



Fiscal Summary

Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Measure: Initiative 286 – RIGHT TO ACCESS PUBLIC PROCEEDINGS AND RECORDS

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Fiscal Summary of Initiative 286

This fiscal summary, prepared by the nonpartisan Director of Research of the Legislative Council, contains a preliminary assessment of the measure's fiscal impact. A full fiscal impact statement for this initiative is or will be available at leg.colorado.gov/bluebook. This fiscal summary identifies the following impact.

Background

Colorado has three primary laws governing government transparency. The Colorado Open Records Act (CORA), enacted in 1968, establishes that all public records must be open for inspection by any person at reasonable times, covering records at both the state and local level. Criminal justice records are handled separately under the Colorado Criminal Justice Records Act (CCJRA) of 1977. CORA presumes all non-criminal records are public unless a specific law, federal regulation, or court order says otherwise, and any exceptions are to be narrowly interpreted. The Colorado Open Meetings Law (COML), initiated by voters in 1972 and consolidated into a single statute in 1991, declares that the formation of public policy is public business and cannot be conducted in secret. It applies to all formally constituted boards, committees, commissions, and other government bodies, as well as private entities delegated governmental decision-making functions, though routine administrative staff meetings are exempt. Potential impacts under the measure are discussed below and will depend on how it is interpreted and how existing laws interact with the rights created by this measure.

State Revenue

The measure may increase revenue to the Judicial Department from an increase in civil case filings against state and local governments. Revenue from filing fees is subject to TABOR.

In addition, to the extent more records requests are made and fulfilled, fee revenue for state agency staff to search for and provide copies of records could increase. However, if the measure results in fees under current law being classified as an undue burden to public access, this records-related revenue could also decrease. The exact revenue impact cannot be estimated due to uncertainty over the potential change in request volume and future legal decisions.

Initiative 286

State Expenditures

The measure will likely result in significant increases in workload and costs for state government agencies in several areas, including from processing more records requests, ensuring meetings are open to public, responding to legal disputes over which records and meetings are exempt from public disclosure and access, and, if violation occur, paying sanctions. These impacts are described in more detail below.

Increased Records Requests

State agencies will likely receive more requests under the CORA, both from increased awareness if the measure passes and from requestors potentially having access to additional types of documents that currently fall under an exemption to the public disclosure requirement. Depending on the volume of additional requests received, agencies may require additional staff to respond to these requests. Workload may also increase to redact additional information in documents that become publicly accessible under the measure. Because impacts will vary on the number of additional requests, potential future changes in disclosure requirements, and other factors, the exact impacts have not been estimated for this fiscal summary. It is likely that most state agencies will require an increase in staffing to handle this workload.

For currently closed meetings and hearings, the measure could increase costs for agencies to make these meetings publicly accessible, which may include additional security, staff, audio-visual, technology, and other costs. Costs will vary by agency, depending on current practices, available resources, and how the courts interpret the measure.

Legal Costs

The measure will increase legal service costs for state agencies to respond to disputes over which records and meetings are accessible to the public under the measure and to demonstrate by clear and convincing evidence that any exemptions claimed under the measure are properly applied. For example, the measure may also lead to challenges over whether record-request fees constitute an unreasonable burden to know the affairs of state government and whether existing exemptions to CORA and the COML apply under the expanded rights created by the measure, among other things. Depending on the number and types of legal disputes arising, legal service costs, provided by the Department of Law, could increase significantly and potentially be in the millions of dollars in the initial years following passage of this measure.

Sanctions

To the extent state government agencies are found to have knowingly violated the measure, costs will increase from sanctions, with each sanction resulting in a \$1,000 civil penalty. The measure does not specify where this penalty revenue goes. It is assumed that it will be award to the prevailing party alleging the violation. Costs from sanction will depend on state agency compliance with the measure and exact costs cannot estimate the potential impact of these sanctions. Generally, it is assumed state government will comply with the measure.

Initiative 286

Local Government

Similar to the state, local government agencies will have increased workload and costs from processing more records requests, ensuring meetings are open to public, responding to disputes over which records and meetings are exempt from public disclosure and access, and, if violation occur, paying sanctions.

Economic Impact

The measure is not expected to have a direct economic impact on the state.