



**Colorado  
Legislative  
Council  
Staff**

**HB16-1368**

**FISCAL NOTE**

**FISCAL IMPACT:**  State  Local  Statutory Public Entity  Conditional  No Fiscal Impact

**Drafting Number:** LLS 16-0966  
**Prime Sponsor(s):** Rep. Tyler

**Date:** March 30, 2016  
**Bill Status:** House SVMA  
**Fiscal Analyst:** Josh Abram (303-866-3561)

**BILL TOPIC:** MANAGEMENT OF RECORDS IN THE STATE ARCHIVES

<b>Fiscal Impact Summary</b>	<b>FY 2016-2017</b>	<b>FY 2017-2018</b>
<b>State Revenue</b> Cash Funds	Fee revenue increase See State Revenue section.	
<b>State Expenditures</b> General Fund Cash Funds	Expenditure increase. See State Expenditures section.	
<b>TABOR Impact:</b> Fee revenue increase. See TABOR Impact section.		
<b>Appropriation Required:</b> None.		
<b>Future Year Impacts:</b> Ongoing fee revenue and expenditure impact.		

**Summary of Legislation**

This bill clarifies and codifies the current practices of the state archivist in the Department of Personnel and Administration (DPA) related to the storage and retention of state archives and public records. The bill applies to all governmental agencies, including any state agency or office, department, division, board, bureau, commission, institution, or agency of any county, city, city and county, special district or other district in the state, or any legal subdivision of a state or local government.

The bill creates a distinction between records in the custody of a governmental agency pursuant to law, or in connection with a transaction of public business, and other materials that a governmental agency may hold that are not pursuant to a legal requirement, but deserve retention and preservation. The bill creates two separate programs in the state archives: the permanent records program and the records center. The *permanent records program* consists of records transferred to the DPA pursuant to the State Archives and Public Records act and that the state archivist will keep and retain permanently due to the legal, historical, or administrative value or significance of the record. The *records center* consist of records that have been transferred, with approval of the state archivist, to the DPA for temporary storage until the final disposition of the records has been met, typically destroying the records following a specific retention schedule. The state archivist may determine whether to accept materials for the record center from a governmental agency. If the records are accepted for storage, the agency and the state archivist must establish a written agreement. The governmental agency remains the official custodian of

the records. The state archivist may charge fees to the agency in order to pay for the direct and indirect costs of maintaining the records in the records center. Fees are deposited in the existing State Archives and Records Cash Fund.

In addition, this bill:

- establishes that the state archivist, and not the executive director of DPA, is responsible for the day to day operations of the state archives, including adopting rules and determining when records should be transferred to the archives;
- requires that each state agency have a records management program;
- removes the requirement that the attorney general help determine the legal, administrative, or historical value of records; and
- authorizes the state archivist to convene a records advisory board to study the best practices for the retention and preservation of records, to assist governmental agencies with records management programs, and to perform other advisory functions deemed necessary by the state archivist.

## **State Revenue**

The bill increases state revenue to the State Archives and Records Cash Fund from fees paid by governmental agencies to the DPA. Fees will be set via rule to cover the direct and indirect costs of the storage and retrieval of records from the records center. Fee revenue from governmental agencies that are not departments of state government is counted against state revenue limitations in the state constitution. See TABOR impact section.

A fee impact under the bill will be incurred by any non-state governmental agency that chooses to use the records center for the temporary storage of non-archived materials. The precise amount of new fee revenue will depend on which agencies use this service and the fee schedule established by the state archivist.

## **TABOR Impact**

This bill increases state revenue from fees, which will increase the amount of money required to be refunded under TABOR. TABOR refunds are paid out of the General Fund. z Since the bill increases the TABOR refund obligation without a corresponding change in General Fund revenue, the amount of money available in the General Fund for the budget will decrease by an identical amount.

## **State Expenditures**

The bill increases state expenditures for any state agency that chooses to use the records center for the temporary storage of non-archival records. Generally, it is assumed agencies currently have sufficient appropriations to pay for their existing record storage needs, whether through the state archives or by private vendors. However, some agencies that currently use the state archives for temporary records storage may experience an increase in costs. It is further assumed that any additional appropriations will be requested through the annual budget process. Potential costs under the bill are discussed below.

**Cost increase — state agencies.** As an illustration of the state expenditure impact of this bill, the Secretary of State (SOS) currently transfers approximately 200 boxes of records per year to the state archives at basically no cost. Approximately 25 of those boxes come from the Business and Licensing Division and contain records that the state archives store on a permanent basis. The remaining 175 boxes contain elections records, primarily voter petitions, which are stored by archives for three to four years depending on the type of petition, and then destroyed.

The SOS does not currently pay a storage fee for these services. Instead, various services from the DPA, including document storage, are purchased by the SOS and other departments of state through the Statewide Indirect Costs Assessment Program (SWICAP). The records center at DPA would be an optional service for governmental agencies that would compete with other private vendors and government storage programs.

The SOS has obtained cost estimates from private vendors indicating that election petitions could be stored on a temporary basis for \$22 per month per pallet, where each pallet holds approximately 50 boxes. Therefore, the SOS can anticipate paying for the storage of approximately four pallets. Since these documents have a three year retention schedule, the SOS must pay for four pallets the first year, eight the second year, and twelve in the third and subsequent years. At the estimated private vendor rate, the SOS would anticipate spending about \$1,000 in the first year, about \$2,000 in the second, and about \$3,000 in the third and subsequent years.

As another example, the Office of Legislative Legal Services (OLLS) in the Legislative Branch also stores files with the state archivist. This typically includes legislator files the office assembles as work product when drafting legislation. These and other records from OLLS have been stored with the state archivist due to lack of adequate storage space at the state capitol building. This bill will require that the OLLS begin paying the DPA a fee for records storage.

**Workload and expenditure increase — Department of Personnel and Administration.** Workload in the DPA is anticipated to increase slightly for FY 2016-17 for the state archivist to establish the permanent records program and the records center, adopt rules and a fee schedule for temporary storage in the records center, and to provide clarification and technical assistance to other governmental agencies ensuring their records management program complies with statute and state rules. Workload also increases for the DPA to convene, and for representatives from other governmental agencies to participate in, a records advisory board. These increases do not require additional appropriations.

The department will also increase expenditures from the State Archives and Records Cash Fund to operate the records center. If additional spending authority is required from the cash fund, the DPA will request appropriation adjustments through the annual budget process based on actual usage of the records center.

### **Local Government Impact**

Similar to state agencies, local governments and their subdivisions may decide to use the records center for the temporary storage of non-archived materials. Since the fee schedule for storage in the records center has not been set, no estimate of the expenditure impact to local governments can be estimated. The fee amount may be more than, less than, or equal to the amount these local governments currently pay for records storage.

**Effective Date**

The bill takes effect August 10, 2016, if the General Assembly adjourns on May 11, 2016, as scheduled, and no referendum petition is filed.

**State and Local Government Contacts**

All Departments  
Coroners  
County Clerk And Recorders  
Fire Chiefs  
PERA  
Regional Transportation District  
Special Districts

Colorado Health Benefit Exchange  
Counties  
District Attorneys  
Municipalities  
Public Trustees  
Sheriffs