



Office Memorandum

Date: October 21, 2015

To: Representative Ann Lenczewski Senator Rod Skoe, Chair
Representative Greg Davids, Chair Senator Julianne E. Ortman
Representative Jim Knoblach, Chair Senator Richard J. Cohen, Chair
Representative Lyndon Carlson Sr. Senator Michelle L. Fischbach

From: Margaret Kelly, State Budget Director *MK*

Subject: Local Impact Note for S.F. 498-1E (Latz): Portable Recording System Data

On March 26, 2015, Minnesota Management and Budget received a request to prepare a local impact note on S.F. 498 (Latz): Portable Recording System Data. On March 25, 2015, S.F. 498-1E (Latz) passed the Minnesota Senate Judiciary Committee as amended. We have completed our analysis on S.F. 498-1E and 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 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 Senate Finance committee, and the House Ways and Means committee.

MMB consulted with the Information Policy Analysis Division with the Minnesota Department of Administration, Minnesota Chiefs of Police Association, the Minnesota Sheriffs' Association, and the Minnesota State Archives to evaluate the impact of S.F. 498-1E on local units of government. After consulting with these organizations, MMB has determined that S.F. 498-1E would result in cost increases for local law enforcement agencies that elect to use portable recording systems. However, S.F. 498-1E does not mandate the use of portable recording systems. Therefore, MMB has determined that the bill would not result in any additional state-mandated direct costs to local law enforcement agencies.

If you or your staff has any questions about the local note process, feel free to contact Executive Budget Coordinator Britta Reitan at (651) 201-8028.

cc: Senator Ron Latz
Legislative staff (electronic)

October 21st, 2015

S.F. 498-1E (Latz)

Portable Recording System Data

Local Fiscal Impact				
Net Expenditure Increase/Revenue Loss or (Expenditure Decrease/Revenue Gain)				
In Dollars, Calendar Years				
	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>
Statewide	\$0	\$0	\$0	\$0

Bill Description

S.F. 498-1E classifies data collected through portable recording systems (police body cameras) and establishes required data retention and destruction practices. The bill also includes other provisions pertaining to law enforcement agencies’ use of these systems, auditing requirements, and vendor practices and liability.

Local Impact Methodology

MMB consulted with the Information Policy Analysis Division (IPAD) with the Minnesota Department of Administration, Minnesota Chiefs of Police Association (MCPA), the Minnesota Sheriffs’ Association (MSA), and the Minnesota State Archives to evaluate the impact of S.F. 498-1E on local units of government.

Local Fiscal Impact Analysis of S.F. 498-1E

S.F. 498-1E does not require the use of portable recording systems; therefore, there are no state-mandated local costs associated with this bill. Currently, a small proportion of law enforcement agencies elect to employ portable recording systems. MCPA and MSA estimate that around 40, or less than 10% of all agencies, use these recording systems, with the degree of use varying significantly. Even though there are no state mandated costs resulting from S.F. 498-1E, MMB has provided a discussion of the types of costs that may be associated with this bill for those agencies choosing to use portable recording systems, including example cost estimates provided by the MCPA where applicable. Given that these costs are not mandated, and due to unknown factors and variables described below, MMB has not provided a statewide cost estimate.

1. The bill allows individuals to bring an action in district court for the disclosure of body camera data that is classified as private or nonpublic. The bill requires the petitioner to notify subjects of the data, if known, of this action. Law enforcement agencies maintaining the footage in question are required to notify subjects of the data, if known, who were not notified by the petitioner. This action will require administrative costs on the part of law enforcement agencies. MMB is unable

to quantify these costs due to unknown factors such as the number of requests, number of subjects recorded, and length of time needed by law enforcement agencies to notify subjects

2. The bill authorizes access to portable recording systems data for subjects of data, including a copy of the data. If a copy is requested, data of those who have not consented to the release of the data must be redacted. Law enforcement agencies will incur similar costs mentioned above relating to notifying subjects of data, as well as costs of footage redaction. In an example provided by the MCPA, in 2014, the Duluth Police Department reviewed 100 videos after a request for all data recorded within a certain four hour timespan. This process involved the redaction of 15 minutes of footage, requiring approximately one hour of staff time. In all, the request entailed 14 hours of staff review at an average hourly wage of \$39.35, for a total cost of \$551 in wages. However, redaction costs will vary depending on the amounts of footage requested and redaction required.
3. The bill requires law enforcement to maintain most portable recording systems data for at least 90 days. Data would be maintained for longer periods when they are part of criminal investigations, involve the use of a dangerous weapon or physical coercion by a peace officer resulting in at least substantial bodily harm, involve a peace officer against whom a formal complaint has been made, or when a subject of the data requests for longer retention.

Under current statute, if a law enforcement agency determines that its body camera data are official records as prescribed in M.S. 15.17, the agency must preserve those data. M.S. 138.17 requires agencies to develop a retention schedule that determines how long official records must be maintained before they can be destroyed. These timeframes vary by agency, but all retention schedules must be approved by the Records Disposition Panel. The Minnesota State Archives, which acts as the secretary to the Records Disposition Panel, reviewed schedules that they have on file, and to the best of their knowledge, there is no record of portable recording systems data in cities' and counties' retention schedules, although it is possible that this data is categorized under a more general category.

Because it is likely that law enforcement agencies are not currently categorizing their portable recording systems data as official records, S.F. 498-1E's 90 day retention schedule may result in added costs for agencies using portable recording systems. The costs associated with this provision will vary depending on agencies' current retention schedules and whether agencies retain their own data or use portable recording system vendors. As an example, the Duluth Police Department currently retains most data for only 30 days through a vendor, at a cost of \$30,000 per year. It is unknown if S.F. 498-1E's retention requirements would result in a cost increase for the Duluth Police Department.

4. The bill requires an independent triennial audit of law enforcement agencies to ensure that portable recording systems data are maintained, classified, and destroyed according to the provisions in this bill. It is assumed that law enforcement agencies would need to pay for the costs of these audits. The MCPA estimates that an audit of the portable recording systems data currently being maintained by Minnesota law enforcement agencies may require one staff person 20-40 hours of review per law enforcement agency. At an estimated hourly wage rate of \$35, the

audit would cost \$700-1,400 in wages, but these costs would vary significantly based on how extensively each agency employs portable recording systems.

5. The bill prohibits law enforcement agencies from using portable recording systems unless the agency has adopted a written policy that includes standards established in the bill. In addition, law enforcement agencies must provide training relating to the policy. Due to the varying degrees to which law enforcement agencies currently deploy portable systems, not every law enforcement agency currently has a written policy governing the use of portable recording systems. Those law enforcement agencies without a policy would face costs associated with establishing this policy and providing trainings related to it, which will vary depending on the size of an agency's force and the degree to which an agency uses portable recording systems.

It is MCPA and MSA's position that the other provisions within S.F. 498-1E would not impose additional costs beyond those costs already incurred currently through the use and maintenance of portable recording systems. While MMB concludes that S.F. 498-1E would result in increased costs for law enforcement agencies that elect to use portable recording systems, the variables described above make it impossible to quantify a statewide cost estimate. Moreover, this bill does not require law enforcement agencies to use portable recording systems, and thus would not result in any additional state-mandated direct costs.