



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2025 Biennium

Bill information:	
SB0232 - Provide for deadlines to respond to public information requests (Ellis, Janet)	
Status:	As Introduced

- | | | |
|---|--|--|
| <input type="checkbox"/> Significant Local Gov Impact | <input checked="" type="checkbox"/> Needs to be included in HB 2 | <input checked="" type="checkbox"/> Technical Concerns |
| <input type="checkbox"/> Included in the Executive Budget | <input type="checkbox"/> Significant Long-Term Impacts | <input type="checkbox"/> Dedicated Revenue Form Attached |

FISCAL SUMMARY

	<u>FY 2024 Difference</u>	<u>FY 2025 Difference</u>	<u>FY 2026 Difference</u>	<u>FY 2027 Difference</u>
Expenditures:				
General Fund	\$4,409,930	\$4,388,595	\$4,350,905	\$4,383,377
State Special Revenue	\$150,556	\$144,950	\$147,185	\$149,445
Federal Special Revenue	\$35,255	\$34,249	\$35,046	\$35,824
Revenue:				
General Fund	\$0	\$0	\$0	\$0
State Special Revenue	\$0	\$0	\$0	\$0
Federal Special Revenue	\$0	\$0	\$0	\$0
Net Impact-General Fund Balance:	<u>(\$4,409,930)</u>	<u>(\$4,388,595)</u>	<u>(\$4,350,905)</u>	<u>(\$4,383,377)</u>

Description of fiscal impact: SB 232 changes the response time for public information requests. The time constraints set forth in Section 1 (2) and (3), create no fiscal impact for several state agencies that receive minimal public records requests. However, for agencies that receive a high volume of complex records requests, the bill will require additional resources.

FISCAL ANALYSIS

Assumptions:

Department of Administration

1. The Department of Administration is currently working to create a centralized office for the coordination of public information requests, based on the current law processes.
2. Governor Gianforte's Executive Budget proposed funding for the new office in HB 2. The proposal requests approximately \$400,000 per year for the Office of Public Information Requests (OPIR) and 3.00 FTE. The OPIR would work in collaboration with state agencies to process information requests by centralizing what

can be centralized, implementing enterprise software to help track and manage requests, standardize charges for requests, and creating reports or dashboards for requests. The final approval for request responses will fall to the appropriate state agency related to the request. This request can be found in NP 108 in the Director's Office of the Department of Administration.

3. The Executive Budget also includes a request included in HB 10, for an IT system for e-discovery of information requests. The budget proposal for the IT system is \$2,000,000. For purposes of this fiscal note, it is assumed that the HB 10 proposal is approved by the legislature.
4. In most agencies, record request fulfillment processes are largely manual. Staff retrieve records by querying users in an agency who are likely to possess responsive records and/or searching information systems using native search tools (i.e., search engines built into the systems). After repeating multiple searches of multiple systems, staff compile data in paper and/or electronic form. It is difficult to store data securely in a place where all users who are involved in a search can access the collected data. Often, data must be converted into another format for review and redaction (i.e., the process of removing confidential information to protect privacy and proprietary interests). Redaction is frequently a mix of physically obscuring or electronically removing confidential data. Communicating with requesters regarding the status of a request is also typically a manual process where citizens and staff check in with each other by email, letter, etc. Billing and receiving payment for the actual cost of producing records is also a manual process.
5. In order to produce records in the timeframes anticipated in SB 232, the Department of Administration would procure additional information technology systems to support agencies' efforts to fulfill requests. In combination with the requests made in HB 10, these systems would capture and archive electronic messages in transit to and from executive branch email users, provide a central searchable repository for a variety of record types, securely store up to 40 terabytes of data, provide enhanced search capabilities, use machine learning to refine search results, facilitate data culling to reduce review of duplicate records, allow users to collaborate on requests, simplify record redaction, tag redacted records to document the reasons for redaction, track requests throughout their life cycle, and automate interactions with requesters. The systems would automatically generate invoices and allow online payment of the actual cost of producing records.
6. The purpose of procuring the information technology systems described in Assumption 5 is to automate as many processes as possible to allow staff to spend their time performing the remaining manual tasks (e.g., retrieving paper records), tasks involving judgment, and other tasks that cannot be automated. By capturing and categorizing records as they are created/in-transit, the information technology systems will speed up the record gathering phase. Machine learning and artificial intelligence will increase efficiency in searching and reviewing records to allow more records to be reviewed in less time. Data repositories will allow reviewers to review related records of different types together to decrease review time and allow collaboration between multiple users (for example, a lawyer and a subject matter expert). Tracking tools will reduce the number of manual interactions with requesters, who will nonetheless have better visibility regarding the status of a request and allow staff to shift time from corresponding with requesters to gathering and reviewing records. Similarly, these systems will allow staff to quickly generate estimated costs of record requests and automate invoicing and collection of fees.
7. The capabilities of the system requested in HB 10 (reference in Assumption #3) are not sufficient to meet the statutory requirements of SB 232. Additional software with the capabilities to meet the new statutory requirements is estimated to cost \$3,550,000 annually.
8. Further, in addition to the budget request referenced in Assumption # 2, the Department of Administration estimates the need for 1.00 FTE attorney and 1.00 FTE legal assistant. State agencies will also need additional resources. For purposes of this fiscal note, it is assumed the HB 2 request is approved.

Department of Transportation

9. MDT 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 within the timeframe contained in SB 262.
10. MDT generally responds to routine requests within 14 to 30 calendar days.

11. Preparing information not ready for public distribution within 20 days of acknowledgment will require existing staff to suspend other duties to comply with an expedited collection of records.
12. Records collection typically involves multiple MDT programs, so additional staff time would be spent to prioritize collection of records over all other assigned duties.
13. MDT will require a full-time dedicated staff person to comply with an expedited collection of records.
14. A 1.00 FTE administrative specialist position is needed. The personal services related to this position will cost \$53,732 in FY 2024, \$53,732 in FY 2025, \$54,538 in FY 2026 and \$55,356 in FY2027.
15. The operating costs associated with the new 1.00 FTE will be \$2,800 in FY 2024 (\$1,600 for office equipment + \$1,200 for a computer).

Office of the State Auditor

16. The Legal Bureau at the Office of the State Auditor handles approximately 10 public information requests annually. The complexity of handling these requests as they relate to trade secret protection, personal identifiable information (PII), and confidential criminal justice information require an adjustment to staff time.
17. The current public information request is reviewed by a paralegal initially, followed by one or more staff attorneys. The legal staff time to manage each public information request is 8 to 22 hours currently.
18. Current average turnaround time from when the public information request is received until the response is complete is 58 days.
19. If the public information request seeks confidential justice information, then court approval is required. Court approval, in some circumstances, makes complying with the 20-working day response impractical and potentially impossible.
20. If the public information requestor is being investigated or litigated against, legal staff time will increase to meet the requirements of SB 232.
21. If the public information request is on the eve of hearing or trials, legal staff time will increase to meet the requirements of SB 232.
22. The unpredictability of public information request volume and complexity will require the Legal Bureau to hire outside counsel to ensure that SB 232 requirements are met. This would occur when existing staff are unable to handle a public information request based on trial preparation, trial proceedings, court case deadlines, or staff shortages.
23. The outside counsel cost is factored on the estimated increase in the number of hours it will take to manage public information requests if SB 232 is passed. The calculation is as follows, 10 yearly requests x 140 hours x \$175 hourly rate = \$24,500.

Department of Environmental Quality (DEQ)

24. DEQ estimates 900 public information requests per fiscal year. FY 2022 actual requests totaled 910.
25. Analyzing FY 2022 requests, assume 20 working days is comparable to 30 calendar days.
26. Of the 910 requests processed in FY 2022, 455 or 50% were not closed within 30 calendar days.
27. Implementation of SB 232 would require an additional 3.00 FTE program specialists and an additional 1.00 FTE lawyer 2 to prioritize information requests over competing deadlines and current workload on existing staff.
28. DEQ may be subject to unfunded litigation expenses. A single records case would be estimated at \$10,000-\$50,000, depending on the complexity of the case and the rates of outside counsel which would be hired to defend DEQ. In addition, DEQ may be required to pay plaintiff's costs or attorney's fees.

Department of Public Health and Human Services

29. For purposes of this fiscal note, the department assumes that public information requests include Freedom of Information Act (FOIA) requests, and other public inquiries. Requests from media or for personal documents (vital records) are not included in the assumptions.
30. The department averages 80 public information requests each fiscal year. It is estimated 31% (25 requests) take an average of two hours of staff time per request. For the requests that are more complex and resource

intensive, it is estimated that 31% (25 requests) take an average of 10 hours of staff time per request, and 38% (30 requests) take an average of 20 hours of staff time per request.

31. Section 1(2) and (3) of the bill requires the department to acknowledge and respond to public information requests within specific timeframes. Requests that are more complex and resource intensive will take double the staff time to meet the requirements of the bill.
32. The department estimates that 31% (25 requests) will take an average of an additional 500 hours of staff time (25 requests X 20 hours), and 38% (30 requests) will take an average of an additional 1,200 hours of staff time (30 requests X 40 hours) totaling additional staffing needs of 1,700 hours annually to meet the timelines established in the bill.
33. The department estimates additional staffing needs of 0.75 FTE public affairs officer to meet the timeframes within the bill.
34. Salary and benefits of the 0.75 FTE position is estimated to be \$63,785 in FY 2024 and \$63,994 in FY 2025. One-time only office set up costs are estimated to be \$2,100, and ongoing operating costs associated with the FTE are estimated at 3% personal services, 37% General Fund, 11% state special revenue, and 52% federal funds.
35. The department assumes a 1.5% inflation factor for personal services in FY 2026 and FY 2027.

Department of Fish, Wildlife & Parks (FWP)

36. This bill requires a public agency to acknowledge receipt of a public information request within five days and requires that the request is fulfilled within 20 days. If the agency fails to meet the deadlines this bill will allow the requestor to file a complaint in district court.
37. In 2022, FWP received 287 public information requests. The average response time to fulfill these requests was 43 days.
38. To meet the 20-day requirement, FWP will require 1.00 FTE for an administrative assistant 3. This will cost \$62,066 in FY 2024 and \$59,473 ongoing.

Department of Military Affairs

39. Department of Military Affairs would need to hire 1.00 FTE lawyer to meet the timeframes in the legislation.
40. For FY 2024, the department estimates a salary and benefits cost of \$97,252. In addition, a one-time equipment cost of \$2,800 for office supplies, furniture, and computer equipment.
41. FY 2026 and FY 2027 personal services are based on a 1.5% annual inflation increase.

Department of Justice

42. Three 0.50 FTE are necessary to gather and review agency information under the timelines amended in SB 232. The FTE necessary are as follows: 0.5 FTE attorney, 0.5 FTE paralegal and 0.5 FTE data analyst, for a total of \$120,693 in personal services in FY 2024 and FY 2025.
43. It is estimated that there would be one-time-only costs in the amount of \$13,556 to set up office space and computers for the new 1.5 FTE.
44. Annual operating costs are estimated at \$14,874.
45. A 1.5% inflation rate has been applied in the FY 2026 and FY 2027.

Other State Agencies

46. State agencies who receive no or very few public information requests and have indicated they can accommodate the requirements of the bill within existing resources include: Montana Arts Council, Board of Public Education, Judicial Branch, Office of Commissioner of Higher Education, Montana State Library, Montana Historical Society, Secretary of State's Office, Commissioner of Political Practices, Department of Agriculture, Office of Public Defender, Department of Commerce, Legislative Branch, Department of Labor & Industry, Department of Livestock, Public Service Commission, Department of Natural Resources and Conservation, Department of Corrections, and the Department of Revenue.
47. To the extent that any of the agencies listed above receive an information request that is a complex or resource intensive request, there may be a delay to other department services in order to meet the timelines in SB 232.

	<u>FY 2024 Difference</u>	<u>FY 2025 Difference</u>	<u>FY 2026 Difference</u>	<u>FY 2027 Difference</u>
<u>Fiscal Impact:</u>				
FTE	11.25	11.25	11.25	11.25
<u>Expenditures:</u>				
Personal Services	\$901,475	\$902,919	\$916,614	\$930,455
Operating Expenses	\$3,694,266	\$3,664,875	\$3,616,522	\$3,618,193
TOTAL Expenditures	\$4,595,741	\$4,567,794	\$4,533,136	\$4,548,648
<u>Funding of Expenditures:</u>				
General Fund (01)	\$4,409,930	\$4,388,595	\$4,350,905	\$4,383,377
State Special Revenue (02)	\$150,556	\$144,950	\$147,185	\$149,445
Federal Special Revenue (03)	\$35,255	\$34,249	\$35,046	\$35,824
TOTAL Funding of Exp.	\$4,595,741	\$4,567,794	\$4,533,136	\$4,568,646
<u>Revenues:</u>				
General Fund (01)	\$0	\$0	\$0	\$0
State Special Revenue (02)	\$0	\$0	\$0	\$0
Federal Special Revenue (03)	\$0	\$0	\$0	\$0
TOTAL Revenues	\$0	\$0	\$0	\$0
<u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u>				
General Fund (01)	(\$4,409,930)	(\$4,388,595)	(\$4,350,905)	(\$4,383,377)
State Special Revenue (02)	(\$150,556)	(\$144,950)	(\$147,185)	(\$149,445)
Federal Special Revenue (03)	(\$35,255)	(\$34,249)	(\$35,046)	(\$35,824)

Technical Notes:

Department of Public Health and Human Services

1. SB 232 amends 2-6-1006 and 2-6-1009, MCA, regarding public information requests, imposing timelines of five (calendar) days to respond to the request, and 20 workdays from response to produce the requested records, with a potential 20-day extension if mutually agreed upon. Failure to meet response deadlines could result in a complaint in district court with potential costs and attorney fees awarded.
2. Five calendar days, with some days potentially falling over a holiday weekend, and 20 workdays for a response contradicts existing records request response standards. Requests involving HIPAA, which requires a response to a request for an individual’s health records, including production if granted, is currently 30 days, with the department being able to unilaterally extend up to 30 additional days for good cause (note also the subject public records requests can be much more voluminous and complex than one person’s health records)
3. SB 232 doesn’t distinguish between requests by Montanans (which are also generally limited in scope), and large, complex requests from national media outlets. Requests from national media outlets can be especially voluminous and complex.
4. SB 232 does not consider public information requests where the requester does not respond to clarifying questions or cost estimates within the time parameters. In a recent example, DPHHS provided a response to the requestor under 20 days (these days included Christmas and New Year’s Day). However, the department

did not receive a response from the requestor for another 22 days regarding the information provided. At that point, the requester altered their request. Lack of or delays in clarification may prevent the department from being responsive in the way outlined in the bill and thus subject to sanction outside its control.

Department of Military Affairs

- 5. Department of Military Affairs cannot guarantee the response time for questions pertaining to Disaster and Emergency Services while the division is activated for a Disaster Response. Disaster responses often take more than 20 days, and can even exceed 40 days, and the division may not have the capacity to address large FOIA requests during this time.

Department of Administration

- 6. The Department of Administration concurs with the technical notes of the Department of Public Health and Human Services. In addition to certain media requests, in the department’s experience, requests made by commercial entities that sell public records for profit and requests made for the purpose of academic research are often voluminous and complex.

NO SPONSOR SIGNATURE

2/8/23



2-7-23

Sponsor’s Initials

Date

Budget Director’s Initials

Date