Department of Justice (DOJ) did not estimate the costs for remote meetings, as the bill says “may” not “shall” leaving it open for the agency to determine the need at a later date.

80. This bill requires state agencies to acknowledge requests for information from the public in a more restrictive timeframe than current law.

81. The department will require 1.00 FTE Information Technology Systems Analyst at an overall cost of \$79,938 in FYs 2022 and 2023. A 1.5% inflationary factor has been applied to this cost for FYs 2024 and 2025.

82. Operating expenses total \$19,826 in FY 2022, \$10,000 of which is a one-time-only expense for redaction software, necessary to fulfil the public requests, and \$3,052 of which is one-time-only new employee computer, office, and installation costs.

83. Other operating costs are projected to be \$6,774 in FYs 2022 and 2023. A 1.5% inflationary factor has been applied to this cost for FYs 2024 and 2025.

84. The department does not have distribution lists subject to 2-6-1017, MCA.

**Department of Transportation**

85. There is no fiscal impact for remote meetings, since the Montana Department of Transportation (MDT) currently offers remote meetings for the Transportation Commission, Aeronautics Board, and project-specific meetings for public input.

86. The department processes approximately 300 information requests per FY and expects that number to continue to grow, as it has for the last four fiscal years. The department responds to most requests within 14 days, but also receives complicated requests (i.e., law firms, generally in the event of fatalities either on MDT roads or accidents on projects, requesting the “entire highway project files,” which consists of thousands of pages of documents, or contractors seeking information on their competitor’s submissions in alternative contracting projects, where MDT must first contact multiple firms who have submitted a bid on that project and allow the firms time to identify any proprietary or trade secret information and redact that information before the responsive documents may be provided by MDT).

87. The time constraints set forth in SB 393 Section 4 (2) (a) & (b), and the requirement that the MDT provide in-person copies of records and physical examination of records on site, will require an additional FTE and a public workstation for the viewing of the electronic records.

88. SB 393 requires a state agency to provide *information ready for public distribution at the time of the request* in person or electronically.

89. The department currently directs appropriate public information requestors to information that is available on MDT’s website, but does so by addressing requests in the order in which they are submitted, which may not be the timeframe finite limits contained in SB 393.

90. The department will require a part-time dedicated staff person to provide immediate links to the website or immediate copies of information to the public in person or electronically.

91. A .50 FTE para-legal position will cost \$34,784 for FYs 2022 and 2023. A 1.5% inflationary factor has been added to this cost for FYs 2024 and 2025.

92. Preparing information *not ready for public distribution* for physical examination within 5 days of acknowledgment will require existing staff to suspend other duties to comply with an expedited collection of records.

93. Records collection typically involves multiple MDT programs, so additional staff time would be spent to prioritize collection of records over all other assigned duties.

94. The department will need to provide a computer station for the public’s use in examination of electronic records and dedicate staff to compile and stand-by to assist and secure the files. There are typically two types of requests which require a separate computer: 1) documents not available on the internet due to specialized

programs needed to access and view (CADD drawings and design files), and/or 2) any request for viewing documents in person.

95. The cost of a computer workstation for the public is based on the costs of equipment for a new employee setup (\$3,300 in FY 2022). Ongoing operating costs for both the new employee and the public computer system are estimated at \$1,016 for FY 2023. A 1.5% inflationary factor has been added to this cost for FYs 2024 and 2025.

**Assumptions: - Agencies Where Fiscal Impact Cannot be Determined**

**Department of Administration (Also See Technical Concerns)**

96. Public agencies already conduct many public meetings remotely. The state network has sufficient capacity, and agencies have the information technology systems necessary to conduct remote meetings as needed.
97. Most agencies already include an acknowledgement in their record request fulfilment process; therefore, the acknowledgment requirement in 2-6-1006(2), as amended, would not increase agency costs. For record requests involving documents in existence and prepared for dissemination, including some requests pursuant to 2-6-1006(2)(a), MCA, as amended, the agency will acknowledge receipt of the record request in the same correspondence providing the records.
98. For requests under 2-6-1006(2)(a), MCA, as amended, “already prepared and ready for public distribution” is understood to mean the records are compiled and in a format that requires no further input from the agency. The agency does not need to search for the records or retrieve them from archives or other storage. Under these circumstances, the record request can be fulfilled as provided in (2)(a) with little cost to the agency except in the situations identified in Technical Note 1.
99. Under 2-6-1006(2)(b), MCA, as amended, a requester may examine “public information not already prepared and ready for public distribution” free of charge. More complicated record requests may be handled under 2-6-1006(2)(c); however, preparing existing records that do not need to be “searched, compiled, or gathered” for examination may result in significant costs for the agency. For example, a request for all final orders during a given time period would require the agency to, at minimum, review the records to determine whether they include confidential information that must be redacted prior to examination.
100. The DOA provided an average of 150 public information requests in FYs 2019 and 2020. The public information requests that would fall under 2-6-1006(2)(b), MCA, as amended, is where additional net costs would be seen in future FYs, as the 25 cents cost per page would not cover the cost to the agency associated with reviewing records that need confidential information redacted prior to examination. The Department of Administration is unable to quantify these costs.

**State Auditor’s Office (Also See Technical Concerns)**

101. While there is no fiscal impact to the State Auditor’s Office, there are technical concerns.
102. The only public meetings held by the State Auditor’s Office are the Reinsurance Association Board meetings, which are already open to the public.
103. The fiscal impact for public information requests cannot be determined.

**Department of Public Health and Human Services**

104. The Department of Public Health and Human Services (DPHHS) is unable estimate the anticipated cost due to the complexity and variety of data requests that it receives. Properly reporting correct data can involve a multitude of both state and third-party service resources and linking data from across multiple systems, often requiring significant time and effort.
105. Annually, DPHHS receives between 45 to 60 public records requests. An estimated 30% of requestors do not move forward after the initial request is made; either the requestor no longer needs the information, stops engaging with the agency, or does not want to pay the required fee for a customized report.
106. Fees charged are determined if the request requires a customized report and the requestor agrees to pay the fee. There are times when the request can be very expensive. Hourly rates for these specialized resources would not be recouped by the midpoint rate of an IT Systems Analyst 1. This could lead to additional costs that would have to be paid by the agency.

107. If public information requests increase significantly due to this legislation, additional resources may be required. The public records requests are coordinated by the Public Information Office and the Office of Legal Affairs and involve agency staff specific to each request.

**Office of Public Defender**

108. The Office of the State Public Defender (OPD) has the statutory obligation to represent individuals charged with a crime who cannot afford to hire counsel, represent individuals on direct appeal and to provide counsel if there is a conflict of interest.

109. OPD maintains transparent and open records as applicable and assumes any information not already available would be reviewed and a cost estimate developed. The office receives about one to three public information requests annually, for which there is no fee charged. The majority of the information the office has been asked to provide has been publicly reported on their website or the information is readily available elsewhere.

110. This bill, if passed, indicates in Section 4 parts b and c, the agency is allowed collect fees related to the cost of preparing copies of data or compiling data requested by the public, however OPD is unable to quantify fiscal impact.

111. The office has been using remote (Zoom) meetings since last March and does not anticipate needing any additional accounts to accommodate the requirements of this bill.

112. The office does not have any distribution lists referenced in 2-6-1017, MCA.

|   | <u>FY 2022</u><br><u>Difference</u> | <u>FY 2023</u><br><u>Difference</u> | <u>FY 2024</u><br><u>Difference</u> | <u>FY 2025</u><br><u>Difference</u> |
|---|-------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|
| <b>Fiscal Impact: Combined</b>  |                                     |                                     |                                     |                                     |
| FTE   | 2.00                                | 2.00                                | 2.00                                | 2.00                                |
| <b><u>Expenditures:</u></b>   |                                     |                                     |                                     |                                     |
| Personal Services   | \$167,303                           | \$167,303                           | \$169,813                           | \$172,361                           |
| Operating Expenses  | \$39,045                            | \$20,409                            | \$20,715                            | \$21,026                            |
| <b>TOTAL Expenditures</b>   | <b>\$206,348</b>                    | <b>\$187,712</b>                    | <b>\$190,528</b>                    | <b>\$193,387</b>                    |
| <b><u>Funding of Expenditures:</u></b>  |                                     |                                     |                                     |                                     |
| General Fund (01)   | \$99,764                            | \$86,712                            | \$88,013                            | \$89,333                            |
| State Special Revenue (02)  | \$41,384                            | \$35,800                            | \$36,336                            | \$36,882                            |
| Other   | \$65,200                            | \$65,200                            | \$66,179                            | \$67,172                            |
| <b>TOTAL Funding of Exp.</b>  | <b>\$206,348</b>                    | <b>\$187,712</b>                    | <b>\$190,528</b>                    | <b>\$193,387</b>                    |
| <b><u>Revenues:</u></b>   |                                     |                                     |                                     |                                     |
| General Fund (01)   | \$0                                 | \$0                                 | \$0                                 | \$0                                 |
| State Special Revenue (02)  | \$0                                 | \$0                                 | \$0                                 | \$0                                 |
| Other   | \$4,700                             | \$4,700                             | \$4,771                             | \$4,842                             |
| <b>TOTAL Revenues</b>   | <b>\$4,700</b>                      | <b>\$4,700</b>                      | <b>\$4,771</b>                      | <b>\$4,842</b>                      |
| <b><u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u></b> |                                     |                                     |                                     |                                     |
| General Fund (01)   | (\$99,764)                          | (\$86,712)                          | (\$88,013)                          | (\$89,333)                          |
| State Special Revenue (02)  | (\$41,384)                          | (\$35,800)                          | (\$36,336)                          | (\$36,882)                          |
| Other   | (\$60,500)                          | (\$60,500)                          | (\$61,408)                          | (\$62,330)                          |



Fiscal Note Request – As Introduced

(continued)

|   | <u>FY 2022</u><br><u>Difference</u> | <u>FY 2023</u><br><u>Difference</u> | <u>FY 2024</u><br><u>Difference</u> | <u>FY 2025</u><br><u>Difference</u> |
|---|-------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|
| <b>Fiscal Impact: Department of Environmental Quality</b>                         |                                     |                                     |                                     |                                     |
| FTE   | 0.50                                | 0.50                                | 0.50                                | 0.50                                |
| <b><u>Expenditures:</u></b>   |                                     |                                     |                                     |                                     |
| Personal Services   | \$52,581                            | \$52,581                            | \$53,370                            | \$54,171                            |
| Operating Expenses  | \$12,619                            | \$12,619                            | \$12,809                            | \$13,001                            |
| <b>TOTAL Expenditures</b>   | <b>\$65,200</b>                     | <b>\$65,200</b>                     | <b>\$66,179</b>                     | <b>\$67,172</b>                     |
| <b><u>Funding of Expenditures:</u></b>  |                                     |                                     |                                     |                                     |
| General Fund (01)   | \$0                                 | \$0                                 | \$0                                 | \$0                                 |
| Other   | \$65,200                            | \$65,200                            | \$66,179                            | \$67,172                            |
| <b>TOTAL Funding of Exp.</b>  | <b>\$65,200</b>                     | <b>\$65,200</b>                     | <b>\$66,179</b>                     | <b>\$67,172</b>                     |
| <b><u>Revenues:</u></b>   |                                     |                                     |                                     |                                     |
| General Fund (01)   | \$0                                 | \$0                                 | \$0                                 | \$0                                 |
| Other   | \$4,700                             | \$4,700                             | \$4,771                             | \$4,842                             |
| <b>TOTAL Revenues</b>   | <b>\$4,700</b>                      | <b>\$4,700</b>                      | <b>\$4,771</b>                      | <b>\$4,842</b>                      |
| <b><u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u></b> |                                     |                                     |                                     |                                     |
| General Fund (01)   | \$0                                 | \$0                                 | \$0                                 | \$0                                 |
| Other   | (\$60,500)                          | (\$60,500)                          | (\$61,408)                          | (\$62,330)                          |

**Fiscal Note Request – As Introduced**

*(continued)*

|   | <u>FY 2022</u><br><u>Difference</u> | <u>FY 2023</u><br><u>Difference</u> | <u>FY 2024</u><br><u>Difference</u> | <u>FY 2025</u><br><u>Difference</u> |
|---|-------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|
| <b><u>Fiscal Impact: Department of Justice</u></b>                                |                                     |                                     |                                     |                                     |
| <b>FTE</b>  | 1.00                                | 1.00                                | 1.00                                | 1.00                                |
| <b><u>Expenditures:</u></b>   |                                     |                                     |                                     |                                     |
| Personal Services   | \$79,938                            | \$79,938                            | \$81,137                            | \$82,354                            |
| Operating Expenses  | \$19,826                            | \$6,774                             | \$6,876                             | \$6,979                             |
| <b>TOTAL Expenditures</b>   | <u>\$99,764</u>                     | <u>\$86,712</u>                     | <u>\$88,013</u>                     | <u>\$89,333</u>                     |
| <b><u>Funding of Expenditures:</u></b>  |                                     |                                     |                                     |                                     |
| General Fund (01)   | \$99,764                            | \$86,712                            | \$88,013                            | \$89,333                            |
| <b>TOTAL Funding of Exp.</b>  | <u>\$99,764</u>                     | <u>\$86,712</u>                     | <u>\$88,013</u>                     | <u>\$89,333</u>                     |
| <b><u>Revenues:</u></b>   |                                     |                                     |                                     |                                     |
| General Fund (01)   | \$0                                 | \$0                                 | \$0                                 | \$0                                 |
| <b>TOTAL Revenues</b>   | <u>\$0</u>                          | <u>\$0</u>                          | <u>\$0</u>                          | <u>\$0</u>                          |
| <b><u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u></b> |                                     |                                     |                                     |                                     |
| General Fund (01)   | <u>(\$99,764)</u>                   | <u>(\$86,712)</u>                   | <u>(\$88,013)</u>                   | <u>(\$89,333)</u>                   |

|   | <u>FY 2022</u><br><u>Difference</u> | <u>FY 2023</u><br><u>Difference</u> | <u>FY 2024</u><br><u>Difference</u> | <u>FY 2025</u><br><u>Difference</u> |
|---|-------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|
| <b><u>Fiscal Impact: Department of Transportation</u></b>                         |                                     |                                     |                                     |                                     |
| FTE   | 0.50                                | 0.50                                | 0.50                                | 0.50                                |
| <b><u>Expenditures:</u></b>   |                                     |                                     |                                     |                                     |
| Personal Services   | \$34,784                            | \$34,784                            | \$35,306                            | \$35,836                            |
| Operating Expenses  | \$6,600                             | \$1,016                             | \$1,030                             | \$1,046                             |
| <b>TOTAL Expenditures</b>   | <b>\$41,384</b>                     | <b>\$35,800</b>                     | <b>\$36,336</b>                     | <b>\$36,882</b>                     |
| <b><u>Funding of Expenditures:</u></b>  |                                     |                                     |                                     |                                     |
| General Fund (01)   | \$0                                 | \$0                                 | \$0                                 | \$0                                 |
| State Special Revenue (02)  | \$41,384                            | \$35,800                            | \$36,336                            | \$36,882                            |
| <b>TOTAL Funding of Exp.</b>  | <b>\$41,384</b>                     | <b>\$35,800</b>                     | <b>\$36,336</b>                     | <b>\$36,882</b>                     |
| <b><u>Revenues:</u></b>   |                                     |                                     |                                     |                                     |
| General Fund (01)   | \$0                                 | \$0                                 | \$0                                 | \$0                                 |
| State Special Revenue (02)  | \$0                                 | \$0                                 | \$0                                 | \$0                                 |
| <b>TOTAL Revenues</b>   | <b>\$0</b>                          | <b>\$0</b>                          | <b>\$0</b>                          | <b>\$0</b>                          |
| <b><u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u></b> |                                     |                                     |                                     |                                     |
| General Fund (01)   | \$0                                 | \$0                                 | \$0                                 | \$0                                 |
| State Special Revenue (02)  | (\$41,384)                          | (\$35,800)                          | (\$36,336)                          | (\$36,882)                          |

**Technical Notes:**

**Department of Administration**

1. Under 2-6-1006(2)(a), MCA, as amended, agencies are required to provide copies of public information already prepared and ready for public distribution free of charge if the agency does not have the public information available “on the agency’s website.”
  - a. Some public information may not be available on the agency’s website but on a website maintained by another state agency, the federal government, or a trade association (e.g., a national standard or building code). The general definition of “public information” includes “information . . . used . . . by any public agency relating to the transaction of official business.” 2-6-1002(11), MCA, may encompass information published elsewhere. Agencies may not be allowed to reproduce this information, either in print or on the agency website, for copyright or other reasons. In such cases, it would be costly for the agency to provide copies to requesters free of charge.
  - b. Some public information may exist only in preprinted or published reports and books prepared at a cost to the agency. Providing such information free of charge may be costly for agencies.
  - c. The phrase “ready for public distribution” is vague. As noted in the Assumptions section above, if information must be retrieved from archives, is that information “ready for public distribution”?
2. If a requester asks an agency to provide public information by mail, under 2-6-1006(2)(a), MCA, as amended, the agency must mail the requester a copy regardless of the length of the record, the burden and cost of mailing, or whether the information is already provided elsewhere - for example, on another publicly accessible website. Some agencies provide certain information only on a website but would be required to mail copies free of charge upon request. For example, the Lottery might be required to mail out the winning numbers after a drawing although the same information is readily available on the Lottery website.

3. As noted in the agency Assumptions section above, some requests for compiled records may create a substantial burden for an agency and may make it challenging to respond to the request within 5 business days, especially in the case where the request is for public information not already prepared and ready for public distribution.
4. The cost of postage will exceed the 25 cents per page that agencies may charge to fulfill some requests under 2-6-1006(2)(b).
5. The reference in 2-6-1006(2)(c)(i), MCA, as amended, to “subsection (3)(c)(ii)” appears to be an error. The reference is apparently to what would become, upon enactment, subsection (2)(c)(ii).
6. The “information technology systems analyst 1” broadband classification referenced in 2-6-1006(2)(c)(ii) is subject to change.
7. It is not clear how an agency should handle situations where “the actual staff time spent” fulfilling a request exceeds the agency’s initial estimate and the amount paid up front by the requester under 2-6-1006(2)(c)(ii), MCA. It is also unclear if “actual time spent responding to a request” includes necessary legal review to prevent the disclosure of confidential information.
8. The drafter probably intended section (4) (amending 2-6-1006, MCA) to be subsection (3). If this assumption is correct, the existing subsections (4)-(6) of 2-6-1006 would not need to be renumbered as proposed in the bill.
9. Regarding section 5, a distribution list could be valuable to a person for reasons other than making unsolicited contact with persons on the list. Other uses/purposes for obtaining a list may be to do market research, which would not involve direct contacts with people on the list but could lead to targeted social media campaigns. Although information may already be available under current law as public information to a requester who asks about specific persons on a government distribution list, the information will be much more accessible and valuable when compiled in a list and released.

#### **Department of Corrections**

10. SB 393 provides no guidance or standards as to what portions of a public meeting can (or must) be conducted remotely and what parts can (or must) be conducted only in-person. There is no requirement in the bill that that published meeting agendas specify which items will be conducted remotely and which will not (i.e., which will only be conducted in-person).

#### **Department of Environmental Quality**

11. The bill revises 2-6-1006(2) to add a new subsection (b) and renumbers existing subsection (b) as subsection (c). New subsection (c) has subparts (2)(c)(i) and (2)(c)(ii). (2)(c)(i) refers to subsection (3)(c)(ii) when, instead, it should refer to subsection (2)(c)(ii).

#### **Department of Labor and Industry**

12. Timelines for response to records requests may not always be possible. As written, the bill proposes that any information kept “in a uniform format, storage, or software” must be produced within 15 days, or within 25 days if printing is necessary. While a great deal of information is stored within a database, accessing the information into a producible format is not always instantaneous, particularly with other constraints on staff time.

#### **Department of Natural Resources and Conservation**

13. Section 3 adds a definition of “distribution lists” and section 5 amends 2-6-1017, MCA, to prohibit a “person” from using or creating a distribution list “to make unsolicited contact with the individuals on the list.” Section 5 also provides that a public agency may provide a person the opportunity to examine and obtain a copy of public information, and a public agency may contact individuals on a distribution list for public purpose.
  - a. As written, a “person” working at a public agency would still be prohibited from *creating* a distribution list, even if the list would be used for public purposes.
  - b. All agency records, except confidential information, are available for public inspection. Prohibiting a member of the public from compiling public information to create a “distribution list” is likely to be problematic from an enforcement standpoint.

- 14. Section 4 amends 2-6-1006, MCA, related to timelines for responding to information requests. The language on page 5, line 8, requires that an agency make information available or provide a copy “at the time of the request” if it can be provided electronically, which is confusing in the context of lines 2-3 in which the agency has 10 business days to acknowledge receipt of a request.
- 15. Payment for photocopies is only permitted in the case of “requests for public information not already prepared and ready for public distribution;” as written, SB 393 excludes the possibility of payment for copies in any other scenario.

**State Auditor’s Office**

- 16. NEW SECTION 1(3) states, “the agency shall provide a remote communication system that provides ... the public the ability to reasonably participate in the meeting.” It is unclear if the intent of the bill is for the agency to provide hardware and internet access to the public.
- 17. NEW SECTION 1(3)(d) states for non-video remote meetings that the agency “shall ensure” that, “agency members and the public can reasonably observe all materials reviewed and discussed by the agency during the meeting.” Perhaps more precise language could be “reasonably access all materials”.
- 18. SECTION 4(2) states that an agency shall acknowledge receipt of the [public records] request as soon as possible within 10 business days. SECTION 4(2)(a) states that prepared and ready public information be available free of charge at the time of request, i.e. before the 10 day acknowledgement period is complete. To reconcile the two deadlines, perhaps more precise language could be “free of charge at the time of acknowledgment of receipt of the request”. If the intent is for an immediate response from the agency for certain types of information, then there may be a cost for ensuring an employee is available full-time to immediately respond and provide that information.
- 19. SECTION 4(2)(b) states that information that is not prepared and ready be available within 5 business days of acknowledgment of the receipt of the request. SECTION 4(2)(c)(i)-(ii) states that information that requires the agency to search, compile, or gather data be available within 60 business days of acknowledgement of receipt of the request or payment of the estimated fee. SECTION 4(2)(b) appears to be contradictory, because information that is not prepared and ready would require the agency to search, compile, or gather that information.

**NO SPONSOR SIGNATURE**

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*Sponsor’s Initials*

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*Budget Director’s Initials*

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